

INTERGOVERNMENTAL AGREEMENT BETWEEN THE
COUNTY OF MENDOCINO,
REDWOOD VALLEY - CALPELLA FIRE PROTECTION DISTRICT
AND THE COYOTE VALLEY BAND OF POMO INDIANS
CONCERNING MITIGATION FOR OFF RESERVATION IMPACTS RESULTING FROM
THE TRIBE'S CASINO EXPANSION AND HOTEL PROJECT

AMENDED AND RESTATED AS

THE INTERGOVERNMENTAL AGREEMENT
CONCERNING THE MITIGATION OF ALL OFF-RESERVATION IMPACTS DIRECTLY
RELATED TO THE OPERATION OF CLASS III GAMING ACTIVITIES

By and Among

THE COUNTY OF MENDOCINO

and

THE REDWOOD VALLEY - CALPELLA FIRE DISTRICT

and

THE COYOTE VALLEY BAND OF POMO INDIANS

This "Intergovernmental Agreement Concerning the Mitigation of All Off-Reservation Impacts Directly Related to the Operation of Class III Gaming Activities By and Among the County of Mendocino and the Redwood Valley - Calpella Fire District and the Coyote Valley Band of Pomo Indians" ("*Amended and Restated Agreement*") is entered into on this 26 day of October, 2017 ("*Effective Date*") by and among the COUNTY OF MENDOCINO ("*County*"), a political subdivision of the State of California, the REDWOOD VALLEY - CALPELLA FIRE DISTRICT ("*District*"), and the COYOTE VALLEY BAND OF POMO INDIANS ("*Tribe*"), a federally recognized Indian tribe located within the boundaries of the County and the District. The County, the District and the Tribe are each referred to herein from time-to-time as a "*Party*" and may be referred to collectively as the "*Parties*."

PREAMBLE

WHEREAS: by entering into this Amended and Restated Agreement, the Parties desire to amend and restate the "Intergovernmental Agreement between the County of Mendocino, Redwood Valley - Calpella Fire Protection District and the Coyote Valley Band of Pomo Indians Concerning Mitigation for Off Reservation Impacts Resulting From the Tribe's Casino Expansion and Hotel Project" ("*Original Agreement*") of October 16, 2007, as amended on May 26, 2008 and May 12, 2009, and by letter agreements on January 23, 2009, June 7, 2012 and an addenda dated August 7, 2012; and

WHEREAS: the Board of Supervisors of Mendocino County ("*County Board*"), the District Board of the Redwood Valley - Calpella Fire District ("*District Board*") and the Tribal Council of the Coyote Valley Band of Pomo Indians ("*Tribal Council*") recognize that each is a governmental entity with responsibility for the health, safety and general welfare of the people under their jurisdiction; and

WHEREAS: in 1987, the Supreme Court of the United States, in *California. v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, upheld the inherent, sovereign right of Indian tribes located within the State of California ("*State*") to own and operate certain games of chance on their reservations, subject only to federal and tribal law; and

WHEREAS: in 1988, the United States Congress restricted the inherent rights of Indian tribes to own and operate games of chance on their reservations, while also providing a statutory basis for the operation of gaming by Indian tribes as a means, among other things, of promoting tribal economic development, self-sufficiency, and strong tribal government through passage of the Indian Gaming Regulatory Act ("*IGRA*"); and

WHEREAS: IGRA makes Class III Gaming, as defined at 25 USC § 2703(8), ("Gaming Activities") lawful on Indian Lands, as defined at 25 USC § 2703(4), only if such Gaming Activities are, among other things, conducted in conformity with a

tribal-state compact entered into between the Indian tribe and the state in which such Indian Tribe is located and approved by the Secretary of the Interior; and

WHEREAS: IGRA, under § 2710(d)(3)(c), limits the lawful scope of topics that may be negotiated in a tribal-state compact to those subjects that are directly related to the Tribe's operation of the Gaming Activities; and

WHEREAS: the Tribe and State entered into a certain Tribal-State Gaming Compact between the Coyote Valley Band of Pomo Indians and the State of California noticed as approved by the United States Department of the Interior on December 20, 2004; and

WHEREAS: the Tribal-State Gaming Compact was amended in 2012 ("*Amended Compact*"); and

WHEREAS: Section 11.1 of the Amended Compact requires the Tribe enter into an enforceable written agreement with the County to address: (i) timely mitigation of significant, off-reservation impacts attributable to the Tribe's Gaming Activities authorized under the Amended Compact; (ii) compensation to the County for public services provided by the County to the Tribe as a consequence of the Tribe's Gaming Activities; and (iii) mitigation of the Gaming Activities' effect on public health and public safety (collectively, "*Mitigation Measures*"); and

WHEREAS: the Mitigation Measures required under the Original Agreement were premised on a 70,000 sq. ft. resort gaming facility ("*Resort Facility*") that was never constructed due to a loss of permanent financing resulting from the economic recession that began in late 2007; and

WHEREAS: despite never constructing the Resort Facility, the Tribe has continued to make monthly payments to the District to support a permanent, full-time staff position, and has fulfilled other obligations required of it pursuant to the Original Agreement over the years; and

WHEREAS: the Tribe's existing casino sprung tent structure ("*Existing Casino*"), erected in 1996, is located in an area of the Reservation which would be better suited for housing and as such the Tribe desires to construct a new gaming facility ("*New Gaming Facility*") with a footprint approximately 8,000 square feet larger than the Existing Casino, as further described in Section 2.2; and

WHEREAS: construction of the New Gaming Facility is part of a Reservation-wide master development plan that is intended to: (1) improve the socioeconomic status of the Tribe; (2) distinguish the Tribe's commercial and residential zones, creating the

space necessary for a new, fifty-unit low-income housing development partially located within the footprint of the Existing Casino; (3) fund a variety of social, governmental, administrative, educational, health, and general welfare services to improve the quality of life of Tribal members; (4) provide capital for other economic development and investment opportunities; (5) increase the number of quality job opportunities for area residents; and (6) create more efficient water and wastewater systems that will decrease demand on local and County resources; and

WHEREAS: the Parties recognize that local residents have legitimate concerns over the effect of the Tribe's Gaming Activities on the County, while also recognizing that the present and proposed New Gaming Facility provide economic benefit to the area in terms of local job creation and increased tourism; and

WHEREAS: the Tribe desires to develop and operate the New Gaming Facility in a manner that benefits the Tribe, its members and the local community, and the County and the District recognize the mutual benefit that can be derived if that goal is achieved; and

WHEREAS: the Parties have participated in a series of meetings with each other to hear and consider the ways in which each entity can work cooperatively in regards to the development of the New Gaming Facility, while being consistent with the Tribe's governmental needs and the lawful scope of negotiations conducted pursuant to a gaming compact under IGRA; and

WHEREAS: as a result of the aforementioned meetings, and in consideration of the mutually recognized benefits of the New Gaming Facility, the County, District and Tribe desire to amend the Original Agreement by entering into this Amended and Restated Agreement to address Mitigation Measures directly related to the Tribe's operation of the Gaming Activities associated with the New Gaming Facility; and

WHEREAS: in 2007, the Tribe completed a tribal environmental impact report ("*2007 Final TEIR*") in association with the Resort Facility and provided full public review of said document; and

WHEREAS: Sections 11.2 and 11.4 of the Amended Compact require the Tribe to prepare a comprehensive tribal environmental impact report analyzing the potentially significant off-reservation environmental impacts attributable to the Tribe's Gaming Activities, and to enter into an agreement with the County for mitigation of such impacts, *provided however* that no new tribal environmental impact report is required for the New Gaming Facility if (i) the 2007 Final TEIR is acceptable to

the County and (ii) the New Gaming Facility is the same or smaller than the Resort Facility, *and further provided* that where the forgoing conditions are satisfied the, Tribe shall be deemed to have satisfied section 11.2 through and including section 11.4 of the Amended Compact; and

WHEREAS: the Tribe prepared a supplemental TEIR which analyzed the impacts of the smaller, New Gaming Facility, which was carefully examined by the County and the District; and

WHEREAS: the County hereby finds that the 2007 Final TEIR is acceptable to the County and that, based on the information provided by the Tribe, the New Gaming Facility is smaller than the Resort Facility and as such the County does not require a New TEIR for the New Gaming Facility.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements herein contained, including the Preamble, which is expressly made a part of this Amended and Restated Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

INCORPORATION AND DEFINITIONS

1.1 *Certain Defined Terms.* As used herein, the following capitalized terms shall have the following meanings in this Amended and Restated Agreement:

“Additional Gaming Impact Mitigation Payment” means an increase to the Gaming Impact Mitigation Payment, made for the purpose of mitigating the increased off-Reservation impacts of the Gaming Activities due to the projected increase in patronage to the New Gaming Facility resulting from operation of the Proposed Hotel, which shall be ZERO DOLLARS (\$0.00) until the Proposed Hotel Commencement Date, at which time and thereafter it shall be an initial annual amount of TWENTY THOUSAND DOLLARS (\$20,000.00) payable quarterly and adjusted for inflation in accordance with Section 6.5 and as further described in Article 6.

“Amended Compact” means that certain Amended Tribal-State Gaming Compact between the Coyote Valley Band of Pomo Indians and the State of California noticed as approved by the United States Department of the Interior on December 28, 2012.

“Amended and Restated Agreement” means this Intergovernmental Agreement Concerning the Mitigation of All Off-Reservation Impacts Directly Related to the Operation of Class III Gaming Activities By and Among the County of Mendocino and the Redwood Valley - Calpella Fire District and the Coyote Valley Band of Pomo Indians.

"Applicable Codes" shall have the same meaning as specified in the Amended Compact which are the California Public Safety Code and the California Building Code as set forth in Titles 19 and 24 of the California Code of Regulations and as adopted by the County of Mendocino, as those regulations may be amended and adopted during the term of the Amended Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire, and safety.

"2007 Final TEIR" means the Tribal Environmental Impact Report of 2007, as further defined in the Amended Compact.

"Change in the Law" means the occurrence of any one or more of the following:

- (i) A change in State or federal law having a material adverse effect on one or more of the obligations of one or more of the Parties hereunder.

"Change in Circumstance" means the occurrence of any one or more of the following:

- (i) The termination or expiration of the Amended Compact;
- (ii) A change in the financial obligations of the Tribe to the State under the Amended Compact;
- (iii) A significant decrease in patronage or revenue from the Gaming Activities;
- (iv) The Tribe ceases to operate Class III Gaming on the Reservation, or significantly reduces the number of Class III Gaming devices on its Reservation;
- (v) The Tribe operates more than 349 Class III Gaming devices; or
- (vi) Any event that has, or reasonably could be expected to have, a material adverse effect on the Tribe's Gaming Activities.

"Class III Gaming" shall have the meaning specified in 25 USC § 2703(8), as may be amended or restated from time-to-time.

"Compensation" shall have the meaning specified in section 5.2(b) of this Amended and Restated Agreement.

"County" means the County of Mendocino.

"County Board" means the Mendocino County Board of Supervisors.

"District" means the Redwood Valley – Calpella Fire District.

"District Board" means the governing body of the District.

"Effective Date" shall have the meaning specified in the introductory paragraph of this Amended and Restated Agreement.

"Existing Casino" means the sprung tent structure built in 1996 in which the Tribe currently conducts its Class III Gaming Activities.

"Fire Protection Services Mitigation Payment(s)" means the payment made pursuant to section 5.2(b) in an initial annual amount of SIXTY-FIVE THOUSAND SIX HUNDRED FORTY-ONE DOLLARS AND THIRTY-TWO CENTS (\$65,641.32) payable quarterly, as adjusted for inflation in accordance with section 5.2(c) and as further described in Article 5.

"Fire Protection Services Mitigation Payment Date" means, in any given calendar year, each of January 15, April 15, July 15 and October 15, following the New Gaming Facility Commencement Date, provided however that if any of the forgoing days falls on a Saturday, Sunday or a day that is a holiday recognized by the Tribe, then such Fire Protection Services Mitigation Payment Date shall be on the next day that is not a Saturday, Sunday or a day that is not a holiday recognized by the Tribe.

"Gaming Activities" means the gaming activities authorized by IGRA and the Amended Compact.

"Gaming Impact Mitigation Payment(s)" means the quarterly payments described in Article 6 of this Amended and Restated Agreement, including the Initial Gaming Impact Mitigation Payment and the Additional Gaming Impact Mitigation Payment as they may be adjusted for inflation in accordance with Section 6.5, and as further described in Article 6. The Law Enforcement Services Mitigation Payment described in Section 5.1, which shall be ZERO DOLLARS (\$0.00) provided the Tribe maintains a Tribal Police Department, shall be added to the quarterly Gaming Impact Mitigation Payment but only for the period of time, if any, in which it is applicable.

"Gaming Impact Mitigation Payment Date" means, in any given calendar year, each of January 15, April 15, July 15 and October 15, provided however that if any of the forgoing days fall on a Saturday, Sunday or a day that is a holiday recognized by the Tribe, then such Gaming Impact Mitigation Payment Date shall be on the next day that is not a Saturday, Sunday or a day that is not a holiday recognized by the Tribe.

"IGRA" means the Indian Gaming Regulatory Act, as codified 25 U.S.C. § 2701 et seq. and 18 U.S.C. § 1166 et seq.

"Indian Lands" shall have the meaning specified in 25 USC § 2703(4), as may be amended or restated from time-to-time.

"Initial Gaming Impact Mitigation Payment" means the payment made to reimburse the County for public services provided by the County to the Tribe as a consequence of the Gaming Activities of the New Gaming Facility and to mitigate such Gaming Activities' effect on

public health and safety, which shall commence on the first Quarterly Payment Date after the New Gaming Facility Commencement Date and which shall be in an initial annual amount of FIFTY-FIVE THOUSAND DOLLARS (\$55,000) payable quarterly, adjusted for inflation in accordance with section 6.5, and as further described in Article 6.

“Law Enforcement Services Mitigation Payment” means the payment, if applicable, in an initial annual amount of NINETY THOUSAND DOLLARS (\$90,000) payable quarterly, adjusted for inflation in accordance with section 5.1, and as further described therein.

“Mitigation Measures” means the (i) timely mitigation of significant, off-reservation impacts attributable to the Tribe’s Gaming Activities authorized under the Amended Compact; (ii) compensation to the County and/or the District for public services provided by the County and/or the District to the Tribe as a consequence of the Tribe’s Gaming Activities; and (iii) mitigation of the Gaming Activities’ effect on public health and public safety.

“New Gaming Facility” means a gaming facility with a footprint approximately 8,000 square feet larger than the Existing Casino and as further described in section 2.2.

“New Gaming Facility Commencement Date” means the earlier of (a) the “Grand Opening” of the New Gaming Facility, as determined by the Tribe, or (b) thirty (30) days following date on which the New Gaming Facility opens for commercial operations.

“Original Agreement” means the “Intergovernmental Agreement Between the County of Mendocino, Redwood Valley – Calpella Fire Protection District and the Coyote Valley Band of Pomo Indians Concerning Mitigation for Off Reservation Impacts Resulting from the Tribe’s Casino Expansion and Hotel Project,” first executed on October 16, 2007 and as amended on August 8, 2008 and May 12, 2009, and by letter agreements on January 23, 2009, June 7, 2012 and an addenda dated August 7, 2012, pursuant to which the Tribe has been making payments to the District.

“Proposed Hotel” means an approximately 101-room hotel owned and operated by an entity separate and distinct from the Tribe and the New Gaming Facility, which shall have independent structural integrity from the New Gaming Facility, shall have a separate roof, walls, foundation, porte cochère and entrance from the New Gaming Facility, which shall operate on land leased from the Tribe, and in which no Gaming Activities shall occur.

“Proposed Hotel Commencement Date” means the earlier of (a) the “Grand Opening” of the Proposed Hotel, as determined by the Tribe, or (b) thirty (30) days following the date on which the Proposed Hotel opens for commercial operations.

“Reservation” as defined at 25 CFR 151.2(f) means the area of land over which the United States recognizes the Tribe to have governmental jurisdiction.

"Resort Facility" means the previously proposed 70,000 sq. ft. resort gaming facility that was the subject of the Original Agreement but was never constructed.

"State" means the State of California.

"Tribal Constitution" means the document embodying the laws, customs and traditions of the Coyote Valley Band of Pomo Indians, as amended.

"Tribal Council" means the elected, representative governing body of the Tribe, as described in Article VI of the Tribal Constitution.

"Tribal Police Department" means the law enforcement agency of the Tribe.

"Tribe" means the Coyote Valley Band of Pomo Indians.

"Western States CPI" means the Consumer Price Index for All Urban Consumers, as reported by the United States Bureau of Labor and Statistics.

ARTICLE 2

PURPOSE & SCOPE

2.1 *Purpose and Scope.* The Parties have entered into this Amended and Restated Agreement, as mandated by the Amended Compact, in order to mitigate all significant off-Reservation impacts on the County and the District directly related to the operation of the Tribe's Gaming Activities occurring within the New Gaming Facility on the Tribe's Indian Lands.

2.2 *Description of New Gaming Facility.* The New Gaming Facility will have an approximate 30,000 sq. ft. footprint, 10,841 sq. ft. of which will be gaming space. It will contain no more than 349 Class III Gaming machines, and in addition will offer table games, a poker room, a three-meal restaurant, a bar with gaming tops and a performance stage.

2.3 *Tribe's Obligations not Subject to County or other Local Jurisdiction.* Nothing herein is intended to be, nor shall it be construed as, consent by the Tribe or submission to the exercise of jurisdiction by the County or the District, including without exception any taxing jurisdiction in or upon the Tribe's Reservation as defined herein.

ARTICLE 3

TERM, TERMINATION AND EFFECT ON PRIOR AGREEMENTS

3.1 *Term.* This Amended and Restated Agreement shall continue unless and until terminated in accordance with section 3.2, below.

3.2 *Termination.* This Amended and Restated Agreement may be terminated: (a) upon mutual written agreement of the Parties; or (b) by the Tribe at any time following the occurrence of a Change in the Law or a Change in Circumstance.

3.3 *Effect on Prior Agreements.* The Original Agreement, as amended, is superseded as of the Effective Date by this Amended and Restated Agreement.

ARTICLE 4

CONSTRUCTION OF THE NEW GAMING FACILITY

4.1 *Compliance with Applicable Codes.* Development undertaken by the Tribe for the New Gaming Facility, including expansions thereto, shall comply with the Applicable Codes.

4.2 *Encroachment Permits.* Prior to constructing any roadway improvements within the County right-of-way or installing any utility infrastructure traversing along or beneath North State Street in association with the New Gaming Facility, the Tribe shall apply for and receive an appropriate encroachment permit from Mendocino County Department of Transportation and comply with the reasonable conditions thereof as further discussed in Article 7.

4.3 *Quality and Aesthetics.* The New Gaming Facility shall be built to a comparable level of aesthetic values and quality as the Tribe's existing convenience store and fuel station.

4.4 *Additional Gaming Facilities and Significant Improvements.* The Tribe shall submit all plans for the Gaming Facility, including any additions or substantial modifications thereto, to the District for review and comment prior to construction, and the District and Tribe shall work collaboratively to address legitimate accessibility and fire safety concerns raised by the District in a manner that respects Tribal sovereignty while ensuring compliance with the Applicable Codes.

ARTICLE 5

REIMBURSEMENT FOR MUNICIPAL SERVICES

5.1 *Law Enforcement Services Mitigation Payment.* The Tribe shall have no obligation to make any separate or additional mitigation payments to the County for law enforcement services, provided the Tribe maintains a Tribal Police Department. If at any time after the Commencement Date the Tribal Police Department becomes inactive for any reason, the Tribe shall make mitigation payments to the County at a *pro rata* rate of NINETY THOUSAND DOLLARS (\$90,000.00) annually, payable quarterly, adjusted for inflation as provided below, until such time as a Tribal Police Department is re-established. The Parties hereto agree that the employment of at least one full-time police officer shall constitute an active police force for purposes of this Amended and Restated Agreement. Commencing on the first day of the first January that is at least 180 days after the New Gaming Facility Commencement Date, and on the first day of January thereafter while this Amended and Restated Agreement is in effect, the Law Enforcement Services Mitigation Payment amount shall be adjusted by the lesser of the Western States CPI or two percent (2%). The Law Enforcement Services Mitigation Payment shall be added to the quarterly Gaming Impact Mitigation Payment but only for the period of time, if any, in which it is applicable.

5.2 *Fire Protection Services.*

(a) *Fire Protection Services Mitigation Payments Prior to the New Gaming Facility Commencement Date.* Prior to the New Gaming Facility Commencement Date, the Tribe shall continue to make monthly payments to the District in an amount of FIVE THOUSAND DOLLARS (\$5,000.00).

(b) *Fire Protection Services Mitigation Payments Following the New Gaming Facility Commencement Date.* On the first Fire Protection Services Mitigation Payment Date following the New Gaming Facility Commencement Date, and on each Fire Protection Services Mitigation Payment Date thereafter while this Amended and Restated Agreement is in effect, the Tribe shall make the Fire Protection Services Mitigation Payment to the District in an initial annual amount of SIXTY-FIVE THOUSAND SIX HUNDRED FORTY-ONE DOLLARS AND THIRTY-TWO CENTS (\$65,641.32) payable quarterly subject to the adjustment provisions of Section 5.2(c). Fire Protection Services Mitigation Payments received by the District hereunder shall be used solely to enable the District to pay the salary, wages and benefits, *exclusive* of overtime (collectively, "*Compensation*"), of a fourth full-time staff-level firefighter, provided however that at no time shall said firefighter receive Compensation that is significantly

greater than the Compensation provided to other firefighters of like skill and experience, with similar job duties.

(c) *Adjustments to the Fire Protection Services Mitigation Payment.* The Fire Protection Services Mitigation Payment shall be adjusted on the first day of the first January that is at least 180 days after the New Gaming Facility Commencement Date, and on the first day of every January thereafter during the term of this Amended and Restated Agreement, by the lesser of the Western States CPI or two percent (2%).

(d) *Material Changes to District Staffing.* Compensation paid hereunder is for the purpose of enabling the District to employ four (4) full-time, staff-level firefighters. The District shall provide notice to the Tribe following the occurrence of a material change to staffing, such as a personnel change or a significant change in the staff's duties. The District shall endeavor to employ four (4) firefighters at all times while this Amended and Restated Agreement is in effect. If any of the four District positions are vacant for a period of more than ninety (90) continuous days, the Tribe shall not be required to make Fire Protection Services Mitigation Payments until such time as the position is filled.

ARTICLE 6

GAMING IMPACT MITIGATION PAYMENTS

6.1 *Purpose and Use of Gaming Impact Mitigation Payments.* The purpose of the Gaming Impact Mitigation Payments provided for hereunder is to reimburse the County for (i) law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe as a consequence of the Gaming Activities and (ii) mitigation of any effect on public health or public safety attributable to the Gaming Activities.

6.2 *Initial Gaming Impact Mitigation Payment.* The Initial Gaming Impact Mitigation Payment described herein, is to reimburse the County for the off-Reservation impacts referenced above that are a consequence of the Gaming Activities of the New Gaming Facility, and shall be in the initial annual amount of FIFTY-FIVE THOUSAND DOLLARS (\$55,000), payable quarterly, commencing on the first Gaming Impact Mitigation Payment Date after the New Gaming Facility Commencement Date.

6.3 *Additional Gaming Impact Mitigation Payment.* The Additional Gaming Impact Mitigation Payment described herein is to reimburse the County for the increased off-Reservation impacts referenced above that are a consequence of the increase in patronage to the New Gaming Facility that is expected to result from operation of the Proposed Hotel, and shall

be in the initial annual amount of TWENTY THOUSAND DOLLARS (\$20,000), payable quarterly, commencing on the first Gaming Impact Mitigation Payment Date after the Proposed Hotel Commencement Date. It is expressly recognized that the Additional Gaming Impact Mitigation Payment is not payment for taxes, construction, ownership or operation of the Proposed Hotel, but rather is additional mitigation for off-Reservation impacts attributable to the increased Gaming Activities at the New Gaming Facility due to increased patronage resulting from the Proposed Hotel. At such time as the Additional Mitigation Payment Amount becomes applicable, it shall be added to, and become part of, the Gaming Impact Mitigation Payments.

6.4 *Gaming Impact Mitigation Payments.* At all times following the New Gaming Facility Commencement Date and while this Amended and Restated Agreement is in effect, the Tribe shall, by each Gaming Impact Mitigation Payment Date, make a Gaming Impact Mitigation Payment to the County in an amount equal to the Initial Gaming Impact Mitigation Payment plus the Additional Gaming Impact Mitigation Payment, if applicable.

6.5 *Adjustments to the Gaming Impact Mitigation Payments.* Commencing on the first day of the first January that is at least 180 days after the New Gaming Facility Commencement Date, and on the first day of every January thereafter while this Amended and Restated Agreement is in effect, the Initial Gaming Impact Mitigation Payment shall be adjusted by the lesser of the Western States CPI or two percent (2%). Commencing on the first day of the first January that is at least 180 days after the Proposed Hotel Commencement Date and on the first day of every January thereafter while this Amended and Restated Agreement is in effect, the Additional Gaming Impact Mitigation Payment shall be adjusted by the lesser of the Western States CPI or two percent (2%).

ARTICLE 7

TRAFFIC AND ROAD IMPACT AND MITIGATION

7.1 *North State Street Intersection.* The Parties agree that the New Gaming Facility will introduce increased traffic to the intersection of North State Street and Coyote Valley Boulevard. The Parties also agree that the traffic study developed by the Tribe concluded that the increased traffic was insufficient to require mitigation. However, the Parties also agree that certain road improvements at the intersection of Coyote Valley Boulevard and North State Street could benefit the project and the local community. While construction of such improvements is not required, they are included within the Tribe's master plan and the Tribe is willing to make a good faith effort to develop such improvements, subject to available funding and receipt of the permits described in section 7.2, below. Although it is not an enforceable obligation under this Amended and Restated Agreement, within five (5) years following the Hotel Commencement Date, the Tribe intends to develop a southbound left turn lane as well as

a northbound right turn deceleration lane and acceleration lanes in the southbound and northbound directions at the intersection of North State Street and the Reservation entrance with the understanding that the length of said storage and/or channelization for lanes south of the intersection will be limited by the existing bridge.

7.2 *Permits.* Prior to the commencement of the work described in Section 7.1, above, the Tribe shall submit a design prepared by a California Registered Civil Engineer which is consistent with County roadway design standards, which may include references to standard industry documents such as the CALTRANS Design Manual and the AASHTO guidelines, except that, as stated above, a design exception will be granted due to the length limitations between the Forsythe Creek Bridge and the intersection with Coyote Valley Boulevard. The widening of North State Street and construction of turn channelization will be based on a pavement section design which accounts for bus and truck turning loads and is expected to require High Strength ("HS") type asphalt or equivalent structural section design which meets a Traffic Index eleven ("TI 11"), as submitted by the Tribe's Civil Engineer. The Tribe shall apply for and receive an appropriate encroachment permit from Mendocino County Department of Transportation, and shall comply with the reasonable conditions thereof.

7.3 *Utility Infrastructure Traversing Along or Beneath North State Street.* Provided the Tribe intends to install utility infrastructure traversing along or beneath North State Street, the Tribe shall first submit a design prepared by a California Registered Civil Engineer which is consistent with industry standards and shall apply for and receive an appropriate encroachment permit from Mendocino County Department of Transportation, and shall comply with the reasonable conditions thereof.

ARTICLE 8

ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE COUNTY

8.1 *Additional Representations and Warranties.* The County represents and warrants to the Tribe as follows:

- (a) the County has reviewed the 2007 Final TEIR and finds it acceptable;
- (b) the County has reviewed designs for the New Gaming Facility and has determined it is smaller than the Resort Facility;
- (c) the Tribe has satisfied sections 11.2 through and including section 11.4 of the Amended Compact;
- (d) The County shall use Gaming Impact Mitigation Payments in accordance with section 6.1; and

- (e) Upon request of the Tribe, the County will communicate that the Mitigation Measures set forth in this Amended and Restated Agreement address all significant, off-reservation impacts attributable to the Tribe's Gaming Activities, whether named or unnamed, and whether known or unknown at the time of this Amended and Restated Agreement.

8.2 *Books and Records.* The County shall maintain books and records in relation to the Gaming Impact Mitigation Payments in accordance with GAAP and shall permit the Tribe and its authorized representatives to inspect such books and records at any reasonable time upon reasonable notice.

ARTICLE 9

ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE DISTRICT

9.1 *Additional Representations and Warranties.* The District represents and warrants to the Tribe as follows:

- (a) The District shall use all Compensation in accordance with section 5.2(b);
- (b) Upon request of the Tribe, the District will communicate that the Mitigation Measures set forth in this Amended and Restated Agreement address all significant, off-reservation impacts attributable to the Tribe's Gaming Activities, whether named or unnamed, and whether known or unknown at the time of this Amended and Restated Agreement; and
- (c) That the District will timely complete reviews of all plans submitted for the Gaming Facility, including any additions or substantial modifications thereto, and provide comments in writing in a timely fashion.

9.2 *Books and Records.* The District shall maintain books and records in relation to the Compensation in accordance with GAAP and shall permit the Tribe and its authorized representatives to inspect such books and records at any reasonable time upon reasonable notice. Upon request, the District shall provide the Tribe with information sufficient to assess the skill and experience of any firefighter receiving Compensation.

ARTICLE 10

ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE TRIBE

10.1 *Additional Representations and Warranties.* The Tribe represents and warrants to the County and the District that it maintains a Tribal Police Department with the authority to enforce Tribal and federal law on the Reservation and provides the Gaming Facility with

adequate safety and protection.

ARTICLE 11

GOVERNMENT-TO-GOVERNMENT COMMUNICATIONS

11.1 *Bi-Annual Meetings.* The Parties agree to meet no less than once every two (2) calendar years to review and discuss the matters contained in this Amended and Restated Agreement and other matters directly related to the Tribe's Gaming Activities.

11.2 *Communications and the Spirit of the Agreement.* The Parties desire to maintain a positive working relationship, to maintain open communication and to not take actions or make statements with the intent to undermine the spirit of this Agreement.

11.3 *Re-Opener Provisions.*

- (a) Any Party may request that the other Parties renegotiate one or more terms of this Amended and Restated Agreement if there is a Change in the Law or a Change in Circumstances.
- (b) A request to renegotiate one or more terms of this Amended and Restated Agreement will be made in writing, addressed to the other Parties. The request will specify the basis for the request.
- (c) If the request is determined to meet the requirements for renegotiation pursuant to this subsection, then the Parties will meet within thirty (30) days from the receipt of the request and will commence to renegotiate in good faith, provided however that failure of the parties to agree to new or amended terms shall not in itself be evidence of bad faith and shall not in itself be considered a breach of this Amended and Restated Agreement.

ARTICLE 12

LIMITED WAIVER OF SOVEREIGN IMMUNITY AND DISPUTE RESOLUTION

12.1 *Limited Waiver of Sovereign Immunity.*

- (a) The Tribe expressly and irrevocably waives on a limited basis its sovereign immunity (and any defense based thereon) as to any dispute, which arises out of this Amended and Restated Agreement in favor of the other Parties, as applicable, and not to any third party, to have disputes resolved solely in the manner set forth in section 12.2, below, and solely for disputes arising out of this Amended and Restated Agreement,

including interpretations thereof, the lawfulness of the provisions therein and the activities undertaken by one or more of the Parties pursuant thereto.

- (b) Without in any way limiting the generality of the foregoing, the Parties expressly authorize any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any Approved Court, to take such action or otherwise give effect to any judgment entered; provided, however, that in no instance will any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the undistributed or future net revenues or accounts receivable, both as defined by Generally Accepted Accounting Principles, of the New Gaming Facility. For the avoidance of doubt, it is understood herein that no enforcement shall be permitted against the property of any individual member of the Tribe.

12.2 *Dispute Resolution.* The Parties will make their best efforts to resolve disputes that occur under this Amended and Restated Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of a Party to seek injunctive relief against another when circumstances are deemed to require immediate relief, the Parties hereby establish a threshold requirement that a dispute between one or more of the Parties first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Amended and Restated Agreement, as follows:

- (a) A concerned Party will give the other Parties, as soon as practical after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.
 - (b) The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days after receipt of the notice, unless the Parties agree in writing to an extension of time.
 - (c) If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then any Party may seek to have the dispute resolved by an arbitrator in accordance with section 12.3.
 - (d) In no event may any party be precluded from pursuing any arbitration or judicial remedy against another party on the grounds that the Party failed to exhaust its administrative remedies.
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- (e) The Parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resorting to the arbitration process.

12.3 *Arbitration Rules.*

- (a) All Disputes shall be finally and exclusively settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with the provisions of its Commercial Arbitration Rules as amended and effective October 1, 2013, excluding Rule 52(c), and will be held at such location as the Parties may agree. If the Parties cannot agree on a location, arbitration shall be conducted at a location in Mendocino County, California, selected by the AAA.
- (b) Each Party will bear its own costs, attorneys' fees and proportional share of the costs and expenses of the AAA and the arbitrator.
- (c) Arbitrations shall be decided by a majority vote of a panel of three (3) arbitrators, each of whom must actively participate in all hearings and deliberations. One (1) arbitrator shall be selected by the County, one (1) arbitrator shall be selected by the Tribe and one (1) arbitrator shall be selected by the two (2) previously selected arbitrators. The two previously selected arbitrators shall select a third arbitrator who has a professional background demonstrating that he or she has significant experience in the field of federal Indian and tribal law. Notwithstanding the foregoing, the Parties may agree to have the dispute resolved by a single arbitrator mutually approved of by all parties to the arbitration.
- (d) The decision of the arbitrator(s) shall be in writing, shall be based in the governing law of this Amended and Restated Agreement, shall be written in a manner similar to judicial decisions and shall be binding on the Parties.
- (e) Judgment on the award may be entered in and enforced by the United States District Court for the Northern District of California which shall also have the power to compel the arbitration described herein.

12.4 *No Waiver or Preclusion of Other Means of Dispute Resolution.* This Section may not be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual written agreement, any other method of dispute resolution, including, but not limited to, mediation provided that no Party is under any obligation to agree to such alternative method of dispute resolution.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 *Satisfaction in Full.* The obligations of the Tribe set forth in this Amended and Restated Agreement address all off-Reservation impacts, whether named or unnamed, and whether known or unknown at the time of this Amended and Restated Agreement.

13.2 *Mutual Good Faith.* Throughout the term of this Amended and Restated Agreement, the Parties agree to exercise good faith and to observe the covenants contained herein, in accordance with the State Compact, IGRA and other applicable law.

13.3 *Captions and Headings.* The captions and headings of various Articles and Sections of this Amended and Restated Agreement pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

13.4 *Counterparts.* This Amended and Restated Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument. Digitally or electronically transmitted signatures are as effective as originals.

13.5 *Severability.* Any provision of this Amended and Restated Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

13.6 *Notices.* Any notices, communications and waivers under this Amended and Restated Agreement shall be in writing and shall be delivered via electronic mail, addressed in each case as follows, and (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) delivered by overnight carrier:

If to County:	County of Mendocino Attn: Chief Executive Officer 501 Low Gap Road, Room 1010 Ukiah, California 95482 Phone: (707) 463-4441
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With a copy to:	County Counsel Attn: County Counsel 501 Low Gap Road, Room 1090 Ukiah, California 95482 Phone: (202) 434-8298
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If to the District: Redwood Valley – Calpella Fire District
Attn: Fire Chief
8481 East Road
Redwood Valley, California 95470
Phone: (707) 485-8121

With a copy to: County Counsel
Attn: County Counsel
501 Low Gap Road, Room 1090
Ukiah, California 95482
Phone: (202) 434-8298

If to the Tribe: Coyote Valley Band of Pomo Indians
Attn: Tribal Chairperson
Post Office Box 39
7751 North State Street
Redwood Valley, CA 95470
Phone: (707) 485-8723

With a copy to: Tribal Legal Counsel
Ceiba Legal, LLP
Attn: Keith Anderson or
Little Fawn Boland
35 Madrone Park Circle
Mill Valley, CA 94941

or to any other address as to any of the Parties hereto, as such Party shall designate in a written notice to the other Parties hereto. All notices sent pursuant to the terms of this paragraph shall be deemed received (a) if personally delivered, then on the date of delivery, (b) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, (c) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received, or (d) when transmitted via electronic mail, then on the next federal banking day immediately following the day sent.

13.7 *No Waiver; Cumulative Remedies.* No failure or delay on the part of a Party in exercising any right, power or remedy under this Amended and Restated Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies provided in this Amended and Restated Agreement are cumulative and not exclusive of any remedies provided by law.

13.8 *Amendments.* This Amended and Restated Agreement may be amended only by written instrument signed by all Parties.

13.9 *Governing Law.* This Amended and Restated Agreement, its interpretation and disputes arising therefrom shall be construed pursuant to federal law, Tribal law and the law of the State, in that order.

13.10 *Advice from Independent Counsel.* The Parties hereto understand that this Amended and Restated Agreement is a legally binding agreement that may affect such Party's rights. Each Party hereto represents to the others that it has received legal advice from counsel of its choice regarding the meaning and legal significance of this Amended and Restated Agreement and that it is satisfied with its legal counsel and the advice received from it.

13.11 *Binding Effect; Assignment; No Third Party Beneficiaries.* This Amended and Restated Agreement shall be binding upon and inure to the benefit of the Tribe, the County, the District and their respective and legal successors and assigns; provided, except that the Tribe may not assign any or all of its rights or obligations hereunder or any of its interest herein without the prior written consent of the County. No Person shall be or become a third-party beneficiary to this Amended and Restated Agreement.

13.12 *Entire Agreement.* This Amended and Restated Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations and other agreements, whether written or oral.

13.13 *Mutual Drafting.* The Parties agree that this Amended and Restated Agreement has been mutually drafted and authored by all the Parties and that it shall not be construed against any one Party.

13.14 *Authority to Execute.* Each Party hereto possesses due authority to execute and enter into this Amended and Restated Agreement.

IN WITNESS WHEREOF, the County, District and Tribe have caused this Amended and Restated Agreement to be executed the day and year first written above.

THE COUNTY OF MENDOCINO

By: 
John McCowen, Chair

REDWOOD VALLEY - CALPELLA FIRE DISTRICT

By: _____

James Tusó, Chair

COYOTE VALLEY BAND OF POMO INDIANS

By: _____

Michael Hunter, Chairman

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

DEPARTMENT FISCAL REVIEW:

John McCowen OCT 26 2017
DEPARTMENT HEAD DATE

Budgeted: ☐ Yes ☐ No

Budget Unit: _____

Line Item: _____

Grant: ☐ Yes ☐ No

Grant No.: _____

CONTRACTOR/COMPANY NAME

By: _____

NAME AND ADDRESS OF CONTRACTOR:

COUNTY OF MENDOCINO

By: *John McCowen*
JOHN MCCOWEN, Chair
BOARD OF SUPERVISORS OCT 26 2017

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

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: *Karla Van Hagen*
Deputy OCT 26 2017

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

CARMEL J. ANGELO, Clerk of said Board

By: *Karla Van Hagen*
Deputy OCT 26 2017

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: *K. Elliott*
Deputy

INSURANCE REVIEW:

By: *Carmel J. Angelo*
Risk Manager

FISCAL REVIEW:

By: *Janette Rawn*
Deputy CEO/Fiscal

EXECUTIVE OFFICE REVIEW:

APPROVAL RECOMMENDED

By: *Janette Rawn*
CARMEL J. ANGELO, Chief Executive Officer

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

Exception to Bid Process Required/Completed ☐ _____

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____