

RESOLUTION NO. 2012- 78

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING THE JOINT EXERCISE OF POWERS
AGREEMENT WITH THE FEDERATED INDIANS OF GRATON RANCHERIA FOR
WASTEWATER SERVICES**

WHEREAS, on October 1, 2010 the Bureau of Indian Affairs and Secretary of the Interior accepted the Federated Indians of Graton Rancheria's ("Tribe") application requesting that the United States take title to that certain property comprised of approximately 254 acres of land in Sonoma County ("Trust Lands");

WHEREAS, the Governor of California and the Tribe negotiated a compact that authorizes and prescribes the terms of Class III gaming on the Trust Lands ("Compact") and that Compact was ratified by the Legislature on May 17, 2012;

WHEREAS, the environmental impacts of the construction and operation of the Tribe's proposed gaming enterprise were evaluated by the National Indian Gaming Commission ("NIGC") under the National Environmental Policy Act ("NEPA");

WHEREAS, on October 15, 2012, the NIGC published a Record of Decision ("ROD") for the proposed project concluding that the newly acquired Trust Lands are Indian lands which are eligible for gaming and adopting a reduced intensity casino and hotel project as the preferred action alternative;

WHEREAS, the preferred action alternative is significantly smaller than the project initially proposed by the Tribe and includes a casino and a 6-story, 200-room hotel ("Project") to be built on approximately 66 acres of land located on the northeastern portion of the Trust Lands and situated within the City's urban growth boundary and outside the 100-year flood plain ("Project Area");

WHEREAS, the Project is located on Trust Lands outside the boundaries of the City and the City has no legal authority to exercise jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgment regarding the Trust Lands or the Project or gaming or other activities conducted in the Project Area;

WHEREAS, the City and the Tribe, recognizing that various impacts may arise in the City in connection with the gaming enterprise, entered into that certain Memorandum of Understanding dated October 14, 2003 wherein the Tribe agreed to make certain contributions and community investments to mitigate the impacts of the gaming enterprise ("MOU");

WHEREAS, Section 5 of the MOU recognized the Tribe's plan to construct and operate an on-site wastewater treatment facility and implement water conservation measures, but contemplated the alternative possibility of the City providing wastewater services to the Tribe, in which case the Tribe would agree to pay applicable fees and charges and its fair share of any capital improvements;

WHEREAS, the FEIS included an analysis of two on-site and one off-site wastewater treatment options for the Project, the latter involving a connection to the sewerage system owned by the

City, including sewer lines, interceptor sewers, pumping station, and effluent pipelines (“City Sewer System”) and transportation to and treatment and disposal of the wastewater at the Subregional Laguna Wastewater Treatment Plant (“Laguna WWTP”);

WHEREAS, at present, wastewater collection, treatment, reclamation, recycling, reuse, and disposal of sanitary sewage have not been extended to the Project Area;

WHEREAS, in the absence of a binding agreement for off-site wastewater treatment, the NIGC identified the on-site wastewater treatment option with no off-reservation discharge as the preferred alternative in the ROD;

WHEREAS, after the NIGC issued the ROD, the Tribe undertook a detailed analysis of the wastewater treatment options for the Project in the December 2, 2011 “Graton Rancheria Off-Site Sanitary Sewer Alternative Analysis” prepared by RBF Consulting (“RBF Report”);

WHEREAS, the RBF Report identified a way to connect the Project to the City’s sewer system within existing public right-of-way by running approximately 3,140 feet of pipe from the south end of the Project site east along Business Park Drive, turning south on Redwood Drive and west on J. Rogers Lane and terminating at a manhole in front of the existing City pump station (“Alternative 2 Alignment”);

WHEREAS, the ROD includes a mitigation measure that requires the Tribe’s approved casino and hotel to use recycled wastewater for some of its water supply, and the Parties have determined that in the event the City becomes the managing agency of the existing recycled water distribution system within the City in the future, the City will provide recycled wastewater to the Tribe as a subset of its wastewater services by extending an 8 inch pipe approximately 1,000 feet from the proposed project entry at the intersection of Labath Avenue and Business Park Drive to the existing recycled water main located in Labath Avenue approximately 300 feet north of the intersection of Martin and Labath Avenues.

WHEREAS, the Tribe has the power to plan, finance, acquire, construct, maintain and operate facilities for collection, transportation, treatment, reclamation and disposal of sanitary sewage and similar wastewaters and to prescribe fees and charges for such services on Trust Lands pursuant to the Tribe’s inherent sovereignty as exercised under the Tribe’s Constitution;

WHEREAS, the City has the power to plan, finance, acquire, construct, maintain and operate facilities for collection, transportation, treatment, reclamation, recycling, reuse and disposal of sanitary sewage and similar wastewaters and to prescribe fees and charges for such services pursuant to Government Code sections 38900 *et seq.*, Health and Safety Code sections 5470 *et seq.*, and Cal. Const. Article 11, Section 9 (“Wastewater Services”);

WHEREAS, the Parties have determined that the connection to the City Sewer System and City’s extension of Wastewater Services to the Project is desired to efficiently process wastewater from the Project, minimize any potential off-reservation impacts, and protect the public health, safety and welfare;

WHEREAS, the Tribe desires to connect the Project to the City’s Sewer System along the Alternative 2 Alignment and to receive Wastewater Services from the City for the Project;

WHEREAS, the City is willing to provide Wastewater Services along the Alternative 2 Alignment pursuant to a joint exercise of powers agreement (“Agreement”);

WHEREAS, a federally recognized Indian tribe may enter into a joint powers agreement with other public agencies, including cities, under the Joint Exercise of Powers Act, codified at Government Code section 6500 *et seq.*;

WHEREAS, at a regular meeting of the General Council of the Tribe on June 9, 2012, the General Council authorized the adoption of the limited waiver of sovereign immunity;

WHEREAS, at a regular meeting of the Tribal Council, on June 22, 2012, the Tribal Council authorized the adoption of the Agreement by adopting Resolution No. 12-20;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that the recitals hereto are true and correct and material to this Resolution.

BE IT FURTHER RESOLVED that the City Council hereby finds as follows:

1. The Agreement is a joint exercise of powers agreement in which City and Tribe are cooperatively exercising their mutual authority to provide wastewater services with each agency being responsible for activities within their boundaries to a point of connection.
2. The Agreement was negotiated as provided for in the Compact and constitutes approval of an intergovernmental agreement, as that term is defined in Section 11.8.7 of the Compact, which is designed to mitigate certain Project impacts on the City and compensate the City for its provision of Wastewater Services to the Tribe for the purposes of the Tribe’s gaming operation, including the gaming facility, as a consequence of the Project pursuant to Section 11.8.7, subsections (a)(1) and (a)(2) of the Compact.
3. Approving the Agreement does not approve the Project nor gaming, those approvals have previously been granted by the NIGC and the Governor. The Agreement is a consequence of those prior approvals.
4. Although the Tribe could feasibly provide onsite wastewater services to serve the Project, the FEIS evaluated both onsite and off-site wastewater treatment options and the off-site wastewater treatment option as proposed in the Agreement is the environmentally superior option because it: (a) provides equal or better protection of water resources, including both surface water and groundwater; (b) avoids land dispersal of treated effluent in the Project Area (near the Laguna de Santa Rosa); (c) eliminates the need to dedicate additional land in the Project Area for a WWTP, effluent storage facility, and disposal sprayfields; (d) utilizes existing public infrastructure (Laguna WWTP) which is permitted and regulated by the State; and (e) avoids duplication of public services infrastructure.
5. In undertaking environmental review, the following facts are relevant: (a) the Project has been reviewed under NEPA; (b) the Tribe is not a public agency subject to CEQA; (c) the Project is not subject to CEQA or to City environmental review, design, land use or land development ordinances, plans, manuals or standards; (d) the City does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding

the Project; and (e) the City is not deliberating on, approving, disapproving or otherwise exercising judgment regarding the Project by entering this Agreement.

BE IT FURTHER RESOLVED that the City Council hereby finds that the adoption of this Agreement is statutorily exempt from CEQA pursuant to:

1. Government Code Section 12012.56(b)(1)(C), which expressly exempts intergovernmental agreements, such as this Agreement which mitigates the Project's impacts on the City and provides for compensation for the Wastewater Services, negotiated pursuant to the express authority of, or as expressly referenced in, the Compact, including but not limited to Section 11.8.7; and
2. Public Resources Code Section 21080.21, which exempts the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline of less than one mile in length within a public street or highway or any other public right-of-way, because the only development to occur in the City's jurisdiction under the Agreement is the extension of approximately 3,140 feet of an existing underground sewer pipeline and the possible extension of approximately 1,000 feet of an existing underground recycled water pipeline, both of which will be installed within public streets and their existing rights-of-way.

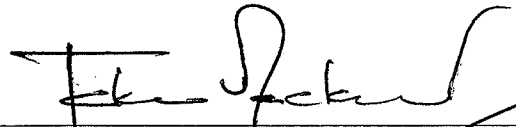
BE IT FURTHER RESOLVED that in making its findings the City Council relied upon and hereby incorporates by reference all of the documents referenced in this Agreement, the materials in the City's file on this matter, correspondence, staff reports, presentations and all other related materials.

BE IT FURTHER RESOLVED that the City Council does hereby authorize and approve the Joint Exercise of Powers Agreement by and between the City of Rohnert Park and the Federated Indians of Graton Rancheria for wastewater services in substantially similar form to the Agreement attached hereto as Attachment 1 and incorporated by this reference, subject to final review, including minor modification, and approval by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions to effectuate this agreement for and on behalf of the City of Rohnert Park, including execution and directing staff to file a notice of exemption.

DULY AND REGULARLY ADOPTED this 26th day of June 2012.

CITY OF ROHNERT PARK



Jake Mackenzie, Mayor



(4)

ATTEST:


JoAnne Currie, City Clerk

OAK #4840-3420-3151 v1

AHANOTU: AYE BELFORTE: AYE CALLINAN: Absent STAFFORD: AYE MACKENZIE: AYE

AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

JOINT EXERCISE OF POWERS AGREEMENT

BY AND BETWEEN

CITY OF ROHNERT PARK

AND

FEDERATED INDIANS OF GRATON RANCHERIA

FOR WASTEWATER SERVICES

DATED AS OF

_____, 2012

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THIS JOINT EXERCISE OF POWERS AGREEMENT (this "**Agreement**"), dated as of this _____ day of _____, 2012, is made by and between the CITY OF ROHNERT PARK, a municipal corporation organized and existing under and by virtue of the laws of the State of California (the "**City**"), and the FEDERATED INDIANS OF GRATON RANCHERIA, a federally recognized Indian tribe (the "**Tribe**") (City or Tribe may be individually referred to as "**Party**" and collectively referred to as the "**Parties**"), with reference to the following facts and intentions:

WHEREAS, the Tribe is comprised of Coast Miwok and Southern Pomo Indians whose aboriginal territory includes Marin and Sonoma Counties, California;

WHEREAS, on October 1, 2010, pursuant to the Graton Rancheria Restoration Act (25 U.S.C. § 1300n-3), the Bureau of Indian Affairs and the Secretary of the Interior approved the Tribe's application ("**Trust Application**") requesting that the United States take title to that certain property comprising approximately 254 acres of land in Sonoma County and hold the property in trust for the benefit of the Tribe as part of the Tribe's Reservation ("**Trust Lands**");

WHEREAS, the Tribe intends to use its Trust Lands for operation of a gaming enterprise pursuant to the terms of the Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. § 2701 *et seq.*, ("**IGRA**");

WHEREAS, the Governor of California and the Tribe entered into a tribal-state compact ("**Compact**") to authorize and prescribe the terms of class III gaming on the Trust Lands pursuant to IGRA and the Compact was subsequently ratified by the California State Legislature and, on May 17, 2012, chaptered by the Secretary of State;

WHEREAS, prior to the lands going into trust, the National Indian Gaming Commission ("**NIGC**") prepared and completed a Final Environmental Impact Statement ("**FEIS**") evaluating the environmental consequences for the construction and operation of the Tribe's proposed gaming enterprise pursuant to the National Environmental Policy Act ("**NEPA**");

WHEREAS, on October 15, 2012, the NIGC published a Record of Decision ("**ROD**") for the proposed project concluding that the newly acquired Trust Lands are Indian lands which are eligible for gaming pursuant to IGRA and adopting a reduced intensity casino and hotel project as the preferred action alternative;

WHEREAS, the preferred action alternative is significantly smaller than the project initially proposed by the Tribe and includes a casino and a 6-story, 200-room hotel ("**Project**") to be built on approximately 66 acres of land located on the northeastern portion of the Trust Lands and situated within the City's urban growth boundary and outside the 100-year flood plain on property designated in the FEIS as the Wilfred site and more particularly identified by the legal description set forth in Exhibit A and the map of property in Exhibit B ("**Project Area**");

WHEREAS, the Project is located on Trust Lands outside the boundaries of the City and the City has no legal authority to exercise jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgment regarding the Trust Lands or the Project or gaming or other activities conducted in the Project Area;

WHEREAS, the City and the Tribe, recognizing that various impacts may arise in the City in connection with the gaming enterprise, entered into that certain Memorandum of Understanding dated October 14, 2003 wherein the Tribe agreed to make certain contributions and community investments to mitigate the impacts of the gaming enterprise (“**MOU**”);

WHEREAS, Section 5 of the MOU recognized the Tribe’s plan to construct and operate an on-site wastewater treatment facility and implement water conservation measures, but contemplated the alternative possibility of the City providing wastewater services to the Tribe, in which case the Tribe would agree to pay applicable fees and charges and its fair share of any capital improvements;

WHEREAS, the FEIS included an analysis of two on-site and one off-site wastewater treatment options for the Project, the latter involving a connection to the sewerage system owned by the City, including sewer lines, interceptor sewers, pumping station, and effluent pipelines (“**City Sewer System**”) and transportation to and treatment and disposal of the wastewater at the Subregional Laguna Wastewater Treatment Plant (“**Laguna WWTP**”);

WHEREAS, at present, wastewater collection, treatment, reclamation, recycling, reuse, and disposal of sanitary sewage have not been extended to the Project Area;

WHEREAS, in the absence of a binding agreement for off-site wastewater treatment, the NIGC identified the on-site wastewater treatment option with no off-reservation discharge as the preferred alternative in the ROD;

WHEREAS, after the NIGC issued the ROD, the Tribe undertook a detailed analysis of the wastewater treatment options for the Project in the December 2, 2011 “Graton Rancheria Off-Site Sanitary Sewer Alternative Analysis” prepared by RBF Consulting (“**RBF Report**”);

WHEREAS, the RBF Report identified a way to connect the Project to the City’s sewer system within existing public right-of-way by running pipes from the south end of the Project site east along Business Park Drive, turning south on Redwood Drive and west on J. Rogers Lane and terminating at a manhole in front of the existing City pump station (“**Alternative 2 Alignment**”), which is shown in Exhibit C;

WHEREAS, the Tribe has the power to plan, finance, acquire, construct, maintain and operate facilities for collection, transportation, treatment, reclamation and disposal of sanitary sewage and similar wastewaters and to prescribe fees and charges for such services on Trust Lands pursuant to the Tribe’s inherent sovereignty as exercised under the Tribe’s Constitution;

WHEREAS, the City has the power to plan, finance, acquire, construct, maintain and operate facilities for collection, transportation, treatment, reclamation, recycling, reuse and disposal of sanitary sewage and similar wastewaters and to prescribe fees and charges for such services pursuant to Government Code sections 38900 *et seq.*, Health and Safety Code sections 5470 *et seq.*, and Cal. Const. Article 11, Section 9 (“**Wastewater Services**”);

WHEREAS, the Parties have determined that the connection to the City Sewer System and City’s extension of Wastewater Services to the Project is desired to efficiently process

wastewater from the Project, minimize any potential off-reservation impacts, and protect the public health, safety and welfare;

WHEREAS, the Tribe desires to connect the Project to the City's Sewer System along the Alternative 2 Alignment and to receive Wastewater Services from the City for the Project;

WHEREAS, a federally recognized Indian tribe may enter into a joint powers agreement with other public agencies, including cities, under the Joint Exercise of Powers Act, codified at Government Code section 6500 *et seq.*;

WHEREAS, an agreement between the Tribe and the City to provide Wastewater Services to the Project, entered pursuant to the authority in the Joint Exercise of Powers Act, is intended to constitute an intergovernmental agreement (“IGA”) pursuant to sections 4.4 of the Compact once the Compact becomes effective;

WHEREAS, as part of this Agreement, the Parties agree upon the operating and maintenance requirements in the form of Operating Requirements attached to this Agreement as Exhibit E;

WHEREAS, the City Council of the City held a duly noticed public meeting to consider adoption of this Agreement and approved its adoption pursuant to Resolution No. 2012_____, which is attached as Exhibit F;

WHEREAS, at a regular meeting of the Tribal Council on June 22, 2012, the Tribal Council authorized the adoption of this Agreement by adopting Resolution No. _____, which is attached as Exhibit G;

WHEREAS, at a regular meeting of the General Council of the Tribe on June 9, 2012, the General Council authorized the adoption of the limited waiver of sovereign immunity by adopting Resolution No. GC-12-16, which is attached as Exhibit I;

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

1. SCOPE, NATURE AND PURPOSE.

1.1 Pursuant to Sections 4.4 and 11.8.7 of the Compact, this Agreement shall be an IGA between the City and Tribe establishing the terms and conditions of Wastewater Service. The purpose of this Agreement is to authorize the City and Tribe, pursuant to that authority in the Joint Exercise of Powers Act under Government Code Section 6502, to jointly exercise their powers to plan, finance, acquire, construct, maintain and operate facilities for collection, transportation, treatment, reclamation, recycling, reuse, and disposal of sanitary sewage and similar wastewaters and to prescribe fees and charges for such services for the benefit of the lands and inhabitants within the Project Area.

1.2 The Parties agree that nothing in this Agreement or the Compact is intended to or shall affect or alter the City and/or the Tribe’s rights or obligations under the

MOU, including but not limited to the Tribe's obligation to make contributions or other payments to the City under the MOU.

2. **TERMINOLOGY.** Capitalized terms in this Agreement shall have the meaning provided for in Exhibit D entitled "Definitions" and attached hereto.

3. **AGREEMENT ADMINISTRATION.**

3.1 The City Manager and/or his or her designee shall represent the City in all matters relating to the administration of this Agreement.

3.2 The Tribal Chair and/or his or her designee shall represent the Tribe in all matters relating to the administration of this Agreement.

4. **WASTEWATER SERVICES.**

4.1 **DEVELOPMENT & CONSTRUCTION OF TRIBAL FACILITIES.**

4.1.1 The Tribe shall, at its sole expense, provide for, develop and construct the sewage disposal infrastructure for the Project within the Project Area, which is referred to herein as the "**Tribal Facilities**" and more particularly defined in Exhibit D.

4.1.2 The Parties have negotiated and agreed that the Tribe shall construct Tribal Facilities to City standards, which standards are set forth in Exhibit E.

4.1.3 The Tribe shall furnish, at its sole expense, all labor, materials, equipment, tools, transportation and services necessary for the successful development and construction of the Tribal Facilities. The Tribe shall give its attention and supervision to the fulfillment of the provisions of this Agreement by its employees and subcontractors and shall be responsible for the timely performance of its obligations required by this Agreement.

4.1.4 No operation or use of the Tribal Facilities shall occur until the Tribal Facilities are reviewed, approved in writing (which approval shall not be unreasonably withheld), and inspected by City officials as provided for in Exhibit E.

4.2 **DEVELOPMENT & CONSTRUCTION OF DEDICATED FACILITIES.**

4.2.1 The Tribe shall provide for, develop and construct the Dedicated Facilities within the City limits, including the new infrastructure repairs, replacements, improvements and/or modifications which will be made to the existing City Sewer System that are more particularly defined in Exhibit D ("**Dedicated Facilities**"), which are necessary to connect to the Tribal Facilities and to accommodate the Tribe's Wastewater needs for the Project. The Tribe shall be solely responsible for all costs associated with

the Tribe's provision, development and construction of the Dedicated Facilities.

4.2.2 The Tribe shall furnish, at the Tribe's sole expense, all labor, materials, equipment, tools, transportation and services necessary for the successful development and construction of the Dedicated Facilities.

4.2.3 Upon City inspection and approval that the Dedicated Facilities conform to the requirements of this Agreement, the Tribe shall irrevocably offer to dedicate the Dedicated Facilities to the City. The Tribe shall make such an offer using the City's standard Irrevocable Offer of Dedication form of agreement. This offer shall remain in effect and shall not be terminated until accepted by Resolution of the City Council. Provided that the Dedicated Facilities meet inspection and are completed, City Manager shall bring a Resolution accepting Tribe's Irrevocable Offer of Dedication before the City Council for approval before the Commencement Date. The City shall incur no liability with respect to this offer and shall not assume any responsibility for the Dedicated Facilities until they have been accepted by appropriate action of the City Council.

4.2.4 The City shall give its attention and supervision to the fulfillment of the provisions of this Agreement by its employees and subcontractors and shall be responsible for the timely performance of its obligations required by this Agreement.

4.3 OPERATION & MAINTENANCE OF TRIBAL FACILITIES.

4.3.1 Operation and maintenance of the Tribal Facilities shall be the responsibility of the Tribe, at its sole expense. The Tribe shall, at its sole expense, make such repairs, replacements, improvements and/or modifications to the Tribal Facilities required under this Agreement, including the Operating Requirements, and as the City determines are reasonably necessary to ensure that the Project Sewer System continues to operate as originally designed and approved and in a manner which does not negatively impact City's Sewer System or the City's ability to provide wastewater services to its ratepayers.

4.3.2 The Tribe shall not destroy, alter, modify, remove or relocate the Tribal Facilities without the City's prior written consent, which consent shall not be unreasonably withheld.

4.4 OPERATION & MAINTENANCE OF DEDICATED FACILITIES.

4.4.1 Day-to-day operation and maintenance of the Dedicated Facilities shall be the responsibility of the City, at the City's sole expense. The City shall, at the Tribe's sole expense, make such repairs, replacements, improvements and/or modifications to the Dedicated Facilities required under this Agreement and as the City determines are reasonably necessary to ensure

that the Project Sewer System continues to operate as originally designed and approved and in a manner which does not negatively impact the City's Sewer System or the City's ability to provide wastewater services to its users.

- 4.4.2 In the event that a repair, replacement, improvement and/or modification to the City Sewer System is necessary to provide the Tribe with Wastewater Services under this Agreement, the City shall make such repair, replacement, improvement or modification, at the Tribe's sole expense.

4.5 OWNERSHIP OF & INTEREST IN FACILITIES & SEWER SYSTEM.

- 4.5.1 The Tribe shall own the Tribal Facilities.
- 4.5.2 Upon adoption of a Resolution of the City Council accepting the Tribe's Irrevocable Offer of Dedication, as provided for in Section 4.2.3, the City shall own the Dedicated Facilities.
- 4.5.3 Notwithstanding any other provision of this Agreement, the Parties acknowledge that the City presently owns and operates City Sewer System and shall retain sole and exclusive authority, ownership and responsibility for those facilities.
- 4.5.4 Notwithstanding any other provision of this Agreement, the Parties acknowledge that the City is a subregional partner in the Santa Rosa Subregional Sewage System, pursuant to the Master Agreement dated April 3, 1975, and as amended (the "**Master Agreement**"). Nothing in this Agreement is intended to or shall affect or alter the City's interest under that Master Agreement.
- 4.5.5 The Parties understand and agree that this Agreement contractually authorizes and guarantees that the Tribe shall receive from the City, upon payment therefor, the Capacity Service (which is more particularly described in Sections 4.7 and 5.2 hereof and the Operating Requirements) and Wastewater Services through the Project Sewer System, provided that in the event of a breach or default, such rights are subject to suspension, termination and other remedies as provided for in Sections 7 and 8.
- 4.5.6 Nothing in this Agreement shall be construed to be the City's express or implied consent to the annexation of the Project Area to the City, nor to the provision of services other than the Wastewater Services under the terms and conditions described herein.

4.6 STANDARDS OF DEVELOPMENT, CONSTRUCTION, OPERATION & MAINTENANCE.

4.6.1 In performing its obligations under this Agreement, the Tribe shall comply with the standards of development, construction, operation and maintenance established in the Operating Requirements, which are set forth in Exhibit E.

4.7 **CONVEYANCE AND PROVISION OF WASTEWATER / CAPACITY SERVICES.**

4.7.1 The Tribe shall exclusively receive Wastewater Services from the City for the Trust Lands, as more particularly described in Sections 6.1 and 6.2 of the Operating Requirements set forth in Exhibit E.

4.7.2 Upon completion of the Parties' development and construction obligations pursuant to Sections 4.1 through 4.6 of this Agreement and fulfillment of the Tribe's financial obligations pursuant to Sections 5 and 6 hereof, all of which are currently estimated to occur by no later than May 15, 2013 ("**Commencement Date**"), the Tribe shall collect and convey sanitary sewage and similar Wastewaters generated from the Project to the City at the Point of Delivery and the City shall commence operation of, and thereafter operate and maintain the Dedicated Facilities and shall provide Wastewater Services and Capacity Service to the Project by conveying, treating and disposing of all Wastewater received into the City Sewer System generated from the Project in a volume and pollutant loading not exceeding the amounts set forth herein.

4.7.3 The Capacity Service in treatment, disposal and reclamation works shall be average dry weather flow ("**ADWF**") expressed in million gallons per day ("**MGD**"). The total ADWF Capacity Service expressed in MGD that the City allots to the Tribe, at Tribe's sole expense, shall be 0.41 MGD. The ADWF Capacity Service paid for by the Tribe and allotted by the City to the Tribe shall be 0.20 MGD for Phase 1 and shall be 0.21 MGD for Phase 2 or as otherwise provided in Section 5.2.1. The Tribe shall have no right to use ADWF Capacity in excess of the amount paid for and allotted to the Tribe hereunder.

4.7.4 The Tribe and the City hereby understand and agree that maximum day peak wet weather flow ("**PWWF**") is a system constraint and so agree that the City shall provide Capacity Service based on PWWF limited to a flow rate of 0.83 MGD (35,553 gallons in one hour) for Phase 1 and 1.7 MGD (70,833 gallons in one hour) in any one hour for Phase 1 and Phase 2 combined if the combined ADWF Capacity Service is 0.41 MGD. If the Tribe elects to purchase only a portion of the Phase 2 ADWF Capacity Service (Section 5.2.1(b)) and cumulative ADWF Capacity Service is less than 0.41 MGD, then the PWWF shall be limited to the ADWF Capacity Service multiplied by a PWWF to ADWF peaking factor of 4.15. The Tribe shall have no right to use PWWF at a flow rate in excess of the amount allotted to the Tribe hereunder.

4.7.5 In providing the Wastewater Services and Capacity Service (which is more particularly described in the Operating Requirements), the City may use the City's capacity in the Laguna WWTP to treat and dispose of or recycle and reuse sewage generated in the Trust Lands and collected by the Project Sewer System. The City shall allow such use of the City's capacity, provided that the City may decline to allow such use for any additional sewage generated by the Project in excess of the wastewater volume, rate of flow, densities or intensities established pursuant to this Agreement. Tribe shall not discharge or cause to be discharged to the Project Sewer System any of the industrial wastes set forth in section 13.36.050 of the City's Municipal Code, as may be amended.

4.8 RECYCLED WATER SERVICES.

4.8.1 The City does not presently have access to recycled water or provide recycled water services to its residents and does not commit to providing the Tribe recycled water services hereunder. Notwithstanding the foregoing, if, however, the City becomes the managing agency of the existing recycled water distribution system within the City in the future, the Tribe may request that the City transport and convey recycled water to the Tribe for the Tribe's use in the Trust Lands ("**Recycled Water Service**").

4.8.2 The Tribe shall, at Tribe's sole expense, develop and construct the necessary infrastructure to convey recycled water to the Trust Lands ("**Recycled Water Facilities**"), consistent with the standards established in Exhibit E. The Recycled Water Facilities are comprised of approximately 1,000 feet of a new 8-inch recycled water main to be installed entirely underground within the existing public right-of-way from the southern boundary of the Project Area at the intersection of Labath and Business Park Drive, to the existing recycled water main located within Labath Avenue, approximately 300 feet north of Martin Avenue / Labath Avenue intersection. The location of the Recycled Water Facilities is depicted in Exhibit C, hereto.

4.8.3 Upon the City's inspection and approval of the Recycled Water Facilities, the Tribe shall irrevocably offer to dedicate that portion of the Recycled Water Facilities within the City limits to the City and the City may accept the dedication in the same manner as provided for in Section 4.2.3.

4.8.4 Upon acceptance of the dedication, the City shall provide Recycled Water Service to the Tribe on a mutually acceptable date. Said Recycled Water Service shall become part of the Wastewater Services provided for under this Agreement and shall be operated and maintained consistent with the standards established in Exhibit E and subject to all of the provisions hereof, including but not limited to, those provisions for payment provided

for in Sections 5 and 6 and termination, suspension and other remedies provided for in Sections 7 and 8.

4.8.5 Operation and maintenance of the Recycled Water Facilities in the Project Area shall be the responsibility of the Tribe, at its sole expense. The Tribe shall, at its sole expense, make such repairs, replacements, improvements and/or modifications to the Recycled Water Facilities required under this Agreement, including the Operating Requirements, and as the City determines are reasonably necessary to ensure that the recycled water system continues to operate as originally designed and approved and in a manner which does not negatively impact the City's recycled water system or the City's ability to provide recycled water services to its ratepayers.

4.8.6 The Tribe shall not destroy, alter, modify, remove or relocate the Recycled Water Facilities without the City's prior written consent, which consent shall not be unreasonably withheld.

5. FEES AND CHARGES.

5.1 **FACILITIES COSTS.** The Tribe shall be solely responsible for paying all design, permitting, construction, review, inspection, operating and maintenance costs incurred by the Parties for the Tribal Facilities and Dedicated Facilities, as well as any improvements to the Project Sewer System as provided for in Section 4.4. These costs shall also include the City legal and staff time required to prepare this Agreement and to achieve compliance herewith. The City shall provide the Tribe with an invoice for any such costs the City incurs and the Tribe shall provide remuneration as provided for in Section 6.

5.1.1 If the City determines that it is necessary to contract with outside consultants in order to satisfy its obligations under Section 4 of this Agreement, the Tribe shall be solely responsible for the actual and administrative costs of contracted and additional services and provide remuneration as provided for in Section 6, provided however that the rate for such services will be established in a manner consistent with existing City practices.

5.1.2 The Tribe shall pay, when due, all persons furnishing labor or materials in connection with any work to be performed by or on behalf of the Tribe related to this Agreement, and shall keep the City's interests in its public infrastructure free and clear of any related mechanics' liens or stop notices related to such work.

5.2 PUBLIC FACILITIES FINANCING PLAN ("PFFP") FEES.

5.2.1 City has prepared and adopted the PFFP in order to identify capital facilities necessary to serve new development, and to develop a comprehensive strategy for managing the financing of such facilities, among other purposes. The Tribe shall pay all applicable PFFP Fees and

other City fees related to impacts on the City of reserving sufficient capacity to provide Wastewater Services to the Tribe. The nature of the Capacity Service is more particularly described in the Operating Requirements.

- (a). Prior to the Commencement Date, upon request of the Tribe, the City shall notify the Tribe of the total applicable PFFP Fees for the Project (including Phases 1 and 2), as provided for in Section 5.2.2, and the Tribe shall pay the PFFP Fees to the City within thirty (30) days of the date of the notice.
- (b). Prior to the Commencement Date, the Tribe may alternatively request that the City calculate the PFFP Fee for Phase 1 of the Project. The City shall notify the Tribe of the applicable PFFP Fees for Phase 1 of the Project, as provided for in Section 5.2.2, and the Tribe shall pay the PFFP Fees for Phase 1 of the Project within 30 days of receipt of the notice. No later than eighteen (18) months after the Commencement Date, the Tribe shall notify the City of its intent to proceed with all or a portion of Phase 2 of the Project. In the event the Tribe timely affirms its intent to proceed with all or a portion of Phase 2, the City shall notify the Tribe of the applicable PFFP Fees for such portion or all of Phase 2 of the Project, as provided for in Section 5.2.2, and the Tribe shall pay the PFFP Fees applicable to the portion or all of Phase 2 of the Project for which the Tribe intends to proceed no later than thirty (30) days after the mailing of notice of the applicable Phase 2 PFFP Fee amount. In the event the Tribe timely notifies the City of its intent not to proceed with Phase 2, or fails to timely notify the City of its intent regarding Phase 2, then the Capacity Service shall remain at the amount purchased for Phase 1 for the life of this Agreement, unless the Parties amend this Agreement. Whatever portion, if any, the Tribe elects to purchase in Phase 2, then the Capacity Service shall remain at the amount purchased at that Phase 2 combined with the Phase 1 portion for the life of this Agreement, unless the Parties amend this Agreement. The Parties expressly understand and agree that any remainder not timely purchased will no longer be reserved for the Tribe.
- (c). In the event the Tribe fails to timely make any PFFP Fee payments to the City, the City may terminate this Agreement for cause as provided for in Section 7.2.3.
- (d). In no event shall the Tribe be entitled to more than the total Capacity Service allotment of 0.41 MGD, as more particularly set forth in Section 4.7.3.

5.2.2 The PFFP Fees shall be determined by the City at the rate set forth in the City's approved Public Facilities Financing Plan (PFFP) based upon the rate category that is most comparable to the Tribe's use as determined by the City Manager or his or her designee based on reasonable evidence. Presently, the City has determined that the most comparable rate category under the PFFP Fee schedule adopted by the Council on May 8, 2012 by Resolution 2012-44 is provided for in Table 3 for non-residential wastewater fees on a per gallon basis for retail and/or hotel/motel in the Northwest Specific Plan Area, which is currently calculated to be \$64.30 per gallon per day. However, nothing in this Agreement shall be construed to limit the City's authority to update or amend the PFFP schedule, so long as the City applies a similar "fair share" methodology to the calculation of the PFFP Fee applicable to the Tribe as the City applies to the calculation of other PFFP Fees. The Tribe's PFFP Fees shall be based on the PFFP Fee schedule in effect at the time of payment. Provided that the City substantially complies with this Section 5.2.2, the Tribe hereby covenants not to sue the City in connection with, and waives any and all rights to challenge, the PFFP Fee, including any updates to the PFFP, on any grounds whatsoever.

5.3 **WASTEWATER SERVICES CHARGES.** In consideration of the City's provision of Wastewater Services, the City shall charge the Tribe and the Tribe agrees to and shall pay the City amounts the same or equivalent to the any and all Wastewater Services charges in effect at the time which, if the Project Area were not in trust status, would be charged by the City ("**Wastewater Service Charges**"). The Wastewater Services Charges shall be based upon the rate category most comparable to the Tribe's discharge as determined by the City Manager or his or her designee based on reasonable evidence. Presently, the City has determined that the most comparable rate category of Wastewater Service Charges is "Non-Residential - Medium Strength" under Ordinance No. 837; provided, however, that the Tribe shall pay an additional ten percent (10%) operational fee on that category in consideration of, among other things, the volume of wastewater that will be generated, the Trust Lands being located outside the City's boundaries, the Tribe's unique status as a sovereign entity, and the considerable time and resources the City will expend in carrying out its obligations under this Agreement. It is expressly understood and agreed upon by the Tribe that the City may update rates, adopt new rates, and/or change rate calculation methodologies from time to time, in City's sole discretion so long as the City applies a similar methodology to the calculation of the Tribe's Wastewater Service Charges as the City applies to the calculation of other Wastewater Service Charges. Provided that the City substantially complies with this Section 5.3, the Tribe hereby covenants not to sue the City in connection with, and waives any and all rights to challenge, the Wastewater Service Charges on any grounds whatsoever.

5.4 **RECYCLED WATER SERVICE CHARGES.** In consideration of the City's provision of Recycled Water Services, the City shall charge the Tribe and the Tribe agrees to and shall pay the City amounts the same or equivalent to any and all recycled

water service charges in effect at the time, which, if the Project Area were not in trust status, would be charged by the City ("**Recycled Water Service Charges**"). The Recycled Water Service Charges shall be based upon the rate category most applicable to the Tribe's usage as determined by the City Manager or his or her designee based on reasonable evidence; provided however that the Tribe shall pay an additional ten percent (10%) operational fee on that category in consideration of, among other things, the volume of wastewater that will be generated, the Trust Lands being located outside the City's boundaries, the Tribe's unique status as a sovereign entity, and the considerable time and resources the City will expend in carrying out its obligations under this Agreement. It is expressly understood and agreed upon by the Tribe that the City may update rates, adopt new rates, and/or change rate calculation methodologies from time to time, in City's sole discretion so long as the City applies a similar methodology to the calculation of the Tribe's Recycled Water Service Charges as the City applies to the calculation of other Recycled Water Service Charges. Provided that the City substantially complies with this Section 5.4, the Tribe hereby covenants not to sue the City in connection with, and waives any and all rights to challenge, the Recycled Water Service Charges on any grounds whatsoever. In the event that the City has not adopted rates for recycled water at the time Recycled Water Service commences, the City shall charge and the Tribe agrees to and shall pay the City amounts the same or equivalent to the City's domestic water charges, until such time as Recycled Water Service Charges are adopted by the City. The domestic water charge the City charges the Tribe shall be based upon the rate category most comparable to the Tribe's usage as determined by the City Manager or his or her designee, based on reasonable evidence.

5.5 **LAGUNA WWTP CAPACITY COSTS.** In addition to the Wastewater Services Charges provided for in Section 5.3 and the PFFP Charges in Section 5.2, the Tribe shall pay the costs incurred by the City, up to a maximum cost of Six Hundred Thousand Dollars per year (\$600,000), under the "Agreement For Interim Transfer of Capacity" between the City of Santa Rosa and the City of Rohnert Park, and dated as of September 25, 2001 ("**Interim Transfer Agreement**"), as may be amended, which is incorporated herein by reference, provided that the City continues to provide to the Tribe Wastewater Services and Capacity Service, until such time as that agreement is terminated by the parties thereto. In the event that the agreement is amended, the Parties hereto may renegotiate the Laguna WWTP capacity costs which the Tribe is obligated to pay under this Section 5.5 and memorialize their agreement with a written amendment to this Agreement.

5.6 **EFFECT OF PROPOSITION 218 AND RATE ROLLBACKS.**

5.6.1 The City and the Tribe agree that the fees and changes described in Sections 5.1 through 5.5 and 5.10 are being incurred voluntarily by negotiation, are not being imposed upon the Tribe by the City, and that the Tribe shall not have any rights to receive Proposition 218 notices or cast protests under Proposition 218.

5.6.2 Notwithstanding Sections 5.1 through 5.5, in the event that any of the fees and costs described in Sections 5.1 through 5.5 are rolled back or reduced pursuant to an initiative or referendum or similar measure enacted pursuant to Proposition 218, the rollback or reduction shall not affect the fees and costs the Tribe is required to pay under this Agreement and the Tribe shall continue to pay the rate applicable under the schedule in effect immediately prior to the rollback or reduction. The Tribe shall receive the benefit of any other future rate reductions that may be enacted by the City Council from time to time.

5.7 **TAXES, ASSESSMENTS AND PREMIUMS.** The Tribe shall be solely responsible for the payment of any federal, state, or local income tax, social security tax, workers' compensation insurance, state disability insurance, and any other taxes, assessments and premiums or insurance contributions which the Tribe is responsible for paying under federal, state or local law by reason of or in connection with the obligations to be performed under this Agreement.

5.8 **THIRD PARTIES.** The City shall not be obligated or liable for payment hereunder to any party engaged by Tribe for the performance of the Tribe's obligations under this Agreement. The Tribe's duty to indemnify, as provided for in Section 9.2, shall include the duty to protect the City from such third party claims.

5.9 **FINES.** The Tribe shall be solely responsible for regulatory fines and penalties incurred as a result of the Tribe's actions or omissions under this Agreement. The City shall be responsible for regulatory fines and penalties incurred as a result of the City's sole actions or omissions under this Agreement.

5.10 **Negotiation Costs.** The City shall invoice the Tribe and the Tribe shall be solely responsible for the reimbursement of the City's actual costs incurred in negotiating this Agreement, which costs include the cost of City department heads, legal counsel, and similar personnel to draft, review and implement this Agreement.

6. **TRIBAL PAYMENTS.**

6.1 **DEPOSIT ACCOUNT.**

6.1.1 The Tribe shall deposit, via three installment payments, a cash sum with the City in an amount equal to three (3) times the monthly amount of the charges and costs set forth in Section 5.4 and 5.5 of this Agreement, which the Parties agree is fairly estimated at five hundred thousand dollars (\$500,000.00) (the "**Deposit**"). For the first installment, the Tribe shall deposit a cash sum with the City in the amount of One Hundred Thousand dollars (\$100,000.00) within thirty (30) days after execution of this Agreement. For the second installment, the Tribe shall deposit an additional cash sum with the City in the amount of One Hundred and Fifty Thousand dollars (\$150,000.00) no later than the Commencement Date.

For the third installment, the Tribe shall deposit an additional cash sum with the City in the amount of Two Hundred and Fifty Thousand dollars (\$250,000.00) no later than the opening date, which shall be the date on which the Tribe commences gaming operations which are open to the public (“**Opening Date**”). Together these three installment payments total five hundred thousand dollars (\$500,000.00).

- 6.1.2 The City shall hold the Deposit in a separate, interest-bearing deposit account. Any interest accruing on the balance of the Deposit shall remain in the deposit account, accruing to the benefit of the Tribe.
 - 6.1.3 If the Tribe breaches any provision of this Agreement, the City may (but shall not be required to), without prejudice to any other remedy it has, apply all or part of the Deposit to: (i) any delinquent invoice, (ii) any amount that the City may spend or become obligated to spend in exercising City’s rights under this Agreement, (iii) any liquidated damages owed pursuant to Sections 8.1.3 and 8.2.2; (iv) any late charges not paid in accordance with Section 6.1.6, and/or (v) any expense, loss, or other damage that the City may suffer because of the Tribe’s default.
 - 6.1.4 Tribe may not assign or encumber the Deposit account without City’s prior, written consent. Any attempt to do so shall be void and shall not be binding on the City.
 - 6.1.5 The City shall provide written notice to the Tribe of the amount of any deductions which are made from the deposit account. The Tribe shall replenish the deposit account to an amount sufficient to restore the Deposit by the amount withdrawn and to the amount prior to the withdrawal within fifteen (15) days of the mailing of the notice.
 - 6.1.6 Any amount of the deposit account not timely replenished pursuant to 6.1.5, shall be subject to a five percent (5%) late charge, provided however, that in the event the Tribe fails to replenish the Deposit on two (2) consecutive occasions, the late charge shall thereafter be ten percent (10%). The Parties agree that this late charge represents a reasonable estimate of the expenses the City will incur. The City’s acceptance of the late payment shall not constitute a waiver of the Tribe’s breach with respect to the overdue amount or prevent the City from exercising any of the rights and remedies available to the City under this Agreement.
 - 6.1.7 If the Tribe performs every provision of this Agreement to be performed by the Tribe, the unused portion of the Deposit (with interest) shall be returned by the City to the Tribe within thirty (30) days following the expiration or termination of this Agreement.
- 6.2 **TIMING OF PAYMENT AND INVOICES.** Except as otherwise provided for herein or agreed to by the Parties in writing, City shall monthly in arrears (or other

applicable billing procedures) render invoices outlining the items for which payment is requested for any and all costs, fees and charges, and fines required under Sections 5.1 through 5.5 and Section 5.9 and 5.10 of this Agreement. Invoices shall be due and Tribe shall pay said invoices within thirty (30) days of mailing the invoice.

6.2.1 If Tribe disputes any of City's costs and/or charges, it shall give written notice to the City Manager within ten (10) days of the City mailing an invoice of such disputed fees and clearly state the basis for the dispute. Within ten (10) days, the City Manager or his or her designee shall render a decision regarding the dispute. The findings of the City Manager shall be based on reasonable evidence and meet any applicable legal requirements. For purposes of Section 8 of this Agreement, the City Manager's decision shall be considered to be a final decision which may be subject to dispute resolution. Any amount found to be due shall be immediately due and payable upon the receipt of notice.

6.2.2 In the event that the Tribe fails to pay an invoice or any portion thereof, it shall become delinquent thirty (30) days after mailing the invoice. Invoices not paid by this date shall be subject to a penalty of ten percent (10%). The Tribe shall pay this amount for each calendar month in which all or any part of any invoice payment remains delinquent. The Parties agree that this late charge represents a reasonable estimate of the expenses the City will incur. The City's acceptance of the late payment shall not constitute a waiver of the Tribe's breach with respect to the overdue amount or prevent the City from exercising any of the rights and remedies available to the City under this Agreement.

6.2.3 By way of example, if the City mailed an invoice to the Tribe on January 1st for \$50,000 and the Tribe failed to pay the invoice by January 31st, the City would apply the 10% delinquency penalty described in Section 6.2.2 and the amount due would be \$55,000. If there were sufficient funds available, the City would deduct the \$55,000 from the deposit account and notify the Tribe of the same. If the Tribe failed to replenish the \$55,000 in the deposit account within 15 days after the date of the notice, then the City would impose the 5% late charge described in Section 6.1.6 and the Tribe would owe \$57,750 to replenish the deposit account.

6.3 **NATURE OF PAYMENTS.** The Parties expressly understand and agree that any and all costs, fees, and charges incurred under this Agreement are due and owing at the time set forth herein regardless of the timing or amount of payments made to the City by the State Gaming Agency under the Graton Mitigation Fund. The Parties further agree that Section 11.8.7 of the Compact allows the Parties to negotiate compensation for public services in this manner. Because the payments required under this Agreement would otherwise represent operating costs for the Tribe, and the Tribe is the exclusive source of funds for the Wastewater Services, the Parties have determined that requiring upfront payment of any and all costs,

fees and charges incurred under this Agreement is a reasonable and appropriate means of compensation.

6.4 **DELINQUENCY.** In the event that the Tribe fails to timely pay an invoice or timely replenish the Deposit account, the City may suspend or terminate Wastewater Services as provided for in Section 7 of this Agreement. In addition, the City may use all available remedies including initiation of an action in court to collect the unpaid invoice(s) and all applicable penalties. The Tribe expressly waives its right to assert sovereign immunity in such a proceeding. The Tribe shall be responsible for all fees and costs incurred by the City to obtain delinquent payments, including, without limitation, attorneys fees and costs.

6.5 **CREDITS.**

6.5.1 The City may credit to the Tribe any amount of money which the Tribe pays the City in excess of the amount due under the invoice(s), which sum shall be applied as a credit towards payments due on the next invoice that the Tribe would otherwise be required to make.

6.5.2 The City agrees to allow the Tribe to represent to the State Gaming Agency that payments made under this Agreement may be credited as payments to the City under the Graton Mitigation Fund, which fund is more particularly described in Section 4.5.1 of the Compact; provided however, that any such credits shall in no way affect or offset the payments made to the City from the Graton Mitigation Fund pursuant to the MOU.

7. **TERM & TERMINATION.**

7.1 **TERM.** This Agreement shall become effective upon its execution by the Parties hereto and shall continue in full force and effect until terminated.

7.2 **SUSPENSION/TERMINATION.**

7.2.1 **SUSPENSION/TERMINATION OF WASTEWATER SERVICES FOLLOWING DISPUTE RESOLUTION.** The City may suspend and/or terminate the Tribe's Wastewater Services (which may include Recycled Water Services) when: (i) any provision of this Agreement, the Operating Requirements, or the Regulations is violated by the Tribe, (ii) a discharge of wastewater causes or threatens to cause a condition of contamination, pollution, or nuisance, as defined in the City of Rohnert Park Municipal Code, or (iii) unfavorable conditions of the Project Sewer System exist as determined by the City Manager or his or her designee based upon reasonable evidence. This provision is in addition to other statutes, rules, or regulations authorizing suspension and/or termination of service. Prior to suspension or termination of Wastewater Services pursuant to this Section 7.2.1, the City shall seek correction of defaults and/or resolution of disputes, pursuant to Section 8 hereof. During the period of time the

Wastewater Service is suspended or terminated, the remainder of the Agreement shall remain in effect.

- 7.2.2 **IMMEDIATE SUSPENSION/TERMINATION OF WASTEWATER SERVICES.** Notwithstanding Section 7.2.1, the City may immediately suspend and/or terminate Tribe's Wastewater Services (which may include Recycled Water Services) in the event the Project causes a significant negative impact to the City's Sewer System or the City's ability to provide wastewater services to its ratepayers due to: (i) a significant threat to public health or safety, and/or (ii) if a default or mediated dispute is not resolved through the procedures established in Section 8. During the period of time the Wastewater Service is suspended or terminated, the remainder of the Agreement shall remain in effect.

In addition to or instead of the option of immediate suspension/termination of Wastewater Services, if the City reasonably believes that the Tribe's violation of this Agreement has caused or will cause a significant threat to public health or safety, the City may pursue any and all other remedies available in law or equity, including *ex parte* applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for declaratory relief or specific performance of this Agreement. The result of every action or omission by the Tribe whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity to remedy such nuisance shall be applicable against every such result and may be exercised by the City, including provisions of the Rohnert Park Municipal Code governing nuisances, including those provisions requiring reimbursement to the City for any costs incurred in removing, abating, or remedying said nuisance. The Tribe expressly waives its right to assert sovereign immunity in such a proceeding.

- 7.2.3 **Termination of Agreement for Cause.** Notwithstanding the provisions of Section 7.2.1, 7.2.2 or 8, the City may terminate this Agreement when the Tribe causes a violation of any provision of this Agreement, the Operating Requirements, or the Regulations, or if the Tribe's operation of the Tribal Facilities or Recycled Water Facilities results in a discharge of wastewater that causes or threatens to cause a condition of contamination, pollution, or nuisance, as defined in the City of Rohnert Park Municipal Code as determined based on reasonable evidence. Notwithstanding the foregoing, if the Tribe's operation of the Tribal Facilities causes a violation of the Operating Requirements or this Agreement, the City may, in its sole discretion, nonetheless continue to provide Recycled Water Services to the Tribe in accordance with this Agreement. Similarly, if the Tribe's operation of the Recycled Water Facilities causes a violation of the Operating Requirements or this Agreement, the City may, in its sole

discretion, nonetheless continue to provide Wastewater Services (other than the Recycled Water Services) to the Tribe in accordance with this Agreement.

- 7.3 **Payment Upon Termination.** In the event this Agreement is terminated, pursuant to this Section 7, the Tribe shall pay for the actual value of the service or work performed under the Agreement up to the time of termination. In the event that termination requires removal of or modification to the Project Sewer System or recycled water system, the Tribe and the City shall timely complete such work at Tribe's sole expense. Upon termination of the Agreement, the City will submit a final invoice to the Tribe as provided for herein. Termination will not result in reimbursement or refund of any fees or other charges incurred or paid by the Tribe. Further, the City shall incur no liability or damages for the City's decision to terminate.
- 7.4 **Termination for Non-Commencement.** The Parties acknowledge and agree that the City's performance of its obligations by the Commencement Date is of the essence in order to allow the Project to be operational. Accordingly, if, after the conditions precedent set forth in Section 4.2 have been timely satisfied, the City fails to timely accept the Dedicated Facilities or to connect the Tribal Facilities to the Dedicated Facilities and provide Wastewater Services, the Tribe's remedies shall be limited to: (i) terminating this Agreement or (ii) pursuing injunctive relief, including *ex parte* applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default and actions for specific performance of this Agreement.
8. **DEFAULT AND DISPUTE RESOLUTION.** In the event of a default under this Agreement, the Parties recognize that a mutually binding and judicially enforceable method of correcting defaults and resolving potential disputes that may arise under this Agreement is desirable and beneficial and agree to the following:
- 8.1 **FACILITIES DEFAULT (NON-HEALTH RELATED).** The occurrence of any of the following, provided that it does not pose a significant threat to public health and safety, shall constitute a default by Tribe under this Agreement: (i) the Tribe's failure to develop, construct, operate or maintain the Tribal Facilities or Recycled Water Facilities in accordance with the terms of this Agreement, and/or (ii) the Tribe's failure to perform any of its other obligations with respect to the Tribal Facilities or Recycled Water Facilities hereunder. In the event of such a default, the default shall be resolved as follows:
- 8.1.1 The City shall notify the Tribe in writing of the condition of the Tribal Facilities or Recycled Water Facilities which do(es) not conform to the terms of this Agreement and specify in detail the deficiencies and the actions required to be taken by the Tribe to cure the deficiencies.

- 8.1.2 Upon notification of any deficiency caused by the Tribal Facilities or Recycled Water Facilities or the operation of such facilities, the Tribe shall correct, remedy or cure the deficiency within the timeframe specified by the City.
- 8.1.3 If the Tribe fails to cure any such deficiencies following written notice and an opportunity to cure as provided for above, the Tribe shall pay to the City liquidated damages in the amount of two thousand five hundred dollars (\$2,500.00) per day for each and every day's delay in curing the deficiency beyond the completion date so specified. The Parties agree that this liquidated damages charge represents a reasonable estimate of the expenses the City will incur. The City's acceptance of the liquidated damages shall not constitute a waiver of the Tribe's breach or prevent the City from exercising any of the rights and remedies available to the City under this Agreement.
- 8.1.4 If the Tribe fails to cure any such deficiencies following written notice and an opportunity to cure as provided for above the City, at its option and without waiving the City's rights for the Tribe's failure to perform or releasing the Tribe from such obligation, may develop, construct, operate or maintain and/or make the necessary repairs and replacements to the Tribal Facilities or Recycled Water Facilities at Tribe's sole expense. As provided for in Section 6.2, the City shall invoice and the Tribe shall reimburse the City all of the City's costs incurred in curing the deficiency, plus a ten percent (10%) administrative fee.
- 8.1.5 In addition to the foregoing remedies, the City may also pursue any and all other remedies available in law or equity in the event of the Tribe's breach of its obligations with respect to the Tribal Facilities or Recycled Water Facilities set forth herein, including *ex parte* applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for declaratory relief or specific performance of this Agreement. The result of every action or omission by the Tribe whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity to remedy such nuisance shall be applicable against every such result and may be exercised by the City, including provisions of the Rohnert Park Municipal Code governing nuisances, including those provisions requiring reimbursement to the City for any costs incurred in removing, abating, or remedying said nuisance. The Tribe expressly waives its right to assert sovereign immunity in such a proceeding.

8.2 **FACILITIES DEFAULTS (HEATH-RELATED).** The occurrence of any of the following, provided that it has caused or will cause a significant threat to public health and safety based on reasonable evidence, shall constitute a default by the

Tribe under this Agreement: (i) the Tribe's failure to develop, construct, operate or maintain the Tribal Facilities or Recycled Water Facilities in accordance with the terms of this Agreement, and/or (ii) the Tribe's failure to perform any of its other obligations with respect to the Tribal Facilities hereunder. In the event of such a default, the default shall be resolved as follows:

8.2.1 The City may, in its sole discretion:

- (a). Immediately suspend or terminate Wastewater Services, as provided for in Section 7.2.2.
- (b). Terminate the Agreement for cause, as provided for in Section 7.2.3.
- (c). Notify the Tribe of the condition of the Tribal Facilities or Recycled Water Facilities which does not conform to the terms of this Agreement and specify the deficiencies and the actions required to be taken by the Tribe to cure the deficiencies, including, but not limited to an order to cease and desist the flow of Wastewater. Upon receipt of such notice, the Tribe shall cure the deficiencies as soon as possible and no later than the time specified by the City.
- (d). Develop, construct, operate or maintain and/or make the necessary repairs and replacements to the Tribal Facilities or Recycled Water Facilities at the Tribe's sole expense, including entering upon the Tribe's Project Area to block the flow of Wastewater. As provided for in Section 6.2, the City shall invoice and the Tribe shall reimburse the City all of the City's costs incurred in curing the deficiency, including attorney's fees for actions taken to cure the deficiency, plus a ten percent (10%) administrative fee, prior to any recommencement of Wastewater flows.
- (e). Decline to continue or recommence Wastewater Service to the Tribe unless the Tribe first (a) satisfactorily demonstrates its ability to Comply to the City Manager or his or her designee, and/or (b) files a satisfactory cash deposit, payable to the City, in a sum not to exceed a value determined by the City Manager or his or her designee, to be necessary to achieve consistent compliance.

8.2.2 If the Tribe fails to cure any such deficiencies or does not comply with an order of the City made pursuant to Section 8.2.1, the Tribe shall pay to the City liquidated damages in the amount of two thousand five hundred dollars (\$2,500.00) per day for each and every day's delay in curing the deficiency beyond the completion date so specified. The Parties agree that

this liquidated damages charge represents a reasonable estimate of the expenses the City will incur. The City's acceptance of the liquidated damages shall not constitute a waiver of the Tribe's breach or prevent the City from exercising any of the rights and remedies available to the City under this Agreement.

8.2.3 In addition to or instead of the foregoing remedies, the City may also pursue any and all other remedies available in law or equity in the event of the Tribe's breach of its obligations with respect to the Tribal Facilities or Recycled Water Facilities set forth herein, including *ex parte* applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for declaratory relief or specific performance of this Agreement. The result of every action or omission by the Tribe whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity to remedy such nuisance shall be applicable against every such result and may be exercised by the City, including provisions of the Rohnert Park Municipal Code governing nuisances, including those provisions requiring reimbursement to the City for any costs incurred in removing, abating, or remedying said nuisance. The Tribe expressly waives its right to assert sovereign immunity in such a proceeding.

8.3 **OTHER DEFAULTS.** For other defaults under this Agreement relating to anything other than the defaults described in Sections 8.1 and/or 8.2, either Party may initiate mediation to resolve any dispute arising under this Agreement. The Tribe expressly waives and waives its right to assert sovereign immunity in such a proceeding. The mediation shall be conducted in accordance with the following procedures:

8.3.1 The Parties shall select a mutually agreeable mediator to conduct the mediation in Sonoma County.

8.3.2 Prior to the mediation, the parties shall exchange any documents reasonably necessary to resolve the matter to be mediated.

8.3.3 Neither Party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.

8.3.4 The costs of the mediator, if any, shall be paid equally by the Parties.

9. **INSURANCE AND INDEMNIFICATION.**

9.1 **INSURANCE.**

- 9.1.1 The City shall maintain in full force and effect its current insurance coverage type and limit through Redwood Empire Municipal Insurance Fund (REMIF) or other municipal insurance provider.
- 9.1.2 The Tribe shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in the attached Exhibit H, which is incorporated by this reference as though set forth in full.
- 9.1.3 In order to effectuate the insurance coverage, the Tribe shall expressly waive, and waive its right to assert, sovereign immunity up to the limits of the Policy, in accordance with the tribal resolution referenced in Section 9.7 below, in connection with any claim for bodily injury, personal injury, or property damage, arising out of, connected with, or relating to the operation of the Project Sewer System; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and waived its right to assert, sovereign immunity for the purpose of mediation of those claims up to the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds the Policy limits.

9.2 **TRIBE INDEMNIFICATION.** The Tribe, to the fullest extent allowed by law, agrees to and shall indemnify, protect, defend (as set forth in Section 2788 of the California Civil Code) and hold harmless (with counsel reasonably acceptable to the City) the City and the City Representatives from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by: (a) any act, omission or negligence of the Tribe or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with the performance of its obligations under this Agreement, (b) any negligence of the Tribe, including Claims relating to the City's active negligence, except where such claims are caused by the sole negligence or willful misconduct of the City, (c) claims to attack, set aside, void or annul the City's approval of this Agreement, or the City's CEQA determination with respect to the approval of this Agreement, and (d) the implementation of this Agreement by the City (collectively, "**Claims**"). In the event that any Claim is brought against the City or City Representatives, the Tribe upon notice from the City shall pay for all the City's legal and staff costs incurred in defending any such claim. The City shall defend the Claim, at the Tribe's sole expense, and shall consult with the Tribe during the pendency of the action or proceeding. The provisions of this section shall survive completion of the Wastewater Services and/or the expiration or other termination of this Agreement. The Tribe acknowledges and agrees that

the obligations of the Tribe under this Section 9.2 are material elements of the consideration to the City for the performance of its obligations under this Agreement, and that City would not have entered into this Agreement unless such obligations were as provided for herein.

- 9.3 **CITY INDEMNIFICATION.** The City, to the fullest extent allowed by law, agrees to and shall indemnify, protect, defend and hold harmless the Tribe and Tribal Representatives from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by: (a) the sole or active negligence or willful misconduct of the City or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with the performance of its obligations under this Agreement, and (b) any sole negligence of the City (collectively, "**Tribal Claims**"). In the event that any Tribal Claim is brought against the Tribe or Tribal Representatives, the City upon notice from the Tribe shall pay for all Tribe's legal and staff costs incurred in defending any such claim. The provisions of this section shall survive completion of the Wastewater Services and/or the expiration or other termination of this Agreement.
- 9.4 **SCOPE OF OBLIGATION.** The Tribe's duty to indemnify, protect, defend and hold harmless as set forth herein shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Tribe under worker's compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by the Tribe and shall continue to bind the parties after termination/completion of this Agreement. This indemnification shall be regardless and not in any way limited by the insurance requirements of this contract. This indemnification is for the full period of time allowed by law and shall survive the termination of this Agreement.
- 9.5 **CITY REPRESENTATIVE LIABILITY.** No City Representative shall be personally liable to the Tribe or otherwise in the event of any default or breach of the City, or for any amount which may become due to the Tribe or any successor in interest, for any obligations directly or indirectly incurred under the terms of this Agreement.
- 9.6 **TRIBAL REPRESENTATIVE LIABILITY.** No Tribal Representative shall be personally liable to the City or otherwise in the event of any default or breach of the Tribe, or for any amount which may become due to the City or any successor in interest, for any obligations directly or indirectly incurred under the terms of this Agreement.
- 9.7 **LIMITED WAIVER OF SOVEREIGN IMMUNITY.**

- 9.7.1 For the purpose of actions or mediations based on disputes between the City and the Tribe that arise under or pertain to this Agreement and the enforcement of any judgment or award resulting therefrom, the Tribe expressly, unequivocally, and irrevocably agrees to and shall (i) waive the Tribe's right to assert sovereign immunity in favor of the City as to disputes arising under, or in connection with, the Agreement and any other agreement executed by the Tribe in connection with the Agreement, (ii) waive any requirement that disputes be heard in a court or other dispute resolution forum of the Tribe, whether under the doctrines of exhaustion of Tribal remedies, comity, or otherwise; and (iii) consent to the jurisdiction of state and federal courts and to mediation as well as the application of the laws of the state of California to govern and interpret the Agreement.
- 9.7.2 The waivers and consents to jurisdiction expressly provided for under this Section 9 and elsewhere in the Agreement shall extend to all mediations and civil actions authorized by this Agreement, including, but not limited to, actions to compel mediation, any mediation proceeding herein, any action to confirm, modify, or vacate any mediation award or to enforce any judgment, and any appellate proceeding emanating from any such proceedings.
- 9.7.3 The Tribal Council shall adopt, and at all times hereinafter shall maintain in continuous force, a formal Resolution Authorizing a Limited Waiver of Sovereign Immunity substantially identical to the resolution attached hereto as Exhibit I. The executed Limited Waiver is a condition for the City's execution of this Agreement and shall be made a part hereof.
- 9.7.4 Notwithstanding any other provision of this Agreement, to the extent that Tribe fails to make the waivers provided for herein and/or a court of competent jurisdiction holds that the Tribe's waiver(s) is/are invalid or incomplete, the City shall have the right to declare this Agreement null and void and therefore terminate this Agreement. In the event the City so declares, this Agreement shall be unenforceable, provided however, that the Tribe shall remain liable to the City for the fees and charges incurred to date as provided for in Sections 5, 6 and 7.3.
- 9.7.5 Consistent with the waivers provided for herein, the Tribe consents to actions that arise under this Agreement being filed in the Superior Court of California for Sonoma County.

10. RELATIONSHIP OF THE PARTIES.

- 10.1 **INDEPENDENT CONTRACTORS.** The Parties intend and agree that each of them, in performing the obligations specified in this Agreement, shall act as independent contractors and shall control the work and the manner in which it is performed. The personnel performing the services under this Agreement on behalf of the

Tribe shall at all times be under the Tribe's exclusive direction and control. Neither the City nor any of its officers, employees or agents shall have control over the conduct of the Tribe or any of the Tribe's officers, employees or agents, except as set forth in this Agreement. The Tribe shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. The Tribe shall not incur or have the power to incur any debt, obligation or liability whatever against the City, or bind the City in any manner.

- 10.2 **NO AGENCY RELATIONSHIP.** This Agreement does not create any partnership or agency between the Parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors and any subcontractors, including any negligent acts or omissions. None of the Parties are an agent of any other party, and none have authority to act on behalf of or to bind the other Party to any obligation or commitment whatsoever.
- 10.3 **NO CITY EMPLOYEE PRIVILEGES.** No City employee benefits shall be available to the Tribe in connection with the performance of this Agreement. Except as expressly required under this Agreement, the City shall not pay salaries, wages or other compensation to the Tribe for performing services hereunder for the City.

11. **COMPLIANCE WITH LAWS.**

- 11.1 **LEGAL RESPONSIBILITIES.** The Parties shall keep themselves informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Parties shall at all times observe and comply with all such laws and regulations.
- 11.2 **LICENSES.** At all times during the term of this Agreement, the Parties shall have in full force and effect, all licenses and permits required by law for the performance of services described in this Agreement.
- 11.3 **LABOR CONDITIONS.** The City is a public entity in the State of California, and therefore, the City and the Tribe are subject to the provisions of the Government Code and the Labor Code of the State of California, including, but not limited to, the provisions which (a) require every employee to be insured against liability for workers compensation or to take self-insurance and (b) require every employer to adopt a written injury and illness prevention program. All provisions of law applicable to public contracts and/or this Agreement are incorporated herein by this reference and are made a part of this Agreement to the same extent as if they were fully stated in the Agreement and shall be complied with by the Tribe. The Tribe certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

11.4 **LABOR REQUIREMENTS.** The Parties shall abide by all federal and California laws and regulations regarding wages, including, without limitation, the Fair Labor Standards Act and the California Labor Code, which, in part, require the Parties to pay the general prevailing wage rates.

11.5 **DISCRIMINATION.** No person shall be excluded from employment in the performance of this Agreement on the grounds of race, creed, color, sex, age, marital status, sexual orientation, or place of national origin. The Tribe shall comply with all local, state, and federal laws relating to equal employment opportunity rights.

11.6 **CITY NOT RESPONSIBLE.** The City and its officers and employees shall not be liable at law or in equity occasioned by failure of the Tribe to comply with this Section 11.

11.7 **ENVIRONMENTAL REVIEW.**

11.7.1 The Parties acknowledge that the FEIS evaluated both onsite and off-site wastewater treatment options and that the Tribe could feasibly provide onsite wastewater services to serve the Project. Notwithstanding the foregoing, the Parties agree to pursue the off-site wastewater treatment option because, among other things, it is the environmentally superior option because it: (1) provides equal or better protection of water resources, including both surface water and groundwater; (2) avoids land dispersal of treated effluent in the Project Area (near the Laguna de Santa Rosa); (3) eliminates the need to dedicate additional land in the Project Area for a WWTP, effluent storage facility, and disposal sprayfields; (4) utilizes existing public infrastructure (Laguna WWTP) which is permitted and regulated by the State; and (5) avoids duplication of public services infrastructure.

11.7.2 The Parties acknowledge and agree that: (i) the Tribe is not a public agency subject to CEQA; (ii) the Project is not subject to CEQA or to City environmental review, design, land use or land development ordinances, plans, manuals or standards; (iii) the City does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Project; and (iv) the City is not deliberating on, approving, disapproving or otherwise exercising judgment regarding the Project by entering this Agreement.

11.7.3 Pursuant to Sections 4.4 and 11.8.7 of the Compact, the Parties are entering into this Agreement, an IGA, to facilitate the provision of and compensation for Wastewater Services to serve the Tribe as a consequence of the approval of the Tribe's Project and gaming operation. Execution of this Agreement is not a project for purposes of CEQA pursuant to the statutory exemptions provided for in: (i) Government Code Section 12012.56(b)(1)(C), which expressly exempts intergovernmental

agreements negotiated pursuant to the express authority of, or as expressly referenced in, the Compact; and (ii) Public Resources Code Section 21080.21, which exempts the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline of less than one mile in length within a public street or highway or any other public right-of-way. The Parties agree that the statutory exemption provided by Government Code section 12012.56(b)(1)(C) plainly applies and exempts this IGA from CEQA given that the Compact requires the City and the Tribe to enter into an enforceable IGA and this Agreement's dual purposes are subject matters the Compact expressly authorizes to be addressed within an intergovernmental agreement pursuant to Section 11.8.7, subsections (a)(1) and (a)(2). The Parties similarly agree that the statutory exemption provided by Public Resources Code section 21080.21 also plainly applies and exempts this IGA from CEQA given that the only development to occur in the City's jurisdiction under the Agreement is the extension of approximately 3,140 feet of an existing underground sewer pipeline and the extension of approximately 1,000 feet of an existing underground recycled water pipeline, both of which will be installed within public streets and their existing rights-of-way. Any ancillary wastewater improvements would be constructed by the Tribe on trust lands outside of the City's jurisdiction and beyond the scope of CEQA.

12. GENERAL PROVISIONS.

- 12.1 **Incorporation of Recitals.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.
- 12.2 **TIME OF THE ESSENCE.** Time is of the essence of this Agreement and every provision hereof.
- 12.3 **INTERPRETATION.** The City and the Tribe acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement; the language of the Agreement will not be construed against one party in favor of the other. The City and the Tribe acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 12.4 **SECTION HEADINGS.** All Section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the Section referred to or to define or limit the scope of any provision of this Agreement.
- 12.5 **SUCCESSOR PROVISIONS.** Wherever this Agreement makes reference to a specific statutory provision, regulation, or set of rules, it also applies to the

provision or rules, as they may be amended from time to time, and any successor provision or set of rules.

- 12.6 **WAIVER.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. Any waiver by the City of any provision of this Agreement must be in writing. Such written waiver shall affect only the provisions specified and only for the time and in the manner stated in the writing.
- 12.7 **NOTICES.** Notices hereunder shall be in writing and shall be sufficient if delivered to the address of each party hereto set forth below or at such other address as is provided by a party hereto in writing to the other party hereto.

City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attention: City Manager; City Engineer
Phone: (707) 588-2227

With Copy to:

Burke, Williams and Sorensen
1901 Harrison Street – Suite 900
Oakland, CA 94612
Attention: Michelle Kenyon, City Attorney
Phone: (510) 273-8780

Federated Indians of Graton Rancheria
6400 Redwood Drive, Suite 300
Rohnert Park, CA 94928
Attention: Tribal Chair
Phone: (707) 566-2288

Maier Pfeffer Kim & Geary, LLP
1440 Broadway, Suite 812
Oakland, CA 94612
Attention: John Maier, Tribal Attorney
Phone: (510) 835-3020

- 12.8 **GAMING COMPACT NOTICE.** If the Tribe is informed by the Secretary of the Interior that the Tribe may not conduct gaming activities on the Trust Lands and all appeals related to such a decision have been exhausted, then the Tribe shall immediately notify the City thereof in writing.
- 12.9 **AMENDMENTS.** This writing is intended both as the final expression of the Agreement between the Parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to

Code of Civil Procedure Section 1856. This Agreement may be amended in writing at any time, or from time to time, with the approval of the Parties to this Agreement.

- 12.10 **EXHIBITS.** The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A: Legal Description of Project Area

Exhibit B: Depiction of Project Area

Exhibit C: Wastewater and Recycled Water Alignments

Exhibit D: Definitions

Exhibit E: Operating Requirements

Exhibit F: City Resolution Authorizing Agreement

Exhibit G: Tribal Resolution Authorizing Agreement

Exhibit H: Insurance

Exhibit I: Tribal Resolution Authorizing Limited Waiver of Sovereign Immunity

- 12.11 **GOVERNING LAW.** This Agreement shall be construed and interpreted according to the substantive law of California regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma, California.

- 12.12 **PARTIAL INVALIDITY.** If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

- 12.13 **ATTORNEYS FEES.** If either party undertakes litigation against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys fees and costs incurred.

- 12.14 **FORCE MAJEURE.** If performance of a Party of any portion of this Agreement is made impossible by any prevention; delay; or stoppage caused by acts of God, government, or other forces or events beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of

that prevention, delay or stoppage is excused. Tribe's obligation to pay invoices, however, is not excused by this Section 12.14.

- 12.15 **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.
- 12.16 **THIRD PARTIES.** Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties, or affect the legal liability of either Party to this Agreement by imposing any standard of care respecting the operations and maintenance of the Facilities and/or Sewer System different from the standard of care imposed by law.
- 12.17 **ASSIGNMENT PROHIBITED.** Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 12.18 **SUCCESSORS AND RECORDING.** This Agreement shall be binding upon and shall inure to the benefit of the successors, executors, administrators, and assigns of the City and the Tribe. This Agreement pertains to and shall run with the Trust Lands. Upon execution, this Agreement may be recorded in the Official Records of Sonoma County.
- 12.19 **EXECUTION.** The City Council of the City and the Tribal Council of the Tribe have each authorized execution of this Agreement as evidenced by the authorized signatures below, respectively.
- 12.19.1 The Tribe expressly represents that as of the date of the undersigned's execution of this Compact the undersigned has the authority to execute this Compact on behalf of the Tribe, including any waiver of sovereign immunity and the right to assert sovereign immunity therein, and will provide written proof of such authority and of the ratification of this Compact by the tribal governing body to the Governor no later than thirty (30) days after the execution of this Compact by the undersigned.
- 12.19.2 The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government.
- 12.19.3 In entering into this Agreement, the City expressly relies upon the foregoing representations by the Tribe, and the City's entry into the Agreement is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Agreement

through the undersigned. If the Tribe fails to timely provide written proof of the undersigned's aforesaid authority to execute this Agreement or written proof of ratification by the Tribe's governing body, the City shall have the right to declare this Agreement null and void.

12.20 **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

12.21 **APPROVAL BY THE DEPARTMENT OF THE INTERIOR.** The parties will submit this Agreement to the Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response from the Department of the Interior that this Agreement does not require approval under 25 U.S.C. § 81 to be enforceable.

IN WITNESS WHEREOF, the parties hereto have caused this Joint Exercise of Powers Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

<p>CITY OF ROHNERT PARK</p> <p>By: _____ Gabriel Gonzalez, City Manager</p> <p>APPROVED AS TO FORM:</p> <p>_____ Michelle Marchetta Kenyon, City Attorney</p>	<p>THE FEDERATED INDIANS OF GRATON RANCHERIA</p> <p>By: _____ Greg Sarris, Tribal Chair of Federated Indians of Graton Rancheria</p> <p>APPROVED AS TO FORM:</p> <p>_____ John Maier, Tribal Attorney</p>
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EXHIBIT A:

LEGAL DESCRIPTION OF PROJECT AREA

EXHIBIT A-1

**Legal Description for APN:
143-040-068**

Exhibit "A"

The land referred to herein is situated in the State of California, County of Sonoma, City of Rohnert Park, and described as follows:

Lot 6, as shown upon that certain Map entitled "Rohnert Business Park Subdivision", filed for record August 12, 1985 in Volume 375 of Maps, at Pages 10 and 11, Sonoma County Records.

(APN: 143-040-068)

(End of Legal Description)

Description: Sonoma, CA Assessor Map 143.4 Page: 1 of 1
Order: 312358 Comment:

COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA
7-006
7-007

143-04

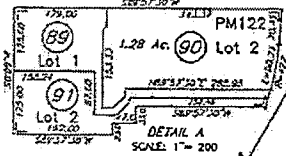
ROHNERT BUSINESS PARK SUBDIVISION

- REC. 08-12-85 IN BK. 375, MAPS, PGS. 10-11
- Parcel Map No. 3
REC. 03-30-73 IN BK. 190, MAPS, PGS. 13-20
- Parcel Map No. 6
REC. 07-05-74 IN BK. 209, MAPS, PGS. 30-20
- Parcel Map No. 25
REC. 11-03-76 IN BK. 241, MAPS, PGS. 19-20
- Parcel Map No. 39
REC. 07-21-77 IN BK. 255, MAPS, PGS. 50-51
- Parcel Map No. 49
REC. 10-16-78 IN BK. 278, MAPS, PGS. 04-20
- Parcel Map No. 51
REC. 03-20-85 IN BK. 369, MAPS, PGS. 30-31
- Parcel Map No. 88
REC. 07-19-84 IN BK. 358, MAPS, PGS. 45-47

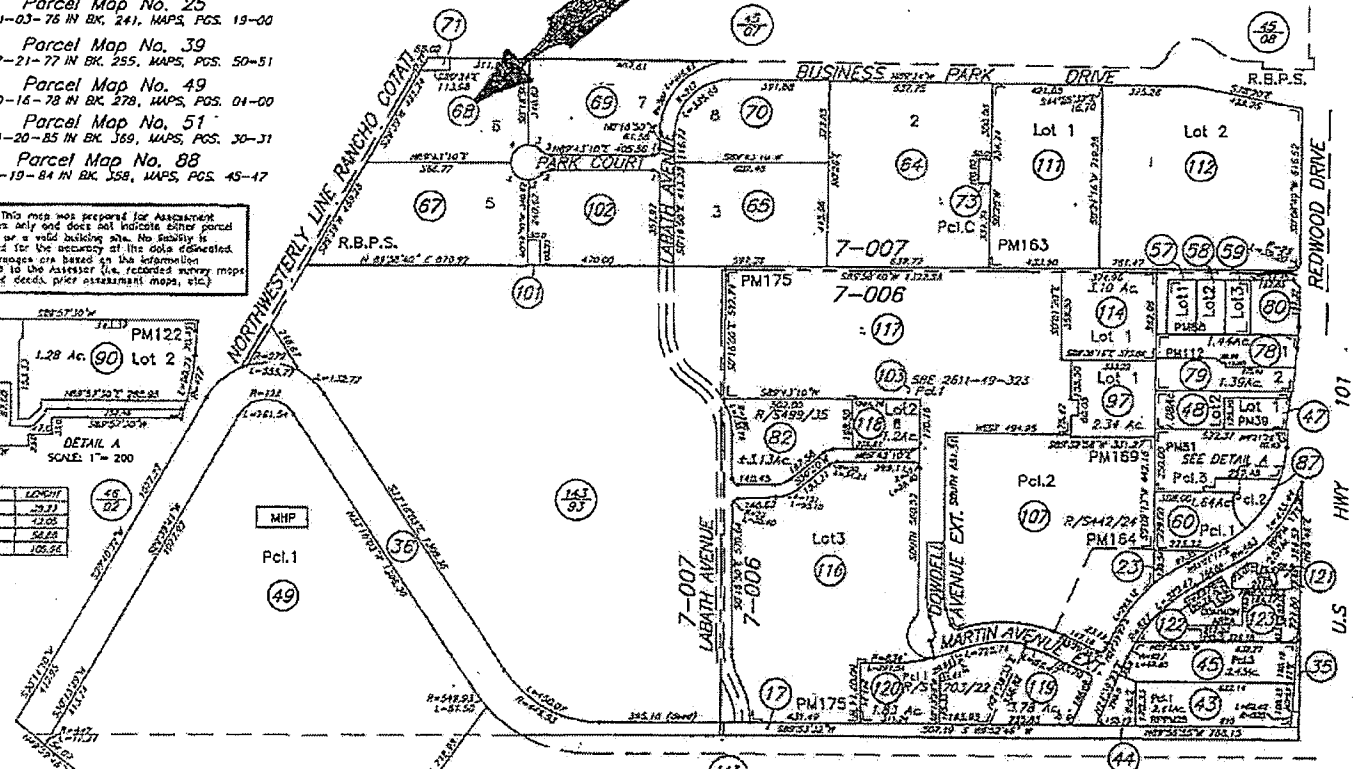
- Parcel Map No. 112
REC. 10-02-87 IN BK. 405, MAPS, PGS. 2-24
- Parcel Map No. 163
REC. 05-01-89 IN BK. 436, MAPS, PGS. 16-18
- Parcel Map No. 163
REC. 08-09-05 IN BK. 436, MAPS, PGS. 44-45

- Parcel Map No. 164
REC. 08-10-87 IN BK. 569, MAPS, PGS. 20-21
- Parcel Map No. 169
REC. 12-14-01 IN BK. 628, MAPS, PGS. 24-26
- Parcel Map No. 175
REC. 07-14-05 IN BK. 679, MAPS, PGS. 13-15

NOTE: This map was prepared for Assessment purposes only and does not indicate either parcel legality or a valid building site. No liability is assumed for the accuracy of the data presented. The acreages are based on the information supplied to the Assessor (i.e. recorded survey maps, recorded deeds, prior statement maps, etc.)

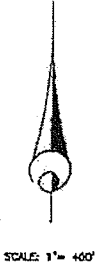


7	RADIUS	LENGTH
1	30	29.71
2	20	19.61
3	70	68.88
4	30	106.86



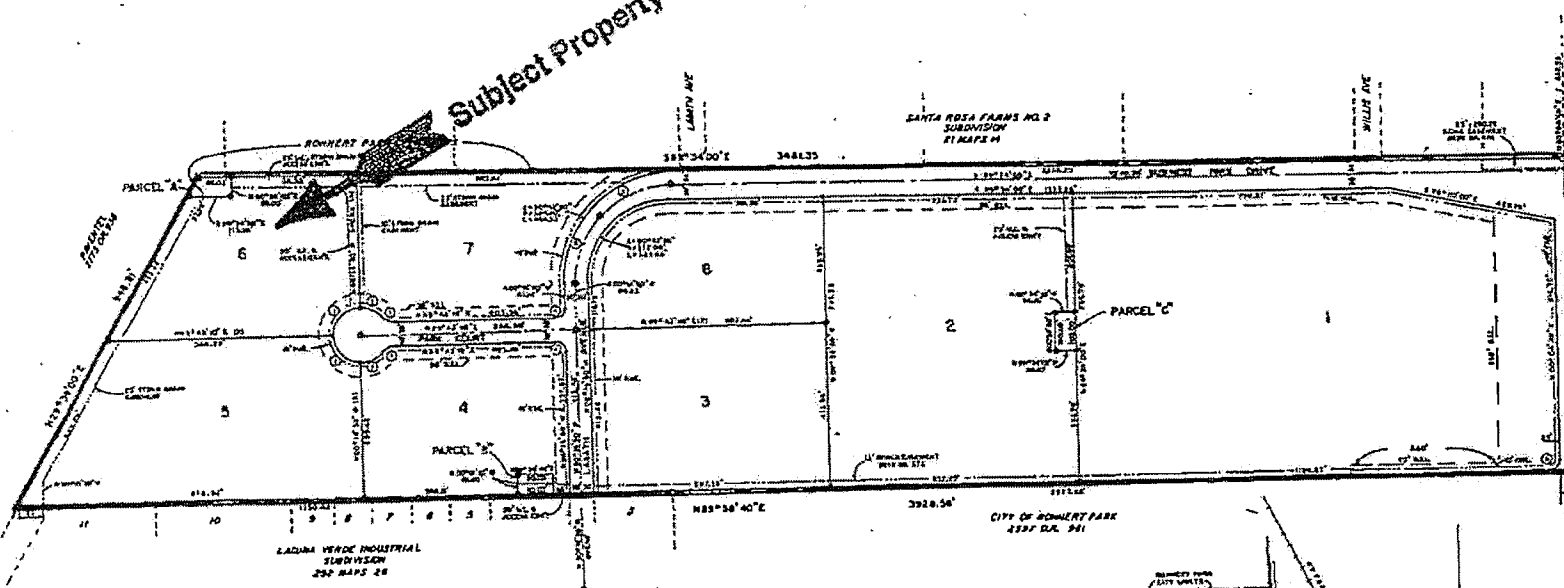
NOTE: Assessor's parcels do not necessarily constitute legal lots. To verify legal parcel status, check with the appropriate city or county community development or planning division.

ROHNERT PARK PARCEL MAP NO. 177
AN INDUSTRIAL CONDOMINIUM
Assessor's Map Bk. 143, Pg. 04
Sonoma County, Calif. (ACD)
REC. 08 17 06 06-102092 IN BK. 699, MAPS, PG. 35-36
REV. 9/30/09 AC



"This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon."

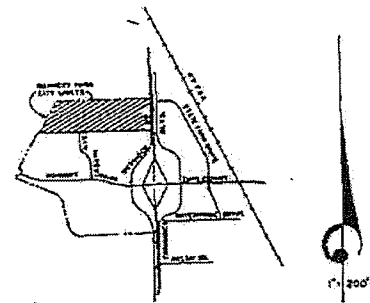
Subject Property



THE MID BORDER INDICATES THE BOUNDARY OF LANDS SURVEICED BY THE MAP.
 ALL DIMENSIONS & DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
 BASIS OF CORNER: THE MONUMENTED CENTERLINE OF U.S. 101 FREEWAY (SECTION 49 & 51 ADJ. 4 OF HIGHWAY MAPS, PAGES 43 & 44, SONOMA COUNTY RECORDS).
 FULL REFERENCE IS MADE TO A REPORT BY MOORE & THUR FOR SISED PART, DATED MARCH 8, 1985 NO. 173/044/90
 CROSSES (H) ARE OR WILL BE CUT ON TOP OF CURVE ON AN EXTENSION OF SIDE LOT LINES.

CURVE DATA

Δ	DELTA	ANGLE	LENGTH
1	49°11'25"	50.00'	43.05'
2	49°11'25"	70.00'	58.84'
3	90°00'00"	70.00'	108.34'
4	90°00'00"	23.00'	38.21'
5	49°11'25"	230.00'	193.81'
6	89°40'51"	25.00'	38.30'



- LEGEND**
- 1/2" IRON PIPE FOUND
 - 1/2" IRON PIPE SET, TAGGED AGE 10578
 - CITY MONUMENT FOUND
 - CITY MONUMENT SET
 - STANDARD STATE MONUMENT MONUMENT
 - O.A. OFFICIAL RECORDS
 - R.S.L. BUILDING SETBACK LINE
 - P.U.E. PUBLIC UTILITY EASEMENT
 - U.E. UTILITY EASEMENT
 - CROSS (SEE NOTE)

"This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon."

ROHNERT BUSINESS SUBDIVISION

BEING A SUBDIVISION OF PARCEL 1 OF RC PARCEL MAP NO. 49, FILED IN BOOK 27 AT PAGE 4, SONOMA COUNTY RECORDS / OF ROHNERT BUSINESS PARK ASSOCIATES PARTNERSHIP, RECORDED DOCUMENT NO. 68,84 AC.
 CITY OF ROHNERT PARK
 COUNTY OF SONOMA
 STATE OF CALIFORNIA

EXHIBIT A-2

**Legal Description for APN:
046-021-020; 021; 039 & 040**

Exhibit "A"

The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area and described as follows:

PARCEL ONE:

A tract of land, being a portion of the Rancho Llano de Santa Rosa, and commencing on the boundary line of said Rancho on the line between Section 21 and 22, in Township 6 North, Range 8 West, Mount Diablo Base & Meridian, at a point in the center of the County Road known as the Santa Rosa and Stony Point Road, from which point the post for the railing of the bridge, across the Laguna and standing on the Southeast corner of the same, is North 31° West, 13 links distant; thence from said point of beginning, North 89° 30' East, 11.92 chains, South 39° 05' East, 2.61 chains, South 53° East, 1.36 chains, South 64° East, 1.23 chains, South 77° 15' East, 2.62 chains, South 88° 05' East, 3.94 chains, North 4° 15' East, 1.43 chains, South 88° East, 2.03 chains, South 56° East, 2.44 chains, North 87° 15' East, 22.62 chains to the Northwest boundary line of the Cotati Rancho; thence along said line, North 29° 15' East, 39.44 chains; thence leaving said line, West 67.92 chains to the center of the aforesaid Road and Section line; thence South, 32.18 chains to the point of beginning. Magnetic Variation 17° East.

Excepting therefrom those portions of land described in the Deeds from Manuel T. Pimental et al, to the Sonoma County Flood Control and Water Conservation District, recorded August 16, 1961 in Book 1840 of Official Records, page 280, Serial No. 0-60050, Sonoma County Records, and recorded September 24, 1963 in Book 1989 of Official Records, page 575, Serial No. H-56600, Sonoma County Records.

Also excepting therefrom that portion of land described in the Deed from Mary C, Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded February 11, 1966 in Book 2187 of Official Records, page 957, Serial No. J-83 549, Sonoma County Records.

Also excepting therefrom that portion of land described in the Deed to the City of Rohnert Park, recorded January 11, 1989 as Document No. 89002750 of Official Records of Sonoma County.

Also excepting therefrom that portion of land described in the Deed to the County of Sonoma, recorded May 17, 1996 as Document No. 1996 0044116 of Official Records of Sonoma County.

PARCEL TWO:

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, page 284, Serial No. 0-6005 1, Sonoma County Records.

PARCEL THREE:

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, page 288, Serial No. Serial No. G60052, Sonoma County Records.

Assessor Parcel No: 046-021-020; 021; 039 & 040
(End of Legal Description)

46-02

TAX MAP AREA
67-002
67-008

COUNTY ASSESSOR'S PARCEL MAP

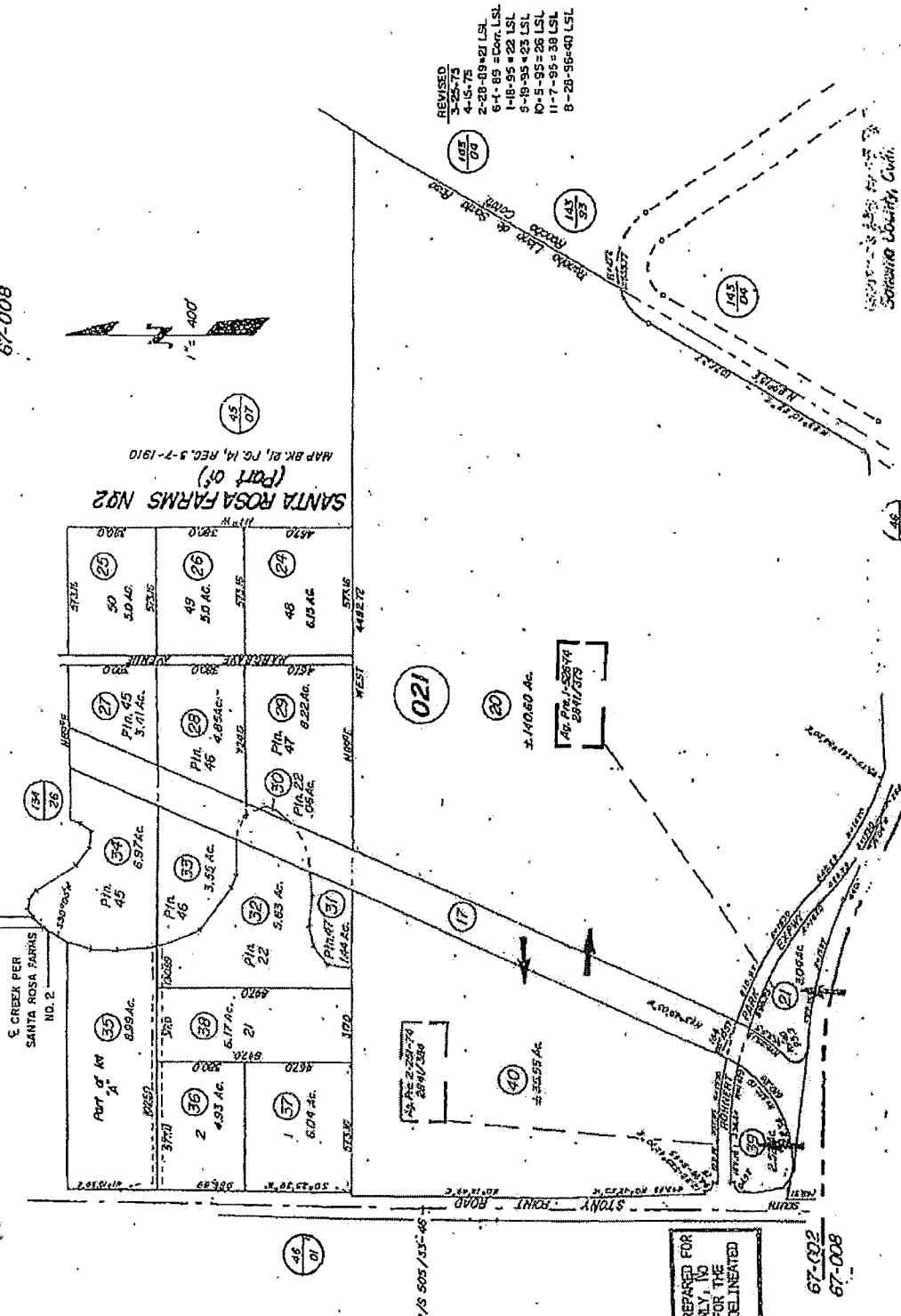


EXHIBIT A-3

Legal Description for APN:

045-073-001;

045-074-009; 010;

045-073-002; 003; & 004

Exhibit "A"

The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area and described as follows:

TRACT ONE:

Farms 102, 103, 104, 105, 106, 124, 125, 126 and 127, as shown upon the Map of Plan of Subdivision of Santa Rosa Farms No. 2, filed March 7, 1910 in the Office of the County Recorder of Sonoma County in Book 21 of Maps, Page 14, Sonoma County Records.

Certificate of Compliance recorded January 28, 1998 as Document No's 1998 0008588 through 1998 0008596, Sonoma County Records.

Being Assessor Parcel No: 045-073-001

TRACT TWO:

PARCEL ONE:

Farms 130 and 131 as shown upon the Map of Plan of Subdivision of Santa Rosa Farms No. 2 filed March 7, 1910 in the Office of the County Recorder of Sonoma County in Book 21 of Maps, Page 14, Sonoma County Records.

Certificate of Compliance recorded January 28, 1998 as Document No's 1998 0008597 and 1998 0008598, Sonoma County Records.

Being a portion of Assessors Parcel No. 045-074-009

PARCEL TWO:

Farm 129 of Santa Rosa Farms No. 2, according to Map thereof filed in the Office of the County Recorder of said County on March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records.

Being Assessors Parcel No. 045-074-010

PARCEL THREE:

Farm No, 128 as same is shown upon that certain Map of Subdivision of Santa Rosa Farms No. 2, Sonoma Co. California, filed March 7, 1910 in Book 21 of Maps, at Page 14.

SAVING AND EXCEPTING THEREFROM, the following:

Commencing at the Southeasterly corner of said Farm No. 128; thence Northerly along the Eastern line thereon, 155 feet and 7 inches to a point, for the actual point of commencement of the tract to be herein described; thence from said point of commencement, South 89° West, 289 feet and 6 inches to a point; thence Northerly, parallel with the Eastern line of said Farm No. 128, a distance of 155 feet and 10

inches to a point; thence North 89° East, 289 feet and 6 inches to the Eastern line of said Farm No. 128; thence Southerly along said Eastern line, 155 feet and 10 inches to the point of commencement.

ALSO SAVING AND EXCEPTING THEREFROM, the following:

Beginning at a point on the center line of Labath Avenue, which point is the Southeast corner of Lot 128 as shown upon the Map entitled "Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma Co. CA., etc.", filed March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records; thence North 1° West along the Easterly line of Lot 128, a distance of 155 feet, 7 inches to point; thence South 89° West, 289.5 feet; thence North 1° West, 77 feet, 10 inches; thence South 89° West, 283.66 feet to the Westerly line of said Lot 128; thence along said line, South 1° East, 233.5 Feet to the Southwest corner of said Lot 128; thence along the Southerly line of said Lot, North 89° East, 573.16 feet to the point of beginning.

Being Assessors Parcel No. 045-073-002

TRACT THREE:

A Portion of Farm No. 128 as shown upon the Map entitled "Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California" filed in the Office of the County Recorder of Sonoma County, California, on March 7, 1910 in Book 21 of Maps, page 14, more particularly described as follows:

Commencing at the Southeasterly corner of said Farm No. 128; thence Northerly along the Easterly line thereof, 155 feet, 7 inches to a point for the tile point of beginning of the tract to be herein described; thence South 89° West 289 feet, 6 inches to a point, thence Northerly parallel with the Easterly line of said Farm No. 128, a distance of 155 feet, 10 inches to a point thence North 89° East, 289 feet, 6 inches to the Easterly line of said Farm No. 128; thence Southerly along said Easterly line, 155 feet, 10 inches to the point of beginning.

Being Assessors Parcel No. 045-073-003

TRACT FOUR:

Beginning at a point on the center line of Labath Avenue which point is the Southeast corner of Lot 128 as shown upon the Map entitled Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California, etc., filed March 7, 1910 in Book 21 of Maps, page 14, Sonoma County Records; thence North 1° West along the Easterly line of Lot 128, a distance of 155 feet 7 inches to a point; thence South 89° West, 289.5 feet; thence North 1° West, 77 feet 10 inches; thence South 89° West, 283.66 feet to the Westerly line of said Lot 128; thence along said line South 10 East, 233.5 feet to the Southwest corner of said Lot 128; thence along the Southerly line of said Lot North S9 East, 573.16 feet to the point of beginning.

Being Assessors Parcel No. 045-073-004

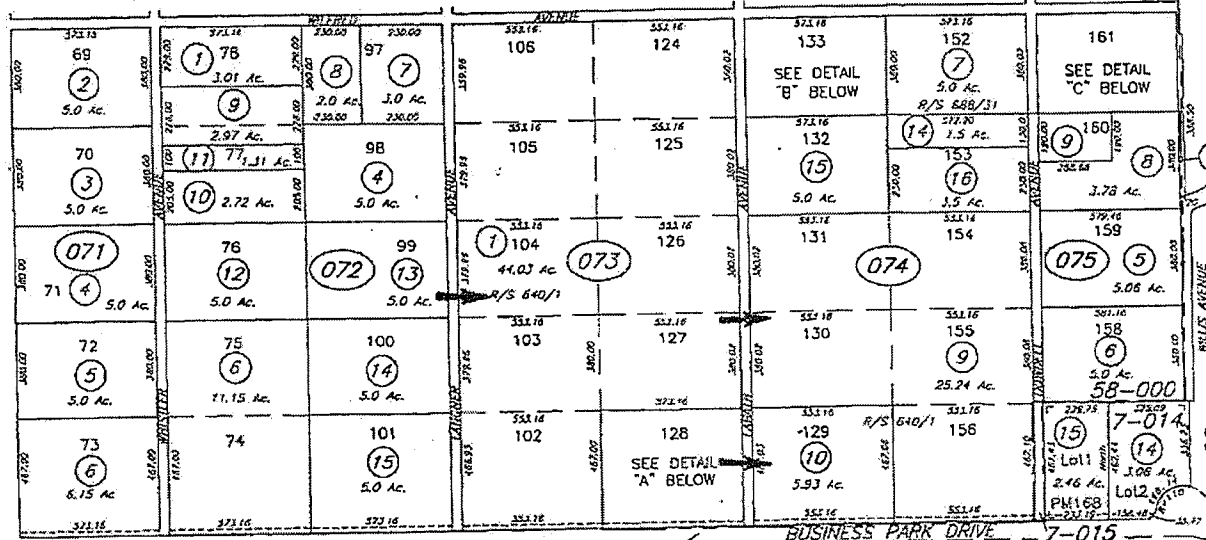
(End of Legal Description)

COUNTY ASSESSOR'S PARCEL MAP

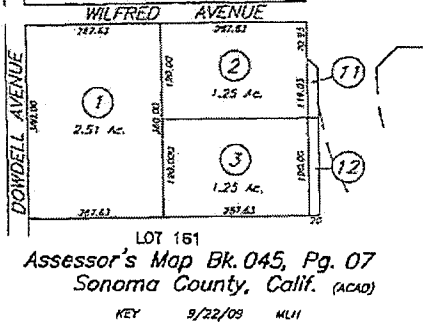
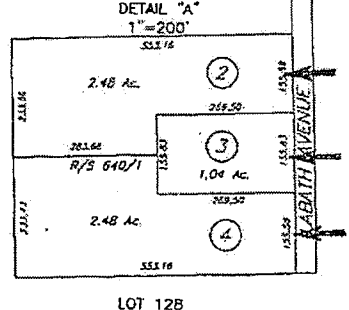
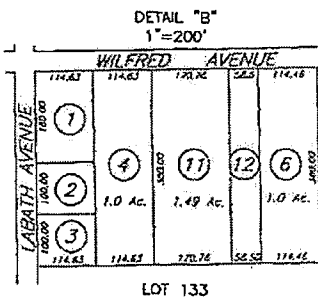
TAX RATE AREA
 58-000
 7-014
 7-015

Ptn. SANTA ROSA FARMS NO. 2
 REC. 03-07-1910 IN BK. 021, MAPS, PGS. 14-00

45-07
 58-000
 7-014



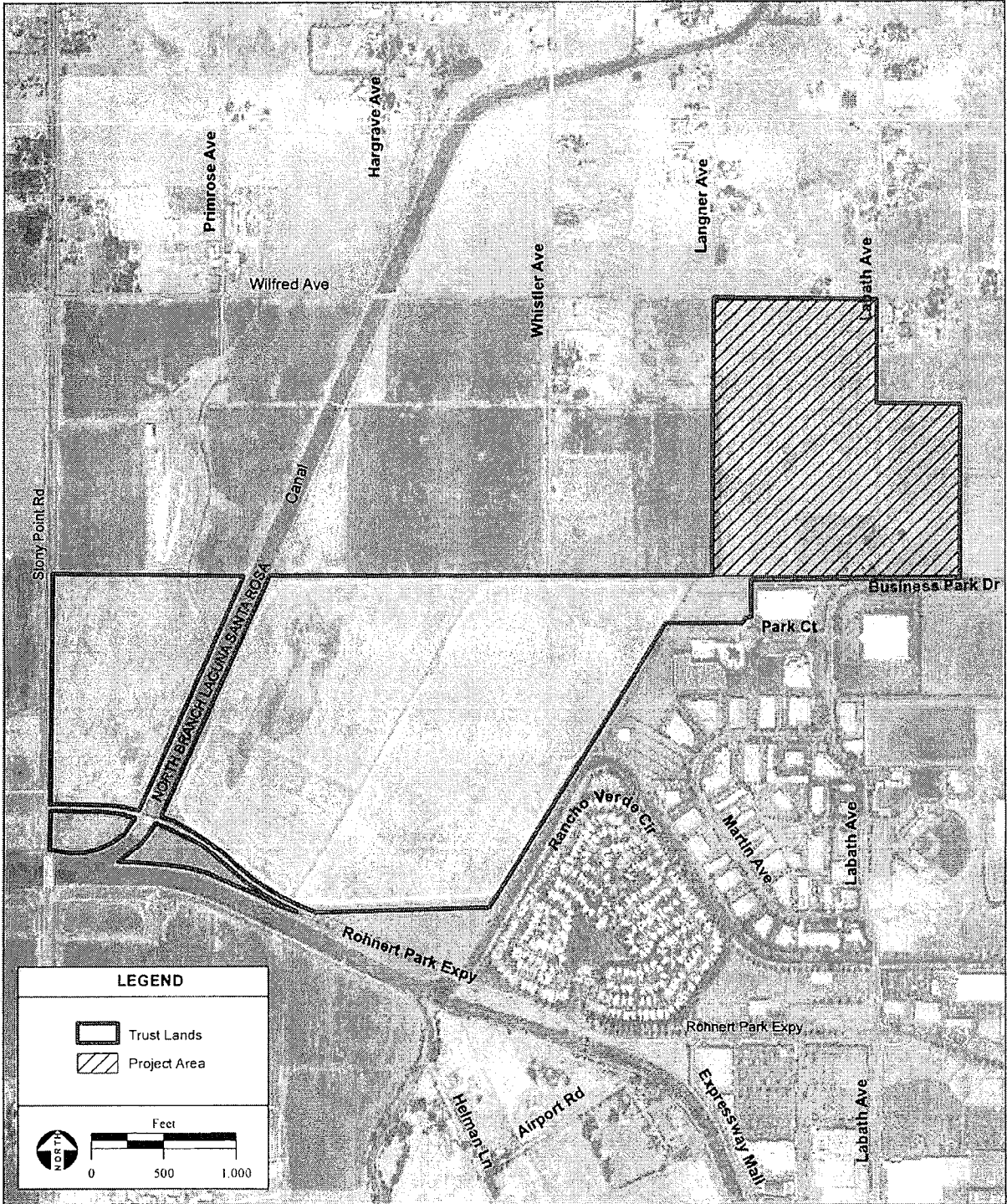
Parcel Map No. 168
 REC. 01-26-01 IN BK. 617, MAPS, PGS. 13-15



NOTE: This map was prepared for Assessment purposes only and does not indicate either parcel legality or a valid building site. No liability is assumed for the accuracy of the data delineated. The parcels are based on the information supplied to the Assessor (i.e., recorded survey maps, recorded deeds, prior assessment maps, etc.)

NOTE: Assessor's parcels do not necessarily constitute legal lots. To verify legal parcel status, check with the appropriate City or county community development or planning division.

EXHIBIT B:
DEPICTION OF PROJECT AREA



SOURCE: Aerial Photography August 2002; AES, 2012

EXHIBIT C:

WASTEWATER AND RECYCLED WATER ALIGNMENTS



MEMORANDUM

To: Jeff Janakus, Station Casinos

JN: 50-101282

From: Mark Johnson, RBF Consulting 

Date: June 20, 2012

Subject: Off-Site Wastewater – Graton Rancheria Casino Project

The following is a narrative of the approximate alignment for the proposed new wastewater force main line to serve the Graton Rancheria Casino project:

Approximately 3,140 feet of new 8" wastewater force main will be installed along the Alternative 2 Alignment from the southeastern boundary of the Proposed Graton Rancheria Casino Project site running east along Business Park Drive then turning south on Redwood Drive and then turning west on J. Rogers Lane where it terminates in at a manhole in front of the City of Rohnert Park pump station. The new main will only require the installation of 8" wastewater line and will be located entirely underground and within the existing public rights-of-way of Business Park Drive, Redwood Drive and J. Rogers Lane. The new main will be PVC Class C900. The main will be installed per the City of Rohnert Park's standards.

PLANNING ■ DESIGN ■ CONSTRUCTION

10150 Covington Cross Drive, Las Vegas, NV 89144 ■ 702.364.0180 ■ Fax 702.364.0189

Offices located throughout California, Arizona & Nevada ■ www.RBF.com



MEMORANDUM

To: Jeff Janakus, Station Casinos

JN: 50-101282

From: Mark Johnson, RBF Consulting

Date: June 19, 2012

Subject: Off-Site Reclaimed Water – Graton Rancheria Casino Project

The following is a narrative of the approximate alignment for the proposed new reclaimed water line to serve the Graton Rancheria Casino project:

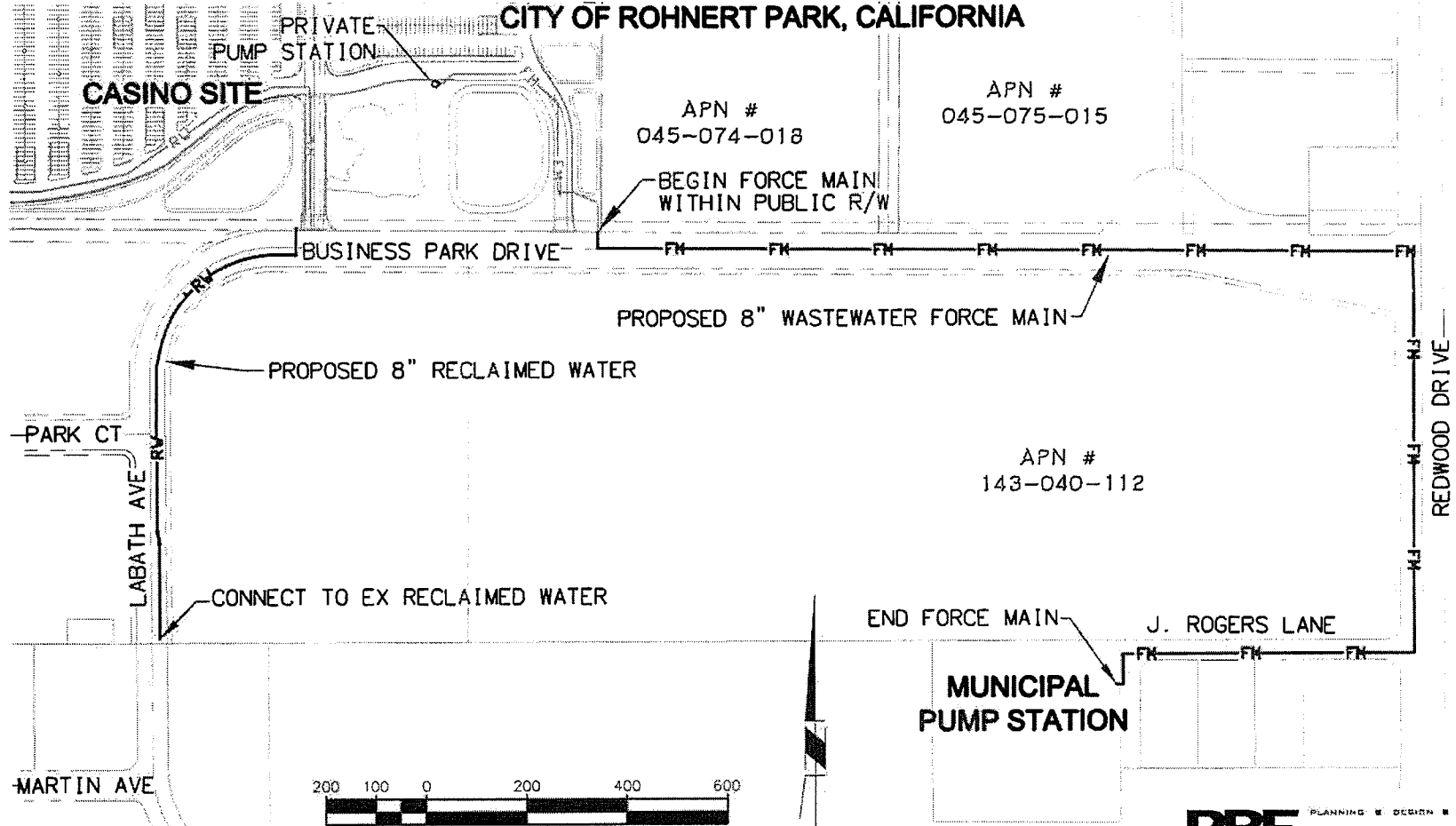
Approximately 1000 feet of new 8 inch recycled water main will be installed from the southern project boundary of the proposed Graton Rancheria Casino Project site in the general vicinity of the proposed project entry at the intersection of Labath Avenue and Business Park Drive, to the existing recycled water main located in Labath Avenue approximately 300 feet north of Martin Avenue / Labath Avenue intersection. The new main will only require the extension of the existing 8 inch recycled water line and will be located entirely underground and within the existing public rights-of-way of Labath Avenue and Business Park Drive. The new main will be PVC Class 150 per AWWA C900. The main will be installed per the City of Santa Rosa Recycled Water Standards, unless the City of Rohnert Park develops its own recycled water standards prior to construction of this extension, in which case the City's standards would control.

PLANNING ■ DESIGN ■ CONSTRUCTION

10150 Covington Cross Drive, Las Vegas, NV 89144 ■ 702.364.0180 ■ Fax 702.364.0189

Offices located throughout California, Arizona & Nevada ■ www.RBF.com

**GRATON RANCHERIA CASINO
OFF-SITE UTILITY WASTEWATER FORCE MAIN
AND RECLAIMED WATER IMPROVEMENTS EXHIBIT
CITY OF ROHNERT PARK, CALIFORNIA**



APN #
045-074-018

APN #
045-075-015

APN #
143-040-112



SCALE: 1"=200'



PLANNING ■ DESIGN ■ CONSTRUCTION

0755 CLAREMONT MESA BOULEVARD, SUITE 100
SAN DIEGO, CALIFORNIA 92124-1324
858.614.5000 • FAX 858.614.5001 • www.RBF.com

EXHIBIT D

DEFINITIONS

DEFINITIONS

1. **TERMINOLOGY.** Capitalized terms in the Agreement and the Operating Requirements shall be defined as follows.
 - 1.1 **Action.** Any lawsuit, court or administrative proceeding (whether of a legal or equitable nature), arbitration or mediation (whether binding or non-binding), or any other alternative dispute resolution procedure, and the filing, recording, or service of any process, notice, claim, lien, or other instrument which is a prerequisite to commencement of the Action.
 - 1.2 **ADWF.** Abbreviation for average dry weather flow.
 - 1.3 **ADWF Capacity Service.** The amount of sewage, on an average dry weather flow basis, that Tribe can dispose into the City Sewer System, which is more specifically established in Section 4.7 of the Agreement.
 - 1.4 **Agreement.** The Joint Exercise of Powers Agreement by and between the City and the Tribe for Wastewater Services, dated as of _____, 2012.
 - 1.5 **Alternative 2 Alignment.** The means of connecting the Project to the City's sewer system within existing public right-of-way by running pipes from the south end of the Project site east along Business Park Drive, turning south on Redwood Drive and west on J. Rogers Lane and terminating at a manhole in front of the existing City pump station.
 - 1.6 **Average dry weather flow (ADWF).** The mean daily volume of sewage during the period of time not influenced by rainfall.
 - 1.7 **Biochemical oxygen demand (BOD).** Biochemical oxygen demand as determined in accordance with standard laboratory procedures and, unless otherwise noted, exerted in a period of 5 days at 20 degrees Celsius.
 - 1.8 **Capacity Service.** Capacity service or capacity right is the amount of sewage that Tribe can dispose into the City Sewer System, which is more specifically established in Sections 4.7 and 5.2 of the Agreement.
 - 1.9 **City.** The City of Rohnert Park, a municipal corporation organized and existing under and by virtue of the laws of the State of California.
 - 1.10 **City Engineer.** The City Engineer for the City of Rohnert Park or his/her designee.
 - 1.11 **City Representatives.** Any member of the City and/or any other officer, elected or appointed official, employee, agent, consultant or volunteers of the City.

- 1.12 **City Sewer System.** The existing sewerage system owned by the City, including sewer lines, interceptor sewers, pumping station, and effluent pipelines which is described in the Sewer System Management Plan.
- 1.13 **Commencement Date.** The date upon which Wastewater Services commence, which is estimated to occur by no later than May 15, 2013, provided that the Parties satisfy their development and construction obligations under Sections 4.1 through 4.6 and that Tribe has fulfilled its financial obligations under Sections 5 and 6, which require certain payments to be made before Wastewater Services commence. In the event of delays, the commencement date shall be the earliest date upon which such development, construction and financial obligations are completed and accepted by the City.
- 1.14 **Compact.** The Tribal-State Compact entered into pursuant to the IGRA between the Tribe and the State of California for Class III gaming, executed by Governor Brown on March 27, 2012 and ratified by the State Legislature pursuant to Assembly Bill No. 517 (Hall) on May 17, 2012, which is available online at: http://gov.ca.gov/docs/Graton_Compact_executed.pdf.
- 1.15 **Compatible Pollutant.** A component of industrial wastewater which does not interfere with, pass through, or is not otherwise incompatible with the City Sewer System or City of Santa Rosa subregional sewage treatment or water reclamation plant or its processes.
- 1.16 **CWEA.** Abbreviation for the California Water Environment Association.
- 1.17 **Dedicated Facilities.** The new infrastructure repairs, replacements, improvements and/or modifications which will be made within the City Limits to the existing City Sewer System, along the Alternative 2 Alignment which are necessary to accommodate the Tribe's wastewater from the Project. The specific sewage disposal infrastructure required for the Project within the City is more particularly described/depicted in the RBF Report in Exhibit C relating to the Alternative 2 Alignment.
- 1.18 **Deposit.** The sum of funds paid by the Tribe which the City shall hold in a separate deposit account in consideration of the provision of Wastewater Services and which City may draw upon in the event Tribe breaches this Agreement.
- 1.19 **EPA.** Abbreviation for the Federal Environmental Protection Agency.
- 1.20 **Facilities.** The collective term for the Tribal Facilities and City Facilities.
- 1.21 **FEIS.** The Final Environmental Impact Statement prepared by the National Indian Gaming Commission evaluating the environmental consequences of the Project pursuant to NEPA, which is available online at www.gratoneis.com/documents/final_eis/Final-EIS.htm.

- 1.22 **IGA.** An intergovernmental agreement required under Section 4.4 of the Compact between the Tribe and the City to mitigate the impacts of and receive services for the Project. This Agreement is an IGA.
- 1.23 **IGRA.** The Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.
- 1.24 **Incompatible Pollutant.** A component of industrial wastewater which interferes with, passes through, or is otherwise incompatible with the Santa Rosa Subregional Sewage System.
- 1.25 **Industrial Waste Discharge Permit.** A permit issued to dischargers of industrial waste as defined by the Santa Rosa Subregional Sewage System.
- 1.26 **Infiltration.** Water entering the sewerage system through the ground.
- 1.27 **Inflow.** Water entering a sewerage system from surface drainage and clean cooling water systems.
- 1.28 **Interim Transfer Agreement.** The Agreement for Interim Transfer of Capacity between the City of Santa Rosa and the City of Rohnert Park, dated September 25, 2001 and amended on June 10, 2003, which allocated 1.03 million gallons per day (mgd) of capacity from Santa Rosa to the City of Rohnert Park.
- 1.29 **Laguna WWTP.** The regional Laguna Wastewater Treatment Plant, which is a part of the Santa Rosa Subregional Sewage System.
- 1.30 **Litigation Expenses.** All reasonable costs and expenses incurred by the Prevailing Party directly related to an Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs.
- 1.31 **Master Agreement.** The Agreement Between the City of Santa Rosa and City of Rohnert Park, City of Sebastopol, and South Park County Sanitation District for use of Santa Rosa Subregional Sewerage System dated April 3, 1975, as amended.
- 1.32 **MGD.** Abbreviation for million gallons per day.
- 1.33 **MOU.** That certain binding and enforceable Memorandum of Understanding dated October 14, 2003, as may be amended from time to time, wherein the Tribe agreed to make certain contributions and community investments to mitigate various impacts that may arise in connection with the gaming enterprise, which is available online at [http://gratoneis.com/documents/final_eis/files/appendices/vol1/Appendix E.pdf](http://gratoneis.com/documents/final_eis/files/appendices/vol1/Appendix_E.pdf).

- 1.34 **NEPA.** The National Environmental Policy Act, codified at 42 U.S.C. 4321 *et seq.*
- 1.35 **NIGC.** Abbreviation for the National Indian Gaming Commission.
- 1.36 **O&M.** Abbreviation for operation and maintenance.
- 1.37 **O&M Plan.** The written plan prepared by the Tribe to prevent, stop and mitigate the impact of releases of Wastewater to the environment.
- 1.38 **Opening Date.** The date on which the Tribe commences gaming operations on the Trust Lands which are open to the public.
- 1.39 **Overflow.** Any spill, release or diversion of sewage, including: (a) an overflow that results in a discharge to waters of United States; and (b) an overflow of wastewater, including a wastewater backup into a building, even if that overflow does not reach waters in the United States.
- 1.40 **Party.** An individual party to the Agreement, meaning the City or the Tribe.
- 1.41 **Parties.** The collective parties to the Agreement, meaning the City and the Tribe.
- 1.42 **Peak Wet Weather Flow (PWWF).** Peak rate of wastewater flow within one hour occurring during or from the effects of precipitation.
- 1.43 **PFFP.** An abbreviation for the Public Facilities Financing Plan.
- 1.44 **Point of Delivery.** The point in the Project Sewer System where the Tribal Facilities connect to the City Sewer System, which is depicted in Exhibit C with an arrow indicating "Begin force main within public right of way."
- 1.45 **Project.** The Graton Rancheria Casino and Hotel gaming enterprise to be developed as a casino and a 6-story, 200-room hotel as provided for in the Record of Decision adopted by NIGC on October 1, 2010 and approved by the Compact.
- 1.46 **Project Area.** The approximately 66 acres of land within the Trust Lands situated within the City's urban growth boundary and outside the 100-year flood plain on property sometimes referred to as the Wilfred Site, which is located south of Wilfred Avenue and east of Stony Point Road, where the Project will be developed. See Exhibit A.
- 1.47 **Project Sewer System.** The sewage disposal system for the Project, which includes the Tribal Facilities, Dedicated Facilities, the existing portion of the City Sewer System which will carry the Project's wastewater as described in the RBF Report, and the Capacity Service provided to the Tribe in the Santa Rosa Subregional Sewer System. The Project Sewer System shall follow the route described as the Alternative 2 Alignment in the RBF report, running from the Project Area east along Business Park Drive, then turn south on Redwood Drive

and then turn west on J. Rogers Lane where it will intersect with the City's existing pump station.

- 1.48 **Public Facility Fees.** The public facilities fee as provided for in Chapter 3.28 of the Rohnert Park Municipal Code.
- 1.49 **Public Facility Financing Plan (PFFP).** A comprehensive strategy for managing the costs of capital facilities, maintenance and services that are impacted by new development, which was most recently updated via City Council Resolution No. 2012-44 and as may be amended from time to time.
- 1.50 **Publicly Owned Treatment Works (POTW).** All parts of the public sewer system used for collection, transport, storage, treatment and disposal of wastewater, including the City Sewer System and the City of Santa Rosa subregional sewage treatment and water reclamation plant.
- 1.51 **PWWF.** Abbreviation for peak wet weather flows.
- 1.52 **PWWF Capacity Service.** The amount of sewage, on an peak wet weather flow basis, that Tribe can dispose into the City Sewer System, which is more specifically established in Section 4.7 of the Agreement.
- 1.53 **RBF Report.** A detailed analysis of the wastewater treatment options available to the Tribe to serve the Project prepared by RBF Consulting dated March 8, 2011 and entitled "Graton Rancheria Off-Site Sanitary Sewer Alternatives Analysis."
- 1.54 **Recycled Water Facilities.** The recycled water infrastructure that may be constructed by the Tribe and dedicated to the City which would convey recycled water to the Trust Lands, comprised of approximately 1,000 feet of new 8-inch recycled water main to be installed entirely underground within the existing public right-of-way from the southern boundary of the Project Area at the intersection of Labath Avenue and Business Park Drive, to the existing recycled water main located in Labath Avenue, approximately 300 feet north of Martin Avenue / Labath Avenue intersection, as is depicted in Exhibit C, hereto.
- 1.55 **Recycled Water Service.** Those recycled water services provided by the City to the Tribe to serve the Trust Lands by transporting and conveying recycled water from the Laguna WWTP to the southern boundary of the Trust Lands located at the intersection of Labath Avenue and Business Park Drive. Recycled Water Services are a subset of the Wastewater Services.
- 1.56 **Recycled Water Service Charges.** The fees charged by the City to the Tribe for the provision of Recycled Water Services which shall be calculated and changed from time to time in sufficient amounts to operate, maintain and expand the City's recycled water system to meet the needs of all users.

- 1.57 **ROD.** The Record of Decision of the NIGC approving the management contract for a gaming facility located at the 254-acre Wilfred Site (Preferred Alternative) in Sonoma County, California, pursuant to 25 U.S.C. § 2711, which is available online at http://www.gratoneis.com/documents/record_of_decision/ROD.pdf.
- 1.58 **Sewage.** The water-borne wastes received from human habitation and use of buildings for residential, business, institutional, and industrial purposes.
- 1.59 **Santa Rosa Subregional Sewage System.** The subregional sewerage system including the Laguna WWTP and any improvements and expansions thereof, owned, operated and managed by the City of Santa Rosa.
- 1.60 **Sewer System Management Plan.** A document that describes the activities used to manage a wastewater collection system effectively including: maintaining the condition of the collection system, minimizing Infiltration/Inflow and minimizing the number and impact of sanitary sewer Overflows.
- 1.61 **SSMP.** Abbreviation for Sewer System Management Plan.
- 1.62 **Tribe.** Federated Indians of Graton Rancheria, a federally recognized Indian tribe listed in the Federal Register as Graton Rancheria, California, or an authorized official or agency thereof.
- 1.63 **Tribal Chair.** The person duly elected under the Tribe's constitution to perform the duties specified therein, including serving as the Tribe's official representative.
- 1.64 **Tribal Facilities.** The sewage disposal infrastructure system for the Project, as such system may be modified, located within the Project Area, including, but not limited to, the sewer lines, interceptor sewers, lift/pump stations, force mains, gravity mains and effluent pipelines that are necessary to connect to the City's Sewer System for the provision of Wastewater Services. The specific sewage disposal infrastructure required for the Project within the Project Area is more particularly described / depicted in Exhibit C relating to the Alternative 2 Alignment.
- 1.65 **Trust Application.** The Tribe's application requesting that the United States take title to the Trust Lands for the benefit of the Tribe as a part of the Tribe's reservation, which the Bureau of Indian Affairs and the Secretary of the Interior approved on October 1, 2010 pursuant to the Graton Rancheria Restoration Act (25 U.S.C. § 1300n-3).
- 1.66 **Trust Lands.** That certain property held in trust by the United States for the benefit of the Tribe pursuant to the Graton Rancheria Restoration Act (P.L. 106-558, 25 U.S.C. § 1300n *et seq.*) comprising approximately 254 acres of land in Sonoma County including Assessors Parcel Numbers 045-073-001, 045-074-009, 045-074-010, 045-073-002, 045-073-003, 045-073-004, 046-021-020, 046-021-021, 046-021-039, 046-021-040 and 143-040-068.

- 1.67 **Wastewater.** Sewage, industrial, and other wastes and waters, whether treated or untreated, discharged into or permitted to enter a community sewer.
- 1.68 **Wastewater Services.** Those wastewater services provided by the City to the Tribe to serve the Trust Lands pursuant to the City's powers to plan, finance, acquire, construct, maintain and operate facilities for collection, transportation, treatment, reclamation, recycling, reuse, and disposal of sanitary sewage and similar wastewaters and to prescribe fees and charges for such services, including the conveyance of the Wastewater from the Point of Delivery into the Santa Rosa Subregional Sewer System for collection, treatment, reclamation, recycling, reuse, and disposal.
- 1.69 **Wastewater Services Charges.** The fees charged by the City to the Tribe for the ongoing provision of Wastewater Services which shall be calculated and changed from time to time by formal action of the City Council in sufficient amounts to operate, maintain and expand the City sewer system to meet the needs of all users.

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EXHIBIT E:
OPERATING REQUIREMENTS

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OPERATING REQUIREMENTS

1. **APPLICABILITY.** Pursuant to the Joint Exercise of Powers Agreement between the Federated Indians of Graton Rancheria (“**Tribe**”) and the City of Rohnert Park (“**City**”) (the “**Agreement**”), the Tribe shall comply with these Operating Requirements (“**Operating Requirements**”) in the development, construction, operation and maintenance of the Tribal Facilities, Recycled Water Facilities and in the development and construction of the Dedicated Facilities.
2. **TERMINOLOGY.** Capitalized terms in these Operating Requirements shall have the same meaning as provided for in the Agreement.
3. **REGULATIONS & STANDARDS.**
 - 3.1 **REGULATIONS.** In performing its obligations under these Operating Requirements and the Agreement, the Tribe shall comply with and shall require that the Tribal Facilities, Dedicated Facilities and Recycled Water Facilities within the Trust Lands and within the City be developed, constructed, operated and maintained in a manner that conforms with all of the following regulations, which shall collectively be referred to as the “**Regulations**”:
 - 3.1.1 The City wastewater and enforcement ordinances, resolutions and minute orders both codified in the Rohnert Park Municipal Code and uncoded, including but not limited to the City’s Sewer Ordinance (which is codified in Rohnert Park Municipal Code Chapters 13.08 through 13.52), Stormwater Management Ordinance (which is codified at Rohnert Park Municipal Code Chapter 15.52);
 - 3.1.2 The General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems, Water Quality Order No. 2006-0003, wastewater source control requirements, and best practices for satellite systems, as well as and any and all related administrative guidelines, criteria, other written direction regarding the same applicable to the Santa Rosa Subregional Sewage System;
 - 3.1.3 The Industrial Waste Discharge Permit Program established by the Santa Rosa Subregional Sewage System, being the National Pollutant Discharge Elimination System (NPDES) Permit No. CA0025054;
 - 3.1.4 The state and City of Rohnert Park recycled water rules, regulations and permits as they exist now or may be amended or revised during the period of time this agreement is in effect, including but not limited to Titles 17 and 22 of the California Code of Regulations, and the Water Reclamation Requirements and Provisions for Recycled Water Use established by the NPDES Permit issued to the Santa Rosa Subregional Water Reclamation System.

- 3.1.5 The building standards and codes consistent with those adopted by the City and in effect at the time, including but not limited to, the City of Rohnert Park Manual of Standards, the California Building Code, the California Plumbing Code and other applicable regulations adopted by the City; and
- 3.1.6 Federal and state laws regulating wastewater, including but not limited to, the Federal Water Pollution Control Act of 1972, the Clean Water Act, and the Comprehensive Environmental Response, Compensation and Liability Act.
- 3.2 **CERTIFICATION.** Prior to the dedication of any of the Dedicated Facilities or the use of any of the Tribal Facilities or Recycled Water Facilities, the Tribe shall provide to the City, at the Tribe's expense, written certification from the Project's engineer and architect of record that said structures have been constructed in accordance with the Regulations.
- 3.3 **REGULATORY AMENDMENTS.** In the event of future amendments to and/or updates of the Regulations, the more stringent of the requirements in these Operating Requirements or the most current Regulations shall apply, as determined by the City Engineer. Nothing in these Operating Requirements or the Agreement shall prevent the Tribe or the City from adopting more restrictive regulatory standards.

4. **REVIEW, APPROVAL AND INSPECTION OF FACILITIES.**

- 4.1 **CITY REVIEW OF PLANS.** To ensure compliance with the Regulations and the terms of the Agreement, the Tribe agrees to contract with the City, at the Tribe's sole expense, to provide planning, building and safety, public works, legal and similar personnel to review any and all construction plans and inspect construction of all improvements related to the Tribal Facilities, Recycled Water Facilities and the Dedicated Facilities. If the City determines that it is necessary to contract to outside consultants to satisfy its obligations hereunder, the Tribe, at its sole expense, shall pay the City, in the manner provided for in the Agreement, for the actual cost of contracted and additional services.
- 4.2 **CITY APPROVAL.** All of the Tribe's development plans, work done and materials furnished for the Tribal Facilities, the Dedicated Facilities or the Recycled Water Facilities shall be subject to final review and approval by the City; the Tribe is not providing final approval or review, which is solely the City's function and role. The City's review and approval of such development plans, work and materials shall not, however, relieve the Tribe of any of its obligations under this Agreement. The City Engineer, or his/her designee, shall have the authority to act on the City's behalf to review and approve all development plans, work done and materials furnished by the Tribe for the Tribal Facilities, Recycled Water Facilities and Dedicated Facilities.

4.2.1 Any City review and approval required to implement this Section 4 shall not be unreasonably withheld and the standards referred to in this Section shall be substantially identical to those applied by the City to other similarly situated users.

4.2.2 The City will not be responsible for any incomplete or nonconforming parts of the Tribal Facilities, Recycled Water Facilities or Dedicated Facilities constructed by the Tribe, or for damage to the Project Sewer System and/or City Sewer System or recycled water system resulting from events or causes other than City's sole negligence, including, but not limited to the Tribe's operation of the Tribal Facilities prior to their completion and/or the City's acceptance thereof.

4.3 **INSPECTION AND ENTRY.** The Tribe hereby consents and shall allow the City, the City of Santa Rosa acting on behalf of the City, the EPA, or an authorized contractor or agent thereof, to enter upon the Project Area at reasonable times and in a reasonable manner (which may include formal, informal or no notice, as may be appropriate for the particular circumstances) to inspect the Tribal Facilities and/or Recycled Water Facilities and to confirm the Tribe's compliance with the terms of these Operating Requirements and the Agreement. This includes the right to enter upon the Project Area whenever there is a reasonable basis to believe that the Tribe may be responsible for a violation of this Agreement or the Regulations has occurred or threatens to occur. The City and its authorized contractor or agent shall also have a right to enter the Project Area, when necessary for the abatement of a public nuisance or correction of a violation of the Agreement, the Regulations, or any other applicable laws, criteria or written direction.

5. **TRIBE'S O&M RESPONSIBILITY.** The Tribe's obligation, pursuant to the Agreement, to properly operate and maintain the Tribal Facilities is as follows:

5.1 The Tribe shall properly manage, operate, and maintain in good working order at all times all parts of the Tribal Facilities and the Recycled Water Facilities located in the Project Area. The Tribe shall, at all times, maintain adequate access to the components of the Tribal Facilities and the Recycled Water Facilities located in the Project Area.

5.1.1 The Tribe's maintenance obligation pursuant to Section 5.1 shall include removal of blockages and periodic cleaning and other such work and minor repairs as would be considered incidental to ongoing operation of a wastewater collection system and/or recycled water system, routine periodic inspection, and operation and routine servicing of pumps and pump stations.

5.2 The Tribe shall provide adequate capacity in all parts of the Tribal Facilities and the Recycled Water Facilities to convey Project average dry weather base flows and peak wet weather flows.

- 5.3 The Tribe shall take all reasonable steps to prevent, stop and mitigate the impact of releases of Project Wastewater and unintentional releases of recycled water to the environment, including but not limited to implementing a written O&M Plan as further defined in Section 5.3.1 plan.
- 5.3.1 Elements of the O&M Plan are further described under SSMP below and shall include, but not be limited to: a current system map, a schedule for routine preventive operation and maintenance activities including inspections and/or line cleaning, a schedule for equipment testing, training, and a methodology for addressing system problems (“**O&M Plan**”). The O&M Plan shall be made available to the City Engineer to review and approve.
- 5.4 The Tribe shall maintain adequate inventory of spare parts and equipment for the Tribal Facilities and the Recycled Water Facilities located in the Project Area.
- 5.5 The Tribe shall furnish to the City, within a reasonable time but no longer than ten (10) days from the date of mailing of the City’s request, any information regarding the operation and maintenance of the Tribal Facilities that the City may request to determine whether the Tribe has complied with these Operating Requirements and the Agreement.
- 5.6 The Tribe shall take all feasible steps to stop, and mitigate the impact of, Project Overflows in or from the Tribal Facilities and the Recycled Water Facilities located in the Project Area.
- 5.7 The Tribe shall employ at least one (1) person with a Collection System Maintenance Grade II Certification from CWEA, or equivalent, and one additional person with a Collection System Maintenance Grade I Certification from CWEA, or equivalent, to manage the Tribal Facilities. The work schedules of these operators shall be staggered such that the system is inspected on a daily basis.

6. POINT OF DELIVERY & DISCHARGE RESTRICTIONS.

- 6.1 **COLLECTION AND CONVEYANCE.** The Tribe shall develop, construct, operate, and maintain in good condition all of the Tribal Facilities as may be necessary to collect and convey Wastewater from the Project to the City at the point of delivery designated as the location at the southern project boundary of the Project Area in the general vicinity of the proposed Project entry at the intersection of Labath and Business Park Drive, as depicted on Exhibit C (“**Point of Delivery**”). The Tribe shall collect and convey Wastewater from the Project to the City at the Point of Delivery in such manner as to comply with all terms of these Operating Requirements, the Agreement, and with all applicable laws, rules, and regulations.
- 6.2 **WASTEWATER RESTRICTIONS.** The Tribe shall be prohibited from doing any and all of the following, without the prior written consent of the City:

- 6.2.1 Discharging sewage from unauthorized locations, including any location other than the Point of Delivery.
- 6.2.2 Storing sewage.
- 6.2.3 Developing, constructing, operating or maintaining a septic system, spray fields, treatment plant or similar wastewater system for any reason, whether for the Project Wastewater or otherwise.
- 6.2.4 Receiving Wastewater Services from any third party or using a third party to collect, transport, treat, reclaim, recycle, reuse or dispose of Wastewater.
- 6.2.5 Receiving septic wastes or any other wastes not generated from the Project.

7. 24-HOUR POINT OF CONTACT.

- 7.1 The Tribe shall maintain a sewer system contact phone number which shall be operated on a 24-hour per day, 7 days per week basis so people can report Wastewater system problems. The Tribe shall provide this number to the City and make this number available to its users.
- 7.2 The Tribe shall notify the City within three (3) business days of any changes of address, telephones, authorized representative and/or emergency contact information.

8. CAPACITY SERVICE ALLOTTED.

- 8.1 Pursuant to Sections 4.7 and 5.2 of the Agreement, the Tribe shall pay for and the City shall provide the Tribe with Capacity Service. Such Capacity Service shall be provided by the City as follows:
 - 8.1.1 Capacity Service with respect to BOD and TSS pollutants may be defined when found necessary for equitable distribution of costs.
 - 8.1.2 The Tribe's Wastewater delivered to the City Sewer System at the Point of Delivery shall be from Project uses only; admission of surface water and of groundwater to the City Sewer System shall be subject to limitations described herein and that the admission of matter of a kind or quantity which may damage the City Sewer System, its functions, or the quality of its effluent or reclaimed products shall be prohibited.

9. VOLUME OF WASTEWATER MEASUREMENT.

- 9.1 The Tribe agrees to install and to maintain and operate, at the Tribe's sole expense, a volume measuring device to determine the total amount of Wastewater discharged by the Tribe to the City Facilities. The measuring device shall

measure and record daily flows, peak hour flow, monthly peak flows, and total monthly flows.

- 9.2 The Tribe shall, at the Tribe's sole expense, produce monthly reports of Wastewater discharge which shall include: total use for the month, daily use each day, average daily use, and peak hour flow. The flow shall be measured at a point agreeable to the City Engineer, or his or her designee.

10. PENALTY FOR EXCEEDING CAPACITY SERVICE.

- 10.1 In the event that the Tribe exceeds its Capacity Service, as specified in Section 8 hereof and Sections 4.7 and 5.2 of the Agreement, or takes steps which would cause it to exceed its Capacity Service without acquiring or providing additional capacity, the City shall notify the Tribe, pursuant to Section 8 of the Agreement, to obtain compliance with these Operating Requirements and the Agreement.
- 10.2 If for any reason the Tribe exceeds its ADWF Capacity Service as measured by the average daily wastewater flow in any seven (7) day period, it shall pay excess Capacity Service surcharges. The surcharge for the capacity used in excess of capacity shall be one and a half (1.5) times an amount equal to the otherwise applicable cost per gallon of Wastewater Service Charges.
- 10.3 If for any reason the Tribe exceeds its PWWF Capacity Service for any single hour period, it shall pay excess Capacity Service surcharges. The surcharge for the capacity used that hour in excess of capacity shall be ten (10) times an amount equal to the otherwise applicable cost per gallon of the Wastewater Service charges.
- 10.4 In addition to the above excess Capacity Service surcharges, if for any reason the Tribe exceeds its ADWF Capacity Service as measured by the average daily flow in any seven (7) day period or PWWF Capacity Service for any single hour period, the Tribe shall submit a plan to the City to obtain compliance with these Operating Requirements and the Agreement and to reduce the flow to the capacity allotted. The Tribe shall submit the plan to the City within thirty (30) days of exceeding the Capacity Service allotted.

11. LIMITATIONS, PROHIBITIONS AND ACTIONS. The Tribe shall comply with the following limitations, prohibitions and actions:

- 11.1 The Tribe shall enforce sewer use requirements which shall prevent the Inflow to Tribal Facilities of storm and surface waters, roof drainage, and cooling water, and to identify and to abate existing surface water Inflows.
- 11.2 The Tribe shall minimize Infiltration of groundwater and storm water into Tribal Facilities through:
- 11.2.1 Proper design, inspection of construction and testing of new sewers.

11.2.2 Provide adequate building code inspection governing construction of sewers and enforcement thereof.

11.2.3 Maintenance of a program of sewer inspection and repair and of replacement of defective sewers.

11.3 The Tribe shall video inspect and smoke test the Tribal Facilities in accordance with the City's standards each five (5) years. All defects found shall be repaired in accordance with the City's standards. Evidence of such expenditures shall be included in the annual SSMP Audit.

11.4 The Tribe shall enforce sewer use requirements including Industrial Waste Discharge Program requirements which shall prohibit the discharge of substances which may be hazardous or which may impair the structures, equipment, functions, processes, or the quality of the end products of the City Sewage System, and which shall require control of the quantity, rate of flow, and concentration of Compatible Pollutants, of Incompatible Pollutants, and of toxic substances.

11.5 Project Sewage discharged by the Tribe to the City Sewer System shall comply with the following requirements:

11.5.1 Meet requirements with respect to quality, characteristics, and prohibited substances contained in the Rohnert Park Municipal Code and applicable regulations.

11.5.2 Not contain undissociated hydrogen sulfide to the extent that the hazard of odor nuisance or damage to sewers and other structures occurs at the point of discharge. Hydrogen sulfide levels shall be maintained such that they do not create an odor and such that dissolved sulfide is below 0.1 mg/l measured at the end of the force main. Treatment may be required to achieve this requirement.

11.6 The Tribe shall notify the City of actual or impending violations of the provisions of this Section 11, as provided for in Section 12 hereof.

12. REPORTING.

12.1 SELF-REPORTING OF NON-COMPLIANCE WITH OPERATING REQUIREMENTS, AGREEMENT OR LAWS

12.1.1 The Tribe shall self-report to the City as soon as practicable but no later than three (3) days after discovery of any violation, exceedance or non-compliance with these Operating Requirements, the Agreement, or with the Regulations, any applicable laws, rules, or regulations. In addition, the Tribe shall report to the City any actions or system problems that might lead to any violation, exceedance or non-compliance with the same.

12.1.2 In the event that the Tribe fails to self-report any actual or potential violation, exceedance or non-compliance, this failure to self-report shall be a violation of these Operating Requirements and the Agreement and shall constitute a Tribal Facilities default under Section 8 of the Agreement.

12.2 REPORTING OF OVERFLOW.

12.2.1 **Immediate Reporting to City.** Immediately after the Tribe becomes aware of the circumstances, the Tribe shall orally report to the City Engineer any Overflow from a Tribal Facility. At a minimum, the report shall identify: (i) the location of the Overflow; (ii) the receiving water (if there is one); (iii) the duration of the Overflow; and (iv) the estimated volume of the Overflow.

12.2.2 **Written Reports to City.** The Tribe shall also provide a written report to the City Engineer regarding any Overflow as soon as practicable but no later than three (3) business days after the Tribe becomes aware of the circumstances. The written report shall contain a description of:

- (a). The location of the Overflow;
- (b). The receiving water (if there is one);
- (c). An estimate of the volume of the Overflow;
- (d). A description of the sewer system component from which the release occurred (e.g., manhole, constructed Overflow pipe, crack in pipe);
- (e). The estimated date and time when the Overflow began and stopped or will be stopped;
- (f). The cause or suspected cause of the Overflow;
- (g). Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the Overflow and a schedule of major milestones for those steps;
- (h). An estimate of the number of persons who came into contact with wastewater from the Overflow; and
- (i). Steps taken or planned to mitigate the impact(s) of the Overflow and a schedule of major milestones for those steps.

12.2.3 **REPORTS TO THE STATE.** The Tribe shall be solely responsible for reporting any Overflow from a Tribal Facility to the appropriate state and

Federal entities and shall include a plan for such reporting in its SSMP program, provided for in Section 14 hereof.

13. **RECORD KEEPING, INSPECTION AND COPYING**

13.1 **RECORD KEEPING.**

13.1.1 The Tribe shall maintain a record of the following information for a period of at least seven (7) years from the date of the written report:

- (a). Any construction plans, approvals and certifications for the Tribal Facilities, Recycled Water Facilities and Dedicated Facilities.
- (b). Any O&M Plans and records relating to Tribal Facility or Recycled Water Facilities operation and maintenance activities.
- (c). Any report or audit submitted under Sections 12 and 14 hereof; and
- (d). Any report, including work orders that are associated with investigation of system problems related to an Overflow, that describes the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the Overflow, or that documents system performance.

13.2 **INSPECTION AND COPYING OF DOCUMENTS.**

13.2.1 The City may inspect and copy and all of Tribe's records related to the Agreement and these Operating Requirements at any time, immediately after the City gives notice to the Tribe, during business hours, and at any other time that a Tribal employee is available onsite with physical access to offices, including off-site facilities, where the records are kept. The Tribe shall cooperate with, and cannot refuse, the inspection and copying, provided that the City inspectors cannot require copies of records in such volume that it unreasonably interferes with the normal functioning of the Tribal Facilities or Recycled Water Facilities.

13.2.2 In lieu of onsite inspection and copying of records by its inspectors, the City may request in writing that the Tribe provide copies of such records as the City deems are reasonably necessary to ensure compliance with the terms of the Agreement and these Operating Requirements. The City's written request shall describe those records requested to be copied with sufficient specificity to reasonably identify the requested documents. Within ten (10) days after it receives the request, or such other time as the City may agree in writing, the Tribe shall provide one copy of the requested records to the City. An electronic version of the requested

records may be submitted to the City in lieu of a paper copy so long as the software required to access the electronic version is reasonably available to the City and the City does not object.

13.2.3 Notwithstanding any other provision of the Agreement or these Operating Requirements, the City shall not be denied access to records, equipment, or places where such access is reasonably necessary to ensure compliance with the Agreement or these Operating Requirements or to conduct or complete an investigation of suspected criminal activity in connection with the Tribal Facilities or Recycled Water Facilities.

14. SEWER SYSTEM MANAGEMENT PLAN (SSMP).

14.1 COMPONENTS OF SSMP PROGRAM.

14.1.1 Prior to receiving Wastewater Service from City, the Tribe shall develop and implement a Sewer System Management Plan (SSMP) and submit the plan to the City Engineer. The SSMP must include the following components:

- (a). Collection system management goals;
- (b). Organization of personnel, including the chain of command and communications;
- (c). Overflow emergency response plan;
- (d). Fats, oils, and grease (FOG) control program;
- (e). Inflow/Infiltration control;
- (f). Testing standards and inspection requirements;
- (g). Measures and activities to maintain the Tribal Facilities;
- (h). Design and construction standards;
- (i). Capacity management;
- (j). Monitoring plan for SSMP program effectiveness; and
- (k). Periodic SSMP Audits, periodic SSMP updates, and implementation of program improvements.

14.2 **SSMP PROGRAM AUDITS.** Beginning no later than the twenty four (24) months after the Commencement Date, the Tribe shall conduct an annual comprehensive audit, evaluating its SSMP program, including its deficiencies and steps to respond to them. A copy of the audit shall be provided to the City within ten (10)

days of its completion.

- 14.3 **COMMUNICATIONS.** The Tribe shall communicate on a regular basis with the City on the implementation and performance of its SSMP program and shall allow the City to provide input to the Tribe as the SSMP program is developed and implemented.

15. **RECYCLED WATER**

- 15.1 Provided that the conditions precedent established in Section 4.8 of the Agreement are satisfied, the City shall provide Recycled Water Service to the Tribe. The Tribe shall use no more than 3 million (3,000,000) gallons per month of recycled water for irrigation, toilet flushing, and cooling purposes for the Project. The Tribe shall make no other use of recycled water without prior written approval by the City Manager, or his or her designee, which shall not be unreasonably withheld. The Tribe shall not extend recycled water use to any other property besides the Project Area.
- 15.2 The Tribe is required to and shall comply with and enforce all City rules, regulations and standards for recycled water use as may be established by the City and amended from time to time.
- 15.3 The Tribe shall design, construct, operate and maintain the Recycled Water Facilities within the Project Area, at its sole expense, per the City rules, regulations and standards for recycled water use in effect at the time. At the completion of construction and inspection and approval of the Recycled Water Facilities, the Tribe shall submit record drawings to the City.
- 15.4 The Tribe shall designate a Site Supervisor for the Project Area who shall attend training provided by the City or its agent, at the Tribe's sole expense. The Site Supervisor shall be available, or have a designated staff available, at all time to assure 24-hour system coverage and prompt response to operational issues. The Tribe shall notify the City within ten (10) days in the event that a new Site Supervisor is designated for the Project.
- 15.5 The primary application of recycled water for irrigation purposes shall occur between the hours of 8:00 PM and 7:00 AM. If application is made outside this period of time, the Site Supervisor shall be onsite managing the application of recycled water to minimize runoff, overspray and public contact.
- 15.6 The Tribe shall ensure that there are no cross connections between the potable water system and the recycled water system.
- 15.7 The Tribe shall conduct regular inspections and preventive maintenance to ensure the recycled water system is operated per the rules, regulations and standards for recycled water use in effect at the time. If violations, failures or emergencies are

noted, the Tribe shall immediately contact the City by phone and follow directions provided by the City.

- 15.8 The Tribe shall keep accurate records of all recycled water system maintenance and inspections. Self-inspection documentation shall be submitted to the City periodically, as required by the City.

16. VERIFICATION AND SIGNING OF DOCUMENTS.

- 16.1 All documents provided to the City under these Operating Requirements shall be signed by both the Tribal Chair and the certified wastewater collection systems operator.
- 16.2 Pursuant to the provisions of 18 U.S.C. § 1001, relating to fraud and false statements, and the provisions of Section 309(c)(2) of the Act governing false statements, representations, or certification in reports required under the Act, any person who knowingly makes any false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained for the City of Rohnert Park Municipal Code, a wastewater discharge permit, or who falsifies or tampers with or knowingly renders inaccurate any monitoring device or method required under the City of Rohnert Park Municipal Code, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000.00) or imprisonment for not more than six months, or both.

EXHIBIT F:

CITY RESOLUTION AUTHORIZING AGREEMENT

EXHIBIT G:

TRIBAL RESOLUTION AUTHORIZING AGREEMENT

EXHIBIT H

INSURANCE

INSURANCE

A. INSURANCE REQUIREMENTS

1. Within ten (10) days after award of the Agreement, Tribe shall promptly obtain, at its own expense, all the insurance described in this section, and submit coverage verification for review and approval by the City. This insurance shall be in addition to any other form of insurance or bonds required under the terms of the Agreement.

Tribe shall not commence work under the Agreement, until such insurance has been approved by the City. Such insurance shall remain in full force and effect at all times. In addition, the Commercial General Liability Insurance shall be maintained for a minimum of five (5) years after final completion and acceptance of the Dedicated Facilities.

2. Companies writing the insurance under this article shall be authorized to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

3. Nothing contained in these insurance requirements is to be construed as limiting the extent of Tribe's responsibility for payment of damages resulting from its operations under this Agreement. Coverage required hereunder shall operate as Primary insurance.

4. Tribe shall procure, pay for, and maintain throughout the duration of this Agreement the following insurance coverage:

- a. Commercial General Liability coverage (Insurance Services Office form number CG 0001 – "occurrence" form).
- b. Insurance Services Office form number CA 00 01 covering Automobile Liability, including symbol 1 "any auto."
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, with Statutory Limits, and Employers Liability insurance.
- d. The Commercial General Liability Insurance shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:
 - Explosion, collapse or underground hazard (XCU)
 - Products and completed operations
 - Pollution liability
 - Contractual liability

5. Tribe shall maintain insurance limits of no less than:

- a. Commercial General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for all covered losses and no less than Ten Million Dollars (\$10,000,000) general aggregate.
- b. Automobile Liability: Three Million Dollars (\$3,000,000) combined single limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California, with Statutory Limits, and Employers Liability Insurance with limits of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.
- d. Pollution and/or Asbestos Pollution Liability: One Million Dollars (\$1,000,000) per each occurrence and a Two Million Dollars (\$2,000,000) policy aggregate. If coverages are written on a Claims Made form: (a) the "Retro Date" must be shown and must be before the date of the contract or the beginning of contract work, (b) insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work, and (c) if coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective, date, Contractor must purchase 'extended reporting' coverage for a minimum of five (5) years after completion of contract work..

At the option of Tribe, primary limits may be less than required, with an Umbrella Policy providing the additional limits needed. This form of insurance will be acceptable provided that the Primary and Umbrella Policies both provide the insurance coverages herein required, including all additional insured requirements. The Umbrella Policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying commercial General Liability insurance.

6. Endorsements - Originals of the following endorsements shall be attached to the liability insurance policy and delivered to City:
 - a. The Commercial General Liability policy of insurance shall be endorsed to name as additional insureds the City and all of its elected and appointed officials, directors, officers, employees, agents, construction manager, and servants, using ISO Form CG 2010 with an edition prior to 2004. Additional insureds shall also be covered for completed operations, either in the additional insured endorsement or through a separate endorsement such as CG 20 37.
 - b. The policy shall be endorsed to provide primary coverage to the full limit of liability stated in the declarations, and provide that if the additional insureds have any other insurance or self-insurance against the loss covered by this policy, that other insurance shall be excess insurance and not contribute with Tribe's policy.
 - c. Failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.

- d. Coverage shall state that Tribe's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. The insurer shall waive all rights of subrogation against the City, its officials, employees, and agents for losses arising from work performed by or on behalf of Tribe for the City.. Tribe agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
 - f. An endorsement shall be attached which states that the coverage is primary insurance and that any insurance or self-insurance fund maintained by or available to the City or any of its officers, agents, employees or volunteers shall be in excess of Tribe's insurance and shall not be called upon to contribute to a loss covered by the policy.
 - g. The policy must provide that it shall not be cancelled, suspended, voided or changed nor may the "retroactive date" of the policy or any renewal or replacement policy be changed without thirty (30) days prior written notice to the City.
 - h. A cross-liability endorsement must be included to the effect that each insured is covered as if separate policies had been issued to each insured.
 - i. The liability coverage may be either on a blanket basis or a policy which specifically identifies this agreement with a contractual liability endorsement.
- 7.. Subcontractors - The liability insurance shall not require Tribe to have its subcontractors named as insureds in Tribe's policy, but the policy shall protect Tribe from contingent liability which may arise from operations of its subcontractors. Tribe shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.
8. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where any agreement to indemnify the additional insured would be invalid under Civil Code Section 2782(b).
9. Workers' Compensation Insurance certificate - Section 3700 of the Labor Code requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and to comply with such provisions and have Employers' Liability limits of \$1,000,000 per accident for bodily injury or disease before commencing the performance required under the Agreement.
10. Builder's Risk Insurance - "All Risk or Special Form" Builder's Risk Insurance on a replacement cost basis, in an amount equal to the full replacement cost of the Tribal Facilities and Dedicated Facilities on a completed value basis, including coverage for 'soft costs' such as design, engineering and construction management fees, covering all risks of loss, including but not limited to, fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil

commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, flood, and earthquake. This insurance shall name the City of Rohnert Park, its elected and appointed officials, employees, agents and servants and Tribe as insureds, as their interests may appear, and shall include coverage including, but not limited to, all damages or loss to the Tribal Facilities and Dedicated Facilities and to appurtenances, to materials and equipment to be used on the Project while the same are in transit, stored on or off the project site, to construction plant and temporary structures.

Builder's Risk Insurance policies shall contain the following provisions:

- a. The City shall be named as loss payee.
- b. The insurer shall waive all rights of subrogation against the City.
- c. Builder's Risk Insurance may have a deductible clause not to exceed the following limits:
 - If, pursuant to Section 7105 of the Public Contract Code, the City requires coverage for any damage to the work caused by an "Act of God," as defined by Section 7105(b)(2) of that Code, and has set forth the amount of the work to be covered and the insurance premium for such coverage as a separate bid item, the deductible for such coverage shall not exceed five percent (5%) of the value of the Tribal Facilities and Dedicated Facilities at risk at the time of the loss.
 - All other perils: \$5,000.

Tribe shall be responsible for paying any and all deductible costs. The policy shall provide the City the right to occupy the premises without termination of the policy until acceptance of the project.

11. Proof of Coverage - Before proceeding with the work under this Agreement, Tribe shall furnish the City with certificate(s) evidencing issuance of all insurance mentioned herein, copies of the policy declaration or information page(s) and endorsements. The certificate(s) and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on amended ACORD forms and ISO endorsement forms or equivalent endorsement forms acceptable to the City. The certificate(s), policy declaration or information page(s), and endorsements are to be received and approved by the City before work commences. Endorsements are not required for Workers Compensation or Builder's Risk Insurances. Such certificates of insurance shall provide that the insurance policy shall not be cancelable, be subject to non-renewal, or otherwise be subject to material modification, except with thirty (30) days' prior written notice to the City. Tribe shall also provide certificate(s) evidencing renewals of all insurance required herein, at least ten (10) days prior to the expiration date of any such insurance.

12. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and other additional insureds; or Tribe shall

procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

13. In the event of the breach of any provision of this paragraph, or in the event of any notices received which indicate any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provisions of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

14. The Tribe acknowledges and agrees that any actual or alleged failure on the part of City to inform Tribe of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

15. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT I:

RESOLUTION AUTHORIZING LIMITED WAIVER OF SOVEREIGN IMMUNITY



GENERAL COUNCIL RESOLUTION

FEDERATED INDIANS OF GRATON RANCHERIA

A RESOLUTION AUTHORIZING A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN FAVOR OF THE CITY OF ROHNERT PARK WITH RESPECT TO THE JOINT EXERCISE OF POWERS AGREEMENT FOR WASTEWATER SERVICES

GENERAL COUNCIL RESOLUTION NO.: GC-12-16

DATE APPROVED: June 9, 2012

- WHEREAS:** the Federated Indians of Graton Rancheria ("Tribe") is a federally recognized tribe, organized pursuant to the Constitution of the Federated Indians of Graton Rancheria, approved by the Secretary of the Interior on December 23, 2002 ("Constitution"); and
- WHEREAS:** Article III, Section 1 of the Constitution provides that the governing body of the Tribe is the Tribal Council; and
- WHEREAS:** Article VI, Section 1 provides the Tribal Council with the authority to negotiate and conclude agreements with local governments on behalf of the Tribe; and
- WHEREAS:** Article VI, Section 2 of the Constitution reserves to the General Council the power to waive the Tribe's sovereign immunity to unconsented suit; and
- WHEREAS:** on October 1, 2010, pursuant to the Graton Rancheria Restoration Act (25 U.S.C. § 1300n-3), the Bureau of Indian Affairs of the United States Department of the Interior accepted title to that certain property comprising approximately 254 acres of land in Sonoma County into trust for the benefit of the Tribe as part of the Tribe's Reservation ("Trust Lands"); and
- WHEREAS:** the Tribe intends to use its Trust Lands for the operation of a gaming enterprise pursuant to the terms of the Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. § 2701 *et seq.*, ("IGRA"); and
- WHEREAS:** prior to the Trust Acquisition, the National Indian Gaming Commission ("NIGC") prepared and finalized an Environmental Impact Statement evaluating the environmental consequences for the construction and operation of the Tribe's proposed gaming enterprise pursuant to the National Environmental Policy Act; and
- WHEREAS:** on October 15, 2012, after the trust acquisition, the NIGC published a Record of Decision ("ROD") for the proposed project concluding that the newly acquired Trust Lands are Indian lands which are eligible for gaming pursuant to IGRA and adopting a reduced intensity casino and hotel project as the preferred action

alternative ("Project") to be built on approximately 66 acres of land located on the northeastern portion of the Trust Lands and situated within the City of Rohnert Park's ("City's") urban growth boundary and adjacent to the City limits; and

WHEREAS: the Tribe desires to connect the Project to the City's sewer system in order to receive Wastewater Services for the Project; and

WHEREAS: The Tribal Council, with the assistance of legal counsel, has negotiated a Joint Exercise of Powers Agreement between the City and the Tribe ("Agreement"); and

WHEREAS: the Tribal Council, having considered the matter in accordance with tribal law, has determined that it is in the best interests of the Tribe to enter into the Agreement to receive wastewater services for the Project; and

WHEREAS: the Agreement requires the Tribe to provide a limited waiver of the Tribe's right to assert sovereign immunity in favor of the City, a waiver of the doctrines of exhaustion of tribal remedies or comity, and a consent to mediation of disputes and the enforcement of remedies related thereto; and

WHEREAS: the Tribal Council has requested that the General Council exercise the Tribe's sovereign right to expressly and unequivocally provide such waivers with regard to disputes arising under or in connection with the Agreement; and

WHEREAS: the City has requested that the General Council ratify the Agreement and authorize the Tribal Chair to execute and deliver the Agreement to the appropriate City officials to the extent such approval may be necessary or appropriate under Tribal law; and

WHEREAS: The General Council has full power and authority to adopt this Resolution under the Constitution and other applicable Tribal and federal laws and this Resolution does not conflict with any Tribal or federal law or require approval of any other Tribal entity that has not been obtained.

NOW, THEREFORE BE IT RESOLVED THAT the General Council hereby consents to and expressly, unequivocally and irrevocably: (i) waives the Tribe's right to assert sovereign immunity in favor of the City as to disputes arising under, or in connection with, the Agreement and any other agreement executed by the Tribe in connection with the Agreement, (ii) waives any requirement that disputes be heard in a court or other dispute resolution forum of the Tribe, whether under the doctrines of exhaustion of Tribal remedies, comity, or otherwise; and (iii) consents to the jurisdiction of state and federal courts and to mediation as well as the application of the laws of the state of California to govern and interpret the Agreement (collectively "Waivers").

BE IT FURTHER RESOLVED THAT the General Council ratifies the Tribal Chair's execution and delivery of the Agreement to the appropriate City officials.

BE IT FURTHER RESOLVED THAT the recitals to this Resolution are true and correct and material hereto.

BE IT FURTHER RESOLVED THAT this Resolution is in addition to and shall not supersede or extinguish any prior or future consent by the General Council to waive the Tribe's sovereign immunity in favor of the City, including, but not limited to, the sovereign immunity waiver provided under the Memorandum of Understanding dated October 14, 2003.

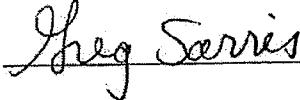
BE IT FURTHER RESOLVED THAT the General Council represents and warrants that the Waivers approved under this Resolution on behalf of the Tribe are valid, enforceable and effective and hereby determines that no laws, ordinances, resolutions or other actions of the Tribe or any of the agencies or instrumentalities of the Tribe, either written or established by custom or tradition, prohibit the General Council from approving this Resolution.

BE IT FURTHER RESOLVED THAT the General Council confirms that any law, ordinances, judgments, decisions, orders, resolutions, rules, regulations or other action, of the Tribe, any instrumentality or agency of the Tribe, or any of the officers, employees, or agents, of the foregoing, whether written, unwritten or established by tradition that are in effect and are in conflict with or inconsistent with the terms of this Resolution, the transactions contemplated herein, or any provision set forth in the Agreement, are hereby repealed and annulled with respect to the transactions approved by this Resolution to the extent of such conflict or inconsistency, and this Resolution shall supersede the same.

BE IT FURTHER RESOLVED THAT the General Council agrees not to pass or adopt any law, ordinances, judgments, decisions, orders, resolutions, rules, regulations or other action, of the Tribe, any instrumentality or agency of the Tribe, or any of the officers, employees, or agents, of the foregoing, whether written, unwritten or established by tradition, of any nature that impairs the obligations of the Tribe under this Resolution or that would rescind or modify these Waivers.

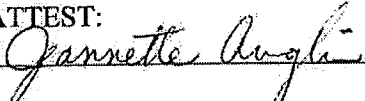
CERTIFICATION

We the undersigned hereby certify that the foregoing resolution was presented and duly adopted by the General Membership on the 9th day of June, 2012, at a General Council meeting at which a quorum of registered voters was present, by a vote of eighty-seven (87) for, none opposed, and none abstaining, and that said Resolution has not been rescinded or amended in any way.



Greg Sarris, Tribal Chair

ATTEST:



Jeannette Anglin, Secretary