

**INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE COUNTY OF MENDOCINO,  
UKIAH VALLEY FIRE DISTRICT  
AND THE PINOLEVILLE POMO NATION  
CONCERNING MITIGATION FOR OFF RESERVATION IMPACTS  
RESULTING FROM THE TRIBE’S CASINO AND HOTEL PROJECT**

This Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the COUNTY OF MENDOCINO, a political subdivision of the State of California (“County”), the UKIAH VALLEY FIRE DISTRICT (“District”) and the PINOLEVILLE POMO NATION, a federally recognized Indian Tribe (“Tribe”) located in Ukiah, County of Mendocino, State of California, collectively referred to as the parties (“Parties”).

**RECITALS**

- A. The Board of Supervisors of Mendocino County, the District and the Tribal Council of the Pinoleville Pomo Nation recognize that each is a governmental entity with responsibility for the health and general welfare of its people.
- B. The County recognizes the Tribe is a Federally Recognized Indian Tribe, recognized by the United States of America. The Tribe owns lands within the boundaries of which constitutes the Original Rancheria Land.
- C. The County and the Tribe recognize that adjacent residents to the proposed project are neighbors with legitimate concerns over environmental quality, development, and the character of life in Mendocino County.
- D. In 1988, Congress enacted the Indian Gaming Regulatory Act (“IGRA”) to govern gaming on Indian lands in the United States. IGRA provides a statutory basis for the operation of gaming by Indian tribes as a means, among other things, of promoting tribal economic development, self-sufficiency, and strong tribal government.
- E. IGRA allocates regulatory authority over gaming among the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally recognized Indian tribes only if such activities are, among other things, conducted in conformity with a Compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.
- F. The Tribe has determined that the kind of gaming project envisioned by the Tribe would assist it in further developing and funding Tribal governmental programs which address education, elderly, medical, job training, social services, and employment needs of the Tribe, as well as funding other Tribal governmental programs and benefits. Without the revenue generated by the gaming facility, such programs and benefits generally would be unavailable to the Tribe or its citizens, or if available, would only be provided from federal governmental sources that would render the Tribe dependent and insufficiently funded. The Tribe and its citizens desire to be economically viable and self-sufficient, and the kind of gaming project anticipated in this

Agreement provides the Tribe with that opportunity. Accordingly, the Tribe has determined that it is in its and its citizens' best interest to utilize a portion of its reservation for gaming and other economic development purposes in order to assist the Tribe in reaching its economic needs and goals.

- G. In 2012 the Tribe and the Governor entered into, the California Legislature approved, and the Secretary of the Interior approved a Tribal-State Gaming Compact to permit the Tribe to conduct Class III gaming activities on its Indian lands in compliance with IGRA.
- H. The Tribe has developed plans for a casino and hotel project on eligible Indian lands primarily to improve the socioeconomic status of the Tribe by providing a new revenue source that could be used to strengthen the Tribal government; provide new tribal housing; fund a variety of social, governmental, administrative, educational, health, and welfare services to improve the quality of life of tribal citizens; and provide capital for other economic development and investment opportunities.
- I. Pursuant to the Compact, the Tribe is required to prepare a tribal environmental impact report ("TEIR") analyzing the potential significant off-reservation environmental impacts of the Project. The Tribe is further required to enter into an agreement with the County regarding the timely mitigation of significant off-reservation effects including environmental and public health and safety and compensation for law enforcement, fire, emergency medical services and any other public services to be provided by the County of Mendocino or District.
- J. The Tribe is willing to enter into this Agreement as a responsible exercise of its sovereignty and in recognition of the fact that the Tribe's long-term governmental and business interests are best served by accommodating the legitimate needs of neighboring governments.
- K. The Tribe desires to operate its gaming project in a manner that benefits the Tribe, its citizens and the community as a whole, and the County recognizes the mutual benefit that can be derived if that goal is achieved. Accordingly, the Tribe and the County have in accordance with the Compact participated in a series of meetings with each other to hear and consider the ways in which each government can assist the other in making the project one that is mutually beneficial while being consistent with the Tribe's governmental needs.
- L. This Agreement embodies the concepts and agreements developed by the Tribe and the County to date as a result of those meetings and continuing dialogue, and is intended to legally bind the Parties to the obligations and government-to-government framework created in this Agreement, so that the Project may better serve the mutual interests of the Tribe and the County and their communities.

**NOW, THEREFORE,** the County, District, and the Tribe agree to enter into this Agreement for the purposes of: (1) establishing a mechanism for mitigation of off-Reservation impacts expected to result from the casino and hotel project in a manner

that recognizes the uniqueness of Mendocino County and satisfies the requirements of the Tribe's Compact with regard to the Project; (2) providing financial resources to help fund those mitigation measures; and (3) strengthening the government to government relationship between the County and the Tribe.

To achieve these purposes, the County, District, and the Tribe agree as follows:

## **1.0 DEFINITIONS**

- 1.1 "Class III Gaming Devices" means gaming devices operating class III games, as described in IGRA, 25 U.S.C. § 2703(8) and regulations of the National Indian Gaming Commission.
- 1.2 "County" means the County of Mendocino, a political subdivision of the State of California.
- 1.3 "Commencement Date" means the date the Tribe opens for commercial operation on the Property.
- 1.4 "Commencement of Construction" means the date the Tribe breaks ground on the Property for the construction of the casino.
- 1.5 "Compact" means the tribal-state compact entered into by and between the Tribe and the State of California pursuant to IGRA.
- 1.6 "Development" means a change in the density or intensity of use of land; construction, reconstruction, demolition, or alteration of any structure; the placement or erection of any solid material or structure, grading, or substantial surface or subsurface alteration of land.
- 1.7 "District" means the Ukiah Valley Fire District.
- 1.8 "Enterprise" means the commercial gaming business of the Tribe authorized by the IGRA and the Compact and operated on the Property.
- 1.8 "Facility" means the buildings, improvements and fixtures hereafter located therein or thereon and housed on the Property and within which the Enterprise will be operated. Title to the Property and the Facility shall merge and be held by the Pinoleville Pomo Nation.
- 1.10 "IGRA" means the Indian Gaming Regulatory Act of 1988, P.L. 100-497, codified at 25 U.S.C. §§ 2701 *et seq.*, and as such may be amended from time to time.
- 1.11 "Intersection" shall have the meaning described in Section 6.1, hereof.
- 1.12 "Project" means all Development contemplated by this Agreement, including but not limited to the construction and operation of a Tribal casino, resort hotel, and/or conference center as described herein.
- 1.13 "Property" or "Properties" means the parcel(s) of land upon which the Project will be located.

- 1.14 "Reservation" means the Pinoleville Pomo Nation's reservation lands.
- 1.15 "Tribe" means the Pinoleville Pomo Nation, a federally recognized Indian tribe.

## **2.0 EFFECTIVE DATE OF AGREEMENT; TERM**

- 2.1 Effective Date of Agreement: This Agreement shall become effective immediately upon execution by the Parties.
- 2.2 Term: This Agreement shall be in full force and effect until the Tribe's Compact expires or is terminated, or until the Tribe ceases Class III gaming, whichever is sooner.

## **3.0 DESCRIPTION OF PROJECT**

- 3.1 Reservation: The reservation land of the Tribe consisting of approximately 99-acres including 100-150 Pinoleville Drive, Ukiah, California, in Mendocino County.
- 3.2 Proposed Site: Approximately 8.8 acres of reservation land located at 2150 North State Street, Ukiah, Mendocino County, California.
- 3.3 Size; Phases: The casino and hotel will be built in two Phases. Phase I consists of approximately 26,000 square feet of new construction of which 12,000 square feet will be dedicated to gaming, accommodating up to 349 slot machines and 10 table games. The remaining 14,000 square feet will consist of one restaurant, a bar/lounge, a full-service deli, retail shop, guest support services, and back of the house areas. Phase II will add approximately 40,000 square feet of casino space for a total of 80,000 square feet. It will accommodate up to an additional 400 slot machines and 10 table games. Expanded amenities may include additional restaurants, a wine room, and larger back of the house areas. A four-story, 125-room hotel and event center may also be added in Phase II, along with the associated support space and meeting rooms. A parking structure may be included in Phase II if the Tribe determines that it would best serve the needs of its customers.
- 3.4 Food Facilities: The Tribe shall adhere to the standards of the California Retail Food Code (Health & Safety §113700 *et.seq.*) regarding food handling, preparation and inspection when operating any food facility located on the Property, which sells or gives away any food and/or beverages to any persons. The Tribe shall allow regular inspection of food and beverage services in the Facility by the Mendocino County Environmental Health Division during normal hours of operation, to assess compliance with these standards. Said inspections shall be limited to on-site food and beverage related inspections only, and start up certifications.
- 3.5 Non-Smoking Facilities: It is the Tribe's intent to make all on-site restaurants at the Facility non-smoking facilities and to provide for one or more non-smoking areas in the gaming sections of the Casino; however, the Tribe is not contractually bound by this Agreement to do so.

3.6 Construction: All construction undertaken by the Tribe related to the Project pursuant to this Agreement will be in full compliance with the currently adopted Uniform Building Codes at the time construction is commenced. The Tribe shall contract with the County for building inspection services.

(a) During any construction, the Tribe will adopt best management practices to reduce air pollution with the goal to meet or exceed the Mendocino County Air Quality Management District ("MCAQMD") construction standards to reduce air pollution.

(b) No construction of any kind, either temporary or permanent, will take place over any functioning leach field or leach line unless the Mendocino County Environmental Health Division of The Health and Human Services Agency determines that any such construction will not interfere with the proper operation of the leach field or leach line as determined by generally accepted engineering standards.

3.7 Limitations on Alcoholic Beverage Service:

(a) If a Tribal application to the State Alcoholic Beverage Control Department to serve alcoholic beverages at the Facility is approved, then the Tribe will limit service of alcoholic beverages to only restaurants, lounges, and the event center, if any. Subject to Section 3.7(b) hereof, no alcohol will be served on the floor of the Casino. In the event of a change in the Compact concerning limitations on service of alcoholic beverages or the expansion of gaming to non-Indian land, the Tribe may use either change as an additional basis for requesting a re-opener of this section pursuant to Section 14 of this Agreement. With regard to applications to the State Alcoholic Beverage Control Department, the County provides factual information only and has no decision-making authority. At the time of execution of this Agreement, the County is not aware of any factual information that would adversely affect any such application by the Tribe. Based on such information to date, the County hereby agrees to support or remain neutral regarding, the Tribe's application for any applicable Alcoholic Beverage Control Department license for the facilities subject to this agreement.

(b) At the time the Tribe commences serving alcoholic beverages on the floor or otherwise throughout the Facility and not limited to the areas described in Section 3.7(a), above, the Tribe will raise the minimum age for gambling at the Facility to 21 years of age.

(c) Nothing herein shall prohibit the service of alcohol within the hotel or events center, including but not limited to mini bars, lounges, hospitality rooms or restaurants.

3.8 Law Enforcement; Prosecution:

(a) Criminal Jurisdiction. As a matter of federal law, Public Law 280, most state criminal laws continue to apply on Indian trust lands and the County's Sheriff's Office retains jurisdiction over the enforcement of those laws. The County's

Sheriff's Office shall have authority to enforce all applicable state criminal laws on the Property, in the same manner and to the same extent as the County Sheriff's Office has such jurisdiction elsewhere in the County. The Tribe and County hereby agree to develop a protocol prior to opening of the new gaming Facility regarding notification to the Tribe by the County Sheriff's Office regarding entry to the property for non-emergency investigation and/or enforcement of state criminal law.

(b) All prosecutions for violations of state criminal law at the Property and within the Facility itself shall be conducted by the District Attorney for Mendocino County or the applicable County employee in state court without regard to whether the charges are filed against Indians (including citizens of the Tribe) or non-Indians, except as such distinctions are recognized under law; provided, however, that nothing herein shall prohibit or otherwise prevent prosecution of offenders in Tribal Court by the Tribe.

#### **4.0 ADDITIONAL LAW ENFORCEMENT SERVICES**

- 4.1 Law Enforcement Services Mitigation Fees: The Tribe hereby agrees to pay to the County for law enforcement services the sum of one hundred and fifty thousand dollars (\$150,000) annually. The amount payable pursuant to this Section 4.1 shall be due within ten (10) days of the Commencement of Construction and increased annually on each anniversary of the first payment by a percentage increase equal to the increase in the Consumer Price Index (All Urban Consumers) for the San Francisco Metropolitan Area, in no event to exceed four percent (4%), compounded annually.
- 4.2 Staffing For Special Events: The Tribe and the Mendocino County Sheriff's Office shall meet and confer regarding the need and payment for additional law enforcement and security personnel for special events and functions occurring within or at the Facility. The payment for law enforcement personnel for special events shall be based on the actual cost to the Mendocino County Sheriff's Office for all personnel used for the special event.
- 4.3 For special events: The Tribe shall notify the Mendocino County Sheriff's Office at least six (6) weeks prior to any special event at which attendance is or reasonably should be expected to reach Five Hundred (500) or more people. The notice shall also indicate whether or not alcoholic beverages will be served at the event.
- 4.4 All persons employed by the Tribe as security personnel shall attend an eight (8) hour training on drug awareness and identification. The Tribe and the Mendocino County Sheriff's Office shall mutually agree to the type of training that will satisfy this requirement.
- 4.5 The Tribe shall give immediate access to the Mendocino County Sheriff's Office to the Tribe's video rooms/cameras located at the casino and related facilities in cases in which the Sheriff determines there is a public safety emergency, and in cases where there is not an emergency upon two (2) hours advance notice when such access is deemed necessary by the Sheriff to further legitimate law enforcement purposes.

- 4.6 The Tribe shall grant access to the Mendocino County Sheriff's Office to the facilities for non-emergency responses. The Tribe and the Mendocino County Sheriff's Office shall agree on a procedure for said non-emergency access, including a point of entry, prior to the opening of the facility.
- 4.7 The Tribe shall pay to the Mendocino County Sheriff's Office thirty thousand dollars (\$30,000.00) every three years, beginning with the date of Commencement of Construction. Each payment shall be increased by a percentage equal to the increase in the Consumer Price Index (All Urban Consumers) for the San Francisco Metropolitan Area, in no event to exceed four percent (4%), compounded annually. The first payment is due no later than ten (10) days from the date of Commencement of Construction. All other payments are due on the anniversary of that date every three years thereafter. Said sum shall be used exclusively to purchase a patrol vehicle that will be assigned to the area of the Casino. The patrol vehicle shall have a sticker that indicates the vehicle was purchased by the Pinoleville Pomo Nation.
- 4.8 Reopener: The County and Tribe hereby agree that the subject of law enforcement mitigation will be discussed in accordance with Section 14.0 of this Agreement and/or no later than five (5) years from the Commencement Date.

#### **5.0 FIRE PROTECTION SERVICES; EMERGENCY SERVICES**

- 5.1 Staffing: The Tribe agrees to pay to the District the sum of two hundred thousand dollars (\$200,000) per year for staffing of the Ukiah Valley Fire District. Staffing Payment shall be due within ten (10) days of the date of Commencement of Construction and increased annually by a percentage increase equal to the increase in the Consumer Price Index (All Urban Consumers) for the San Francisco Metropolitan Area, in no event to exceed four percent (4%), compounded annually, and shall thereafter be due and payable in arrears in equal quarterly installments.
- 5.2 Fire Safety Features: The Facility shall be constructed of non-combustible structural materials and Class A rated finishes and be fully equipped with fire sprinklers in accordance with the standards described in Section 3.6. Interior walls shall be constructed of materials providing a minimum one-hour fire rating and permanent affixed ladders shall be attached to the Facility to provide District access in the event of fire or emergency services events. The Fire District shall be responsible for all inspections.
- 5.3 The Tribe shall grant access to the District to the facilities for non-emergency responses. The Tribe and the Mendocino County Sheriff's Office shall agree on a procedure for said non-emergency access, including a point of entry, prior to the opening of the facility.
- 5.4 Fire District Equipment.
- (a) Within ten (10) days of the Commencement Date and within ten (10) days of the second through fifth anniversary of said date; the Tribe shall pay to the District the sum of fifty thousand dollars (\$50,000) for the purchase of necessary

equipment and apparatus for use in providing fire protection and emergency medical response services to the Facility.

(b) The District shall provide to the Facility fire protection and emergency medical response services at no additional cost to the Tribe.

(c) Subject to Section 5.4 hereof, in the event it is reasonably necessary for a fire protection agency or entity other than the District to respond to a fire or emergency incident at the Facility and utilize non-District fire-fighting equipment, e.g., a ladder truck, that is not owned or managed by the District, the Tribe agrees to pay the District for reasonable costs it incurs, if any, of response and use of the equipment by the responding agency or entity. The responding agency or entity may bill the Tribe in the same manner and on the same basis that it bills other recipients of such services (not to exceed thirty (30) days after the incident) and payment shall be made within 30 days of billing.

(d) The District and the Tribe shall work cooperatively to place (at no cost to the Tribe) the Tribe's logo or other similar acknowledgement upon District equipment to signify the cooperative relationship between the District and the Tribe.

5.5 EMS Fee: The Tribe shall pay to the County on behalf of the local ambulance service provider the sum of fifty dollars (\$50.00) for each call for emergency medical response and transport service (including but not limited to "dry runs") at the Facility by the District to which the local ambulance service provider also responds. Unless the Parties mutually agree to another payment schedule, the County shall submit on a monthly basis to the Tribe an invoice that describes the date and nature of the call at the Facility and whether the local ambulance service provider also responded and the Tribe shall pay the invoice to County within thirty (30) days of the receipt thereof.

5.6 Reopener: The District and Tribe hereby agree that the subject of fire district mitigation will be discussed in accordance with Section 14.0 of this Agreement no later than five (5) years from the Commencement Date of Phase I and within 180 days prior to the Commencement of Construction of any structure contemplated under Phase II and in accordance with section 3.8.

## **6.0 TRAFFIC AND ROADS IMPACTS AND MITIGATION**

6.1 Intersection: The Tribe agrees to bear all costs related to the installation of any required intersection control system or device at the intersection of State Street and Kunzler Ranch Road including the purchase, if necessary, of any right-of-ways or easements from private landowners in order to implement this mitigation.

6.2 Intersection Improvement Phasing: One year after executing this agreement the Tribe shall have a properly licensed engineer in California submit two separate designs of sufficient detail to show that the proposed intersection layout over APN 170-150-17 or APN 169-211-15 will fit with adequate stacking lanes for project 2030 traffic levels at full project build out. The area affected by the two layouts will be analyzed for environmental impacts and reports with recommended mitigation, if any, provided with the designs. The Tribe will then proceed with what ever option has secured land rights; or, if land rights are not



secured the County will begin acquisition of APN 170-150-17 at Tribes expense pursuant to the conditions of this agreement. No later than two years after executing this agreement final construction plans will be completed by a properly licensed engineer in California and an encroachment application submitted to Mendocino County Department of Transportation. No later than three years after executing this agreement the intersection improvements will be constructed.

- 6.3 Prior to the construction of any improvements necessary to the installation of any required intersection control system or device described above, the Tribe shall obtain an encroachment permit. The encroachment permit shall contain an updated Traffic Impact Report, as well as detailed plans of what is being constructed prepared by a properly licensed engineer in California. Any disputes over items contained in the Encroachment Permit, or what should be contained therein are subject to the dispute resolution process set forth in paragraph 12.0 *et seq*, of this agreement.
- 6.4 Caltrans and the County have identified the need for improvements for the intersections of the Highway 101 on/off ramps and North State Street. The County has identified \$1.14 million (2012 dollars) in needed improvements on North State Street. Caltrans may have needs on the Highway end. Tribe agrees to contribute ratio of share consistent with increases in traffic volume as established by the Traffic Impact Report referenced in section 6.3 above.
- 6.5 Parity of Obligations; Processing of Permits: The parties intend that the scope of obligations and liabilities of the County to the Tribe and its Enterprise or Facility regarding municipal services shall be on parity with those obligations and liabilities which normally operate with respect to the citizens and businesses within the jurisdiction of the County. As such, all approvals required for the Project shall not be unreasonably withheld, conditioned, or delayed.
- 6.6 Dedication of Improvements: All road improvements located off-Reservation and directly related to the Project as described in Section 6.1 of this Agreement will be dedicated to the County through an appropriate right of way across Tribal land and appropriate documentation. The County and Tribe agree to work cooperatively to prepare, file and record, as appropriate, said documentation.
- 6.7 CEQA Compliance: As applicable, the County shall serve as the lead agency for any required California Environmental Quality Act ("CEQA") compliance related to the road improvements described in Section 6.1 of this Agreement. The Tribe will extend all its specialty environmental study areas to include those portions of the County and State Right-of-Way subject to construction of Phase I improvements described in Section 6.1. The County will attempt to conserve the Tribe's resources by using these environmental studies for the dual purpose of functioning as CEQA lead agency for the project improvements adjacent to Tribal lands. However, if additional studies become necessary for the County to secure CEQA compliance then the Tribe will bear the cost of those studies.
- 6.7 Should the road improvements described in Section 6.1 and 6.4 not be economically feasible or not be granted a favorable Notice of Determination through the CEQA process, the Tribe and The County shall use the Dispute Resolution process set forth in section 12.0 *et seq* of this Agreement.

## **7.0 VISUAL IMPACTS AND MITIGATION**

- 7.1 All new outside lights for the expanded casino and hotel project will be 100% downcast.
- 7.2 (Proposed new language.) The Tribe agrees to use the relevant sections of the Mendocino County Code regulating outdoor signage, as a guideline, when designing outdoor signage for the Enterprise.
- 7.3 Additional landscaping and/or enhancements of existing overgrowth will be provided and surface parking lots will be enhanced with additional landscaping to increase shade and reduce ambient heat.
- 7.4 Subject to Tribal approval, colors, architectural themes, and building materials will be used that are complementary to the existing natural landscape.

## **8.0 WATER RESOURCES AND MITIGATION**

- 8.1 Storm Water: Tribe agrees to implement best management practices that are substantially similar to the Mendocino County Storm Water Management Program ("Program"), including the "Construction Site Runoff Control", "Post-Construction Runoff Control" and "Illicit Discharge Detection and Elimination" elements of the Program.
- 8.2 Water Supply: Potable water shall be supplied by an existing one inch line on the Property serviced by the Millview Water District.
- 8.3 Wastewater: The Tribe shall contract with Ukiah Valley Sanitation District to handle the wastewater generated by the facility.

## **9.0 HEALTH AND HUMAN SERVICES**

- 9.1 Problem Gambling:
  - (a) The Tribe shall provide responsible gaming signage at the Facility, including on the Casino floor and in back of house areas. In addition, the Tribe shall provide responsible gaming information in brochures and "on-hold" messages and shall provide problem gambling phone numbers on all Enterprise websites, new players club cards, and other similar materials.
  - (b) The Tribe shall allow patrons to "self-ban" from the Facility.
  - (c) The Tribe shall participate in the California Council on Problem Gambling.
- 9.2 Although the prevalence of problem gambling in the County is unknown, the Tribe and County acknowledge that there are at least six tribal government gaming facilities located in the County and that other types of gambling, including but not limited to the California Lottery, are available and prevalent within the County. Within 90 days of the first anniversary of the Commencement Date, the Tribe shall make an annual contribution of Twenty Thousand Dollars (\$20,000) to the County,

which contribution shall be used to address problem gambling issues in Mendocino County as determined by the Mendocino County Health and Human Services Department. Each payment shall be increased by a percentage equal to the increase in the Consumer Price Index (All Urban Consumers) for the San Francisco Metropolitan Area, in no event to exceed four percent (4%), compounded annually.

## **10.0 ENVIRONMENTAL IMPACTS – GENERAL**

**10.1 Any and all significant off site environmental impacts and/or mitigations costs, including any cost of environmental review, caused by the project and required under any applicable law, or as the result of a Court Order SHALL be paid for by the Tribe.**

## **11.0 PAYMENT IN LIEU OF TAXES; MITIGATION MEASURES PAYMENT**

11.1 Within ten (10) days of the Commencement Date, the Tribe will pay to the County the sum of one hundred thousand dollars (\$100,000) in mitigation of the off-Reservation impacts resulting from Phase I of the Project.

11.2 The Tribe will make the following annual payments in lieu of taxes and for mitigation of the recurring off-Reservation impacts resulting from the Project:

(a) Years two to three from the Commencement Date, two hundred thousand dollars (\$200,000) annually. From year four to year seven of the Commencement Date, the payment shall be increased by fifty thousand dollars (\$50,000) annually. Beginning with year eight (8) of the Commencement Date and thereafter until the termination of this agreement, the Tribe shall pay the County the sum of four hundred thousand dollars (\$400,000) annually. Each payment beginning in year nine shall be increased by a percentage equal to the increase in the Consumer Price Index (All Urban Consumers) for the San Francisco Metropolitan Area, in no event to exceed four percent (4%), compounded annually.

(b) Upon commencement of operation of a hotel as part of the Project, the Tribe hereby agrees to charge and remit to the County a fee equal to the County's Transient Occupancy Tax (TOT) of ten percent (10%) on the base rental rate of the room and a one percent (1%) Business Improvement District (BID) assessment on the base rental rate of the room or such other amounts for the TOT and BID as may be duly adopted by the County. Said amounts will be collected by the Tribe and remitted to the County in arrears on a quarterly basis within 30 days of the end of each calendar quarter. The Tribe hereby agrees that it will maintain appropriate accounting records sufficient to account for the TOT and BID assessment and shall make such records available within ten (10) days to the County of a written request by the County CEO.

(c) The payments described in Sections 10.2(a)&(b) shall be paid within ninety (90) days of the respective anniversary of the Commencement Date.

11.3 This Agreement shall fully satisfy all payment obligations between the Tribe, District, and the County with regard to the mitigation of off-reservation impacts of the Project, as required by the Compact. The Tribe shall not be required to make

any payments reimbursements, contributions, investments to, through or on behalf of the County for any taxes, fees, charges, cost reimbursements, service, fees, or other assessments, unless expressly provided for in this Agreement. The County hereby acknowledges that the contributions described in this Agreement are currently sufficient to mitigate any potential non-recurring and recurring impacts of the Project on the County and surrounding community, including without limitation, any potential impacts upon County infrastructure, public services, social services, health and safety, transportation, fire, emergency services, and law enforcement.

(a) The County shall be responsible for distribution of Tribal contributions to the appropriate departments within the County government and to the District, as appropriate.

(b) Nothing in this Agreement is intended to limit in any way the cost of water and sewer services, including infrastructure improvements to these systems, to serve the property on which the project is located. Said costs are the sole responsibility of the Tribe.

11.4 Condition Precedent: The Parties acknowledge and agree that the Tribe's contributions and other obligations set forth in this Agreement are, and shall be, contingent upon (1) the Tribe obtaining a commercially reasonable loan; (2) receipt of any necessary federal approvals, including an NPDES permit from the U.S. Environmental Protection Agency; (3) receipt of any necessary state and local approvals (including a positive N.O.D. under CEQA); and (4) the occurrence of the Commencement Date.

11.5 Indemnification:

(a) The Tribe will indemnify and hold harmless the County of Mendocino, its elected representatives, officers, agents, and employees against any claim brought or filed by a third party, including federal, State or local (non-County) agencies which challenges the validity or performance by the County under this Agreement, the authority of the County to enter into this Agreement, or any approval by the County called for in this Agreement.

(b) The County will provide written notice of any claim brought or filed by a third party and consult with the Tribe regarding and reach mutual agreement regarding the retention of defense counsel prior to retention of any outside legal counsel to defend the County in a matter within the provisions of this indemnification.

(c) Any decision to settle on a non-monetary basis a dispute for which the Tribe is responsible for indemnification and defense under this Agreement shall be made jointly by the Tribe and the County.

11.6 County Museum Display: When requested by the Tribe, the County will enter into discussions regarding the loan of County museum property to the Tribe's casino or hotel for display purposes.

11.7 Hiring Preference: In order to ensure that residents of the Reservation and County receive the maximum economic benefit from the Project, the Tribe shall apply Indian preference in accordance with the Tribe's applicable laws and

subject to applicable federal, state and Tribal law shall use its best efforts to hire County residents for positions at the Facility, as appropriate.

## **12.0 TRIBE – COUNTY COMMUNICATION**

- 12.1 Informal Tribe – County Meetings: Nothing herein shall prohibit the Tribe from meeting with individual members of the Board of Supervisors, District Board Members, or County staff to discuss matters of common interest and importance to both governments. Staff and advisors for each respective government may be invited to attend as deemed appropriate. However, all provisions of the “Brown Act” still apply to any meetings between County Public Officials and the tribe and therefore must be complied with.

## **13.0 DISPUTE RESOLUTION**

- 13.1 Voluntary Resolution; Reference to Other Means of Resolution:

In recognition of the government-to-government relationship between the Tribe and the County, the parties will make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the County first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Agreement, as follows:

(a) Either party will give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

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

(c) If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this Section.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in this Section may be resolved through arbitration utilizing the American Arbitration Association’s Commercial Arbitration Rules. The disputes to be submitted to arbitration include, but are not limited to, claims of breach or violation of this Agreement. In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the County on the grounds that the Tribe has failed to exhaust its administrative remedies. The parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resorting to the arbitral process.

### 13.2 Arbitration Rules:

(a) Any arbitration will be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and will be held at such location as the parties may agree.

(b) Except as provided in Section 13.5 of this Agreement, each party will bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise.

(c) Only one neutral arbitrator may be named, unless the Tribe or the County objects, in which case a panel of three arbitrators (one of whom is selected by each party), will be named.

(d) The provisions of Section 1283.05 of the California Code of Civil Procedure will apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator will be in writing, give reasons for the decision, and will be binding.

(e) Judgment on the award may be entered in and enforced by the United States District Court for the Northern District of California in accordance with the Federal Arbitration Act.

13.3 No Waiver or Preclusion of Other Means of Dispute Resolution: This Section may not be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

### 14.0 LIMITED WAIVER OF SOVEREIGN IMMUNITY

14.1 The Tribe expressly and irrevocably waives on a limited basis its sovereign immunity (and any defense based thereon) in favor of the County and District, as applicable (and not to any third party) as to any dispute, which arises out of this Agreement or the activities undertaken by the Tribe pursuant to this Agreement. The Tribe consents hereby to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing any arbitration award with respect to any dispute arising out of this Agreement. Further, this waiver applies to permit the County and District, as applicable to seek judicial relief against the Tribe in the United States District Court for the Northern District of California with respect to any dispute arising out of this Agreement or to enforce any court order or judgment against the Tribe and in favor of the County within the limitations set forth in Sections 12 and 13 of this Agreement.

14.2 Without in any way limiting the generality of the foregoing, the Tribe expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any court, to take such action or otherwise give effect to any judgment entered; provided, however, that in no instance will any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the limited assets of the Tribe specified in Section 13.3.

14.3 The Tribe's limited waiver of sovereign immunity from suit is specifically limited to permitting, and does permit, the following actions and remedies:

(a) The enforcement of an award of money and/or damages; provided that the arbitrator(s) and/or the court will have no authority or jurisdiction to order the execution against any assets or revenues of the Tribe except undistributed or future net revenues or accounts receivable, both as defined by Generally Accepted Accounting Principles, of the Enterprise that are the subject of this Agreement. In the event of an award or judgment against the Tribe, the County may conduct discovery regarding the undistributed or future net revenues or accounts receivable of the Enterprise. In no instance will any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the limited assets of the Tribe specified in this subsection or as against the property of any individual member of the Tribe.

(b) The enforcement of a determination by an arbitrator or a court that the Tribe has breached this Agreement.

(c) The enforcement of a determination by an arbitrator or a court that prohibits the Tribe from taking any action that would prevent the County from performing its obligations pursuant to the terms of this Agreement, or that requires the Tribe to specifically perform any obligation under this Agreement (other than an obligation to pay money except as provided for in subsection 13.3(a)).

14.4 The Tribe does not waive any aspect of its sovereign immunity with respect to or otherwise consent to actions by or on behalf of third parties.

14.5 In any arbitration or court action brought pursuant to this Agreement, the prevailing party will be entitled to recover reasonable attorney fees and costs as are determined by the arbitrator or court.

14.6 The use of arbitration is solely as an accommodation for dispute resolution and nothing regarding the use of arbitration or the choice of state or federal law shall waive or limit tribal sovereign immunity beyond that expressly provided in section 13.1 herein.

## **15.0 REOPENER PROVISIONS**

15.1 Either Party may request that the other Party renegotiate one or more terms of this Agreement if: (1) there is a significant change that directly or indirectly relates to a Party's expectations under this Agreement and that change materially impacts that party; or (2) within one hundred eighty (180) days of the Commencement of Construction of any structure contemplated under Phase II and in accordance with Section 4.8. Such changes may include, but are not limited to, a change in State or federal law that extends gaming to non-Indians or non-Indian lands, a change in the financial obligations of the Tribe to the State under the Compact, a reduction in the scope of gaming on Indian lands mandated by federal or State law, or a change in State law or in the State manner of doing business that increases the County's responsibility regarding

traffic on State highways either in terms of law enforcement, road surface maintenance, or traffic safety measures.

- 15.2 A request to renegotiate one or more terms of this Agreement will be made in writing, addressed to the other Party. The request will specify the basis for the request.
- 15.3 If the request is determined to meet the requirements for renegotiation pursuant to this subsection, then the Parties will meet within thirty (30) days from the receipt of the request and will commence to renegotiate in good faith. The sole purpose of the renegotiation will be to determine if there are alternative terms that are consistent with the purposes of this Agreement, which do not impose new impacts that were unforeseen when this Agreement was entered into by the Parties and which do not materially change the financial condition of either the County or the Tribe's Enterprise.
- 15.4 Regardless of the existence of any significant change as described in subsection 14.1 above, the Parties will meet at least once every five (5) years to discuss whether the terms of this Agreement still are effective to carry out the intent of the Parties in entering into this Agreement. If there is concern by either Party that the intent of that Party in entering into this Agreement is no longer being fulfilled, then the Parties will commence to renegotiate in good faith. The purpose of this renegotiation will be to determine if there are other provisions for inclusion in the Agreement that would more effectively fulfill the intent of the Party that had a concern without significantly detracting from the purposes of the original Agreement.

## **16.0 NOTICE**

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

### **FOR THE TRIBE**

Pinoleville Pomo Nation  
Attn: Tribal Chairperson  
500 Pinoleville Dr.  
Ukiah, CA 95482  
Phone: (707) 463-1454  
Telefax: N/A

**With a copy to (which copy shall not constitute notice):**

### **FOR THE COUNTY**

County of Mendocino  
Attn: Chief Executive Officer  
501 Low Gap Road, Room 1010  
Ukiah, California 95482  
Phone: (707) 463-4441  
Telefax: (707) 463-5649

**With a copy to (which copy shall not constitute notice):**

County of Mendocino  
Attn: County Counsel  
501 Low Gap Road, Room 1030  
Ukiah, California 95482  
Phone: (707) 234-6885  
Telefax: (707) 463-4592



**FOR THE DISTRICT:**

Ukiah Valley Fire District  
Attn: Chief John Bartlett  
1500 S. State Street  
Ukiah, CA 95482  
Phone: (707) 462-7921

- 16.2 In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers listed above are used.
- 16.3 Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change within fifteen (15) calendar days of the effective date of the change.
- 16.4 All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5<sup>th</sup>) day following deposit in the mail if sent by first class mail.

**17.0 MISCELLANEOUS PROVISIONS**

- 17.1 Submission of Agreement: The parties shall submit this Agreement to the United States Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response that this Agreement does not require approval under 25 U.S.C. § 81. The County's signature to this Agreement is not contingent upon the approval called for in this Section.
- 17.2 Governing Law: This Agreement shall be construed pursuant to the applicable federal laws and the laws of the State of California.
- 17.3 Mutual Good Faith: Throughout the term of this Agreement, the parties agree to exercise good faith and to observe the covenants contained herein.
- 17.4 Captions: The captions of each paragraph, section, or subsection of contained in the Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement.
- 17.5 No Third Party Beneficiaries: This Agreement is not intended to, and will not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.
- 17.6 Amendments: This Agreement may be amended only by written instrument signed by the County and the Tribe.

- 17.7 Waiver: The waiver by either party or any of its officers, agents or employees or the failure of either party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.
- 17.8 Authorized Representatives: The persons executing this Agreement on behalf of the parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective party understand that both parties are relying on these representations in entering into this Agreement.
- 17.9 Successors in Interest: The terms of this Agreement will be binding on all successors in interest of each party.
- 17.10 Severability: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

## **18.0 ENTIRE AGREEMENT**

- 18.1 This Agreement constitutes the entire agreement between the County and the Tribe and supersedes all prior negotiations, representations, or other agreements, whether written or oral. A notice approved by the legal advisors of each party will be filed in the Bureau of Indian Affairs Registry and with the County Recorder to reflect the substance of this Agreement.
- 18.2 In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

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

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.**

**COUNTY OF MENDOCINO**

**DEPARTMENT FISCAL REVIEW:**

DEPARTMENT HEAD \_\_\_\_\_ DATE \_\_\_\_\_

Budgeted: ☐ Yes ☐ No

Budget Unit: \_\_\_\_\_

Line Item: \_\_\_\_\_

Grant: ☐ Yes ☐ No

Grant No.: \_\_\_\_\_

**COUNTY OF MENDOCINO**

By: \_\_\_\_\_

DAN HAMBURG, Chair  
BOARD OF SUPERVISORS

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: \_\_\_\_\_

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: \_\_\_\_\_

Deputy

**INSURANCE REVIEW:**

RISK MANAGER

By: \_\_\_\_\_

KRISTIN McMENOMEY, Director  
General Services Agency

**PINOLEVILLE POMO NATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

attn: Tribal Chairperson  
500 Pinoleville Dr., Ukiah, CA 95482

**UKIAH VALLEY FIRE DISTRICT**

Chief John Bartlett

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

**COUNTY COUNSEL REVIEW:**

APPROVED AS TO FORM:

THOMAS R. PARKER, County Counsel

By: \_\_\_\_\_

Deputy

**EXECUTIVE OFFICE REVIEW:**

APPROVAL RECOMMENDED

By: \_\_\_\_\_

CARMEL J. ANGELO, Chief Executive Officer

**FISCAL REVIEW:**

By: \_\_\_\_\_

Deputy CEO/Fiscal

**Signatory Authority:** \$0-25,000 Department; **\$25,001- 50,000 Purchasing Agent;** \$50,001+ Board of Supervisors