

RESOLUTION NO. 2016-183

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE
WILTON RANCHERIA (CEQA EXEMPT)**

WHEREAS, the Wilton Rancheria (the "Tribe") is a federally recognized Indian tribe; and

WHEREAS, the Tribe has identified property within the City of Elk Grove (the "City") which is approximately 35.92 acres in size, and adjacent to the proposed Elk Grove outlet mall site (the "Property") which the Tribe intends to seek to be put into trust with the United States federal government and developed into a hotel, casino, and entertainment facility (the "Facility") by the Tribe; and

WHEREAS, though recognizing that the City does not have land use or regulatory authority over the Property if placed in trust with the United States federal government for development of the Facility, the City and the Tribe wish to enter into a government-to-government Memorandum of Understanding ("MOU") with each other, pursuant to which the Tribe agrees to make payments to the City to mitigate the expected impacts of the Facility, should it be developed at the Property.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby finds the approval of the MOU is not subject to review under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* ("CEQA"), and that it is otherwise exempt from CEQA.

Finding: The approval of the MOU does not constitute the approval of a project under CEQA, and it is otherwise exempt from CEQA pursuant to CEQA Guidelines section 15378(b)(4).

Evidence: The City does not have land use or regulatory authority over the Tribe's Property if placed into trust with the United States federal government for the development of the Facility. Therefore, the approval of this MOU does not constitute the approval of a project by the City under CEQA, and it is not a decision that is subject to CEQA review. Additionally, the approval of the MOU provides for the creation of a government funding mechanism or other government fiscal activities, through mitigation payments to the City, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and this action is therefore exempt from CEQA pursuant to CEQA Guidelines section 15378(b)(4). Based on the foregoing, the approval of the MOU does not constitute the approval of a project under CEQA and is otherwise exempt from CEQA.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Elk Grove hereby approves the MOU and authorizes the City Manager to execute the MOU in substantially the form attached hereto as Exhibit A, and subject to approval as to form by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 28th day of September 2016




GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN THE CITY OF ELK GROVE AND
THE WILTON RANCHERIA

DATED: _____, 2016

This Memorandum of Understanding (the "MOU") is made and entered into this ___ day of _____, 2016, by and between the City of Elk Grove, a general law city and municipal corporation organized and existing under the laws of the State of California (the "City"), and the Wilton Rancheria, a federally recognized Indian tribe (the "Tribe"). The parties may collectively be referred to herein as the "Parties," and individually as a "Party."

RECITALS

WHEREAS, by virtue of a stipulated judgment filed June 8, 2009 in the case of *Wilton Miwok Rancheria v. Kenneth Salazar*, Case No. C-07-02681 (N.D. Cal. 2007) (the "Litigation"), the Tribe is a federally recognized Indian tribe; and

WHEREAS, in conjunction with the withdrawal of their Motion to Vacate the Judgment in the Litigation, in June of 2011, the City, County of Sacramento, and the Tribe entered into a prior Memorandum of Understanding Among the County of Sacramento, City of Elk Grove, and The Wilton Rancheria (the "2011 Agreement") under which the Tribe is to consult with the City as to any land to be taken into trust that is within the City's limits, and to negotiate with the City for mitigation of impacts to the City concerning the development of such land; and

WHEREAS, under the 2011 Agreement, the Parties established a process for the Parties to determine and enforce mitigation measures for proposed off-trust tribal land environmental, social and economic impacts and to provide a framework for future agreements between the Parties for development of specific projects on lands to be taken into trust for the Tribe. The 2011 Agreement requires the Tribe to have prepared a Tribal Project Environmental Document ("TPED") to evaluate "off-reservation environmental impacts including significant off-reservation environmental effects of proposed project and environmental effects of proposed project not found to be significant." Once impacts have been identified, the 2011 Agreement requires the Tribe to "construct and/or finance any Project identified as requiring mitigation in full compliance with the terms of an agreement" between the City and the Tribe; and

WHEREAS, one of the primary reasons for the 2011 Agreement was that officials for Sacramento County and the City of Elk Grove did not want the Tribe to build a casino on or near its former Rancheria property in Wilton due to the rural nature of that area of the County; and

WHEREAS, the Tribe has identified property within the City limits, and subject to the aforementioned 2011 Agreement, located near Highway 99 in the City, approximately 35.92 acres in size adjacent to the Elk Grove Mall site, currently under development, and more particularly described at Exhibit A (the "Property") which the Tribe seeks to have put into trust with the United States federal government and developed into a hotel, casino, and entertainment facility (the "Facility"); and

WHEREAS, the Facility is the subject of an Environmental Impact Statement/Tribal Project Environmental Document Wilton Rancheria Fee-to-Trust and Casino Project (the “EIS/TPED”) which is being prepared consistent with the National Environmental Policy Act (“NEPA”); and

WHEREAS, the current Facility, while subject to revision, is anticipated to include approximately 608,756 square feet of casino-resort facility, a 12-story and approximately 302 room hotel tower, including a convention center, with attendant on-site parking, all as further described in the EIS/TPED; and

WHEREAS, the Tribe, as a federally-recognized Indian tribe, may engage in particular types of gaming under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq* (“IGRA”) as a means to promote tribal economic development, self-sufficiency, and strong tribal government and to generally protect the welfare of its members; and

WHEREAS, IGRA makes Class III gaming activities lawful on lands of federally recognized Indian tribes only if: (1) authorized by a properly adopted ordinance or resolution of the Indian Tribe; (2) located in a state that permits such gaming, including the State of California (the “State”), and (3) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State. (25 U.S.C. § 2710(d)); and

WHEREAS, Class III gaming activities under IGRA include, without limitation, any gaming that is not Class I gaming (e.g. social games) or Class II gaming (e.g. bingo) and may include, without limitation, slot machines, electronic games of chance, blackjack, and poker (*See* 25 U.S.C. § 2703); and

WHEREAS, the Tribe has filed a land-into-trust application with the Bureau of Indian Affairs, United States Department of Interior (“BIA”), to place the Property into trust for the purpose of developing the Facility; and

WHEREAS, the Tribe is committed to entering into this voluntary contractual arrangement with the City pursuant to which the Tribe agrees to make certain financial contributions and community investments to fund the mitigation of various off-Property impacts that are a direct result of the Facility; and

WHEREAS, in addition to payments for the mitigation of significant off-Property impacts identified within this MOU, the City and the Tribe have agreed upon numerous provisions for additional contributions by the Tribe to the City for law enforcement, civic projects, roadway and infrastructure improvements, and community services that in part serve off-reservation needs of City residents and are not otherwise required by the Draft EIS/TPED (“Additional Contribution(s)”); and

WHEREAS, by this MOU, the City is not approving or disapproving the Facility, and, pursuant to the California Environmental Quality Act, California Public Resources Code sections 21000 *et seq.*, (“CEQA”) Guidelines section 15378(b), entry into this this MOU does not constitute the approval of a “project” for CEQA purposes because it involves the creation of a government funding mechanism and/or other government fiscal activity.

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

1. **NON-RECURRING PAYMENT**

(a) Non-Recurring Payment. The Tribe shall make a non-recurring monetary contribution to the City as follows:

Roadway Contribution	\$10,469,711
Regional Roadway Contribution	\$ 1,824,028
Police Equipment Contribution	\$ 250,000
City Community Facilities Contribution	\$ 2,000,000
TOTAL	\$14,543,739

(b) Payment Schedule. Subject to the other provisions of this Section, payment of the Non-Recurring Payment shall be made in five equal annual payments with the first payment due on the date of the Start of Construction and the additional payments due on the annual anniversary of the Start of Construction until paid in full. “Start of Construction” shall be the earliest date of the commencement of the first placement of permanent construction of a structure on the Facility site, including, without limitation, the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or grading. Start of Construction shall not include, excavation, clearing, grading, demolition of existing buildings, and/or filling, nor does it include the installation of off-site streets, sidewalks, walkways or other improvements.

(c) Roadway Contribution.

i) As listed above, the Tribe’s non-recurring Roadway Contribution shall be \$10,469,711. This Roadway Contribution and the Regional Roadway Contribution set forth at Section 1(d) include the amounts that the Tribe would otherwise pay for the Facility toward the City’s roadway fee program and regional roadway improvements, but for the Tribe’s sovereignty, and include the Tribe’s fair share contributions to the roadway facilities identified at Exhibit B, which corresponds to the mitigation measures

of the Draft EIS/TPED. The City will work in good faith with the Tribe to implement any necessary roadway intersection improvements related to the Facility at the earliest possible date after receipt of the first Non-Recurring Payment so as to be completed prior to Opening Day. Of the amount paid to the City by the Tribe pursuant to this Section, eighty-five (85%) percent will be applied to reimburse the City for costs directly associated with off-reservation traffic impacts resulting from the Facility, and fifteen (15%) percent will be an Additional Contribution to the City beyond what is required to mitigate for the off-reservation traffic impacts of the Facility.

ii) There are currently four buildings at the Property, identified as Buildings A, B, D, and E (the "Buildings"), as indicated on Exhibit C, which were part of a prior development project, and which are anticipated to be demolished. The Parties agree that if the Buildings are demolished by an entity other than the Tribe or the Tribe's contractors, and prior to the transfer of the Property into trust with the United States federal government or a transfer to the Tribe directly, the City may allow such other entity to receive roadway impact fee credits of up to \$2,274,118, and the Tribe shall have no claim to such credits, as against the City. If the Buildings remain on the Property at the time the Property is transferred into trust with the United States federal government or transferred to the Tribe directly, and if the Tribe thereafter demolishes the Buildings, or causes the Buildings to be demolished by the Tribe's contractors, all to the reasonable satisfaction of the City, the Tribe shall receive a credit toward its \$10,469,711 Roadway Contribution in the amount of \$2,274,118. The Tribe may deduct this Roadway Contribution credit from the Roadway Contribution otherwise owed to the City pursuant to this subsection (c) prior to payment of said Roadway Contribution. In order for the Tribe to receive the Roadway Contribution credit, as provided herein, and subject to the other terms and conditions of this subsection, the Tribe shall demolish the Buildings no later than six months after the date the Property is taken into trust by the United States federal government. The time allowed for the Tribe to demolish the buildings and still receive a credit shall be tolled pending any litigation challenging the acceptance of the Property into trust by the United States federal government. For purposes of this Section, "demolish," "demolishes," and "demolished" means the complete removal of the entire Buildings from the Property, including the Buildings' foundations. Nothing herein is intended to impair, limit, or impact any rights either Party has as against any person or entity not a party to this MOU.

(d) Regional Roadway Contribution. Pursuant to the 2016 Memorandum of Understanding and Intergovernmental Agreement between the County of Sacramento and Wilton Rancheria, the Tribe agreed to work with the City of Elk Grove in good faith to develop an agreement in which the Tribe will contribute sufficient payments to the City of Elk Grove so that all necessary mitigation of traffic impacts recommended within the Draft EIS/TPED related to

the Property are fully funded by the Tribe's payment. The Tribe's Regional Roadway Contribution represents payment for the mitigation of impacts on roadway facilities shared between the City and the County of Sacramento, including, without limitation, the Kammerer Road project.

(e) Police Equipment Contribution. As listed above, the Tribe shall make a Police Equipment Contribution in the amount of \$250,000. This Police Equipment Contribution shall be an Additional Contribution that shall benefit the law enforcement needs of the residents of Elk Grove and is not required pursuant to the Draft EIS/TPED.

(f) City Community Facilities Contribution. The City Community Facilities Contribution shall represent a voluntary donation by the Tribe for the purposes of improvement or construction of City community facilities. Such payment does not represent payment for mitigation of impacts of or by the Facility. Payment of the \$2,000,000 City Community Facilities Contribution shall be contingent upon the Tribe receiving a credit from the State in recognition of this amount for the above-stated purposes in the Tribe's yet to be finalized Tribal-State Compact. Should the Tribe receive credit in an amount less than \$2,000,000 from the State under the Tribal-State Compact for the above-stated purposes, the amount of the City Community Facilities Contribution to the City shall be the amount to which the Tribe receives credit from the State. The Tribe represents and warrants that it will make all reasonable efforts in negotiating the Tribal-State Compact to seek credit from the State in at least the amount of the \$2,000,000 City Community Facilities Contribution.

2. RECURRING MITIGATION PAYMENTS

(a) General. The Tribe shall make quarterly recurring payments as set forth in this Section 2. Quarterly payments in any given year in which payments are due and payable shall be paid quarterly pursuant to the following schedule: March 1, June 1, September 1, and December 1. Unless otherwise specified, the first quarterly recurring payment shall be due and payable on the first quarterly due date that is one year after the date the Facility is opened to the public ("Opening Day"), and payments shall be made each quarter thereafter. Payments shall be made in arrears with the first year of payments intended to cover the mitigation cost of the prior year, and so forth for each year, until all payments have been made as required by this MOU. In order to accommodate increasing costs and inflationary factors, unless otherwise specified in subsection 2(d) below, all payments due as set forth in this Section 2 shall increase at the rate of 2% per year, which inflator shall be applied at the first anniversary of the initial quarterly payment.

(b) Police and Code Enforcement. The Tribe shall make recurring annual payments to the City for Police and Code Enforcement services in the amount of \$1,500,000, paid quarterly

in equal amounts of \$375,000, in the manner set forth above in Section 2(a). Fifty percent (50%) of the annual amount paid to the City each year shall be considered direct mitigation to address both on-reservation and off-reservation potential crime impacts associated with the Facility. Fifty percent (50%) of the annual amount paid to the City shall be considered an Additional Contribution made for the purpose of providing additional and improved law enforcement services off-reservation to the residents of the City, which additional and improved law enforcement services are beyond what is required to address the impacts to law enforcement from the Facility.

(c) Roadway Maintenance. The Tribe shall make recurring annual payments to the City for Roadway Maintenance in the amount of \$500,000, paid quarterly in equal amounts of \$125,000, in the manner set forth above in Section 2(a).

(d) City Tax Revenue In-Lieu. In recognition of the fact that the City does not have the ability to directly levy taxes or assessments against the Tribe, such as property tax and assessments, sales tax and transient occupancy tax, the Tribe shall pay the City a Tax Revenue In-Lieu payment to reimburse the City as follows:

Year 1	\$2,000,000
Year 2	\$2,150,000
Year 3	\$2,350,000
Year 4	\$2,500,000
Years 5 and beyond	Increased 2% per year from the previous year.

The amounts set forth above represent annual amounts. All of the above payments shall be paid quarterly in equal amounts, in the manner set forth above in Section 2(a). Notwithstanding the 2% inflationary factor as set forth in Section 2(a) above, the Tax Revenue In-Lieu payment for Years 1 through 4 shall be a fixed number and shall not increase beyond the numbers set forth in the above table. The Tax Revenue In-Lieu payment for years 5 and beyond shall increase by 2% per year, which inflator shall be applied on the fourth year anniversary of the first quarterly payment.

(e) School/Community Contribution.

i) To reimburse the Elk Grove Unified School District (EGUSD) for the loss of tax revenues, the Tribe shall make recurring annual payments to the EGUSD in the amount of \$400,000, paid quarterly in equal amounts of \$100,000, in the manner set forth above in Section 2(a). Of the \$400,000 payment made by the Tribe to the EGUSD,

\$50,000 shall be for the EGUSD's Indian Education program.

ii) The Tribe shall make recurring annual payments of \$100,000 per year to a charitable organization(s) or other organization(s) of its sole selection, which enhances the City and the City residents' quality of life. Evidence of such payment for the prior year shall be provided to the City no later than January 31 of each calendar year.

iii) Payment of the School/Community Contribution made pursuant to this subsection (e) shall be contingent upon the Tribe receiving a credit from the State in recognition of these amounts for the above-stated purposes in the Tribe's yet to be finalized Tribal-State Compact. Should the Tribe receive credit in an amount less than \$500,000 from the State under the Tribal-State Compact for the above-stated purposes, the amount of the Tribe's School/Community Contribution shall be the amount to which the Tribe receives credit from the State. The Tribe represents and warrants that it will make all reasonable efforts in negotiating the Tribal-State Compact to seek credit from the State in at least the amount of the \$500,000 School/Community Contribution.

3. ADDITIONAL PUBLIC HEALTH, SAFETY, AND SECURITY PROVISIONS

(a) Building Codes. The Tribe acknowledges and agrees that the Facility shall comply with the building and construction standards of the California Building Code and California Administrative Code, as set forth in Title 24 of California Code of Regulations, and as adopted by the City pursuant to Elk Grove Municipal Code Chapters 16.02 and 16.04, as now existing or hereafter amended ("Applicable Codes"). Notwithstanding the foregoing, the Tribe need not comply with any building or construction standard that specifically applies in name or in fact only to tribal facilities. Reference to Applicable Codes herein is not intended to confer jurisdiction upon the State, its political subdivisions, or the City. For purposes of this section, the terms "building official" and "code enforcement agency" as used in Title 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other tribal government agency or official as may be designated by the Tribe's law. Nothing herein shall limit or impair the authority of any other government agency not a party to this MOU.

(b) Facility Design. The Tribe agrees to consult with the City concerning the design of the Facility and to receive the City's input as to the Facility design. Notwithstanding the foregoing, the Parties acknowledge that the City does not have any jurisdiction or regulatory authority over the design of the Facility, does not have legal authority to approve or disapprove the Facility design, and that the decision of the Tribe to accept or reject input from the City as to the Facility design shall be wholly voluntary for the Tribe and within the Tribe's sole discretion.

(c) Security. To further mitigate potential impacts of the Facility on law enforcement resources, the Tribe shall:

i) Adopt rules prohibiting anyone under 21 years of age from gambling;

ii) Adopt employee training programs and policies relating to responsible alcoholic beverage services;

iii) Conduct criminal background checks of all gaming employees;

iv) Provide a full and adequate staff of security personnel at the Facility at all times. For special events requiring additional security and/or law enforcement personnel, the Tribe shall coordinate with the City's Police Chief to ensure adequate security and law enforcement at the Facility. The Tribe shall reimburse the City and/or other law enforcement agencies for the reasonable security and/or law enforcement costs incurred by the City or other law enforcement agencies for such additional security and/or law enforcement personnel.

(d) Emergency Medical Services. To mitigate potential impacts of the Facility on City emergency medical services, the Tribe shall provide: (i) emergency medical training to members of its security staff; and (ii) emergency medical equipment, including defibrillators, at the Facility.

(e) Solid Waste Disposal. To mitigate potential impacts of the Facility on solid waste disposal resources, the Tribe shall, to the extent determined by the Tribe to be feasible and commercially reasonable, implement single stream recycling and green waste diversion.

4. SIGNAGE.

The Parties contemplate that the Facility will have a large outside on-site electronic or otherwise changeable message sign (the "Facility Sign"). The Tribe shall consider reasonable requests by the City to display city-sponsored community messages on the Facility Sign to advertise city events, city information, and/or public service messages approved by the City ("City Community Messages"). Notwithstanding the foregoing, the Tribe agrees to display Amber Alert messages on the Facility Sign, provided, however, that the Tribe shall have discretion to determine the duration and frequency of such Amber Alert messages.

5. LOCAL EMPLOYEE RECRUITMENT/JOB FAIR/LOCAL DISCOUNTS.

(a) Subject to applicable federal, state, or tribal law, the Tribe agrees to make reasonable and good faith efforts to recruit and employ residents of the City of Elk Grove to work at the Facility. The Tribe further agrees to hold at least one general job fair for jobs at the Facility prior to the Opening Day of the Facility.

(b) The Tribe shall institute a program, subject to the Tribe's own internal rules and eligibility requirements, for providing dining discounts to City of Elk Grove residents at its Facility.

6. ACKNOWLEDGEMENT OF TRIBE'S COMPLETE MITIGATION.

(a) Subject to the other terms and conditions of this MOU, the City agrees that the foregoing measures in Sections 1 through 5 will fully address and mitigate any and all direct impacts of the Facility to the City and City services as described in the Draft EIS/TPED prepared by the BIA. The City acknowledges that the EIS/TPED is intended to serve as the Tribal Environmental Impact Report ("TEIR") supporting a proposed compact with the State of California, and, as such, and provided the Tribe complies with this MOU, the City agrees that the foregoing measures in Sections 1 through 5 will fully address and mitigate any and all direct impacts of the Facility to the City and City services as described in that TEIR. Nothing herein shall limit or impair the authority of any other government agency not a party to this MOU.

(b) Concurrent with the execution of this MOU, the City shall sign and deliver a letter to the BIA, in substantially the form attached hereto at Exhibit D, acknowledging the Tribe's complete mitigation of impacts related to the Tribe's proposed Facility consistent with the non-opposition provisions of the 2011 Agreement that are triggered by said complete mitigation.

7. EFFECTIVE DATE, RE-NEGOTIATION, AND TERMINATION

(a) Effective Date. This MOU shall not become effective unless and until all of the following events have occurred:

(i) This MOU has been approved by the City Council of the City, executed by the City Manager, and approved as to form by the City Attorney; and

(ii) This MOU has been approved by the Tribal Council of the Tribe and executed by the Tribe's Chairperson.

(iii) The Tribe's payment obligations at Sections 1 and 2 and other obligations at Sections 3, 4, and 5 of this MOU do not become operative until the Property is taken into trust for the benefit of the Tribe by the United States federal government. In the event that the Property identified by this MOU is never taken into trust by the United States federal government or that the application for land-into-trust is abandoned or withdrawn by the Tribe, the Tribe's payment obligations at Sections 1 and 2 and other obligations at Sections 3, 4, and 5 of this MOU shall never come into effect. Notwithstanding the foregoing, all other provisions of this MOU shall be effective upon the satisfaction of the conditions at subsections (i) and (ii), above.

(b) Re-Negotiation.

Should the City provide substantial evidence of a material increase in any physical environmental impact (“Increased Environmental Impact”) as a direct result of the operations of the Facility, as compared to the operations described in the Draft EIS/TPED, the Tribe shall provide additional mitigation for those impacts in a manner to be agreed upon by the Tribe and the City. Such Increased Environmental Impact could include, without limitation, a material increase in vehicle trips, a material impact to air quality, a material impact to biological resources, material impacts to water quality or supply, material impacts to public services provided by the City, and/or any other material increased physical environmental impact of the Facility supported by substantial evidence. Notwithstanding the foregoing, the Parties agree that an increase in operations, the size of the structures on the Property, or the number of gaming machines, in and of itself, shall not be considered an Increased Environmental Impact, absent substantial evidence supporting an Increased Environmental Impact.

(c) Termination by Mutual Agreement. Notwithstanding anything to the contrary herein, the Parties may terminate this MOU by mutual written agreement.

8. MUTUAL COOPERATION/REGULAR MEETINGS

The City and the Tribe intend to advance a cooperative and mutually respectful government-to-government relationship with each other. To this end, representatives of the City and the Tribe shall meet with each other on a regular basis, but no less than every six months, to discuss any issues or concerns either or both may possess with respect to their respective communities, whether in conjunction with the Facility, impacts associated with the Facility, this MOU or otherwise.

9. ENVIRONMENTAL REVIEW/LAND USE

(a) The approval of this MOU is exempt from environmental review under CEQA pursuant to CEQA Guidelines § 15378(b)(4). The approval of this MOU does not constitute the approval of a “project” under CEQA because it provides for the creation of a government funding mechanism or other government fiscal activities, which do not involve any commitment to any specific project, which may result in a potentially significant physical impact on the environment. This MOU requires the Tribe to make mitigation payments; however, the City retains discretion to elect not to implement any or all of the specific mitigation measures and programs identified in this MOU. Further this MOU does not obligate the City to undertake a specified mitigation program or construction project nor does it set a time for development, and the approval of this MOU does not constitute the approval of any particular project at the Property, or otherwise. Notwithstanding the foregoing, the Parties acknowledge that the EIS/TPED is evaluating the environmental impacts of the Facility and provides for the mitigation

thereof, and the Tribe agrees to comply with all mitigation measures imposed on it through the EIS/TPED process.

(b) The Parties further acknowledge and agree that: (i) the Tribe is not a public agency subject to CEQA; (ii) the placement of the Property into trust with the United States federal government is not subject to CEQA or to City environmental review, design, land use or land development ordinances, plans, manuals, or standards; (iii) if the Property is placed in trust with the United States federal government, the City does not have regulatory authority over the Property to approve, disapprove, or otherwise exercise land use control regarding the development of the Property or the Facility; and (iv) the City is not approving, disapproving or otherwise exercising land use approval or discretion regarding the Facility by entering this MOU. To the extent that the City is required to further comply with CEQA with respect to any City improvements, programs or activities identified in, funded by, or related to this MOU, the City will comply with CEQA prior to approving or implementing such improvements, programs or activities. This MOU does not restrict the City's discretion to evaluate the impacts of such improvement, programs or activities, identify and adopt mitigation for such impacts, consider and approve alternatives designed to lessen such impacts, or deny approvals necessary for such improvement, programs or activities.

(c) The Parties acknowledge and agree that this MOU is not intended to be and does not constitute a development agreement for the purposes of Government Code section 65864 *et seq.* Nor does this MOU commit the City to implement any public improvement, or to take any action that may result in physical changes in the environment.

10. TRIBAL SOVEREIGNTY

The Parties acknowledge and agree that the Tribe:

- (a) Is a federally recognized Indian Tribe.
- (b) Is not generally subject to the jurisdiction of the City or its laws, rules, regulations and ordinances.
- (c) Has the right to have land taken into trust by the United States for the benefit of the Tribe.
- (d) Has not submitted to, and nothing in this MOU is intended to constitute or shall be construed as constituting a submission by the Tribe to, the jurisdiction of:
 - (i) the City or any of its subdivisions or departments;
 - (ii) any of its or their respective officials, employees, inspectors, or contractors; or

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

11. LIMITED WAIVER OF SOVEREIGN IMMUNITY

(a) Notwithstanding any other provision of this MOU, the Tribe expressly and irrevocably grants a limited waiver of sovereign immunity (and any defenses based thereon) in favor of the City, but not as to any other person or entity, as to any dispute which arises under this MOU and not as to any other action, matters or disputes. The Tribe does not waive its sovereign immunity with respect to: (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Tribe or City; or (ii) disputes between the Tribe and the City which do not arise under this MOU.

(b) The Parties acknowledge and agree that this MOU, except as otherwise specified or provided by otherwise applicable law, is not intended to constitute, and shall not be construed as constituting, a submission by the Tribe to the general jurisdiction of: (i) the City or any or any of its departments; (ii) any of its or their respective officials, employees, inspectors or contractors; or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans, or specific plans.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS

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. Each person executing this MOU on behalf of such Party is duly authorized to execute and deliver this MOU on behalf of such Party.

(b) Enforceability/Binding Agreement. This MOU constitutes the legal, valid and binding obligation of each Party, enforceable against such Party, including all officers, agents and employees. In accordance with its terms, and, once executed and delivered, this MOU cannot be invalidated pursuant to any subsequent action of the City Council of the City or the Tribal Council or General Council of the Tribe, as applicable, except as set forth herein.

(c) No Conflict. Each Party represents and warrants that 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 applicable federal, state, or tribal law, statute, rule, regulation, ordinance, general plan, specific plan or court order or decree applicable to such Party.

13. GENERAL PROVISIONS

(a) No 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.

(b) No Third Party Beneficiary. This MOU is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. This MOU is not intended to, and shall not be construed to, create any right on the part of any third party to bring any action or otherwise enforce any of its terms.

(c) Indemnification. The Tribe agrees to defend, indemnify, and hold harmless the City (with counsel reasonably acceptable to the City) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the City which challenges the City's approval, execution, or delivery of this MOU and/or the letter to the BIA required by Section 6.

(d) Notice. All notices required by this MOU shall be deemed to have been given when made in writing and hand delivered or mailed, certified, return receipt requested, to the respective Parties and their representatives at their respective addresses as set forth below or such other addresses as they may provide, in writing as set forth above, to the other Party from time to time:

TO CITY:

Notice to City: City of Elk Grove
Attn: City Manager
8401 Laguna Palms Way
Elk Grove, CA 95758

With copy to: City of Elk Grove
Attn: City Attorney
8401 Laguna Palms Way
Elk Grove, CA 95758

TO TRIBE:

Notice to Tribe: Wilton Rancheria
Attn: Chairperson
9728 Kent St
Elk Grove, CA 95624

With copy to: Wilton Rancheria
Attn: Tribal Attorney
9728 Kent St
Elk Grove, CA 95624

(e) Governing Law. The terms and conditions of this MOU, which are contractual in nature and not mere recitals, shall be interpreted under the laws of the State of California or, as applicable, federal law. Should any judicial proceeding be brought relating to this MOU, venue shall lie exclusively, at the option of the filing party, in the Sacramento Superior Court or the United States District Court for the Eastern District of California.

(f) Limitation on Remedies. In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Notwithstanding anything in this MOU to the contrary, the Tribe hereby waives any and all claims for money damages against the City for breach of this MOU. Nothing in this section is intended to, nor does it, limit the Tribe's or the City's rights to equitable remedies as permitted by law including, without limitation, injunctive or declaratory relief. Nothing herein shall limit the City's ability to seek money damages should the Tribe fail to make payments or fulfill other financial obligations under this MOU.

(g) Construction and Interpretation of MOU. This MOU, including all recitals, together with Exhibits A, B, C, and D constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, and/or drafts regarding this MOU, whether written or oral. Each Party is represented by legal counsel and has consulted with legal counsel regarding the terms of this MOU. 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.

(h) Amendments. This MOU may be modified or amended only by mutual and written agreement of the Parties.

(i) Force Majeure. If an event beyond the reasonable control of the Tribe occurs, including, but not limited to, force majeure, war or insurrection, fires, natural calamities, riots, significant changes in law, regulation or governmental policy, the inability of the Tribe to obtain or operate under a Tribal-State compact that would allow for Class III gaming, or demands or requirements of governmental agencies other than the City, that prevents Class III gaming operations at the Facility, the Tribe's obligations under this Agreement shall be suspended as of the date of such event and until such time as such event has subsided, if ever, provided that the

Tribe provides written notice to the City within seventy-two (72) hours of the event justifying the suspension or termination of operations. The City reserves the right to contest the Tribe's determination of the event justifying the suspension of such gaming operations. Nothing in this Section shall reduce the Tribe's liability for contributions or other payments that become due or payable prior to the date such gaming operations are suspended or terminated pursuant to this Section.

(j) Severability. Notwithstanding any provision of applicable law to the contrary, if any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, this MOU shall be construed and enforced as if such void, illegal, invalid, or unenforceable provision had never comprised a part of this MOU, and the remaining provisions of this MOU shall remain in full force and effect and shall not be affected by the void, illegal, invalid, or unenforceable provision or by its severance from this MOU.

(k) Headings and Captions. Headings and captions on sections and subsections are provided for convenience of the Parties only and shall not be considered in the construction or interpretation of this MOU, nor limit, amend or affect the meaning of the provision to which they pertain.

(l) No Joint Venture or Partnership. This MOU does not create any form of joint venture, partnership or other association between the City and the Tribe, and the City and the Tribe agree that nothing in this MOU or in any document executed in connection with it shall be construed as creating any such relationship between City and the Tribe.

(m) Time is of the Essence. Time is of the essence of each and every provision of this MOU.

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

CITY OF ELK GROVE

Dated: _____, 2016

By: _____
Laura Gill, City Manager
City of Elk Grove

APPROVED AS TO FORM:

Jonathan P. Hobbs,
City Attorney, City of Elk Grove

ATTEST:

Jason Lindgren,
City Clerk, City of Elk Grove

WILTON RANCHERIA

Dated: _____, 2016

By: _____
Raymond Hitchcock, Chairperson

ATTEST:

Cammeron Hodson,
Vice-Chairperson, Wilton Rancheria

EXHIBIT A

LEGAL DESCRIPTION

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

Commencing at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S.6815; Thence leaving said Point of Commencement along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the true Point of Beginning. Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet; 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;

- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;
- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 2427'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the POINT OF BEGINNING.

Containing 35.92 acres, more or less.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

May 23, 2016

END OF DESCRIPTION

PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

EXHIBIT A (Cont'd)
MAP OF PROPERTY



Exhibit B

DEIS/TPED Mitigation Measure.	Description.
5.8.2. U	Promenade Parkway/Bilby Road Intersection. Widening WB approach to provide three left-turn lanes, one through lane, and one right-turn lane; and a NB right-turn overlap signal phase shall be provided during the WB left-turn phase.
5.8.2. V.	Grant Line Road Widening: Widening Grant Line Road to four lanes from Waterman Road to Bradshaw Road.
5.8.2. W.	Kammerer Road Widening: Contributing 6% fair share of widening Kammerer Road from SR-99 to Bruceville Road (where it has no shoulders), as well as ultimate connection from I-5 to Hwy 99.
5.8.3. FF.	Future Promenade Parkway/Kammerer Road Improvements. Future optimizing signal timings at the Promenade Parkway/Kammerer Road intersection, reduction of the width of the raised median at the WB approach to provide a second left-turn lane, and a NB right-turn overlap signal phase during the WB left-turn phase.
5.8.3. GG	Future Grant Line Road/East Stockton Boulevard Improvements. Future re-striping the SB approach to provide one left-turn lane, one shared through/right lane, and one right-turn lane. Future converting the NB/SB signal phasing from split to protected left-turn phasing. Future implementing traffic signal coordination with adjacent signalized intersections to improve progression along Grant Line Road during weekday PM peak period.

EXHIBIT C

228

	EXISTING BUILDING AREA (SF)	DEMOLISHED BUILDING AREA (SF)	EXISTING AREA TO REMAIN (SF)
BUILDING_A	65,245	0	65,245
BUILDING_B	65,242	0	65,242
BUILDING_D	38,609	0	38,609
BUILDING_F	62,497	0	62,497
BUILDING_FF/C	71,396	0	71,396
BUILDING_G	38,663	0	38,663
BUILDING_H	58,254	0	58,254
BUILDING_J	68,105	3,304	64,801
BUILDING_K	22,633	0	22,633
BUILDING_O	45,454	3,740	41,714
BUILDING_P	18,306	3,740	14,566
BUILDING_PUMP HOUSE	941	941	0
TOTAL	572,368	240,298	332,070

- * AREAS SHOW GROSS BUILDING AREAS
- EXISTING BUILDING AREA TO REMAIN
- DEMOLISHED BUILDING AREA TO BE DEMOLISHED

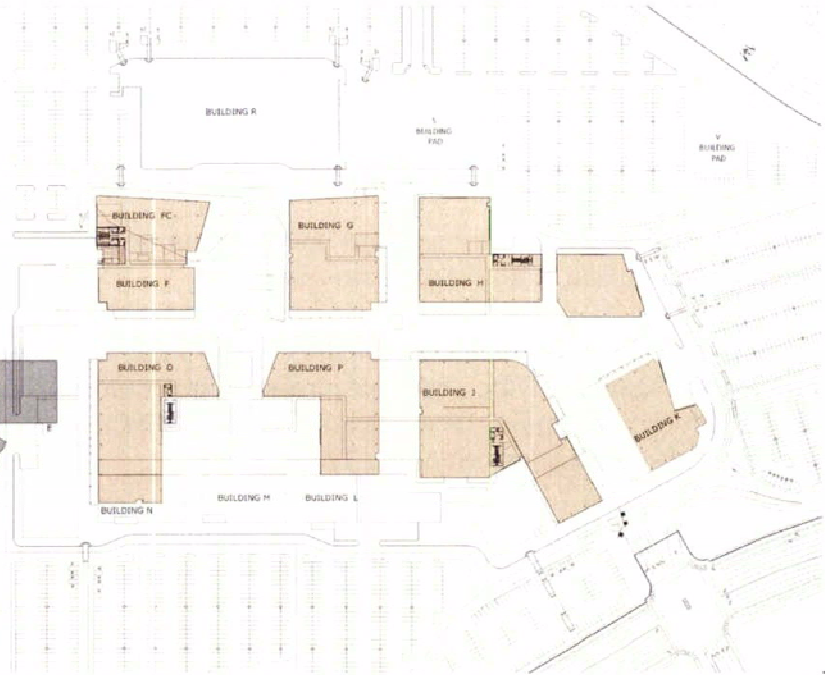


EXHIBIT D

Lawrence S. Roberts
Assistant Secretary - Indian Affairs
MS-3642-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Subject: Wilton Rancheria Fee-to-Trust and Casino Project

Dear Assistant Secretary Roberts:

The City of Elk Grove acknowledges and respects the tribal sovereignty of Wilton Rancheria, a federally-recognized Native American tribe.

The City and the Tribe have executed a Memorandum of Understanding (MOU) regarding the complete mitigation of the proposed project's potential impacts to the City and City services. The City does not oppose the application of the Tribe to the United States to take the identified lands into trust for the benefit of the Tribe.

If we can answer any questions or provide additional clarification, please contact City Manager Laura Gill at (916) 478-2201 or lgill@elkgrovecity.org.

Sincerely,

Gary Davis
Mayor

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2016-183

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)


I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 28, 2016 by the following vote:

AYES : **COUNCILMEMBERS:** *Davis, Ly, Detrick, Hume, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN : **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California