

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made this 29th day of November, 2006, by and between the Northshore Fire Protection District (“NFPD”) and the Habematolel Pomo of Upper Lake (“Tribe”). (The capitalized terms used in this MOU shall have the meanings set forth in Section 1 below).

### RECITALS

**WHEREAS**, the Tribe is a landless Indian tribe restored to federal recognition and, as part of the Tribe’s restoration, the Tribe has acquired the Property and is requesting that the Secretary accept title to the Property in trust for the benefit of the Tribe; and

**WHEREAS**, after the Trust Acquisition Date, the Tribe intends to use the Trust Property for the development of the Project; and

**WHEREAS**, the Tribe and NFPD have been working closely to determine what off-reservation impacts the Project would have on the NFPD, and have been assessing how to resolve such impacts with the NFPD, and where necessary, assess the appropriate level of funding the NFPD would need to off-set any such potential impacts; and

**WHEREAS**, the Tribe desires to promote and provide a clean and safe environment for visiting patrons to the Facility by ensuring adequate response by fire and medical response services; and

**WHEREAS**, although not legally required to do so, the Tribe nevertheless desires to make voluntary contributions to the NFPD to help mitigate any potential impacts of the Project on the cost of operations of the NFPD; and

**WHEREAS**, the Tribe and the NFPD acknowledge that the contributions to be made by the Tribe to the NFPD pursuant to this MOU are voluntary contributions by the Tribe to the NFPD and are not intended to be, and do not constitute, a tax, fee, charge or assessment by the NFPD to the Tribe, and, but for this MOU, the NFPD would not receive such contributions from the Tribe; and

**WHEREAS**, based on the Tribe’s investigation as of the date of this MOU, the Tribe currently understands that it would be able to consummate the Trust Acquisition and develop the Project if the County and/or NFPD does not issue any lease, permit, license, certificate or other entitlement for use relating to the Trust Acquisition, the Federal and State Actions or the Project; and

**WHEREAS**, by approving, executing, delivering and implementing this MOU, the NFPD does not intend to commit itself to support, or to otherwise exercise discretionary judgment over, the Trust Acquisition, the Federal and State Actions or the Project; and

**WHEREAS**, the Trust Acquisition, the Federal and State Actions and the Project are not “projects” of the County within the meaning of CEQA and are not subject to the discretionary approval of the County or NFPD; and

**WHEREAS**, the NFPD does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Project; and

**WHEREAS**, the NFPD is therefore not deliberating on, approving, supporting, disapproving or otherwise exercising judgment regarding the Project by approving, executing, delivering and implementing this MOU; and

**WHEREAS**, the Tribe is not legally required to enter into this MOU in order to consummate the Trust Acquisition and the Federal and State Actions or to develop the Project; and

**WHEREAS**, the NFPD and the Tribe desire to establish a cooperative and mutually respectful relationship and to address other issues of mutual interest to the NFPD and the Tribe.

**NOW, THEREFORE**, the Parties hereby agree as follows:

**I. DEFINITIONS.**

The terms not defined elsewhere in this MOU shall have the following meanings:

"MOU" means this Memorandum of Understanding, as the same may be amended by mutual written agreement of the NFPD and the Tribe from time to time.

"County" means the County of Lake, and its Departments, agencies and subdivisions.

"CEQA" means the California Environmental Quality Act (California Public Resources Code § 21000 et seq.) and the guidelines promulgated under such statute, as the same may be amended or modified from time to time.

“Executive Council” means the duly elected governing body of the Habematolel Pomo of Upper Lake.

"Facility" means any commercial building hosting the casino business of the Tribe authorized by the IGRA and the Compact together with any other building hosting an activity that is directly related to Gaming including specifically, any entertainment and event venue hosting and production facility, any conference and meeting hosting facility, lodging and hospitality services facilities located on the Trust Property, and shall include Facility personal property, furnishings, and equipment contained therein, but not include

any Tribally owned improvements fixtures, personal property, furnishings and equipment other than the Facility on the Property.

"Federal and State Actions" means (i) the consummation of the Trust Acquisition, (ii) the NIGC Approvals, (iii) the negotiation and execution of the Tribal-State Compact by the State Governor, the ratification of the Tribal-State Compact by the State legislature and the approval of the Tribal-State Compact by the Secretary, and (iv) the issuance or completion by federal, state or regional public entities of approvals, permits, licenses, certifications, opinions or consultations requested by the Tribe in connection with the Trust Acquisition or the Project.

"IGRA" means the Indian Gaming Regulatory Act of 1988 (25 U.S.C. §§§ 2701 et seq.), and the regulations promulgated under such statute, as the same may be amended or modified from time to time.

"NIGC" means the National Indian Gaming Commission established pursuant to IGRA.

"NIGC Approvals" means (i) the approval by the NIGC of a Tribal Gaming Ordinance applicable to the Property and (ii) the approval by the Chairman of the NIGC of the Management Agreement between the Tribe and Luna Gaming Upper Lake, LLC.

"NFPD" means the Northshore Fire Protection District, a California Special Fire Protection District formed pursuant to the California Health and Safety Code and the California Resources Code that provides emergency and fire protection services in Lake County, California.

"Opening Date" means the date on which the Tribe commences commercial gaming operations open to the public on the Trust Property.

"Party" means the NFPD or the Tribe.

"Parties" means the NFPD and the Tribe.

"Project" means the development by the Tribe of the Facility on the Property or the Trust Property.

"Property" means the parcels of land which are located within the County and which are identified by the legal description set forth on Exhibit A hereto.

"Secretary" means the Secretary of the United States Department of the Interior or his or her representative.

"State" means the State of California.

"Tribe" means the Habematolel Pomo of Upper Lake, California, a federally recognized Indian tribe.

"Tribal-State Compact" means the Tribal-State Gaming Compact entered into between the Tribe and the State pursuant to IGRA, as approved by the Secretary or allowed to become effective by operation of law pursuant to IGRA.

"Trust Acquisition" means (i) the acquisition by the United States of trust title to the Property for the benefit of the Tribe, and (ii) the determination by the Secretary or the NIGC that the Trust Property is eligible for gaming pursuant to the requirements of IGRA.

"Trust Acquisition Date" means the date on which the deed to the Property has been conveyed to and executed by the Secretary such that (i) Trust Property is held in trust for the benefit of the Tribe and (ii) the Secretary or the NIGC has determined that the Trust Property is eligible for gaming pursuant to the requirements of IGRA.

"Trust Property" means, after the Trust Acquisition Date, the Property which is held by the United States in trust for the benefit of the Tribe.

## **II. MITIGATION MEASURES.**

**A. General Contribution to NFPD:** The NFPD and the Tribe recognize and agree that from and after the Trust Acquisition Date, and from the Opening Date, there will be a significant and direct impact upon the NFPD's operations and services throughout its service area, including among other things additional activities on or near the Trust Property which may result in an increased need for emergency and fire services. The effect of the Trust Acquisition and the Project also may also significantly increase emergency and fire services off the Property and within the County and other public entities. Therefore, in recognition of these potential impacts and demands upon the NFPD resulting from the Project, the Tribe agrees to do the following to comprehensively mitigate such impacts:

1. Annual Payment to Off-Set Service Impact. The Tribe shall make an annual payment to the NFPD in the Amount of EIGHTY THOUSAND DOLLARS (\$80,000.00) on or before January 1st each year as long as this MOU is in effect.
2. First Payment: Notwithstanding the foregoing, the first annual payment made by the Tribe shall be paid to the NFPD within ninety (90) days of the Trust Acquisition Date and shall be the amount equal to the following formula: (number of days between Trust Acquisition Date and January 1 of the next calendar year) multiplied by (\$219.18).

**B. Additional Fire and Safety Mitigation by Tribe:**

1. Evacuation Plan. Tribe shall provide a copy of its Emergency Evacuation Plan to the NFPD prior to commencing operations of the Facility, and ensure any updates or modifications to the plan are provided to NFPD upon implementation.
2. Fire Safety Features.
  - a. The Facility shall be constructed in a manner consistent with and in compliance with applicable State Building Code Standards and will be equipped with fire sprinklers.
  - b. Paved access shall be provided to the building for use by emergency personnel. Fire hydrants will be installed within the parking lot for use by fire fighters.
3. Spark Arrestors. Construction equipment and power tools shall be equipped with spark arrestors, as applicable, and maintained in good working order.
4. Storage of Combustible Materials. Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.
5. Hazardous Materials. In order to mitigate potential impacts of hazardous materials relating to the Facility and the surrounding community, the Tribe agrees to adopt the following mitigation measures:
  - a. If contaminated soil or groundwater or other suspected contamination is encountered during Facility construction, work shall be halted in the affected area and the type and extent of the contamination shall be determined. A qualified professional, in consultation with appropriate regulatory agencies, shall then develop an appropriate method to remediate the contamination. If necessary, the Tribe shall implement a remediation plan in conjunction with continued Facility construction.
  - b. Personnel shall follow written standard operating procedures for filling and servicing construction equipment and vehicles.

6. Facility Emergency Medical Employees. The Tribe shall maintain adequate emergency medical personnel in the Facility, on the Trust Property generally, and for special events as appropriate for the particular event. The Tribe agrees to provide an adequate level of on-site emergency medical personnel in the Facility during all hours of Facility operations. The emergency medical personnel shall be adequately trained with respect to defibrillation, airway management, patient assessment, and manipulative skills assessment.

### **III. Services to be Provided by NFPD.**

- A. **General Services.** The NFPD and the Tribe recognize and agree that from and after the Trust Acquisition Date, and from the Opening Date, there will be a significant need for emergency and fire services provided by the NFPD at or near the Trust Property. Therefore, in recognition of these potential needs, the NFPD agrees to provide emergency and fire services to the Tribe including, but not limited to:
  1. Fire and Hazard Response. This service includes, but is not limited to, responding to calls relating to fire prevention and fire suppression, hazards, etc., which may require engine companies, fire fighting equipment, the use, laying and connection of hoses, maneuvering of nozzles and direct fire streams, raising and climbing ladders, extinguishers and fire fighting hand tools.
  2. Paramedic and Ambulatory Services. This aid would include, but not limited to, responding to calls for assistance requiring immediate medical attention or transportation to a nearby medical facility.
  3. Public Service Response. This aid would include, but is not limited to, calls related to the rescue of trapped people or animals, protection of people which may require engine company, rescue squad, equipment cutters, rams, spreaders, air-bags, cutting torches, shoring equipment, lighting equipment, or generators.
  4. Fire Investigation Service. This aid would include, but is not limited to, the following: investigation of major alarm fires and other fires mandated by NFPD policy, investigation of fires that appear to be significant in fire prevention practices, interviewing of witnesses, collection and preservation of evidence and comprehensive compilation of fire/emergency report data.
  5. Fire Prevention and Inspection Services. This aid would include, but is not limited to, the following: community awareness and education about proper safety practices and identification and elimination of

hazardous conditions that may pose a threat to life, the environment and property.

#### **IV. Indemnification.**

The Tribe agrees that, to the fullest extent permissible by law and to the extent such third party claims do not arise as a result of the NFPD's negligence or other misconduct, the Tribe will defend, indemnify and hold harmless the NFPD, its representatives, officers, agents, and employees, from any and all third party claims, demands, actions, causes of action, losses, liabilities, or costs (including reasonable attorneys' fees) for Claims arising out of or related to the third party challenge or action taken against the NFPD as a result of any action by the NFPD undertaken to enter into, approve, ratify, or adopt this MOU or as a result of the Tribe's development, construction or operation of the Facility that is in material violation of the Tribe's obligations to the NFPD under this MOU. Provided, however, this provision shall only apply to those causes of action that challenges the legitimacy of this MOU, the authority of the NFPD to enter into this MOU, or the adequacy of the mitigation identified within this MOU, and provided further, the Tribe's total aggregate liability pursuant to this subsection shall be a maximum of One Hundred Thousand Dollars (\$100,000.00).

For those matters where the NFPD seeks to invoke this indemnification provision, the NFPD shall immediately notify the Tribe of any Claims being made by any third party against the NFPD, and the Tribe shall have the right to consultation with the NFPD, on how to handle and direct a response to such third party Claims. Upon the NFPD tendering its defense to the Tribe, the Tribe shall retain outside counsel to defend the NFPD in any such matter, and the Tribe shall have the right to direct and control all litigation, including the decision on whether to enter into a monetary settlement. Any decision to settle on a non-monetary basis a dispute for which the Tribe is responsible to indemnify and defend the NFPD shall be made jointly by the Tribe and the NFPD.

Notwithstanding the above, nothing in this provision shall preclude the NFPD from procuring other legal counsel to act as associate counsel on behalf of the NFPD and to participate as such in any legal processes or proceedings or to be a member of any such defense team.

The obligations of this indemnification provision shall be binding on the parties and all successors and assigns of the Tribe and the Tribe shall so obligate all transferees and assigns.

## V. SUFFICIENCY OF MITIGATION.

- A. Acknowledgements.** The NFPD has determined that the contribution referenced in Section II(A)(1), is, in the opinion of the NFPD, sufficient to mitigate any potential non-recurring and recurring impacts of the Trust Acquisition and the Project on the NFPD and its ability to provide emergency and fire services within its area of operation. The Parties intend for the contribution referenced in Section II(A)(1) to constitute all of the contributions which the Tribe shall make to the NFPD. Notwithstanding the above, the NFPD and Tribe shall use their best efforts to obtain additional funding for the NFPD from the Special Distribution Fund pursuant to 1999 Compacts with other tribes if the NFPD is eligible to receive such funding.
- B. Contribution Terms.** The Parties acknowledge and agree that the Project and the Tribe's contribution and other obligations as set forth in this MOU are, and shall be, contingent upon (i) the Secretary accepting trust title to the Trust Property, (ii) the Secretary, the NIGC or the courts determining that the Trust Property is eligible for gaming, (iii) the occurrence of the NIGC Approvals, (iv) the Tribe and the State entering into a Tribal-State Compact, the ratification of such Tribal-State Compact by the State legislature and the effectiveness of such Tribal-State Compact by approval of the Secretary or operation of law, and (v) the occurrence of the Opening Date. In the event the Opening Date does not occur for any reason, the Tribe shall not be required to make any contributions to the NFPD. Within ninety (90) days of each annual contribution, the Tribe and NFPD shall collectively determine how best to publicly acknowledge expenditures made with contributions provided by the Tribe to the NFPD under this MOU and to publicly attribute such expenditures to the Tribe, such as identifying specific areas where NFPD services have been improved due to the Tribe's contribution, including the actual purchase of NFPD assets. However, nothing in this section shall be construed to require the NFPD to develop and maintain a separate accounting system of its expenditures for the Tribe.
- C. No Other Payments.** Except as is expressly set forth in Section II(A)(1) hereof, the Tribe shall not be required pursuant to this MOU or otherwise to:
1. make any payments, reimbursements, contributions or investments to, through or on behalf of the NFPD for any taxes, fees, charges, cost reimbursements, service, fees or other assessments; or
  2. pay the NFPD any other contributions or payments in mitigation of any economic or other impacts of the Project or any other developments on the Trust Property; or

## **VI. TERM AND TERMINATION.**

**A. Effective Date.** This MOU shall not become effective unless and until the following events have occurred:

1. This MOU has been approved by the NFPD, and executed and delivered by the NFPD; and
2. This MOU has been approved or ratified by the Tribe's Executive Council, approved as to form by legal counsel to the Tribe, and executed and delivered by the Tribe.

**B. Expiration Date.**

1. Subject to the early termination provisions of this MOU, this MOU shall expire on the earlier of:
  - a. the twentieth (20th) anniversary of the date of this MOU;
  - b. the date on which the Tribe permanently ceases operation of the Project; or
  - c. the date of the expiration or termination of the Tribal-State Compact.
2. Prior to the termination of this MOU, the parties will negotiate in good faith toward a new agreement that meets the needs of the parties at that time.

**C. Termination.**

1. Termination Upon Land Going Out of Trust: In the event that the Property is removed from trust or protected status such that the Property is no longer held in trust by the United States of America for the benefit of the Tribe, or otherwise would not longer constitute Indian Country as that term is understood pursuant to federal law, or in the event the Tribe ceases gaming operations on the Trust Property, the provisions of this MOU would become void as of that date as to any further obligations of the Tribe for the payment of any amounts which would become due and payable to the NFPD after the date that the Property is removed from trust or "Indian Country" status.
2. Effect of Expiration or Termination Upon the expiration or termination of this MOU, the provisions of this MOU shall be of no further force or effect and none of the provisions of this MOU shall survive such expiration or termination; provided, however, that the

Tribe shall continue to make contributions pursuant to the terms of this MOU which became due and payable prior to any expiration or termination date.

**D. Suspension Events.** If, due to Force Majeure (as hereinafter defined), an act of God, valid business considerations, or the events listed in Section VI(E)(1) below, or in the event the Tribe ceases gaming operations on the Trust Property, the Parties' obligations under this MOU shall be suspended as of the date of such suspension or termination until such time as such operations are resumed. For the purposes of this Section, the term "Force Majeure" shall include, without limitation, the following: earthquake; flood; fire; other natural disasters; riots; war; or terrorism. Nothing in this Section shall reduce the Tribe's liability for contributions or other payments which become due and payable prior to the date such gaming operations are suspended or terminated.

**E. Renegotiation Provision.**

1. Basis for Renegotiation. Either Party may request that the other Party renegotiate one or more of the terms of this MOU if, and only if:
  - a. there is a significant change that directly or indirectly relates to the Party's expectations under this MOU;
  - b. the significant change materially impacts that Party; and
  - c. the significant change could not have been reasonably anticipated at the time of entering into this MOU.
2. Significant Change. Significant changes may include, but are not limited to:
  - a. a change in State or federal constitutions, laws, rules or regulations, relating to gaming on Indian lands, or ending the prohibition on Class III gaming (as defined in IGRA) or the operation of gaming devices by non-Indians in the State;
  - b. a reduction in the scope of gaming permitted on the Trust Property, whether pursuant to a change in federal, state or local constitutions, laws, rules or regulations, the Tribal-State Compact or otherwise;
  - c. the Tribal-State Compact, as amended or interpreted from time to time, (1) does not authorize the Tribe to conduct the scope of Class III (as defined in IGRA) gaming activities authorized by the State 1999 model Tribal-State Gaming Compact, or (2) does not authorize the Tribe to operate at least 350 gaming devices;

3. Renegotiation Procedures. All requests by either Party to renegotiate or amend this MOU shall be by written notice addressed to the other Party and shall identify the provisions of this MOU to be negotiated. Upon receipt of such notice, the Parties shall be obligated to renegotiate applicable provisions of this MOU in good faith. The Parties shall confer promptly and determine a schedule for commencing negotiations within fifteen (15) days of receipt of notice. The Parties are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so. The purpose of the negotiations will be to renegotiate the applicable provisions of this MOU in good faith so that the Parties will retain substantially the same rights and economic benefits in the aggregate from the Project as are contemplated as of the date of execution of this MOU.

## VII. DISPUTE RESOLUTION PROVISIONS.

- A. **Dispute Resolution.** In an effort to foster good relationships, the Parties agree to the dispute resolution procedures set forth in this Section.
- B. **Meeting.** The Parties shall make their best efforts to resolve claims of any dispute specifically arising under this MOU by good faith negotiations whenever possible. The Parties shall meet and confer in good faith to resolve any disputes arising under the MOU or concerning its terms or administration as follows:
  1. A Party shall give the other Party, as soon as possible after the dispute arises, written notice setting forth, with specificity, the Party's claims.
  2. The Parties shall meet and confer in a good faith attempt to resolve such dispute through negotiation not later than 10 days after receipt of notice, unless the Parties agree in writing to an extension of time.
- C. **Arbitration.** If such dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then the Parties may seek to have the dispute resolved by arbitration in accordance with the following procedures:
  1. Upon the request of a Party in writing, the dispute shall be submitted to binding arbitration in accordance with this Subsection.
  2. The disputes to be submitted to arbitration shall be limited to disputes specifically arising under this MOU.

3. In the event that there is any dispute as to whether a matter is subject to the arbitration provisions of this MOU, or any dispute concerning the scope of the matter or matters to be arbitrated, the disagreement as to whether the dispute is subject to the arbitration provisions of this MOU or the scope of such arbitration shall be resolved by the courts referenced in Section VII(D) below.
4. The arbitration shall be administered by a single arbitrator. The Tribe and the NFPD shall jointly select the arbitrator.
5. The arbitration shall be held in Lake County, or at such other location as shall be mutually agreed upon by the Parties.
6. The arbitration shall be administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association utilizing the Expedited Procedures, as modified by the provisions of this MOU.
7. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided, however, that no discovery authorized by that section may be conducted without leave of the arbitrator.
8. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the arbitrator.
9. Subject to the provisions of this Section, the arbitrator shall only be empowered to grant monetary awards or damages and only to the extent permitted in Section VII(D)(2) below.
10. The decision of the arbitrator shall be in writing and shall give reasons for the decision.
11. The NFPD, if applicable, hereby waives any requirements of the Government Claims Act (California Govt. Code section 810 *et. seq.*) that an administrative claim be filed by the Tribe prior to any arbitration demand.

**D. Confirmation of Decisions.** Any Party to an arbitration in which an award or decision has been made pursuant to this Section may petition the State Superior Court for Lake County to confirm the decision. The Parties expressly consent to be sued in such Court for the purposes of confirmation of such an award. An award shall be confirmed of any such decision. A decision shall be confirmed, provided that:

1. The decision is limited to the purposes of arbitration stated in this MOU and to matters specifically arising under this MOU.
2. No monetary award or damages may be awarded except for decisions which require the payment of sums pursuant to breaches of obligations of the Parties under this MOU and which are not inconsistent with the Tribe's limited waiver of sovereign immunity as set forth in this MOU.
3. No person or entity other than the Parties is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Parties in respect to any such third party.

If an award or decision is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action; and may be enforced like any other judgment of the court in which it is entered.

- E. Actions.** The express waivers and consents provided for in Subsection D hereof shall only extend to the following: civil actions specifically arising under this MOU; civil actions to compel arbitration; civil actions to determine whether a matter is subject to arbitration or determine the scope of the arbitration; any arbitration proceeding as provided herein; any action to confirm or enforce any judgment or arbitration award as provided herein; and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this MOU, no other waivers or consents to be sued, either express or implied, are granted by either Party.
- F. Other Dispute Resolutions.** This Section may not be construed to waive, limit, or restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Parties; provided, however, that no Party is under an obligation to agree to any such alternative method of dispute resolution.
- G. Confidentiality.** The Parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements between the Parties settling or otherwise relating to any claims of breach of this MOU or otherwise shall be and remain confidential to the extent not prohibited by applicable law.

## VIII. JURISDICTION

**A. Limited Waiver of Sovereign Immunity.** Tribe grants a limited waiver of sovereign immunity from suit exclusively to NFPD, and to no other entity or person, for the sole purpose of enforcing this MOU. For this limited purpose, Tribe hereby agrees to:

1. Resolve disputes, if necessary pursuant to Section VII above;
2. Waive its sovereign immunity in any such action brought against Tribe pursuant to Section VII for money damages, specific performance, injunctive relief and/or declaratory relief for Tribe's breach of this MOU;
3. Unconditionally waive any claim or defense of exhaustion of tribal administrative or judicial remedies.

Notwithstanding the foregoing, the Tribe does not waive its sovereign immunity to permit any monetary award or damages against, and the arbitrators and the courts will have no authority or jurisdiction to issue any monetary award or damages or order the execution or enforcement of any monetary award or damages against, any assets or revenues of the Tribe except for the Tribe's share of the net revenues distributed or to be distributed to the Tribe by the Facility's operations, which are included within the Project. The Tribe does not waive the defense of sovereign immunity with respect to:

1. actions by third parties;
2. disputes between the Tribe and the NFPD which do not specifically arise under this MOU; or
3. any asset of the Tribe other than those specifically set forth herein.

**C. NFPD Consent.** The NFPD acknowledges that the Tribe may bring an action pursuant to Section VII to enforce the terms of this MOU against NFPD for money damages, specific performance, injunctive relief and/or declaratory relief for NFPD's breach of this MOU. NFPD agrees to:

1. Resolve disputes, if necessary pursuant to Section VII above; and
2. For purposes of this MOU, waive any immunity it may have, as a California Special Fire Protection District, from suits to enforce the provisions of the MOU.

The Waiver provided herein shall not attach to disputes between the Tribe and the NFPD which do not specifically arise under this MOU.

**IX. MISCELLANEOUS.**

**A. Severability.**

1. If any provision of this MOU is held by the Secretary, the arbitrators or a court of competent jurisdiction to be illegal, invalid, unenforceable, unauthorized, annulled, voided or set aside, under present or future laws, the remaining provisions of this MOU shall remain in full force and effect and shall not be affected by such provision or by its severance from this MOU. In the event of any such determination, the Parties shall enter into good faith negotiations to replace the prohibited or invalid provision with a valid provision, the economic effect of which comes as close as possible to that of the invalid provision, which negotiations shall be conducted pursuant to the provisions of Section VI(E)(3) of this MOU.
2. In the event that the entire MOU is declared null and void or the actions of the NFPD or its respective officials in connection with the approval, execution or delivery of this MOU are set aside, voided or annulled, the Parties shall enter into good faith negotiations to negotiate a new agreement.

**B. Scope.** This MOU is intended to apply, and shall be construed to apply, solely to the Property, and, after the Trust Acquisition Date, solely to the Trust Property and shall not be construed to apply to any other property.

**C. Binding Agreement.** This MOU is intended to be, and shall be construed to be, binding upon the Parties and all successors and successors-in-interest of each Party, including, in the case of the NFPD, any future District Board members, and, in the case of the Tribe, future Executive Council members.

**D. Notice.** All notices required by this MOU will be deemed to have been given when made in writing and delivered or mailed to the respective Party and their representatives at their respective addresses as set forth below, or such other address as they may provide to the other Party from time to time:

For the Tribe:

Habematolel Pomo of Upper Lake  
P.O. Box 516  
Upper Lake, CA 95453  
Attention: Executive Council

With a copy to:

Rosette & Associates PC  
6124 E. Brown Road, Suite 101  
Mesa, AZ 85205  
Attention: Robert A. Rosette, Esq.

For the NFPD:

Northshore Fire Protection District  
PO Box 1199  
Lucerne, CA 95458  
Attention: Jim Robbins, Chief

- E. Governing Law.** This MOU shall be governed by, and construed in accordance with, the laws of the State of California.
- F. Construction of MOU.** This MOU, together with all Exhibits hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior negotiations, representations, or other agreements, whether written or oral. In the event of a dispute between or among the Parties as to the language of this MOU or the construction or meaning of any term hereof, this MOU shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, any Party based on the preparation or negotiation of this MOU. The headings contained in this MOU are for convenience of reference only and shall not effect the construction or interpretation hereof.

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

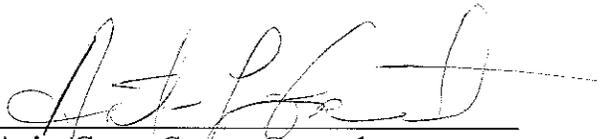
NORTHSHORE FIRE PROTECTION DISTRICT

Date: November 29, 2006

By:   
Michael Kirsch, Board Chairperson  
Northshore Fire Protection District

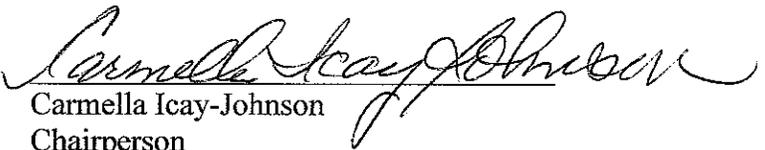
APPROVED AS TO LEGAL FORM BY  
LAKE COUNTY COUNSEL FOR  
NORTH SHORE FIRE PROTECTION DISTRICT:

Date: November 29, 2006

By:   
Anita Grant, County Counsel  
County of Lake, California

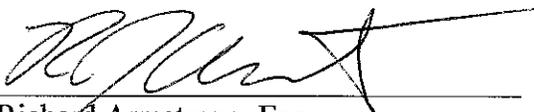
HABEMATOLEL POMO OF UPPER LAKE

Date: November 29, 2006

By:   
Carmella Icaay-Johnson  
Chairperson

APPROVED AS TO LEGAL FORM BY  
LEGAL COUNSEL TO THE TRIBE:

Date: November 29, 2006

By:   
Richard Armstrong, Esq.  
Rosette & Associates PC  
Legal Counsel to the Tribe