

MEMORANDUM OF AGREEMENT

BETWEEN

THE DRY CREEK RANCHERIA BAND OF POMO INDIANS

AND

COUNTY OF SONOMA

MARCH 18, 2008

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MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is effective as of March 18, 2008, by and between the County of Sonoma (the "County") and the Dry Creek Rancheria Band of Pomo Indians (the "Tribe") (referred to herein collectively as "the Parties" and as to each as a "Party"). The terms "County" and "Tribe" as used herein shall include the Parties' governmental entities, departments and officials unless otherwise stated.

RECITALS

WHEREAS, the Tribe is a federally-recognized Indian Tribe located on federal Trust Lands known as the Dry Creek Rancheria ("Rancheria"), which lands are connected to State Route 128 ("SR 128") by BIA Reservation Road S-93 ("BIA 93"), and which lands and roads are within the geographic boundaries of the County; and

WHEREAS, under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA"), the Tribe may engage in gaming as a means of promoting Tribal economic development, self-sufficiency and strong Tribal government; and

WHEREAS, IGRA generally requires that Class III gaming be conducted pursuant to a Tribal-State Class III gaming compact; and

WHEREAS, on or about September 10, 1999, and effective in May, 2000, the Tribe entered into a compact with the State of California ("Compact"), as contemplated under IGRA; and

WHEREAS, the Tribe desires to operate Tribal economic development projects in a manner that benefits the Tribe, its members, and the community as a whole, and the County recognizes the mutual benefit that can be derived if those goals are achieved; and

WHEREAS, the Tribe and the County have participated in a series of joint meetings to address potential off-Reservation environmental impacts and possible additional mitigation measures that might be taken with respect to proposed economic development projects on the Reservation and other lands owned in fee by the Tribe, consistent with the Tribe's sovereignty, applicable law, and the Compact; and

WHEREAS, proposed and future Tribal development are not County projects and are not subject to the discretionary approval of the County and absent this Agreement the County has limited opportunity to influence mitigation measures or seek compensation for adverse environmental impacts; and

WHEREAS, the Parties acknowledge that given the scope of the proposed Tribal economic development projects, specific impacts are not always subject to precise measurement and that the mitigation measures agreed upon below are intended as good faith approximate mitigation of identified impacts; and

WHEREAS, the Parties recognize that this Agreement is an important step in furthering a government-to-government relationship and building trust, mutual respect and

cooperation that is intended to benefit the Tribe, its members and the entire Sonoma County community;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

I. PURPOSE OF AGREEMENT

1.1 The purpose of this Agreement is to:

1.1.1 Memorialize understandings that are intended to resolve and settle a range of disputes between the Tribe and the County;

1.1.2 Assure the implementation of measures for mitigating the off-Reservation impacts of the Existing Casino, the Dugan Projects, and the Resort Project;

1.1.3 Establish a mutually agreeable process to identify and mitigate potential off-Reservation environmental impacts of future Tribal economic development projects, including, with respect to those which are on-Reservation gaming Projects, a process that meets or exceeds the processes required under the Compact;

1.1.4 Create a process to resolve future disputes that may arise between the County and the Tribe under this Agreement;

1.1.5 Create a framework for building and maintaining a mutually beneficial government-to-government relationship between the Tribe and the County; and

1.1.6 Identify ways for the Tribe and the County to work together to provide services and benefits to the Tribal community and Sonoma County residents.

II. ISSUES IN DISPUTE

2.1 The Tribe and County are involved in a number of legal disputes which are summarized below. This Agreement is intended to settle these disputes and to provide a mechanism to resolve other controversies that may arise under this Agreement in the future. The disputed issues include:

2.1.1 Alcohol License: *In the Matter of the Protest of Sheriff Bill Cogbill, et al. Against the Person to Person and Premises to Premises Transfer of a General Public Eating Place Alcohol License* - The County Sheriff, Fire Chief, Board of Supervisors and the Alexander Valley Association ("AVA") each protested to the Department of Alcoholic Beverage Control ("ABC") that the River Rock Casino should not be granted a liquor license. The Tribe contends it is qualified to obtain the applied for license. The protests are pending before an ABC administrative law judge.

2.1.2 Dugan Property Trust Application: *California Department of Conservation, et al. v. Acting Pacific Regional Director, Bureau of Indian Affairs* - The State of

California, County and AVA each are appealing a Bureau of Indian Affairs ("BIA") decision to take 18 acres of land (the "Dugan Property"), adjacent to the Rancheria, into trust for the Tribe. The matter is pending before the Department of the Interior Board of Indian Appeals ("IBIA").

2.1.3 Fire Safety Inspections: *In the Matter of the Sonoma County Fire Chief's Application for an Inspection Warrant* - This case involves the County Fire Chief's application for a State civil administrative inspection warrant for the Rancheria. The United States District Court for the Northern District of California determined that the County does not have fire code enforcement jurisdiction on the Reservation and the Ninth Circuit Court of Appeals, in a final judgment, affirmed the District Court's determination. A petition for *certiorari* to the United States Supreme Court of the Ninth Circuit judgment has not yet been filed by the County.

2.1.4 Wastewater Discharge: *In re: Dry Creek Rancheria NPDES Permit* - On April 30, 2007, the United States Environmental Protection Agency ("USEPA") issued a National Pollutant Discharge Elimination System ("NPDES") permit to allow the Tribe to discharge treated wastewater into a tributary of the Russian River. The County and AVA filed petitions for administrative review of the permit alleging concerns over potential environmental impacts. The Tribe contends that the permit was appropriately granted and is environmentally sound. The petitions are pending before the USEPA Environmental Appeals Board and the permit has been stayed.

2.1.5 Gaming Facilities' Potential Off-Reservation Impacts: County's Dispute Regarding Mitigation of Gaming Facilities' Environmental Impacts - The County and Tribe dispute whether significant off-Reservation impacts of its existing and planned Rancheria gaming Projects have been adequately mitigated.

2.1.6 Tribe's Petaluma Trust Application: County Opposition to Petaluma Gaming Trust Application - The County opposes the Tribe's application to take 277 acres of land into trust for gaming purposes near Petaluma. The Tribe contends that its pending application satisfies all applicable standards for transfer of the land into trust for gaming purposes.

III. DEFINITIONS

The following terms shall be defined in this Agreement as set forth in this subdivision.

3.1 "Alternative Road Site" means a site for an Emergency Access Road other than only through the Dugan Property provided such a road is completed in the same timeframe, serve the same function, and be as effective for such purposes as the Emergency Access Road through the Dugan Property except as may be agreed to by the Parties.

3.2 "Base Year" means the prior year as calculated in Section 16.5.

3.3 "Binding Arbitration Provisions" means the arbitration process set forth in Section 20.2.

3.4 "Bond" means the performance and payment bond described in Section 7.8 below, provided that in lieu of providing such bond the Parties may agree on the establishment and funding of a Construction Completion Account as defined herein and described in Section 7.8. The Bond and Construction Completion Account are referred to interchangeably as the "Construction Assurance Device."

3.5 "Conservation Easement" means an easement over a portion of the Petaluma Property as further described in Section 12.3.

3.6 "Construction Assurance Device" means a performance and/or payment bond or Construction Completion Account, either of which contains sufficient resources to build or complete the Emergency Access Road and Intersection Improvements and can be accessed by the County for such purposes.

3.7 "Compact" means the Tribal-State Compact entered into pursuant to IGRA between the Tribe and the State of California, effective May, 2000, any amendments or revisions thereto, or any new compact related to Gaming on the Rancheria entered into during the Term.

3.8 "Construction Completion Account" means an account at a bank to be mutually agreed upon by the Parties, which agreement shall not be unreasonably withheld, to serve in lieu of a Bond in accordance with Section 7.8.5 below. The Construction Completion Account would be an account into which the Tribe would deposit, or cause to be deposited, sufficient cash to cover the costs of completing the Tribe's required construction of the Emergency Access Road and of the Intersection Improvement, as well as an additional 7% thereof to cover contingencies such as potential cost overruns. Withdrawals and expenditures from the Construction Completion Account will be in accordance with Section 7.8 and 7.9 below.

3.9 "Cumulatively Significant Impacts" means the possible impacts on the off-Reservation environment of a Tribal Commercial Development Project that may be individually limited but cumulatively significant if the incremental impacts of an individual project are considerable when viewed in connection with the impacts of past projects, other current projects, and reasonably foreseeable future projects.

3.10 "Cultural Center" means the Tribe's proposed cultural center located on the Rancheria.

3.11 "Dugan Projects" means the Projects shown on Exhibit B and as may be otherwise described in the Final Environmental Assessment dated August 2005 and prepared for the Dugan fee-to-trust application.

3.12 "Dugan Property" means the real property parcel contiguous to the Rancheria that is commonly referred to as such and is the subject of a pending fee-to-trust application to the Department of the Interior.

3.13 "Effective Date" means the latter date upon which this Agreement is formally approved by the County Board of Supervisors and the Tribe's Board of Directors, which is anticipated to be on March 18, 2008.

3.14 "Emergency Access Road" means the road described in Section 7.3 that provides emergency access connecting the Rancheria to Highway 128, either through the Dugan Property or by way of the Alternative Road Site.

3.15 "Emergency Access Road Plans" means the plans reviewed and accepted by the County as described in Section 7.3 below, or the Alternative Road plans reviewed and accepted by the County as described in Section 7.7.

3.16 "Environmental Assessment" means the August 2005 Final Dry Creek Rancheria Fee-to-Trust Project Environmental Assessment document drafted for the Dugan Property fee-to-trust application prepared for the Tribe by Environmental Science Associates (ESA).

3.17 "Environmental Ordinance" means the Dry Creek Ordinance that was adopted on October 14, 2000 by Resolution No. 00-10-14-005, which amended an earlier version adopted on April 29, 2000. Both ordinances were enacted pursuant to Section 10.8 of the Compact.

3.18 "Environmental Study" means the Final Dry Creek Rancheria Economic Development Master Plan Environmental Study for the Resort Development dated January 2008, which was prepared for the Tribe by ESA with respect to the Resort Project.

3.19 "Existing Casino" means the casino known as the "River Rock Casino" as described in Section 4.1 below, including the parking lots, parking structures, buildings, roads, utilities and other Infrastructure.

3.20 "Financing" means the receipt by the Tribe or by another entity or financial institution on its behalf, of the first draw of funds derived from the major financing commitments that are part of the effort to undertake development of the Resort Project.

3.21 "Gaming" or "Gaming Activities" means Class II and Class III gambling activities as defined under IGRA and as, with respect to Class III gaming, is allowed under the Compact.

3.22 "Gaming Authority" means the Dry Creek Tribal Gaming Commission, the Tribal governmental agency created under Tribal law pursuant to IGRA to regulate gaming on Tribal Trust Land.

3.23 "Gaming Facility" means a building in which Gaming is taking place and as is otherwise defined in the Compact.

3.24 "Gaming Operations" means the conduct of Gaming and the operation of the Gaming Facility, including the administration and other necessary services.

3.25 "IGRA" means the Indian Gaming Regulatory Act of 1988 and any amendments or regulations issued pursuant to the Act.

3.26 "Infrastructure" means the utilities, utility facilities, and wastewater treatment plant, all currently existing on the Rancheria and Dugan Property; the wastewater storage

facilities, above-ground detention facilities, natural gas lines, electrical sub-station, and roads (including the Acorn Road) constructed or to be constructed on the Rancheria or the Dugan Property and made available to the Existing Casino, the Resort Project or the Dugan Projects, as discussed in the Environmental Assessment or Environmental Study; Exhibit B (relating to the Dugan Projects); the Emergency Access Road; the Intersection Improvements; and the existing wells.

3.27 "In Lieu Fee" means the fee determined in accordance with Section 16.9.

3.28 "Interested Persons" means (i) the County; (ii) any city that has boundaries which are contiguous to the boundaries of the trust land on which a proposed Tribal Commercial Development Project is to be constructed; (iii) any state and/or federal agency which, if a project were not taking place on Indian lands, would have responsibility for approving a Tribal Commercial Development Project or would lawfully exercise authority over the natural resources that may be impacted by a Tribal Commercial Development Project; and (iv) any person, group, political subdivision, or agency that submits a timely request to the Tribe in writing to receive a Notice of Preparation or Completion of a draft TEIR, or has timely commented on a Tribal Commercial Development Project in a writing received by the Tribe in accordance with the applicable process for considering such comments. Nothing in this Section shall be deemed to confer any rights on an Interested Person.

3.29 "Intergovernmental Mitigation Agreement" means an agreement between the Parties with respect to off-reservation mitigation measures in connection with a Tribal Commercial Development Project that is subject to the environmental review provisions of this Agreement. To the extent any provision herein requires or refers to an Intergovernmental Mitigation Agreement, this Agreement shall satisfy all such requirements with respect to the Ongoing Projects. This Agreement, including but not limited to its environmental and dispute resolution processes, is intended by the Parties to serve as any intergovernmental mitigation agreement with respect to future construction related to Tribal Gaming Operations or Activities that may be required in any Compact entered into during the Term of this Agreement.

3.30 "Intersection Improvements" means the improvements at the intersections of SR 128 and BIA 93, and at SR 128 and the Emergency Access Road, as provided in Section 16.4 and Exhibit A.

3.31 "Master Plan" means the Tribe's economic development master plan described in the Environmental Study.

3.32 "Non-Commercial Tribal Project" means any Project undertaken by the Tribe on trust lands involving any construction, improvement, or expansion related to an intended or existing non-commercial activity or purpose, including, but not limited to, those projects and activities described in Section 3.43.5 and excluding Commercial Tribal Development Projects.

3.33 "Ongoing Projects" means the Existing Casino, the Dugan Projects, and the Resort Project, including the Infrastructure.

3.34 "Petaluma Property" means the approximately 277 acres owned by the Tribe within an unincorporated portion of the County along U.S. Highway 101 near the City of Petaluma and shown in Exhibit C.

3.35 "Project" means any project undertaken by the Tribe on Trust Lands that involves any substantial construction, improvement, or expansion that is likely to cause a Significant Adverse Impact.

3.36 "Rancheria" means the approximately 75 acres of Trust Land presently accessed by State Highway 128, including BIA 93.

3.37 "Reservation" means the Rancheria and any other land held in trust for the Tribe by the federal government that is located within Sonoma County.

3.38 "Resort Project" means Phase I and Phase II of the Gaming and hospitality Project and the Infrastructure discussed in the Environmental Study.

3.39 "Sheriff's Department" means the Sonoma County Sheriff's Department.

3.40 "Significant Adverse Impact(s)" means a substantial or potentially substantial adverse change in the off-Reservation environment as a result of a Project as determined, to the extent possible, on scientific and factual data. Possible differences of expert opinions shall not alone require that the Tribe make a finding of Significant Adverse Impact.

3.41 "TEIR" means a Tribal Environmental Impact Report, as described in Section V below.

3.42 "Term" means the term of this Agreement which shall commence on the Effective Date and terminate when the Compact, including any amendment, revision, or modifications thereto expires but in any event no earlier than Midnight, December 31, 2020. The Agreement Term therefore includes, and is automatically extended by, the term of any extension(s), modifications(s) and/or amendment(s) of the Compact. Specific provisions may also be extended by operation of Section 26.8. The Term is similarly extended by any new compact unless there has been at least a two year lapse since termination of the Compact and, during any such two year period, no Gaming Activities occurred on the Reservation.

3.43 "Tribal Commercial Development Project" means a Project which may result in a Significant Adverse Impact and consists of the following:

3.43.1 Any Project on Trust Land (including the Petaluma Property if it becomes Trust Land) that is primarily undertaken for or in connection with a commercial purpose or enterprise, but excluding the Ongoing Projects or any part thereof; or

3.43.2 Any expansion or significant renovation or modification of the Existing Casino or any significant excavation, construction or development of a new Gaming Facility or proposed Gaming Facility on Trust Lands after the Effective Date for which there is a Significant Adverse Impact, other than in connection with the Ongoing Projects or those Projects described in Section 3.43.5 below, which are excluded; or

3.43.3 Each expansion in the operation of slot machines above 2,000 on the Rancheria, including in connection with the Ongoing Projects, but only as to the Significant Adverse Impacts, if any, of the increase in machines over 2,000; or

3.43.4 Any Non-Commercial Tribal Projects that include the construction of more than six single family houses, six or more residential units in one building, or any building that is more than three stories in height.

3.43.5 Notwithstanding any other provision of this Agreement, the term "Tribal Commercial Development Project" does not include:

- a. The Resort Project, including but not limited to all Infrastructure improvements, or any renovations or demolition of all or part of the Existing Casino prior to or in connection with the development, construction or operation of the Resort Project;
- b. The Dugan Projects, including but not limited to all Infrastructure improvements;
- c. The Cultural Center;
- d. Any expansion of Gaming Activities or the entering into, finalization, or effectuation of a Compact, new Compact, or Compact amendment during the Agreement Term which permits the Tribe to operate, or the actual operation of less than, 2,001 slot machines;
- e. Any Project which would be exempt under Articles 18 and 19 of the California Environmental Quality Act ("CEQA") Guidelines; or
- f. Non-commercially based development and construction activities or Projects on Trust Lands, including but not limited to activities or Projects relating to housing, education, culture, religion, government, recreation, fire and public safety services, roads, utilities, and the maintenance of Tribal lands. In this context, non-commercially based means development or Projects and the related construction activities that are intended primarily for the Tribe and the Tribal government and all Tribal infrastructure owned and run by the Tribal government that is not substantially related to a Tribal Commercial Development Project. Notwithstanding the above, roads that predominantly serve Reservation purposes other than a Tribal Commercial Development Project, and development and construction activities or Projects related to water resources, drinking water and wastewater facilities, including all equipment and facilities related to water wells, water treatment plants, wastewater treatment plants, treated wastewater irrigation and discharge, shall not be deemed to be Tribal Commercial Development Projects,

3.44 "Trust Land" means lands located within the geographic borders of Sonoma County and held by the federal government for the benefit of the Tribe.

IV. DECLARATIONS REGARDING THE ONGOING PROJECTS AND THE PETALUMA PROPERTY

4.1 The Existing Casino. The Tribe has operated the Existing Casino since September 2002. It currently houses approximately 1,600 slot machines within approximately 60,000 square feet of Sprung™ brand domed facilities. It is served by a multi-section parking garage on the Rancheria which contains approximately 1,179 spaces. Certain modifications, not including expansion of the facility, may be made to the Existing Casino as part of the first phase of constructing and developing the Resort Project.

4.2 The Resort Project. The Resort Project involves the construction of new resort and casino facilities, including the eventual addition, through phases, of a total of an approximately 600 room hotel and related restaurant, retail and hospitality facilities. Approximately 260 rooms are scheduled for completion during the first phase of development. The Tribe released its Environmental Study, prepared pursuant to its Environmental Ordinance, which outlined a two-phase build-out of the Resort Project. The Environmental Study contains information that would be required in a draft TEIR for future Tribal Commercial Development Projects. As part of the Resort Project's construction and development, the Existing Casino may undergo certain modifications or renovations. Such modifications and renovations are included within the meaning of the term "Resort Project" in this Agreement.

4.3 The Dugan Project. In August, 2006, the BIA approved the Tribe's application to place the approximately 18 acre Dugan Property, which is presently owned by the Tribe in fee, into trust for the benefit of the Tribe. The development plan contained in the fee-to-trust application included the creation of single family homes for Tribal housing, vineyards, a winery with offices (that can be used as a Tribal community room), a fire station, and a paved access road. The environmental review process required under the National Environmental Policy Act (NEPA) with respect to placing the Dugan Property into trust, including drafting of the Environmental Assessment and meetings with the County and the public, has been completed. The Dugan Project includes those projects shown on Exhibit B.

4.4 The Petaluma Property. In April 2006, the Tribe filed a fee-to-trust application that sought to have the Petaluma Property placed into federal trust for the Tribe's benefit. The trust application was filed under federal provisions for acquiring land into trust for Tribal governmental gaming purposes. Pursuant to Section 13, the Tribe has agreed to suspend the Gaming purposes of the application, which application may remain pending to serve other uses, including non-Gaming commercial uses and the development of a mitigation bank. If certain conditions specified in this Agreement are satisfied, the Tribe has agreed to permanently forego Gaming on the Petaluma Property.

V. ENVIRONMENTAL REVIEW

5.1 The Tribe and County agree on the importance of conducting an appropriate environmental analysis of Tribal development projects to determine potential off-Reservation adverse environmental impacts and, if necessary, appropriate mitigation. Toward this end, and pursuant to Section 10.8 of the Compact, the Tribe enacted the Environmental Ordinance to provide a process for determining off-reservation environmental impacts of Tribal development

projects that relate to Gaming Facilities and whether or not they are likely to cause a Significant Adverse Impact outside the Reservation, and to provide procedures with respect to such determinations and the possible need for mitigation.

5.2 The environmental review process under the Environmental Ordinance has been completed for the Existing Casino and for the Resort Project. In addition, the NEPA process applicable to the Tribe's application to take the Dugan Property into trust has been completed. The environmental processes and reports with respect to the Existing Casino, Resort Project, and Dugan Project (collectively, the "Ongoing Projects") have been reviewed and commented upon by the County and others. Those comments have been considered by the Tribe in accordance with the Environmental Ordinance and the comment periods in connection with those Projects are now closed. The Parties agree that any and all further actions, if any, to be taken by the Tribe with respect to any environmental processes applicable to the Ongoing Projects are set forth in this Agreement.

5.3 Future Tribal Commercial Development Projects undertaken by the Tribe on Trust Lands shall be subject, to the off-reservation environmental impact processes set forth in this Section 5.3, including all subdivisions thereof and the Binding Arbitration process set forth in Section 20.2.

5.3.1 Future Non-Commercial Tribal Projects are not subject to this Agreement. If the Tribe, in its sole discretion, elects to adopt or follow some or all of the environmental processes set forth in this Agreement for a Non-Commercial Tribal Project(s), the County shall cooperate in good faith in timely reviewing and commenting on submissions of reports and studies to it by the Tribe, and meeting and conferring with the Tribe on mitigation measures at the Tribe's request. The Tribe's participation in environmental processes with the County under such circumstances shall not be deemed to be a waiver of the Tribe's sovereign jurisdiction or immunity unless expressly provided in writing, nor shall participation in any process in this Agreement be deemed to constitute such a waiver except as expressly set forth and limited in Section 23 below.

5.3.2 As to Tribal Commercial Development Projects, the Tribe shall consider and determine whether such projects may potentially cause Significant Adverse Impacts, including in those areas identified in Section 5.3.10 c and, if so, shall issue either a Tribal Negative Declaration or a Tribal Environmental Impact Report ("TEIR").

5.3.3 The Negative Declaration, TEIR and Intergovernmental Mitigation Agreement processes set forth below shall not be applicable to any of the Ongoing Projects. The negotiations leading to this Agreement and the provisions hereof shall be deemed to satisfy any requirement for environmental review, studies, reporting, notice, consultation, mitigation (if required) and other environmental actions that may be required by law or agreement with respect to the Ongoing Projects.

5.3.4 The Tribe agrees to incorporate the environmental review provisions applicable to this Agreement into its Environmental Ordinance with respect to Tribal Commercial Development Projects that relate to Gaming. The environmental review provisions of this Agreement applicable to non-gaming Tribal Commercial Development Projects shall be

included in one or more separate Tribal Ordinances which shall be provided to the County immediately following enactment. Notwithstanding such incorporation into Tribal ordinances, the environmental review and dispute resolution procedures provided for in this Agreement shall be applicable independently of any such Ordinance.

5.3.5 Except as may be expressly provided herein, nothing in this Agreement shall be construed to:

- a. Supplant or limit the application of any otherwise applicable federal law or regulation, including but not limited to NEPA; or
- b. Confer jurisdiction on the County or the State, or diminish the Tribe's sovereign powers and jurisdiction, over any Trust Lands; or
- c. Supplant or limit the jurisdiction of any federal or State agency.

5.3.6 For any Tribal Commercial Development Project, the Tribe shall either issue a Notice of Completion of a Draft TEIR or a Tribal Negative Declaration. The Tribe shall consult with the County at the earliest practicable date, consistent with Section 5.3.7 below, and in any event at least 30 days prior to the issuance of a Tribal Negative Declaration or a Notice of Completion of a Draft TEIR.

5.3.7 A purpose of the consultation process is to permit the County to have input into design considerations and mitigation measures with respect to Projects and to raise issues that may be appropriate for an Intergovernmental Mitigation Agreement. Such consultations shall be confidential to the extent permitted by law and shall be subject to the provisions of Section 19 of this Agreement. Nothing in this Section shall either limit the Tribe's jurisdiction or grant to the County jurisdiction or authority regarding the design of a Tribal Commercial Development Project or Non-Commercial Tribal Development Project.

5.3.8 Tribal Negative Declaration Process.

a. If, following completion of an initial study, the Tribe determines that a Tribal Commercial Development Project is not likely to have a Significant Adverse Impact in those areas identified in Section 5.3.10(c), the Tribe may prepare a Tribal Negative Declaration in lieu of conducting the studies and preparing the materials required for a TEIR under this Agreement. The initial study may consist of an environmental checklist. The Tribal Negative Declaration shall be circulated for comment to the public, Interested Parties, the County and the State Clearinghouse for thirty (30) days.

b. The Tribe shall consider any comments received during the 30-day review process and may adopt the proposed Negative Declaration or a mitigated Negative Declaration if it finds that, based on the record as a whole, there is no substantial evidence that the Project will have a Significant Adverse Impact. The County may request an additional fifteen (15) day extension for further technical review or to prepare and obtain authorization to issue comments, and such request shall not be unreasonably denied by the Tribe. Nothing in this Section 5.3.8(b) shall preclude the Parties from agreeing to a longer period of time in which to

submit comments if such an extension is warranted. The Tribe shall provide the record and the appropriate environmental document to the County within ten (10) days of its adoption.

c. The Parties agree that activities or Projects, such as interior remodeling, redecorating, refurbishment, maintenance or other changes to a facility that do not alter the overall footprint of the facility, and that adds less than 10% to the total square footage of an interior gaming area, and does not materially change the look of the facility as seen from off-reservation locations, and any activities or Projects that would be exempt under Articles 18 and 19 of the CEQA Guidelines, would not have a Significant Adverse Impact.

d. During the comment period for the Negative Declaration, or within such additional time period as the Parties may agree, the County may, for reasonable cause, initiate the Intergovernmental Mitigation Agreement provisions set forth in Section 5.3.18, and if no agreement can be reached, initiate the dispute resolution processes herein, including the Binding Arbitration provisions. "Reasonable cause" means that the County has substantial evidence that the Tribal Commercial Development Project would result in a Significant Adverse Impact that will not be mitigated to an impact level, if any, that is less than significant.

5.3.9 Tribal Environmental Impact Report (TEIR). For Tribal Commercial Development Projects that the Tribe has determined will have a Significant Adverse Impact, the Tribe shall cause a TEIR to be prepared which analyzes potentially Significant Adverse Impacts, as provided below. The Tribe shall consult with the County regarding the scope of the environmental review and consider any recommendation from the County concerning the person or entity to prepare the TEIR.

5.3.10 The Tribe shall undertake good faith efforts to identify and disclose in the TEIR any Significant Adverse Impacts that will be caused by the Project. The TEIR also shall identify ways in which Significant Adverse Impacts can be avoided or mitigated to less than significant and, where such a result cannot be reasonably obtained, analyze how impacts can be reasonably minimized, if possible, and shall include a statement setting forth all of the following:

- a. All Significant Adverse Impacts of the proposed Project;
- b. Any Significant Adverse Impacts that cannot be avoided or mitigated to less than significant if the Project is implemented;
- c. Mitigation measures proposed to minimize or avoid Significant Adverse Impacts, including but not limited to those having an effect on aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, mineral resources, noise, population and housing, public services, recreation, transportation/traffic, utilities, and service systems;
- d. Alternatives to the Project, provided that the Tribe need not address alternatives that would cause it to forego its right to engage in Gaming Activities, or preclude it from implementing activities or Projects that have been proposed in a trust application approved by the BIA;

- e. Any Cumulatively Significant Impacts; and
- f. Whether the proposed mitigation would be effective to reduce the potential Significant Adverse Impacts to a level of less than significant.

5.3.11 In addition to the information required pursuant to Section 5.3.10, the TEIR shall also contain a statement briefly indicating the reasons for determining, if such is the case, that the impacts of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. Such a statement can be contained in an environmental checklist and attached as an exhibit to the TEIR. Any Significant Adverse Impacts shall be clearly identified and described in the TEIR, giving due consideration to both the short-term and long-term impacts. The discussion of mitigation measures shall describe feasible measures which could minimize or avoid the Significant Adverse Impacts. If a mitigation measure is infeasible, the TEIR must demonstrate the specific economic, technological, legal, or other considerations which make the identified mitigation measure infeasible. The TEIR must analyze the proposed project as a whole, including activities that the Tribe determines are reasonably foreseeable.

5.3.12 The TEIR shall also contain an index or table of contents and a summary, which shall identify each Significant Adverse Impact on the off-Reservation environment together with proposed measures that would reduce or avoid that impact.

5.3.13 Notice of Preparation and Determination of Scope of TEIR. If it is determined by the Tribe that a TEIR is required for a Tribal Commercial Development Project, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research ("State Clearinghouse") and to the County. The Tribe shall also provide Notice to all Interested Persons.

- a. The Notice shall include all of the following information:
 - (i) A description of the Project;
 - (ii) The location of the Project shown on a detailed, preferably topographical, map, and on a regional map; and
 - (iii) The probable off-Reservation Significant Adverse Impacts of the Project.
- b. The Notice shall also inform all Interested Persons of the opportunity to provide comments to the Tribe, within thirty (30) days of the receipt of the Notice of Preparation by the State Clearinghouse and the County, of significant environmental issues, reasonable alternatives, and/or mitigation measures that such persons may contend should be explored in a draft TEIR.

5.3.14 In addition, the Tribe shall meet with the County to assist the Tribe in determining the scope and content of the TEIR within fifteen (15) days of such a request by the County and such request shall be made within fifteen (15) days of receipt of the Notice.

Such scoping meeting between the Parties shall take place within the thirty (30) day comment period unless another date is mutually agreed upon in writing between the Parties.

5.3.15 In addition, the Tribe shall conduct a scoping hearing for Projects of statewide, regional, or area wide significance and provide public notice of the hearing including written notification to Interested Persons.

5.3.16 Notice of Completion of the Draft TEIR. Upon completion of the Draft TEIR, the Tribe shall submit a copy of the draft TEIR and a Notice of Completion to the State Clearinghouse and the County.

a. The Notice of Completion shall include all of the following information:

- (i) A brief description of the Project;
- (ii) The proposed location of the Project;
- (iii) An address where copies of the draft TEIR are available; and
- (iv) Notice of a comment period of at least forty-five (45) days during which the Tribe may receive comments on the draft TEIR.

b. The Notice shall also inform Interested Persons of the preparation of the draft TEIR and of the opportunity to provide comments to the Tribe within forty-five (45) days of the Notice. The County may request an additional fifteen (15) day extension, if such additional time is required for further technical review or to prepare and obtain approval of comments, and such an extension request shall not be unreasonably denied by the Tribe. Nothing in this Section shall preclude the Parties from agreeing to a longer extension of time to submit comments if such an extension is warranted.

c. The Tribe shall submit seven (7) copies of the draft TEIR and Notice of Completion to the County, and the Tribe will serve, in a timely manner, a Notice of Completion to all Interested Persons and to the Healdsburg Public Library. The Tribe shall concurrently make an electronic version of the draft TEIR available to the public on its website. In addition, the Tribe will provide public notice by at least one of the procedures specified below:

- (i) Publication, at least one time, by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas; or
- (ii) Direct mailing by the Tribe to the owners and occupants of property adjacent to, but outside, the Tribal Lands (or proposed Tribal lands) on which the Project is to be located. Owners of such property shall be identified as shown on the latest County assessment roll.

5.3.17 Issuance of Final TEIR. The Tribe shall prepare and make available to the County, State Clearinghouse and the public for thirty (30) days a Final TEIR, which shall consist of:

- a. The draft TEIR or a revision of the draft;
- b. Comments and recommendations received on the draft TEIR either verbatim or in summary;
- c. A list of persons, organizations, and public agencies commenting on the draft TEIR;
- d. The Tribe's response to comments and recommendations from the review and consultation process; and
- e. Any other information added by the Tribe.

5.3.18 Meet and Confer to Negotiate Intergovernmental Mitigation Agreement. Not later than fifteen (15) days following the publication of the Notice of Completion of the Draft TEIR, the Parties shall commence diligent and good faith negotiations and shall otherwise use their respective best efforts, including meeting and conferring, to finalize, approve, execute and deliver an Intergovernmental Mitigation Agreement for the Project. The primary objective of an Intergovernmental Mitigation Agreement is to provide for binding and mutually enforceable agreements which insure the timely mitigation of Significant Adverse Impacts, where such impacts:

- a. Are primarily attributable to the Project being proposed;
- b. Occur outside of the geographic boundaries of the Tribe's existing or proposed Trust Lands and within the geographic boundaries of the County; and
- c. Are within the jurisdiction or responsibility of the County.

5.3.19 Binding Arbitration. If the Parties, after meeting and conferring consistent with Section 5.3.18 above, have not approved, executed and delivered an Intergovernmental Mitigation Agreement for a Tribal Commercial Development Project consistent with this Section within thirty (30) days after the date of the publication of the Final TEIR, or such other date as the Parties may mutually agree in writing, either party may initiate the binding arbitration dispute resolution processes contained in Section 20.2.

5.3.20 As to Non-Commercial Tribal Projects, the requirement to enter into a final Intergovernmental Mitigation Agreement or to submit to binding arbitration or a court imposed remedy if an impasse is reached, or otherwise shall not be imposed on the Tribe. If agreement is not reached on an Intergovernmental Mitigation Agreement regarding a Non-Commercial Tribal Project, the Tribe retains the right and jurisdiction to proceed with the Project and the County retains the right to oppose the Project.

5.3.21 Notwithstanding any provision to the contrary, the Parties acknowledge that the Tribe is subject to federal laws and regulations regarding the environment and health and safety, including but not limited to the Clean Water Act, Safe Drinking Water Act, Endangered Species Act, Indian Gaming Regulatory Act, and Occupational Safety and Health Act, and permit conditions including but not limited to conditions in any NPDES permits. The Parties agree that the matters regulated by these laws, regulations, and permits shall be matters that are solely between the Tribe and the federal agency having jurisdiction over such statutes, regulations, and permits, and a violation of such statutes, regulations, and permits shall not be considered a violation of this Agreement or a required part of an Intergovernmental Mitigation Agreement. Consistent with the above, disputes between the Parties over matters covered by such federal processes shall be resolved, to the extent a process for doing so is provided by law, solely before the federal agency conducting the proceedings and in accordance with its rules and regulations. Any dispute or disagreement the County has with the process or its outcome shall not be subject to the dispute resolution or Binding Arbitration Provisions of this Agreement. Nothing herein shall be construed as limiting the Parties' respective rights to reach agreement on a voluntary basis with each other over such matters outside such federal process, subject to applicable law and the sole discretion of each party as to whether or not to negotiate or agree on such matters outside the context of the federal process itself.

VI. ONGOING PROJECT MITIGATION MEASURES

6.1 The County and Tribe reviewed the Environmental Study prepared by the Tribe for the Resort Project and the Environmental Assessment prepared by the Tribe regarding the Dugan Projects. The Parties participated in a meet and confer process and utilized those documents to identify measures to mitigate the Significant Adverse Impacts of the Existing Casino, Resort Project, and Dugan Projects which measures are set forth in this Agreement.

6.2 The Tribe agrees to implement the mitigation measures set forth in this Agreement, including Exhibit A and, pursuant to Section 15, inform the County of the status of the implementation of such measures. Mitigation reports shall include the information required by this Agreement and be in a form substantially similar to Exhibit A.

6.3 NPDES Permits.

6.3.1 Based upon the wastewater mitigation measures contained in Exhibit A, and other provisions of this Agreement, the County shall dismiss with prejudice its petition for review of the Tribe's NPDES permit issued on April 30, 2007.

6.3.2 The County further agrees that it shall not file suit or otherwise seek to challenge a future NPDES permit application by the Tribe for the Resort Project if all of the following conditions are satisfied:

a. The Tribe has submitted a discharge plan prepared by a registered engineer during the permitting process that the EPA has accepted by approving the NPDES permit and that such a plan is feasible. As used herein, "feasible" shall mean that during the time period for considering such comments by the EPA, the Tribe has provided a discharge plan that includes:

(i) An operational history of the existing facility that documents the rated disposal capacity of the on-site storage and disposal system;

(ii) For internal reuse of treated wastewater (in cooling towers, toilets/urinals, etc.), a reasonable estimate of potential internal reuse and documentation supporting that estimate;

(iii) For discharges to Stream P1, an estimate based upon accepted professional standards of the amount of water the stream can accommodate without resulting in a significant increase in erosion, and documentation supporting that estimate;

(iv) For discharges to vegetation:

(1) the location, size in acres, and slope of each potential discharge area;

(2) the plant species in each potential discharge area;

(3) an estimate of the irrigation needs of each potential discharge area;

(4) documentation supporting that estimate, including calculations based on the California Department of Water Resources' *Guide to Estimating Irrigation Water Needs of Landscape Plantings in California* or similarly accepted scientific literature; and

(5) the location and design of runoff control structures.

(v) For storage of treated wastewater, a water balance calculation, based upon accepted professional standards, that identifies the volume of storage and discharges to irrigation and surface water on a monthly basis and documentation supporting that calculation;

b. The permit is not opposed by any federal agency;

c. The permit is not opposed by the State Regional Water Quality Control Board and it has not determined that such a permit violates the Water Quality Control Plan for the North Coast Region (the "Basin Plan");

d. The plant treatment capacity does not exceed 500,000 gallons per day;

e. The Environmental Protection Agency determines that the proposed permit is in compliance with the Clean Water Act; and

f. The proposed wastewater treatment plant will meet Title 22 of the California Code of Regulations for disinfected tertiary recycled water.

VII. ALCOHOL LICENSE AND EMERGENCY ACCESS ROAD

7.1 The Parties agree to stipulate that the license conditions contained in Exhibit D shall be incorporated into the alcohol license for the Existing Casino, to the extent approved by the California Department of Alcoholic Beverage Control ("ABC"). The Parties further agree that each of the conditions contained in Exhibit D are separately enforceable by the Parties as to the Existing Casino under the dispute resolution terms of this Agreement, including Section 20, whether or not any such specific condition is included as part of an ABC license as to the Existing Casino. The Parties further acknowledge that the financial and other commitments made by the Tribe are based upon the likelihood that, if the Protests are withdrawn, an ABC license will issue to the Tribe.

7.2 Based upon this Agreement, including the conditions set forth in Exhibit D, within five (5) days of the Effective Date and/or County's written acceptance of the Emergency Access Road Plans, whichever last occurs, the County shall withdraw its protests to the Tribe's pending alcohol license application, and make good faith efforts to persuade others to withdraw their protests. If the ABC does not grant the Tribe an alcohol license, including interim or temporary license, on or before July 30, 2008, if the delay is due to factors beyond the Tribe's control, the meet and confer and arbitration provision of Section 26.5 of this Agreement shall apply without the requirement that there be a determination of invalidity or material change. Notwithstanding the above, the payments due under Section 16.4.3 shall not be affected.

7.3 The Emergency Access Road Plans shall provide that the Emergency Access Road shall be a paved secondary emergency vehicle access road connecting SR 128 to the Rancheria containing a 15% or less grade throughout its length. The required plans shall include an approved floating construction schedule, with significant construction milestones, demonstrating the amount of time needed to complete the road, from the initiation of construction, along with a cost estimate based upon industry standards. Acknowledgement that the conditions of this Section have been satisfied shall be reflected in a writing by the County, which shall not be unreasonably denied or delayed. The Emergency Access Road Plans may be amended pursuant to a written agreement of the Parties.

7.4 The Tribe agrees to commence construction of the Emergency Access Road pursuant to the Emergency Access Road Plans accepted by the County within sixty (60) days of the Dugan Property going into trust, or upon a time mutually agreed to by the Parties in writing, and to complete construction within 365 days ("Road Completion Date"). If the date to start such construction falls within the rainy season as determined by NOAA Fisheries, the date to start construction shall be extended to 30 days following the end of the rainy season as determined by that agency, and the Road Completion Date shall be extended by a like amount. The time frame to complete construction also shall be extended for a reasonable period, upon notice to the County, due to any other delays not within the control of the Tribe, but the County may invoke the dispute resolution process if it disagrees with the need for such extension.

7.5 The Tribe shall be responsible for complying with the accepted Emergency Access Road Plans. If the Tribe requests technical assistance or otherwise consults with County regarding the construction of the Emergency Access Road, it shall pay standard fees typically imposed by the County for inspection-related services.

7.6 The County shall perform a final inspection of the Emergency Access Road improvements to verify that the construction is materially consistent with the agreed upon Emergency Access Road Plans, and the Tribe hereby grants the County permission to enter the Rancheria and any Tribal Trust Lands or other lands upon which the Emergency Access Road is to be constructed, to perform any necessary inspections authorized under this Section.

7.7 This Agreement and the preceding subsections assume that the Emergency Access Road will be constructed on the Dugan Property, but that the County shall not unreasonably withhold its approval of a request by the Tribe to construct the Emergency Access Road at the Alternative Road Site, provided that a set of completed plans are submitted to and accepted by the County, which acceptance shall not be unreasonably withheld, and that the Emergency Access Road can be constructed on the Alternative Road Site by the Road Completion Date, or such other date to which the Parties may agree. If the land is not in trust, the Tribe shall apply for appropriate permits which the County agrees to process on a reasonable basis. The County shall cooperate with the Tribe in the processing of such permits.

7.8 The Tribe agrees to construct the Emergency Access Road at its sole expense. No later than sixty (60) days following Financing or 15 days prior to commencing construction, whichever comes first, the Tribe shall create a "Construction Assurance Device," either in the form of a completion bond or a cash deposit into an escrow account as provided below, to guarantee construction of the Emergency Access Road in accordance with the accepted Emergency Access Plans. The Tribe shall be responsible for any costs associated with the Construction Assurance Device. The purpose of the Construction Assurance Device shall be to assure the availability of funds to the County to build or complete the road or to remediate any material deviation from the agreed upon Emergency Access Road Plans. If the County determines that the Tribe has defaulted or is about to default on its Emergency Access Road construction obligations under this Agreement, it shall notify the Tribe in writing of that fact and provide the Tribe with a reasonable opportunity to cure the alleged default. If the matter has not been cured, or the Tribe disputes the need to cure or otherwise take corrective action within such reasonable time, the County may notify the Tribe of the County's intent to utilize the Construction Assurance Device. If the Tribe objects, it shall notify the County within seven (7) business days and initiate the dispute resolution process of this Agreement, which process shall be completed prior to a demand on the Construction Assurance Device.

7.8.1 The Tribe warrants that it has conducted a construction estimate of the road consistent with industry standards and that a reasonable estimated cost of the Emergency Access Road is Thirteen Million Five Hundred Thousand dollars (\$13,500,000) if constructed in the location now designated on the Dugan Property, and such amount, plus 7%, shall be the principal amount of funding the Construction Assurance Device, provided that such estimated cost may be revised upwards or downwards in accordance with Section 7.8.5 below.

7.8.2 The Tribe agrees to expeditiously take all necessary steps to work with the County and BIA to have the Dugan Property taken into trust at the earliest possible date so that construction work on the Road can begin as soon as possible following the Effective Date and Financing, or, if applicable, to expedite the submission and approval from the County of plans for an Emergency Access Road on the Alternative Road Site.

7.8.3 County approval of the Emergency Access Road on the Alternative Road Site shall be based on a sufficient Construction Assurance Device being provided by the Tribe with respect to the completion costs for constructing the road and appropriate assurances as to its equivalency in terms of safety and time for construction completion as compared to the Emergency Access Road proposed for the Dugan Property.

7.8.4 Within thirty (30) days following acceptance of the Dugan Property into trust, an escrow account shall be set up pursuant to the Form of Escrow Instructions attached hereto as Exhibit E or a Bond substantially in the form of the Bond attached hereto as Exhibit F. The Tribe shall be responsible for any cost associated with the setting up of either Construction Assurance Device. Within such a time period the Tribe and the County shall agree upon a licensed and independent escrow agent and shall execute and deposit the instructions into escrow or with a licensed and independent surety. Within ten (10) days after opening of the escrow or within ten (10) days of the agreement on the surety, the Tribe will deliver to the County a written budget setting forth in reasonable detail the anticipated costs of constructing the Emergency Access Road ("Budget") which shall include a description of costs by construction milestones. The County shall have ten (10) days from receipt of the Budget to reasonably approve or reject the Budget. The Budget amount, as finally approved (or not disputed) by the County shall be the final estimated cost of the Emergency Access Road, and such amount shall constitute the principal amount to be deposited into the escrow account for release to contractors and materialmen in accordance with the Escrow Instructions or the principal amount of the completion bond.

7.8.5 In addition to the Budget amount, a contingency reserve of 7% of the final Budget amount shall be determined as the required contingency amount, subject to adjustment as necessary as provided below and in Exhibit E, unless a Bond is provided as set forth in Section 7.8.6 below. The contingency reserve shall be deposited into the escrow account along with the Budget amount. The total amount deposited in escrow shall be termed the Construction Completion Account. If either party determines a need to readjust the amount of the Bond or the Construction Completion Account in material part at some later date, it shall submit a proposal to do so to the other party, together with the reasons therefore, and the other party shall have ten (10) days in which to approve such revision, which approval shall not be unreasonably withheld. Substantial progress in construction, or in savings from the original approved Budget, thereby lowering the remaining cost of completion, may be reasons for seeking a reduction of the Bond or Construction Completion Account. Similarly, cost overruns or increased costs of construction materials or labor may be reasons for seeking an increase in the Bond or Construction Completion Account. If the Budget is reduced or increased, the portion of the Account or of the Bond representing such contingency amount shall be reduced or increased pro rata to such change.

7.8.6 The principal amount of the Construction Assurance Device shall either be secured by a Bond, or in lieu thereof deposited into the Construction Completion Account. The Escrow Instructions (Exhibit E), direct the escrow agent to disburse amounts from the Construction Completion Account to the Tribe or its designated contractors, vendors or consultants, to timely meet payments due in connection with the construction of the Emergency Access Road. The Escrow Instructions also shall provide that the Construction Completion Account shall be available to the County, if the Tribe defaults or otherwise does not meet its

construction obligations, so that the County can obtain the funds as necessary to complete the work either by its own forces or through the use of contractors. The Tribe shall ensure that the account balance, until construction is completed, shall be no less than that necessary to complete the Emergency Access Road plus not less than 7% above such amount to cover any cost overruns or contingencies, provided that until the County has inspected and approved the final construction as being in accordance with this Agreement, the balance in the account shall not be less than 7% of the overall budget for construction. The County shall be permitted to monitor and audit the account at any time during construction to ensure compliance with the goals of this paragraph.

7.8.7 The Construction Completion Account shall remain on deposit, or in lieu thereof, the Bond shall remain in effect, until the Emergency Access Road has been completed and approved in writing by the County, which approval shall not be unreasonably withheld, immediately following which all remaining funds on deposit in the Account after paying final amounts due to contractors shall be returned to the Tribe, and if there is a Bond in place, all necessary steps shall be taken to terminate the Bond.

7.9 In the event that the Emergency Access Road improvements are not substantially completed within the approved time frames and in conformance with the plans and specifications submitted to and accepted by the County, or there is otherwise a default in these construction obligations under this Agreement, and the County makes a demand on the Construction Assurance Device after conclusion of the dispute resolution process (if instituted), in addition to any other remedy available by law or equity, the Tribe expressly authorizes the County and/or its or its or the surety's contractors to enter the Dugan Property or any other site designated for construction of the approved Emergency Access Road for the purpose of constructing said road and completing such work. In the event of such a default by the Tribe and the County's or surety's subsequent conduct of such construction, the Tribe shall fully reimburse the County for all costs incurred in connection with any remedy of the default including but not limited to materials, labor costs, engineer costs, expenses, attorney fees, expert fees, and other reasonable costs and expenses not covered by the Construction Assurance Device's proceeds. If provided for under the terms of the Construction Assurance Device, any excess proceeds from the Construction Assurance Device may be used to reimburse the Tribe for any Emergency Access Road construction expenses it incurred.

VIII. LAW ENFORCEMENT SERVICES

8.1 Sonoma County Sheriff's Department Service.

8.1.1 The Sheriff's Department ("Sheriff") shall continue to provide general law enforcement services to the Reservation, particularly with respect to Gaming Operations and Gaming Facilities, and recognizes the need for possible increased services in the future. These Sheriff Department services include, but are not limited to, deputy availability for crime prevention and the prompt investigation, detention, interrogation, removal and possible prosecution of individuals suspected of committing crimes, including but not limited to offenses related to Gaming Operations on the Reservation, as well as other services to protect the safety of the public as provided for pursuant to Public Law 280.

8.1.2 The Sheriff's Department shall not provide gaming security, or enforcement of Tribal laws, provided that nothing herein is intended to diminish, and in fact is intended to reinforce, the prosecution of anyone engaged in criminal conduct, such as theft, embezzlement and fraud, or any criminal activity generally that may occur in, near or related to a Tribal Gaming Facility or on the Reservation.

8.1.3 Nothing in this Agreement, or other contract with the Sheriff, is intended or shall be construed to expand or limit the jurisdiction of the County and Sheriff beyond that which would be exercised pursuant to Public Law 280. Nothing in this Agreement or other contract with the Sheriff is intended, or shall be construed, to expand or limit the jurisdiction of any Tribal law enforcement agency beyond that which would be exercised pursuant to applicable law.

8.2 Tribe Provided Services.

8.2.1 The Tribe agrees to provide an adequate level of security personnel at the Gaming Facilities, who shall be on duty during all hours of operations. The Tribe shall seek input and will consult with the Sheriff's Department in determining the reasonable level of security staffing for all Tribal Gaming Facilities. Nothing in this Agreement or other contract with the Sheriff is intended or shall be construed to give the County or Sheriff the right to decide the adequate level of Tribal security personnel. Nothing in this Section, however, is intended to conflict or supersede the provisions of Exhibit D related to minimum levels of security staffing.

8.2.2 The Tribe shall provide space of reasonably adequate size to allow Tribal Security and Sheriff's Department personnel to conduct necessary law enforcement activities as contemplated herein in connection with the investigation, detention, interrogation, report writing, file storage, secure computer access, and removal of suspected offenders and processing of evidence. The Sheriff and Tribal authority, including, but not limited to, the Gaming Commission and Tribal Security, shall mutually cooperate on a government-to-government basis, as set forth below, in conducting law enforcement activities.

8.2.3 The Tribe shall provide for any additional radio communications equipment that may be reasonably needed for public safety purposes (e.g., signal repeaters), as jointly determined by the Tribe and the Sheriff, consistent with the Tribe's gaming security requirements and applicable law. The Tribe shall also work with the Sheriff to provide a suitable location for emergency helicopter landings on the Reservation in connection with the Sheriff's services. The Sheriff will cooperate with the Tribe to help obtain any necessary permits or other qualifications for the emergency landing zone.

8.3 County Services.

8.3.1 Pursuant to this Agreement, the County agrees to provide an adequate level of law enforcement service to the Reservation, as determined by the Sheriff in consultation with the Tribe, including timely response to security needs. The Tribe shall not be liable for the direct payment of any salaries, wages, or other compensation to any County personnel performing services for the County except for the reimbursement of special event services provided under separate contract or fee schedule.

8.3.2 The Parties shall develop procedures addressing the interface between the Tribe, Sheriff, and the Sonoma County District Attorney's Office ("District Attorney") to aid in the provision of law enforcement services under Public Law 280, including procedures regarding interaction between the Sheriff's Department and Tribal security personnel, the proper handling and preservation of evidence (particularly with respect to the preparation and protection of surveillance tapes), service of process in criminal proceedings, preparation of incident reports, witness statements, and patrol and arrest procedures.

8.3.3 The Sheriff and Tribe shall cooperate in good faith to resolve any conflict between the Sheriff's and Tribe's procedures; however, the Sheriff retains the final authority to determine how any procedural conflicts pertaining to matters strictly within its criminal jurisdiction under Public Law 280 shall be resolved. Such resolution shall serve the purposes and policies of Public Law 280 and this Agreement. Similarly, the Tribe retains the final authority to resolve any internal procedural conflicts pertaining to matters strictly within its jurisdiction. Such resolution shall serve the purposes and policies of applicable laws and this Agreement.

8.3.4 If requested by the Sheriff or Tribe, a Memorandum of Understanding (MOU) may be entered into by and between the Sheriff and Tribe to establish a protocol addressing the provision of services under this Agreement. No such MOU shall have the effect of amending this Agreement unless an amendment to this Agreement is approved in writing by the Tribe and the County Board of Supervisors. In the event of any inconsistency between the terms of such an MOU and the terms of this Agreement, the terms of this Agreement shall prevail.

8.4 Supplemental Security Services.

8.4.1 At the Tribe's request, the Sheriff may agree to provide extra law enforcement services for special events and functions. The County shall bill the Tribe under separate contract for the cost of such services. All Sheriff services provided for special events shall be billed at rates established by the County for special security services and paid within thirty (30) days of receipt of any invoice.

8.4.2 Should the Sheriff incur extraordinary expenses in connection with a response to a significant and unplanned incident relating to the Resort Project or other Gaming Operations on the Rancheria that involves criminal activity and requires efforts that are beyond the range of typical emergency law enforcement response, the Tribe and the Sheriff shall negotiate in good faith for reimbursement of Sheriff's reasonable and necessary extraordinary expenses incurred in connection with such incident. Such reimbursement shall not include payment of any claims for personal injury associated with the incident.

IX. PROSECUTION

9.1 The District Attorney will prosecute violations of criminal law on Tribal Lands to the extent consistent with Public Law 280, except for prosecutions under the jurisdiction of the federal Department of Justice or a tribal court, provided that concurrent jurisdiction therewith shall not lessen the District Attorney's authority or duties with respect to

such prosecutions. Nothing in this Agreement is intended or shall be construed to expand or limit the jurisdiction of the County and/or District Attorney beyond that which would otherwise be exercised pursuant to Public Law 280.

9.2 The Tribe shall identify the Tribal officials with whom the District Attorney shall coordinate all such prosecutions so that they may be carried out as effectively as possible. The District Attorney shall review all complaints referred by the Tribe, but all prosecutorial decisions and strategies as to County prosecutions shall be exclusively within the discretion of the District Attorney. Subject to applicable federal and Tribal law, the Tribe shall cooperate with District Attorney investigators in the collection of evidence, service of process, obtaining of witness statements, and providing assistance to investigators to facilitate the prosecution of all criminal cases that are within the District Attorney's jurisdiction that may occur in, near or related to a Tribal Gaming Facility or on the Reservation.

X. FIRE AND EMERGENCY SERVICES

10.1 Cooperation Agreement.

10.1.1 The Parties acknowledge that the Tribe's development, construction, operation and maintenance of Projects on Tribal lands, including Ongoing Projects and Tribal Commercial Development Projects, require fire protection and emergency response services.

10.1.2 The Tribe and the Sonoma County Department of Emergency Services ("County Fire") shall cooperate on a government-to-government basis to promote public safety and to provide the Tribe with the opportunity to benefit, on a voluntary, non-jurisdictional basis, from the constructive suggestions County personnel may have with respect to fire issues, and to share expertise to maximize public and emergency personnel safety. Such cooperation shall include the Tribe allowing fire safety inspections (and re-inspections), building plan review, and emergency services by County Fire for Reservation Projects. These activities shall occur subject to and in accordance with the County/Tribe Fire Protocol ("Fire Protocol") attached as Exhibit G.

10.2 County Fire also will be informed of, and may participate in, Tribal inspections as allowed for the State under Compact Section 6.4.2.

10.3 The inspections and plan review contemplated in this Agreement shall be conducted subject to the Fire Protocol. Nothing in the Agreement shall be construed to give any non-Tribal entity, including County or County Fire, jurisdiction over the Tribe or Tribal Commercial Development Projects on Tribal Trust Land, or over building and safety code application, interpretation, inspections and determinations by the Tribe (subject to oversight by the State of California and National Indian Gaming Commission as to the Tribe's Gaming Facility).

10.4 Building and Fire Safety Standards.

10.4.1 The Tribe shall comply with the most current adopted editions of building and fire codes in effect at the time of construction of a Tribal Commercial Development Project, as adopted by the Tribe as Tribal law, which for Phase I of the Resort Project include

California Building Code 2001 (CBC), Dry Creek Rancheria High-rise Building and Breathing Air Standards, California Fire Code 2001 (CFC), California Mechanical Code 2001(CMC), California Plumbing Code 2001 (CPC), California Electrical Code 2001 (CEC), California Disabled Accessibility Guidebook (CALDAG) 2003, California Elevator Code 2001, NFPA 13 (Standard for the Installation of Sprinkler Systems) 1999 Edition, NFPA 14 (Standard for the Installation of Standpipe Systems and Hose Systems) 2000 Edition, NFPA 20 (Standard for the Installation of Stationary Pipes for Fire Protection) 1999 Edition, NFPA 22 (Standard for Water Tanks for Private Fire Protection) 1998 Edition, NFPA 72 (National Fire Alarm Code) 1999 Edition, CBC Standard No. 10-1 (Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers) 2001 Edition, CBC Standard No. 10-2 (Stairway Identification) 2001 Edition, California Code of Regulations, Title 19, Public Safety and California Code of Regulations, Title 24 (California Referenced Code) 2001 Edition, unless inconsistent with applicable law, including the 1999 Uniform Building Codes and related uniform codes as provided in the Compact. In addition, the Tribe shall give good faith consideration to voluntary adoption of such reasonable, and economically feasible, County amendments or supplements to said codes as County may reasonably propose. Notwithstanding the foregoing, the Tribe need not give good-faith consideration to any County standard that solely applies, in name or fact, to Tribal facilities or to development on Tribal land. Nothing in this Section shall be construed to grant to the County, or to limit the Tribe's, authority or jurisdiction with respect to such codes or any matter related directly or indirectly thereto.

10.4.2 The Parties acknowledge that recent court decisions have confirmed that the County does not have fire code enforcement authority on the Reservation or BIA 93 under Public Law 280, or any other applicable law, and nothing in this Agreement, including the Fire Protocol, is intended to or may be interpreted as effecting any change in this area. Nonetheless, as part of government-to-government consultations, and subject to the background checking and protection of documents and proprietary information regarding secure areas of any Gaming Facility set forth in the Fire Protocol or above, the County shall be permitted by the Tribe to inspect and review Tribal Commercial Development Projects and review plans consistent with and pursuant to the terms specified in this Agreement, including the Fire Protocol, provided that County inspection or review of residential Tribal Commercial Development Projects shall not take place following occupancy.

10.4.3 Prior to the occupancy of any building of the Resort Project or any future proposed Tribal Commercial Development Project, the Tribe shall provide to the County a certificate issued by a qualified Tribal Building Official attesting that the subject improvements comply with the applicable codes. The Tribe will consider, on a voluntary but not jurisdictional basis, reasonable and feasible suggestions, as determined by the Tribe in its sole discretion, made by County Fire personnel intended to increase fire safety at and around Tribal Commercial Development Projects. However, pursuant to applicable law, the Compact and recent court decisions, the County does not have jurisdiction or authority over the design, development and/or construction of improvements on trust land or to make code determinations or undertake enforcement actions of any potential code violation related to such improvements.

10.4.4 The activities and the terms of this Section 10 and the Fire Protocol are subject to the meet and confer process set forth in Section 20.1 of this Agreement but are not subject to binding arbitration, except for, (1) an alleged failure by the Tribe to permit the

inspections of facilities or review of Tribal building plans in accordance with this Agreement and the Fire Protocol, (2) a disagreement between the Tribe and County regarding whether a consultant has a conflict of interest under Section I.D. of the Fire Protocol, and/or (3) an alleged failure by County Fire to adhere to the terms and conditions of this Agreement and the Fire Protocol, which are subject to the dispute resolution process. provided in Section 20.2 below. In any such proceedings an arbitrator's remedies include the award of monetary damages or equitable relief. The Tribe's compliance with the applicable building and safety codes, regulations, guidelines, or Compact provisions and any safety concerns discussed in this Section 10 and the Fire Protocol shall not be subject to binding arbitration under 20.2.

10.4.5 Any disagreements arising out of or in connection with any inspection or plan review contemplated in this Agreement shall be addressed through the good faith meet and confer process outlined in the Fire Protocol. Given the Tribe's exclusive jurisdiction under the recent court decisions, applicable law and Compact in this area (and which is subject to State and Federal oversight and dispute resolution mechanisms), such disagreements are not subject to the arbitration provisions of this Agreement.

10.5 Tribe's Pre-Existing Agreement with Geyserville Fire Protection District. The Tribe has provided for essential fire and emergency service needs, including first response services, and has mitigated fire-related off-Reservation impacts related to the Casino, in part through separate agreement with the Geyserville Fire Protection District. Nothing in this Agreement, including the Fire Protocol, is intended to or may be interpreted as altering or effecting Geyserville Fire Protection District's agreement with or services to the Tribe.

10.6 Future On-Reservation Tribal Fire Station. The Tribe's fee-to-trust application for the Dugan Property includes a plan for a fire station. If, at the Tribe's sole discretion, such a station is built on the Dugan Property, Reservation, or any other Tribal Trust Land, the Tribe shall determine whether County Fire services differing from those contemplated in this Agreement are desirable and, if so, shall consult with County Fire regarding the provision of fire services for such a facility.

10.7 General Fire Service Provisions.

10.7.1 Roads and Developed Areas. Subject to applicable law, including IGRA and the Compact, the Tribe agrees to comply with its fire safe standards with respect to all roads and developed areas covered by such standards as a matter of Tribal law.

10.7.2 Other Aid Agreements. The Parties recognize that there are automatic aid and mutual aid agreements for fire and emergency services in Sonoma County, under which the County provides hazardous material response to the Reservation, and is responsible for central dispatch services, as well as other command/support and disaster preparedness functions. The increased need for fire protection and emergency services required for the Resort Project may have an impact on those agreements and services and may require additional training and/or services.

10.7.3 Emergency Preparedness Plan. The Tribe has in place an emergency preparedness plan that addresses evacuation and access issues. The Plan and any updates shall

be made available to the County for informational purposes and the County and Tribe shall consult and coordinate services to further develop the Plan and to prepare to respond to any emergency at the Casino.

10.7.4 Hazardous Materials. The Tribe shall consult with the Sonoma County Department of Emergency Services regarding the use, storage, disposal, and transportation of any and all hazardous materials to be used by any Ongoing Project or Tribal Commercial Development Project. Nothing in this Agreement shall expand the County's jurisdiction regarding regulation of hazardous materials.

10.8 Based upon the commitments made by the Parties in the Fire Protocol, and the other terms of this Agreement, the County shall not file a writ of certiorari or take any other additional appeals or actions with respect to the litigation of In the matter of the Sonoma County Fire Chief's Application for an Inspection Warrant.

10.9 Public Health. The Tribe shall continue its duty to enforce environmental health standards under applicable law and its Compact, specifically including Compact Sections:

- 10.9.1 10.1 (public health, safety and welfare);
- 10.9.2 10.2(a) (public health standards for food and beverage handling);
- 10.9.3 10.2(b) (water quality and safe drinking water standards);
- 10.9.4 10.2(e) (workplace and occupational health and safety standards);
- 10.9.5 10.2(f) (public health and safety);
- 10.9.6 10.4 (emergency fire, medical, disaster services); and
- 10.9.7 10.6 (prohibition against firearms).

10.10 Pursuant to and consistent with the Compact, the Tribe shall provide for inspection by federal or state inspectors of all commercial food and beverage operations and swimming pools and spas in connection with the Existing Casino and Resort Project on a regular basis. The Tribe shall provide the County copies of all such inspection reports. In lieu of federal or state inspections, the Tribe may, in its sole discretion, elect to contract with the County to provide such services, for standard and reasonable fees, and the County shall provide such services. If the Tribe elects to continue to obtain federal or state inspections, but they are not conducted on a regular basis, then following notice and an opportunity to have any dispute with regard to such matter determined through the dispute resolution provisions herein, the County may seek to have such inspections conducted by County Health Department inspectors, who shall apply the standards set forth under applicable law. The Tribe shall pay standard and reasonable County Health Department fees to the County for such inspection services. Inspections shall take place during normal hours of operation. The Tribe shall consider any recommendations by the County regarding such matters. Notwithstanding such County inspections, and regardless of whether conducted at the Tribe's request or through dispute resolution provisions, nothing in this Agreement gives or shall be construed to give the County

jurisdiction over food and beverage operations or swimming pools and spas, or to alter the Compact's jurisdictional allocation on these issues.

XI. SOCIOECONOMIC CONDITIONS

11.1 The Sonoma County Human Services Department ("Department") and the Tribe shall work together to help identify and refer potential qualified applicants for employment at the Tribe's gaming related facilities. The Tribe shall transmit copies of job postings and announcements for its gaming and other facilities to the Department, and the Department will cause the same to be posted and distributed in the same manner as job postings and announcements submitted by other outside employers. The Tribe also shall work in good faith with the Department to employ qualified participants in the County's welfare program at the Tribe's gaming related facilities. Such qualifications may, at the Tribe's discretion, include passing any necessary background checks and the ability to obtain any required gaming licenses. Notwithstanding anything herein to the contrary, the County acknowledges that an important congressional goal under IGRA is to encourage Tribal member and Indian job training and employment, and that the Tribe maintains the right to enforce its Tribal Employment Rights Ordinance (TERO) and exercise Tribal and Indian preferences to the extent permitted by law.

11.2 The Department shall work with the Tribe to identify job and other relevant training to eligible Tribal members attempting to make the transition from unemployment to employment.

11.3 The Tribe shall make good faith efforts to assist Gaming Facility employees in meeting their child care needs while working at the Gaming Facility, either through on-site or off-site care, direct employee benefits, or providing assistance to expand capacity of local childcare center(s).

11.4 The Tribe shall adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any checks drawn against Social Security, unemployment insurance, disability benefits, or public assistance payments.

XII. DUGAN PROPERTY

12.1 The County and State of California Department of Conservation ("DOC") have appealed a decision by the BIA to take the Dugan Property into trust for the Tribe, based in part upon California Government Code Section 51256, et seq., and the contention that the Tribe's proposed uses would conflict with the Williamson Act contract on the land, which requires agricultural related use of the property. The BIA and Tribe contend that the contract is invalid when the land goes into trust.

12.2 The Tribe agrees that it will not construct any Gaming Facilities or conduct Gaming Activities (including Class II or III gaming under IGRA), or provide parking for Gaming Facilities, on the Dugan Property. Construction or use of the Emergency Access Road on the Dugan Property shall not be deemed to be a violation of this Section.

12.3 Williamson Act Rescission and Creation of Conservation Easement.

12.3.1 To resolve the Williamson Act contract dispute the Tribe shall request that the County and State approve rescission of the Dugan Property Williamson Act contract in favor of an easement exchange and other public benefits pursuant to Government Code Section 51256. The Tribe will also submit a request for non-renewal of the Williamson Act contract. The Tribe shall proceed in good faith to submit, in a timely manner, all appropriate environmental documents and appraisals necessary for consideration of such an easement exchange by the Board of Supervisors or shall pay the County to contract for such documents to be prepared. The Tribe will take all necessary steps for the rescission request to be considered in a timely manner.

12.3.2 Immediately following the Tribe's submission of its requests to rescind and not renew the Dugan Property Williamson Act contract and the submission of this Agreement to the DOI as provided for in Section 25, the County and the DOC shall withdraw their IBIA appeal, with prejudice, of the BIA decision to take the Dugan Property into trust.

12.3.3 The withdrawal by the County and the DOC of their appeals, and forbearance in making any further objections regarding the Dugan Property Williamson Act contract, shall be without prejudice to the County or the DOC, or either, from being able to take a contrary position as to any other property.

12.3.4 The public benefits to be provided by the Tribe in connection with a Williamson Act rescission include but are not limited to the following:

a. Providing the Emergency Access Road to the Rancheria at the Tribe's sole expense; and

b. Resolution of litigation with the County and the DOC in which the validity of a Williamson Act contract following the acceptance of the land into trust was at issue.

12.3.5 Pursuant to Government Code Section 51256 and this Agreement (but without subjecting the Tribe to the jurisdiction or application of such Code as to any other property), the Tribe has agreed to dedicate a perpetual agricultural and open space easement on at least 90 acres of the Petaluma Property ("Conservation Easement"), as described in Exhibit H, or in another location approved by County, limiting uses of the land to agricultural, open space, and/or wetland restoration purposes. Consistent with applicable law, the County will cooperate with the Tribe in reviewing and processing any application which seeks to divide the Conservation Easement area into a separate parcel(s) from the remaining Petaluma Property.

12.3.6 The County, through the Sonoma County Agricultural Preservation and Open Space District or other organization approved by the County that conforms with the California Land Conservation Program Act as provided pursuant to Public Resources Code Section 10200, et seq., and without subjecting the Tribe to the jurisdiction thereof with respect to any other property, shall have the power to hold, enforce and maintain the character of the Conservation Easement on the Petaluma Property. The Conservation Easement shall allow for the agricultural use of the property, the development, restoration and/or enhancement of wetlands

to provide for native vegetation and wildlife and for use as a mitigation bank and shall be in a form substantially similar to Exhibit H.

12.3.7 The Parties understand that the proposed easement, is part of a Williamson Act contract easement exchange program, and must further meet the requirements set forth in Government Code Section 51256 (d), but that such requirements shall not delay withdrawal of the IBIA appeal. To the extent such requirements or any other provision of law in connection with the rescission, termination or cancellation of a Williamson Act contract requires the payment of fees, costs, taxes, fines, penalties or other charges, including but not limited to the repayment or recoupment of taxes, such charges shall be entirely satisfied through the value of the easement exchange provided for in this Agreement. If the Tribe is subject to a judgment that requires it to pay any fees, costs, taxes, fines or other charges in connection with the cancellation or rescission of the Dugan Property Williamson Act contract that are payable to or for the direct benefit of the County, any local or County governmental or public agency or entity, or any beneficiary or holder of the Easement, the County, to the full extent authorized by law, shall waive the collection and judgment, including any indebtedness or lien that might arise as a result thereof, of any such amounts. Notwithstanding the foregoing, in the event the rescission penalty (12.5% of the rescission valuation of the Dugan Property) as appraised by the Sonoma County Assessor's Office is greater than the appraised value of the 20 acres of Conservation Easement dedicated to unrestricted agricultural production, the Tribe agrees to one of the following: (1) pay the difference between the rescission penalty and the appraised value of the portion Conservation Easement dedicated to unrestricted agricultural production to the California State Controller for deposit in the Soil Conservation Fund; or (2) increase the size of the Conservation Easement area dedicated to unrestricted agricultural production so that its appraised value is equal to the rescission penalty; or (3) some combination thereof. As a result of this uncertainty, should the Conservation Easement be terminated, in whole or in part, either by eminent domain or judicial termination, the DOC is entitled to a portion of any proceeds awarded in connection with such termination pursuant to the terms of Paragraph 17 of the Conservation Easement (Exhibit H) as provided as follows. Such a portion shall be an amount equal to the percentage of the appraised value of that portion of the Conservation Easement dedicated to unrestricted agricultural conservation in relation to the appraised value of the entire Conservation Easement, as of the date of the final Williamson Act contract rescission. This percentage, once determined, shall be reflected in Paragraph 17 of the Conservation Easement.

12.3.8 Nothing in this Agreement shall prevent the Tribe from developing a mitigation bank on lands that will be subject to the Conservation Easement, and to collect fees for such use, nor shall the County's right to preserve such easement interfere with the Tribe's ability to market such mitigation bank rights on such an easement, in a manner in compliance with the Conservation Easement, provided that the Tribe takes no action that would impair such easement or alter its use without the written consent of the County as provided for in the Conservation Easement attached as Exhibit H.

12.4 If the County determines that a CEQA environmental review is required to cancel or rescind the Dugan Property Williamson Act contract or establish the Conservation Easement, the Tribe shall act as the applicant for such project and hire a consultant to prepare any necessary environmental review studies or reports and a qualified independent appraiser at its own cost. The Tribe and County shall agree on the consultants. County costs for

environmental review and processing shall be paid by the Tribe pursuant to a PRMD "at cost project" recovery schedule and procedure. The County shall hire an appropriate consultant, at the Tribe's expense, if the Tribe does not timely initiate the required environmental review. Payment by the Tribe for any consultant and/or qualified appraiser hired shall be through the County, unless the Parties agree on an alternative arrangement. Notwithstanding anything herein to the contrary, any decision of whether or not to rescind the Williamson Act contract will be independently determined by the Board of Supervisors based upon the available evidence and in accordance with applicable law.

12.5 The County further agrees that the Conservation Easement will be held in an escrow account and shall not become effective unless the County approves the Tribe's request to rescind the Dugan Property Williamson Act contract and the Dugan Property goes into trust. Notwithstanding the above, if the Dugan Property is placed into trust without rescission of the Williamson Act contract, the Conservation Easement shall be recorded and become effective. However, if the Tribe is unable to complete the Dugan Project due to interference related to the Williamson Act contract, such interference shall be grounds to cancel or void the Conservation Easement. If the County disputes the Tribe's claim that the Williamson Act contract was the basis for the Tribe's inability to complete the Dugan Project, the issue will be subject to the Agreement's dispute resolution provisions and a decision on the cancellation made by an arbitrator unless otherwise resolved by the Parties.

XIII. PETALUMA PROPERTY

13.1 In April 2006, the Tribe submitted an application to the BIA to take approximately 277 acres into trust for gaming purposes near the City of Petaluma located between U.S. Highway 101 and the Petaluma River (the "Petaluma Property"). The Tribe agrees that it will not conduct Gaming Activities or operate Gaming Facilities (including Class II or III Gaming as defined under IGRA) on the Petaluma Property for a period of at least eight (8) years from the Effective Date of this Agreement.

13.2 Within ten (10) days of the Effective Date, the Tribe will take all steps necessary to suspend and otherwise stay its fee-to-trust application for gaming purposes during such eight (8) year period, including but not limited to communicating to the BIA through a duly passed Tribal resolution that the BIA is not authorized to further process any fee-to-trust application for gaming purposes on the Petaluma Property or to take any steps inconsistent with this Agreement. The resolution to the BIA will be substantially identical to Exhibit I.

13.3 If sewer and water utilities become reasonably available to the Petaluma Property within eight years from this Agreement's effective date, the Tribe agrees never to conduct Class II or Class III Gaming Activities (as defined under IGRA) on the Petaluma Property without the written consent of the County. Such agreement is based on an understanding by the Tribe that the City of Petaluma and the County Board of Supervisors currently oppose such use for that land. For purposes of this Section, "reasonably available" with respect to the utilities means that water and sewer connections become legally and physically available to the Tribe for development on the Petaluma Property without the Tribe's having to bring such utilities across, either above or below ground, U.S. Highway 101, or the Petaluma River, and without the Tribe's having to acquire easements or other property rights

over private or public property at a prohibitive fee. The Tribe may, however, take such steps at its sole discretion. The Tribe shall bear the sole cost of obtaining such utilities once a connection is reasonably available within 1,000 feet of the Petaluma Property. The Tribe shall be relieved of its obligation to perpetually forgo Gaming Activities on the Petaluma Property under this Agreement, if another Tribal casino opens for operation in Sonoma County along the U.S. Highway 101 corridor between Cotati and the southern Sonoma County boundary.

13.4 The County shall consult with the Tribe and the community to explore potential non-gaming economic development Projects on the Petaluma Property that would be of substantial benefit to both the Tribe and the community. In addition, the County agrees that, where permissible under applicable law, planning actions on projects submitted by the Tribe on the Petaluma Property, if such property is not in trust, the Board of Supervisors will exercise its original jurisdiction to directly review the matter.

13.5 The Tribe agrees that if the Petaluma Property is taken into trust, in addition to a restriction not to conduct Gaming Activities, as specified herein, it will be subject to enforcement of the Conservation Easement (if it has not been cancelled pursuant to Section 12.5) or any other agricultural or other easement(s) or conditions placed on the land pursuant to this Agreement and shall seek approval of these encumbrances from the Department of the Interior, provided that such approval shall not be a condition of this Agreement.

XIV. FUTURE TRUST ACQUISITIONS AND TRIBAL DEVELOPMENT

14.1 The Tribe shall consult with the County prior to filing or modifying any application by the Tribe to the United States to take additional land into trust within Sonoma County. The Tribe further recognizes that the County General Plan is an important and valued exercise of County authority and agrees, as a separate jurisdictional government, to give meaningful consideration to the County's General Plan in trust applications and other Tribal planning activities. The Tribe further recognizes that the County has taken the position that economic development proposals on future Trust Lands should meet the following criteria for County support: 1) the Tribe has significant ties to the land that is subject to the trust proposal; 2) the economic proposal is, consistent with this Agreement, subject to an appropriate environmental review process; and 3) the Tribe and County have entered into an Intergovernmental Mitigation Agreement to insure mitigation of any adverse environmental impacts of the proposal. Nothing in this Agreement, however, shall be construed to subject or otherwise bind the Tribe to the County General Plan for development on Trust Land or require that the County support any specific trust application or Project.

14.2 The County recognizes that the Tribe is not bound by the General Plan on Trust Lands. The Parties agree to work together on a government-to-government basis to maximize consistency with the General Plan for Tribal Commercial Development Projects, to the extent possible consistent with Tribal goals, and to minimize off-Reservation adverse environmental impacts.

XV. MITIGATION MONITORING AND REPORTING

15.1 Consistent with Compact Section 10.8.2 and this Agreement, the Tribe shall periodically apprise the County Board of Supervisors of the progress and status of all Ongoing Projects and Tribal Commercial Development Projects.

15.2 During the construction of any Ongoing Project and/or Tribal Commercial Development Project, and continuing until all agreed to mitigation measures are implemented, the Tribe shall prepare and provide the County a mitigation monitoring report on at least a quarterly basis that summarizes the implementation of all agreed to mitigation measures and their effectiveness in reducing the related impact. During periods of construction such reports shall be provided on a monthly basis. This mitigation report shall be prepared in a form substantially similar to that contained in Exhibit A.

15.3 The mitigation reports shall be prepared by an independent qualified consulting firm, hired and compensated by the Tribe and provided to the County. The County may review the qualifications of any consulting firm the Tribe intends to hire and object to such firm's engagement based upon lack of qualifications or bias. The County may seek resolution of any dispute with respect to the engagement of a consultant, or the mitigation monitoring, pursuant to the dispute resolution process in this Agreement. The consultant(s) engaged by the Tribe shall have a contractual independent duty to provide current and accurate unbiased timely reports to the County. The contract shall further specify that the monitoring reports to be produced will be relied upon by the Parties who are depending upon the objective nature of the mitigation reports, provided that, if the consultants are unwilling to so specify, they (or an alternative consultant if the County and Tribe cannot agree to jointly engage them) shall become engaged by the Tribe and the County jointly, or alternate consultants shall be so engaged. The consultants engaged in the monitoring shall have the necessary engineering degrees and/or other expertise necessary to monitor the mitigation measures contained in this Agreement.

XVI. REVENUE AND MITIGATION COSTS

16.1 In addition to the promises and covenants otherwise contained in this Agreement, the Parties acknowledge that Tribal Commercial Development Projects and the Ongoing Projects may create a certain increased demand for public services and may, in some cases, result in lost revenues and/or fees to the County.

16.2 The Parties agree that the County does not have permitting authority over development on Trust Lands and that the payments made under this agreement do not constitute taxes, exactions or fees.

16.3 The payments agreed to below are approximate off-sets to the potential losses and impacts to the County of the Ongoing Projects and are intended to support an appropriate level of County services to the Reservation and affected communities.

16.4 In addition to the other mitigation measures the Tribe has and will implement, including but not limited to the construction of the Emergency Access Road, intersection improvements at both HWY 128 and BIA 93 and at HWY 128 and the Emergency Access Road (if applicable approvals and rights are obtained), and donations to the local community and

government, the Tribe shall pay the County Seventy Five Million dollars (\$75,000,000) over the term of this Agreement ("Mitigation Fee"), for mitigation of tangible and intangible Ongoing Projects impacts, payable on the terms stated below. The Intersection Improvements shall be guaranteed through a Construction Assurance Device to cover the budgeted costs that will be in substantially the same form as Exhibit E or F. The payment terms are as follows:

16.4.1 Upon the later of thirty (30) days after the date that the Tribe obtains Financing for the Resort Project or within seven (7) business days following approval of this Agreement by the Board of Supervisors and the Tribe, whichever last occurs, the Tribe shall pay the County an installment of Seven Million Five Hundred Thousand dollars (\$7,500,000) ("Initial Installment").

16.4.2 Notwithstanding the previous paragraph, in the event that the Tribe receives a license from the ABC authorizing the Tribe to sell alcoholic beverages at the Existing Casino or at the casino, hotel or restaurants at the Resort Project prior to the date that the Tribe obtains Financing, the Tribe shall pay the County Three Million dollars (\$3,000,000) of said \$7.5 million installment within seven (7) business days following issuance of the license, and the remaining Four Million Five Hundred Thousand dollars (\$4,500,000) of said installment within thirty days (30) days after the date that the Tribe obtains Financing.

16.4.3 Notwithstanding the above, if the above triggering events have not occurred, at least \$3 million of the Initial Installment shall be paid to the County on or before June 30, 2008. The entire remaining balance of the \$7.5 million Initial Installment shall be paid in full on the schedule of the triggering events stated in Section 16.4.2, but in no event shall the entire balance be paid later than September 30, 2008.

16.4.4 No later than June 30, 2009, the Tribe shall pay the County an additional installment in the amount of Two Million Eight Hundred Thousand dollars (\$2,800,000).

16.4.5 Upon the earlier of three (3) years from the Effective Date of this Agreement or the opening of Phase One of the Resort Project, as defined by availability of hotel rooms to the public or opening of the Phase I casino floor to gaming, the Tribe shall pay an installment of Five Million dollars (\$5,000,000) to the County.

16.4.6 On July 1 of each calendar year following the year in which the payment in the immediately preceding subparagraph is due, but regardless of whether such payment was paid, beginning no later than July 1, 2011, the Tribe shall make annual installments toward payment of the Mitigation Fee in the amount of Five Million dollars (\$5,000,000) each year, adjusted as provided below.

16.4.7 Beginning no later than the installment due on July 1, 2011, the annual installment payments due to the County shall be increased by 4% from the installment payment made in the previous year, provided that if the July 1, 2011 installment is the first of the Five Million dollar (\$5,000,000) annual installment payments, it shall be increased by 4% to Five Million Two Hundred Thousand dollars (\$5,200,000). For example if the \$5 million dollar installment payment required above was made in 2010, the subsequent payments would be \$5.2

million dollars in 2011 and \$5.408 million dollars in 2012, and so on until the entire \$75 million has been paid.

16.4.8 No later than July 1, 2020, the Tribe shall pay to the County any unpaid balance of the Mitigation Fee in full so that the total Mitigation Fee paid under this Agreement (without regard to the in lieu Transient Occupancy Tax equivalent payments described below) shall equal no more and no less than \$75 million dollars plus any interest for which the Tribe may become obligated under Section 16.12.

16.5 Notwithstanding the foregoing payment schedule, except for payment of the Initial Installment and payment in year 2020, in the event that the annual gross revenues of the Tribe's Casino and Resort Project in any calendar year are 20% less than the annual gross revenue of the prior calendar year (the "Base Year"), then the Tribe may reduce the annual installment due in proportion to the percentage amount of the total reduction. For example, if the gross revenue is 20% below the Base Year, the \$5 million dollar installment would be reduced by \$1 million to \$4 million dollars. The reduction shall continue in effect for each consecutive year in which the gross revenues remains 20% or more below the Base Year.

16.5.1 Any and all reductions shall be treated as deferrals only and shall not reduce the balance payment due in full on or before July 1, 2020.

16.5.2 The Tribe shall bear the burden of demonstrating that such reduction in gross revenues has in fact occurred, and shall support such claim by making available to the County, on a confidential and proprietary basis, fully audited Casino and Resort Project financial statements certified by an independent qualified accounting firm for the relevant year(s).

16.5.3 Notwithstanding the above, in no event shall payment in any year fall below a minimum payment of \$2.8 million dollars other than for a suspension of this Agreement under the force majeure provisions of Section 26.6 or the permanent cessation of Gaming Activities, hotel operations, and the service of alcohol by the Tribe on the Rancheria, in which case the Tribe shall have no further financial obligations under this Section.

16.6 Annual payments shall return to the payment schedule described in Section 16.4 as soon as the gross revenue increases to more than 80% of the Base Year's amount. Payment of deferred amounts shall be fully amortized, without interest, over the remaining term of the Agreement and paid accordingly. However, deferred amounts do not need to be paid in years where gross revenue is 20% or more below the Base Year.

16.7 Any interest due under this Agreement shall be limited to interest imposed due to the failure to timely make payments as provided for above in Sections 16.4 and 16.6, and shall accrue as provided for in Section 16.12.

16.8 Notwithstanding any other provision of this Agreement, the entire Mitigation Fee and any accrued interest shall all be paid on or before July 1, 2020.

16.9 In addition to the \$75 million dollars in Mitigation Fee payments described above, the Tribe shall pay to the County a fee in lieu of the County's Transient Occupancy Tax ("In Lieu Fee") in the amount of 9% of the rental collected on occupied hotel rooms. The In

Lieu Fee shall be paid on a quarterly basis to the County. The first payment shall be due following the completion of the first quarter immediately after the hotel opens. Notwithstanding any other provision of this Agreement, unless a longer period is agreed to by the Parties, the In Lieu Fee payments shall be paid through the later of the fifth (5th) year following the end of the Term of this Agreement, including any extension thereof, or the 5th year following the termination of the Compact, whichever is longer. The County shall apply such In Lieu Fees to programs and services that serve to promote tourism in the County as determined by the Board of Supervisors, provided that the Resort Project shall be promoted on at least as comparable a basis as any other casino and/or resort is promoted by the County. If there is a dispute as to TOT In Lieu Fee payments and supporting computations, the Tribe will provide the information/receipts to verify payment and the supporting basis for the computation. Any disputes regarding the payment amount shall be subject to the dispute resolution provisions of the Agreement.

16.10 As a separate matter from the foregoing, the Tribe is encouraged but not required to pay, along with all other hotels in the unincorporated areas of the County which gross more than \$350,000 per year, an additional voluntary in lieu fee in the amount of 2% of the amounts collected from the rental of hotel rooms, to be paid to the Sonoma County Tourism Improvement Area Assessment. If paid, this voluntary in lieu fee also shall be calculated and paid in the same manner as the Sonoma County Transit Occupancy Tax.

16.11 Any funds received by the County from the Tribe pursuant to this Agreement are subject to the sole discretion of the County Board of Supervisors with the exception of In Lieu Fee payments which shall be applied as set forth in Section 16.9.

16.12 On the later of the 31st day after the due date of any payment under this Agreement or ten (10) days after receipt of written notice from the County following such due date, any amounts due from the Tribe shall bear interest from the scheduled payment date at a rate equal to the prime rate of interest announced by the Wall Street Journal plus 2% per annum.

XVII. RE-OPENER PROVISIONS

17.1 The Parties recognize that additional impacts or events, not foreseen or compensated for in this Agreement, may occur and that the projected income from which the Tribe intends to pay the County fees may be negatively impacted in the future, including the possible inability to open the Resort Project as planned. Balancing this recognition against the Parties' need for certainty and stability with respect to this Agreement, the Parties agree that upon the occurrence of any of the following, either party may request the reopening of this Agreement for the purpose of negotiating amendments to it:

17.1.1 The Compact is amended, or a new compact entered into within the Agreement Term, to permit the Tribe to operate more Class III slot machines than the 2,000 machines allowed under the Tribe's current Compact, and the operation by the Tribe of such additional machines, provided that with regard to such Compact amendment or new compact, the County shall join with the Tribe in urging the State and the Governor that this Agreement be deemed to meet the requirements of any Intergovernmental Agreement required in any such compact;

17.1.2 Phase I is not opened within three years from the Effective Date;

17.1.3 More than seven years has elapsed from the Effective Date;

17.1.4 The Tribe's gross revenues declined by at least 20% over a previous year and remained at or below that Base Year revenue level for a consecutive three-year period;

17.1.5 A significant portion of the Tribe's Gaming Facility ceased operations for a continuous period of at least seven (7) consecutive days, due to forces entirely beyond the Tribe's control, and the Tribe's annual gross revenues during the year in which that occurred declined by more than 20% from the preceding year;

17.1.6 Prior to the opening of Phase I, the Tribe's annual net revenue from casino and related operations (including but not limited to alcohol sales) for the twelve (12) month period following June 30, 2008, the issuance of an alcohol license, or the date of Financing, whichever is later, decreased more than 20% from that of the immediately preceding 12 month period;

17.1.7 The ABC alcohol license is not issued for the Existing Casino or is issued with conditions significantly more restrictive than those contained in Exhibit D, and that any such additional restrictions have a demonstrated material negative effect on Tribal Gaming gross revenues;

17.1.8 The Resort Project does not have an alcohol license following the completion of Phase I;

17.1.9 The Dugan Property is not taken into trust by the BIA for the Tribe;

17.1.10 The Williamson Act contract on the Dugan Property is not rescinded by the County and the Tribe has suffered a material detriment as a result;

17.1.11 The Tribe undertakes Ongoing Project development beyond the projects and Infrastructure discussed in the Environmental Study, Environmental Assessment, or Exhibit B (relating to the Dugan Projects); or

17.1.12 There is a Significant Adverse Impact of an Ongoing Project beyond that discussed by the Tribe in the Environmental Study or Environmental Assessment or which was anticipated or should have been anticipated by the County, including but not limited to those effects which were anticipated and described in its written comments to the Tribe in reply to those documents.

17.2 Upon written request by a Party with respect to matters arising under Section 17.1, the Parties shall meet and confer in good faith to discuss such matters.

17.3 The Tribe and Gaming Authority shall make relevant audited financial statements prepared by an independent accounting firm available if the Tribe makes a request to reopen negotiations based upon any of the financial events listed above.

17.4 Any request to renegotiate one or more terms of this Agreement shall be made in writing, addressed to the other party. The request shall specify the basis and provide documentation to support reopening the Agreement.

17.5 If the request meets the requirements for renegotiation pursuant to this Section, the Parties shall meet within 30 days from the receipt of the request and will commence to renegotiate in good faith. If agreement regarding amendment of this Agreement or the right to reopen is not reached after a reasonable period of time following a request to reopen, the other party may invoke the Section 20 dispute resolution provisions. If the matter goes to arbitration, the arbitrator shall determine only whether a party was acting in good faith in the negotiations under the dispute resolution and reopener provisions. If the arbitrator found that a party was acting in bad faith, the Parties shall be ordered back into negotiations.

17.6 The sole purpose of the renegotiation will be to determine if, due to the circumstances set forth above under which the re-opener may be invoked, there are alternate terms providing for mitigation measures, payments or other benefits that are consistent with the requirements of IGRA, the Compact, and this Agreement and that, following a negotiation, would retain essentially the same rights, level of mitigation, intent of the Parties, their positions relative to each other, and the aggregate economic benefits anticipated at the time of execution of this Agreement. Based on the above, the Parties will determine whether or not there is good cause and a reasonable basis for amending this Agreement to provide for such alternate terms. A measure of any proposed mitigation amendment shall be the basis of mitigation that was used by the Parties in reaching this Agreement.

XVIII. INDEMNIFICATION

18.1 The Tribe agrees, under the terms and conditions set forth in Sections 18.2 and 18.3 below, to indemnify and defend the County with respect to claims made by third Parties that are related to or arise from the following County activities:

18.1.1 Work undertaken or funds disbursed related to completion of the Emergency Access Road under the Construction Assurance Device;

18.1.2 Actions of County personnel responding to fire, criminal activity or other Reservation emergencies;

18.1.3 Any action challenging the County's approval of this Agreement; or

18.1.4 Any action challenging the County's cancellation or rescission of the Dugan Property Williamson Act contract including but not limited to creation of the Conservation Easement or entering into the easement exchange (the claims set forth in Sections 18.1.1 – 18.1.4 are referred to collectively as the ("Indemnification Claims").

18.2 The scope of the indemnity with respect to the Indemnification Claims is as follows: the Tribe agrees to provide defense costs only, with respect to matters arising under Section 18.1.1 and 18.1.2 above, and, as to Sections 18.1.3 and 18.1.4, to defend, indemnify, hold harmless, and reimburse the County, including its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities, and expense, including but

not limited to attorneys' fees and the cost of litigation incurred in the defense, arising out of the Indemnification Claims, whether arising from personal injury, property damage or economic loss of any type (but excluding economic losses based on alleged lost taxes, revenues or lost economic opportunity to the County, State, or any person, business or entity, claims that such actions lowered the use or market value of any property or business, or claims in the nature of an alleged taking) that may be asserted by any third party, but to the extent required or permitted by law, excluding liability due to the primary negligence, willful misconduct, or contractual liability or breach of the County, or any claims for punitive damages against the County or any entity insuring it against such claims that may have subrogation rights against the Tribe. If there is a reasonably possible obligation to indemnify or defend under Sections 18.1.1-18.1.4, the Tribe's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to defend or indemnify.

18.3 The County shall vigorously defend any such actions and shall have the right to select its own legal counsel at local prevailing rates at the expense of the Tribe, but the Tribe shall have the right to review counsel fees and costs to be incurred, and to be informed regarding the progress in the litigation and of any and all settlement proposals.

18.4 The Tribe will obtain and maintain a policy of commercial general liability insurance with limits not less than Ten Million dollars (\$10,000,000) per occurrence and in the aggregate covering bodily injury and property damage, including excess medical coverage. The policy shall contain endorsements for coverage, which includes but is not limited to: premises liability, general liability, personal injury, blanket contractual coverage and contractual indemnity. The policy shall be endorsed to name the County of Sonoma, its officers, officials, employees and volunteers as an additional insured. The County shall cooperate in providing any information reasonably required to obtain such insurance. The Tribe shall provide a copy of the policy to the County for review and approval and timely provide proof of such insurance on an annual basis. Any dispute over the existence of a duty to indemnify or defend shall be resolved through the dispute resolution process set forth below in this Agreement.

XIX. CONFIDENTIALITY

19.1 Any information or documents obtained, observations made, or conclusions drawn directly or indirectly under this Agreement, including without limitation, where the source or information comes from inspections, plan reviews, examinations of financial information, negotiations, consultations, disputes or other activities under this Agreement, shall be deemed confidential to the extent allowed under law and shall not be shared with any third party. The County shall promptly provide the Tribe notice of any Public Records Act request related to this Agreement and afford the Tribe, within the time limits allowed under the Act, an opportunity to seek an injunction by the Court against any such disclosure. Notwithstanding this confidentiality agreement, County Fire retains the right to communicate such confidential information obtained pursuant to the terms of this Agreement to the State Fire Marshall and/or other appropriate State and/or Federal government agencies following exhaustion of all procedural provisions of the Fire Protocol.

XX. DISPUTE RESOLUTION

20.1 Meet and Confer Process.

20.1.1 In recognition of the government-to-government relationship between the Tribe and County, the Parties shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Therefore, the Parties hereby establish a threshold requirement that disputes arising under this Agreement shall first be subject to a good faith meet and confer procedure to give the Parties an opportunity to work together to solve identified issues.

20.1.2 Disputes arising between the Parties regarding a party's alleged failure to meet its obligations imposed by this Agreement, including a refusal to meet and confer or, in the case of a Tribal Commercial Development Project, to enter into an Intergovernmental Mitigation Agreement, shall be addressed through the following process:

a. The Parties may meet and confer informally to discuss their concerns. This stage may include an informal exchange of views among Tribal and County personnel and may remain confidential in accordance with applicable law.

b. A party desirous of invoking the meet and confer provisions of this Agreement shall provide confidential written notice to the other party, identifying with specificity the alleged issue or issues and the actions requested to resolve the dispute. Within seven (7) days after receipt of the notice, the recipient shall provide a written response agreeing or disagreeing with the complaint. If the party agrees it will set forth detailed steps to address the alleged breach of the Agreement or the unreasonable refusal to enter into an Intergovernmental Mitigation Agreement. If the Parties disagree, they shall proceed in accordance with the next subsection.

c. The Parties shall formally meet and confer in good faith within ten (10) business days of receipt of such notice, or at such other time as the Parties may agree in writing, to attempt to resolve the dispute. If both Parties agree, a mediator may be used to help resolve the dispute at this stage. The Parties and mediator, if any, shall ensure that any disputed issues are clearly and directly communicated according to any agreed upon process and timeline. Multiple meetings under this step may be reasonably required depending upon the nature of the dispute, provided that the meet and confer process shall be completed within thirty (30) days of the notice provided pursuant to subsection (b) above, unless extended in writing by mutual agreement of the Parties. Failure to substantially comply with the procedures and timelines contained in this Section with respect to a Tribal Commercial Development Project shall entitle the complaining party to proceed directly to arbitration. If a dispute has not been resolved through the meet and confer process, and the issue is subject to dispute resolution as provided for in this Agreement, the Parties shall proceed pursuant to Section 20.2 below.

20.2 Binding Arbitration Procedure.

20.2.1 Subject to compliance with the meet and confer process stated above, either party may initiate binding arbitration to resolve any dispute regarding a term of this Agreement except for those disputes expressly excluded from arbitration, such as those so

designated in Exhibit A, and any dispute regarding a Tribal Commercial Development Project arising out of a party's alleged failure to meet its obligations under this Agreement, including the duty to enter into an Intergovernmental Mitigation Agreement where required, unless expressly exempted from arbitration by the terms of this Agreement.

20.2.2 The arbitration shall be conducted by a single arbitrator in accordance with the JAMS Streamlined Arbitration Rules and shall take place in Santa Rosa or another location mutually agreed upon by the Parties. The arbitrator shall be an attorney or retired judge selected pursuant to the following terms:

a. The arbitrator shall be from the list of prior approved arbitrators attached as Exhibit J. The list of arbitrators shall be reviewed and revised, if necessary, through good faith negotiations of the Parties at least once every five (5) years during the Term. If the Parties are unable to agree to a new list or upon the selection of a single arbitrator, then each Party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired United States District Court or California Superior Court judge; provided, however, if either Party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of any Party, shall select the necessary arbitrator(s), in accordance with California Code of Civil Procedure Sections 1280, et seq., or any successor statutes then in effect.

b. Arbitrators shall be contacted in the order their names appear on the list and the person highest on the list whom is available within sixty (60) days to conduct the arbitration shall be selected, unless another arbitrator is mutually agreed upon by the Parties in writing.

c. Once an arbitrator has been passed on the list, the selection process shall continue to move through the list in order as to the remaining arbitrators on the list, following which the selection process from the top of the list, in order, shall be repeated. If no arbitrator is available during the sixty day time frame, the first available arbitrator on the list shall be selected. If an arbitrator on the list is not available within a reasonable time frame an arbitrator shall be selected as provided for in Subsection (a) above. Notwithstanding the foregoing, a person shall not be eligible to serve as an arbitrator under this Agreement if the person has an interest in, or is related to, affiliated with, or has represented in a legal capacity, either Party without a written waiver from the other party.

20.2.3 The issue of whether the County has jurisdiction to make determinations regarding the enforcement of any law or ordinance on trust property shall be deemed to be a question of law and shall not be the subject of any arbitration process, except where the County has expressly agreed not to assert such jurisdiction and the claim is that the County is violating that agreement. The arbitrator shall have jurisdiction to interpret and apply this Agreement's terms, but shall lack jurisdiction to modify the Agreement or relieve a party of its obligations, or add to those obligations under the Agreement, except in the event that a material term(s) of this Agreement is determined to be void. In such an instance the arbitrator may order the Agreement modified, terminated or rescinded to maintain the relative positions of the Parties at the time the Agreement was entered. Notwithstanding the above, but subject to the

limitations in the preceding sentence and in Sections 20.2.4 - 20.2.8 below, an arbitrator may determine appropriate mitigation for Tribal Commercial Development Projects when the Parties have been unable to complete an Intergovernmental Mitigation Agreement. This Agreement does not provide for, and the arbitrator shall not have jurisdiction to:

- a. Enforce or order remedies with respect to federal, state, Tribal or County laws, regulations, ordinances, codes or other laws against the Tribe, including its government entities, officials, members or employees or its Trust Lands, and shall only consider or evaluate such laws as expressly permitted under this Agreement;
- b. Make determinations as to fire, building and safety and related code compliance, inspections, or plan review determinations by Tribal officials with jurisdiction over such matters; or
- c. Limit the Tribe's authority to pursue non-gaming trust applications with the United States government.

20.2.4 Arbitration judgments may include monetary awards, specific performance, declaratory relief, and/or injunctive relief, provided that monetary awards shall be limited to reasonable amounts as may be necessary to cure a breach within the terms of this Agreement, or to mitigate a Significant Adverse Impact on a practical basis, taking all circumstances, including federal law and policy into account, and subject to the limitations in this Section. No punitive or consequential damages shall be awarded. Equitable relief shall be limited to compelling some actual performance that is described in this Agreement or preventing a party from failing to take such action.

20.2.5 Any controversy regarding whether an issue is subject to arbitration shall be determined by the arbitrator, but the arbitrator's jurisdiction shall be limited to ordering forms of relief agreed to in this Agreement.

20.2.6 In arbitrating disputes under this Agreement, the arbitrator shall apply applicable law, including where appropriate, IGRA and federal laws and policies regarding Tribal economic development.

20.2.7 In making a decision with respect to the failure to enter into an Intergovernmental Mitigation Agreement when required under this Agreement, or in determining appropriate mitigation measures, the arbitrator only has jurisdiction to impose reasonable measures to mitigate the Significant Adverse Impacts of the proposed Tribal Commercial Development Project and may not off-set or compensate for impact of other Project(s), including but not limited to the Resort Project, the Dugan Projects, or the Cultural Center. Reasonable mitigation measures are those that would be or have been undertaken in other comparable projects within Northern California to mitigate similar adverse environmental impacts. Nothing herein shall limit either Parties' ability to request that reimbursement of actual and reasonable out of pocket costs be considered as part of such an Agreement but the Tribe shall not be subject to any County fees or exactions for Projects on Trust Lands. Since the arbitrator only has authority to impose reasonable mitigation measures, the Parties recognize that some Significant Adverse Impacts may not be mitigated to less than significant and that such fact does not prevent the

Parties from entering into an Intergovernmental Mitigation Agreement, or the Tribe from developing such Tribal Commercial Development Project, or the arbitrator from imposing reasonable mitigation measures that would decrease or minimize the Significant Adverse Impact. Accordingly, the arbitrator does not have authority to determine that such Tribal Commercial Development Project shall not be built; that authority remaining solely with the Tribe.

20.2.8 In making a decision regarding satisfaction of the Tribe's obligation for the Emergency Access Road, the arbitrator may award all reasonable costs related to curing the defect including but not limited to labor costs, material costs, professional consulting and engineering costs, and all costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by County in enforcing the Tribe's obligations under the Construction Assurance Device and this Agreement. The County is not entitled to attorneys' fees if the Tribe prevails in the legal dispute decided under this Section.

20.2.9 The arbitrator shall provide a written award and a reasoned decision supporting the basis of the award within thirty (30) days of submission of the dispute following hearing. The provisions of California Code of Civil Procedure, Section 1283.05 are incorporated into this Agreement, provided, however, that no such discovery may be conducted without leave of the arbitrator. Any discovery conducted shall be subject to the Confidentiality provisions of this Agreement, and the arbitrator shall make such orders as are necessary to enforce such provisions.

20.3 Notwithstanding anything to the contrary in this Agreement, disputes related to compliance with federal laws and regulations, and permit conditions in connection therewith, or regarding whether or not the Compact (including any amendments) has been complied with, shall not be subject to the dispute resolution provisions in Sections 20.1 and 20.2 and shall be resolved, in the case of federal laws, regulations and permits, through the dispute resolution provisions applicable to such laws, regulations and permits, and in the case of the Compact (including any obligations to abide by it in this Agreement), through the dispute resolution provisions between the Tribe and the State contained therein.

XXI. JUDICIAL REVIEW AND ENFORCEMENT

21.1 The award of an arbitrator shall be final and binding. Jurisdiction to take any action necessary to enforce an arbitrator's award, or to take any other action provided for under this Agreement, shall be in the United States District Court for the Northern District of California as well as any appellate courts with jurisdiction over relevant proceedings. The Parties hereby agree that interpretation of this Agreement may involve questions of federal law, including without limitation IGRA and federal regulations promulgated thereunder, the Tribal-State Gaming Compact, and the federal common law of Indian affairs. The Parties hereby agree to not raise or challenge the jurisdiction of said federal court to adjudicate matters as provided under this Agreement. In the event that the federal court declines or lacks jurisdiction, the Parties agree to submit the matter, including the enforcement of an arbitrator's award, to the Sonoma County Superior Court and any related appellate proceedings.

21.2 Except for matters expressly exempted from arbitration under this Agreement, the Parties agree not to assert, and will waive any defense alleging any governmental immunities,

indispensable party, exhaustion of tribal or administrative remedies (except for the procedures required under this Agreement), improper venue or forum non-conveniens as to any federal court action brought pursuant to this Agreement in the United States District Court for the Northern District of California, or, if the federal court declines or lacks jurisdiction, in the Sonoma County Superior Court, including related appellate proceedings.

21.3 In any proceeding brought pursuant to this Agreement and as to which sovereign immunity has been waived, the Parties consent to service of process made in accordance with the notice provisions of this Agreement or the Federal Rules of Civil Procedure.

21.4 Except as provided in Section 20.2.8, each party shall bear its own costs and attorneys' fees in any court action or arbitration proceeding brought pursuant to this Agreement.

21.5 Nothing in this Agreement shall preclude or restrict the ability of Parties to voluntarily pursue, by mutual agreement, any other method of dispute resolution.

XXII. NOTICES

22.1 Notices and service of process shall be sent to the contacts listed below or to such other person or address as shall be provided in writing by the party. Service of process in any judicial or arbitration proceeding is waived in favor of delivery of documents by Certified Mail – Return Receipt Requested to the following:

For the Tribe:

Tribal Chairperson
Dry Creek Rancheria Band of Pomo Indians
190 Foss Creek Circle, Suite A
Healdsburg, CA 95548
Tel: 707 473 2106

With a copy simultaneously delivered to:

Jerome L. Levine
Holland & Knight, LLP
633 W. 5th Street, Suite 2100
Los Angeles, CA 90071
Tel: 213 896 2565

Counsel for the Tribe

For the County:
Sonoma County Administrator
575 Administration Dr.
Santa Rosa, CA 95403
Tel: 707 565 2431

With copy simultaneously delivered to:

County Counsel
575 Administration Dr.
Santa Rosa, CA 95403
Tel: 707 565 2421

XXIII. MUTUAL LIMITED WAIVER OF SOVEREIGN IMMUNITY

23.1 The Parties agree that the Parties' waiver of immunity from arbitration or suit, or the enforcement of any order or judgment related thereto, is limited to the express provisions of this Section 23, and neither the agreement to arbitrate nor any other provision of this Agreement shall be construed as creating any implied waiver of such immunity.

23.2 The Parties each expressly covenant and agree that they may each sue and be sued, including the resolution of disputes in arbitration and the judicial enforcement thereof, as provided herein and pursuant to the Dispute Resolution procedure above, to resolve any controversy arising from this Agreement or to enforce or interpret the terms and conditions of this Agreement, as provided for in this Agreement. The Parties, their officers and agents expressly agree to waive governmental immunities, including sovereign immunity, in connection with any claims arising from this Agreement, as provided for herein for the enforcement of any arbitration award, or judgment to enforce such an award, or enforcement of any easement created as a result of this Agreement. The Parties further consent to the jurisdiction of an arbitrator and/or specified court under this Agreement including the consent to be sued and bound by a lawful order or judgment, to the extent provided for herein. Each of the Parties represent that its agreement to such dispute resolution processes and waivers have been effectively and lawfully granted and that nothing further needs to be done to effectuate those processes.

23.3 With respect to any action arising out of the Agreement for which there is a waiver of sovereign immunity, the Tribe and County expressly consent to the jurisdiction of the United States District Court for the Northern District of California and, as limited herein to, the Sonoma County Superior Court and all related appellate courts, and/or an arbitrator selected pursuant to this Agreement and specifically waive sovereign immunity for that purpose. The Parties specifically agree that the applicable court shall have jurisdiction to enter judgments enforcing rights and remedies provided for in this Agreement that shall include, but not be limited to injunctive relief, declaratory judgment, specific performance, and/or the awarding of monetary damages, which shall be binding and enforceable on the Parties, subject to the limitations set forth in this Agreement. No party to this Agreement shall contest jurisdiction or venue of the above-referenced courts, provided their jurisdiction and venue are invoked in the order specified, but only for disputes or claims arising out of this Agreement. Neither the Tribe nor the County shall plead or invoke the doctrine of exhaustion of Tribal or other administrative remedies, defenses of immunity or indispensable Parties beyond those contemplated in this Agreement.

23.4 The County and the Tribe may not join or consent to the joinder of any third party to any action (including but not limited to any arbitration) contemplated herein, unless failure to join such party would deprive the court or arbitration tribunal of jurisdiction; provided

that nothing in this Agreement shall be construed to constitute a waiver of the sovereign immunity or other protection from lawsuit (or other dispute resolution process), or the effect, orders or judgments thereof, of either the Tribe or the County with respect to any claim of any kind by any such third party. In the event of intervention by any third party into any such action without the consent of the Tribe and the County, nothing herein shall be construed to constitute a waiver of any immunity with respect to such third party, and no arbitrator or court shall have jurisdiction to award any relief or issue any order as against the County or Tribe with respect to such third party in that or any other proceeding.

23.5 Authorization.

23.5.1 The County and Tribe each represent and warrant that each has performed all acts precedent to adoption of this Agreement, including but not limited to matters of procedure and notice and each has the full power and authority to execute this Agreement and perform its obligations in accordance with the above terms and conditions, and that the representative(s) executing this Agreement on behalf of each party is duly authorized to so execute and deliver the Agreement.

23.5.2 In evidence of the above, each governing body shall execute formal resolutions indicating approval of this Agreement and these resolutions are attached in Exhibits K and L.

XXIV. CEQA REVIEW

24.1 The Tribe's Trust Land activities and the Parties' approving, executing and performing this Agreement, currently and in the future, are not activities that, within the meaning of CEQA; (a) are directly undertaken by the County or surrounding communities, (b) are supported, in whole or in part, through contracts, grants, subsidies loans or other forms of assistance by the County, or (c) involve the issuance of a lease, permit, license, certificate or other entitlement for use by the County.

24.2 By approving, executing and performing this Agreement the County has not, and is not, making any commitment to (a) issue a lease, permit, license, certificate or other entitlement for use, or (b) develop, construct or improve any facilities or cause any other physical changes in the environment.

24.3 This Agreement should be construed to be a government payment and funding mechanism that does not commit the County to make any specific physical changes in the environment.

24.4 If the County determines that it is required to comply with CEQA with respect to any activities related to this Agreement, the County shall comply with CEQA at such time.

XXV. REVIEW BY THE DEPARTMENT OF INTERIOR AND OTHER ACTIONS FOLLOWING EXECUTION

25.1 The Tribe 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. A response from the Department of the Interior shall not be a condition to the County's obligations under Section 25.3 below.

25.2 The County, at its sole discretion, has the right to withdraw its support for the Agreement if it is not submitted to the Department of the Interior pursuant to this Section within ten (10) days following the Effective Date.

25.3 Upon the Tribe's submission both of this Agreement to the DOI and of the Williamson Act contract rescission and non-renewal requests to the County, and regardless of the outcome as to either, and following acceptance of the Emergency Access Road plans, which acceptance shall not be unreasonably withheld, the County shall withdraw its opposition to the Dugan Property fee to trust application, consider the Tribe's request to rescind the Williamson Act contract on the terms provided for in this Agreement, withdraw its and its officials' protests to the Tribe's application for an ABC license, support an expedited conclusion of the ABC hearing consistent with this Agreement, and join the Tribe in actively advocating that the ABC issue a temporary license.

25.4 If the Department of Interior determines that portions of this Agreement violate 25 U.S.C. § 81 or are otherwise invalid, the severability provisions set forth below at Section 26.5 of this Agreement shall govern.

XXVI. MISCELLANEOUS PROVISIONS

26.1 Authority Over Tribal Activities. Nothing in this Agreement is intended to confer or expand the jurisdiction of any local, state or federal agency or other governmental body, nor is this Agreement intended to infringe or otherwise usurp the authority of any regulatory body including local, state, federal or Tribal agencies that may have jurisdiction over or related to Tribal activities, development or Projects. Further, nothing in this Agreement shall be construed to relieve the BIA's or Tribe's obligation to comply with the National Environmental Policy Act (NEPA) as may be required as part of any trust application or any other Project requirement. The County acknowledges that to the extent required by applicable law, activities that normally require County permitting are exempt from such requirements when they take place on the Reservation or Tribal Trust Land due to Tribal sovereignty and preemptive, plenary federal power over Indian affairs. The Tribe similarly acknowledges and agrees that its development projects located on fee lands located within the County's geographical boundaries shall conform to County permitting and other regulatory requirements.

26.2 Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party including, without limitation, no rights in any Interested Persons, nor does it create any private right of action for any third party nor permit any third party to bring an action to enforce any of its terms.

26.3 Amendments. This Agreement may be modified or amended only by mutual and written agreement of the Parties.

26.4 Final Agreement. This Agreement contains the entire agreement of the Parties as to the subject matter herein and supersedes any other agreements of the Parties to the contrary. The Agreement is intended both as the final expression of the agreement between the Parties

with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement consistent with California Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing approved and signed by the Parties.

26.5 Severability of Provisions. The invalidity of any provisions or portion of this Agreement as determined by a court of competent jurisdiction or the United States Department of the Interior shall not affect the validity of any other provisions of this Agreement or the remaining portions of the applicable provisions, unless such provision is material to the reasonable expectation of the Parties. Without limiting the foregoing, if the Agreement or any provision thereof is declared invalid by a court of competent jurisdiction or the Department of Interior, then the Parties shall use their best efforts to renegotiate the terms of the invalid provisions. In the event that the Parties are unable to successfully renegotiate the invalid terms, they shall resolve the matters at issue through the dispute resolution provisions of this Agreement which shall allow an arbitrator to modify, terminate or rescind, this Agreement in the event that material terms of this Agreement are determined to be void or are materially changed and shall apply the standards and limitations set forth in Section 20.2.

26.6 Force Majeur. The Parties shall not be liable for any failure to perform, or for delay in performance of a party's obligations, and such performance shall be excused for the period of the delay and the period of the performance shall be extended when a force majeure event occurs; provided however that the party whose performance is prevented or delayed by such event of force majeure shall give prompt written notice (i.e., within 72 hours of the event) of such event to the other party. For purposes of this Section, the term "force majeure" shall include, without limitation, war, epidemic, rebellion, riot, civil disturbance, earthquake, fire, flood, acts of governmental authorities, acts of God, acts of terrorism (whether actual or threatened), acts of the public enemy and in general, any other severe causes or conditions beyond the reasonable control of the Parties, the consequences of which in each case, by exercise of due foresight such party could not reasonably have been expected to avoid, and which by the exercise of due diligence it would not have been able to overcome, when such an event prevents the Tribe from meeting its obligations under this Agreement due to Gaming Activities ceasing operations for an extended period or prevents the County from meeting its obligations under this Agreement due to an interruption of County government operations. An interruption of performance, or the delayed occurrence of any event, under this Agreement caused by an event of force majeure shall as far as practical be remedied with all reasonable dispatch. During any period in which a party is excused from performance by reason of the occurrence of an event of force majeure, the party so excused shall promptly, diligently, and in good faith take all reasonable action required in order for it to be able to commence or resume performance of its obligations under this Agreement.

26.7 Governing Law. This Agreement shall be construed according to applicable federal and California substantive law to the extent not inconsistent with the express provisions of this Agreement, unless federal law as to the Tribe or the County, or California law as to the County, prohibits such Parties from abiding by such express provision, in which case the provision will be deemed to be invalid and resolved, if possible, under the severability provisions in Section 26.5. Notwithstanding the foregoing, California rules of construction shall be applied in interpreting this Agreement. This Agreement shall be deemed to have been drafted jointly by

the Parties and shall not be construed as having been drafted by, or construed against, one party against another.

26.8 Obligations to Continue. Unless specifically designated otherwise, all of the Parties' obligations under this Agreement shall continue through the Term, including any extensions thereof. Notwithstanding the end of the Term, any covenant, term or provision of this Agreement which, in order to be effective, or is necessary to enforce an unfulfilled material term of this Agreement or obligation that may continue beyond the end of the Term shall survive termination.

26.9 Payments. Unless otherwise indicated, all payments made pursuant to this Agreement shall be made payable to the County of Sonoma and sent to the Office of the Auditor, County of Sonoma, on the schedule set out above.

26.10 Representations. By entering into this Agreement each signatory represents that, as of the execution date, the undersigned has the authority to execute this Agreement on behalf of their respective governing bodies. Each signatory will provide written proof of such authority and ratification of the Agreement by the respective governing body as provided above.

26.11 Duplicate Originals. At least two copies of this Agreement shall be signed and exchanged by the Parties each of which shall be considered an original document.

26.12 Approval. Each Party's execution, delivery and performance of this Agreement shall be approved by resolution of each party's respective governing body, which shall provide that the party shall not enact a law impairing the rights and obligations under this Agreement.

26.13 Obligation on Related Entities. This Agreement binds the Parties and their departments, affiliates, agents, representatives, successors, contractors, officials and related entities, which such Agreement shall also be reflected in a resolution of each Party's respective governing body approving the Agreement.

IN WITNESS WHEREOF, the Parties hereby execute and enter into this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

Dated:

DRY CREEK RANCHERIA BAND OF POMO
INDIANS

BY: _____

Harvey Hopkins, Tribal Chairperson
Dry Creek Rancheria Band of Pomo Indians

ATTEST:

Dated:

MARJIE ROJES,
Tribal Secretary

Dated:

COUNTY OF SONOMA

BY:

Mike Kerns, Chairperson
Sonoma County Board of Supervisors

ATTEST:

Dated:

BOB DEIS,
ex-officio Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Date:

HOLLAND & KNIGHT LLP

BY:

JEROME L. LEVINE, Counsel
For Dry Creek Rancheria

Dated:

OFFICE OF THE COUNTY COUNSEL
STEVEN WOODSIDE, County Counsel

BY:

BRUCE D. GOLDSTEIN,
Assistant County Counsel