

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made this 19 day of August, 2021, 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 I below).

RECITALS

WHEREAS, the Tribe wishes to first recognize and thank the NFPD and all local state and federal emergency responders in their heroic efforts to protect our region, including our Tribal members, Tribal lands and our Tribal properties within the Reservation Area, from massive wild fires affecting the community over the past years including the August Complex in August-November 2020; the LNU Lightning Complex in August-October 2020; the Mendocino Complex in July-September 2018; the Pawnee Fire in June-July 2018; the Sulphur Fire (Mendo/Lake Complex) in October 2017; the Clayton Fire in August 2016; the Valley Fire in September 2015; the Jerusalem Fire in August 2015; and the Rocky Fire in July 2015; and

WHEREAS, during the dark days of federal termination, the United States unsuccessfully attempted to terminate the Tribe pursuant to the California Rancheria Act, but after banding together to protect their government and culture, the members of the Tribe prevailed in the lawsuit entitled *Upper Lake Pomo Association, et al., vs. Cecil Andrus, et al.*, No. C-75-0181-SW ultimately obtaining a judgement finding that termination was not legally concluded thus recognizing that the Tribe has always remained a federally recognized sovereign Native American Tribe with continuous recognition by the federal government and its reservation boundaries have never been disestablished and remain intact; and

WHEREAS, inclusion of the Tribe by U.S. Department of Interior, Bureau of Indian Affairs, on the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a) confirms that the Tribe is a federally recognized tribe for which Congress has explicitly expressed a federal policy to promote tribal self-determination and economic development; and

WHEREAS, after it overcame the challenges of past and disastrous federal policies, the Tribe regained its place as a federally-recognized, sovereign Indian tribe which possesses the inherent powers of the self-government and self-determination, and as such, the Tribe recognizes the important, cooperative and constructive role it has and can continue to play in the sovereign relationships with the local, state and national governments; and

WHEREAS, having been deprived of a traditional tax base, the Tribe has built business enterprises to provide the Tribe with governmental revenues for its operations and programs and to play an important role in the economy of the region. The Tribe believes strongly in the concept that all sovereigns (federal, state and local) should work cooperatively to better the quality of life including safety from impacts of wildfires, emergency medical services, vehicle accidents and water emergencies for all of their respective citizens because the best way to advance the Tribe and its members is through advancement of all people in the region, the state and nation; and

WHEREAS, due to its location in a beautiful, yet remote area, the Tribe, pursuant to its inherent sovereign authority and right to self-determination as recognized by the United States Congress in, among other statutes, the Native American Business Development, Trade

Development and Tourism Act of 2000 (25 U.S.C. § 4301et. seq.), has turned to electronic commerce to bring customers to its wholly-owned tribal businesses including its online consumer financial services enterprises pursuant to duly enacted tribal laws authorizing the conduct of these business operations and subjecting each to intense regulation for the protection of all consumers by the Tribal Financial Services Regulatory Commission; and

WHEREAS, the Tribe and the NFPD, among other local and state authorities, wish jointly to strive to create an environment with educational and recruitment opportunities in the region over time, in which the Tribe can create a well-trained and experienced workforce for the Tribe's e-commerce opportunities with the goal of creating an "e-commerce" hub for the region providing well-paying jobs for Tribal members and Tribal neighbors and improving the economy of the Tribe, the region and the state and reducing institutional dependence in the area; and

WHEREAS, the Tribe provides many services for its members such as emergency assistance, substance abuse rehabilitation, child services, educational services, work incentives and elder care services and by doing so allows the County to better serve others by reducing the load on the County's and the area's already strained services; and

WHEREAS, the Tribe recognizes that climate change evident in this year's already devastating fire season increases the need to protect the Reservation Area and the adjacent community from wildfires and engage in proactive efforts vital to preservation of lives, homes, businesses, governments and lands throughout the region; and

WHEREAS, the Tribe recognizes the importance to its Membership and its neighbors of the emergency medical services provided to the Reservation Area and surrounding community by the NFPD. NFPD employs Emergency Medical Technicians and Paramedics highly trained in emergency medical care. Northshore Fire stocks some of the most advanced emergency medical equipment and technology including Zoll Monitors, Stryker Power Pro Gurneys with the Power Load system in all of the front-line ambulances.

WHEREAS, the Tribe recognizes the special operations developed in response the presence of the lake consisting of the Dive Team which responds to water emergencies located around Clear Lake. The dive team consists of several divers and multiple line fenders which protect Members and their neighbors.

WHEREAS, the Tribe has issued several states of emergency for the Reservation Area in cooperation with other local sovereigns and the State of California including the NFPD for which the NFPD has been an integral component of readiness and response.

WHEREAS, the Tribe has purchased several properties which house governmental programs for Tribal Members to which the NFPD provide protection and emergency services and cooperation and support of the NFPD are an integral component protecting property and lives in the Tribe's expanding footprint in the area.

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 wildfires in the Reservation Area and surrounding community and to ensure the NFPD's readiness in protecting lives and property for the Reservation Area, Tribal Members and our neighbors; 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, 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.

WHEREAS, the Tribe and the NFPD have an excellent history of working cooperatively to improve the quality of life for the local area; and

WHEREAS, the NFPD and the Tribe reiterate their dedication to cooperative efforts to improve the quality of life for the region, and the mutual respect each has for the sovereignty of the other, and their desire to address local issues in a cooperative and mutually respectful way; and

WHEREAS, in this spirit of advancing the region for all peoples, the Tribe and the NFPD have previously entered into MOUs on November 29, 2006 addressing the Tribe's Trust Land acquisition and casino project (the "2006 MOU") and on October 26, 2018 addressing the protection and emergency response to the Tribe's ecommerce facilities (the "2018 MOU"); and for clarity, this MOU is separate from and does not supersede, preempt, amend or in any way affect the 2006 MOU or the 2018 MOU; and

WHEREAS, this MOU shall serve as evidence of the continued goodwill and cooperation between the Tribe and the NFPD in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the NFPD and the Tribe. Further, it will introduce the idea of an expanded and on-going relationship of the sovereigns of the area in exploring the concept of a Joint Powers Agreement as allowed under California statute to best leverage expertise and resources.

NOW, THEREFORE, the Parties hereby agree as follows:

I. DEFINITIONS.

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

"Chairperson" shall mean that person elected through a Tribal election to serve as Chairperson of the Tribe's Executive Council pursuant to the Tribe's Constitution.

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

"Executive Council" means the governing body of the Tribe pursuant to Article IV of the Tribe's Constitution consisting of seven members elected at large from the eligible voters of the Tribe.

"Facility" means any building or modular unit owned by the Tribe including personal property, furnishings, and equipment contained therein.

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

“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.

“Party” means the NFPD or the Tribe.

“Parties” means the NFPD and the Tribe.

“Reservation Area” means the jurisdictional area as set forth by the reservation boundaries before attempted termination and all Trust Lands.

“State” means the State of California.

“Tribe” means the Habematolel Pomo of Upper Lake, a federally recognized Indian Tribe.

“Trust Lands” means property held in trust by the United States for the exclusive benefit of the Tribe.

II. MITIGATION CONTRIBUTION TO NFPD.

The NFPD and the Tribe recognize and agree that the Tribe’s Facilities, commercial and governmental operations, employees, Tribal Members and guests impact the NFPD’s operations and services throughout its service area, including among other things additional activities on or near the Reservation Area which may result in an increased need for emergency and fire services. The effect of the Tribe’s property and operations may also increase emergency and fire services outside the Reservation Area and within the County and other public entities. The NFPD has developed a preventative plan to reduce the potential impacts of wildfire in the region which the Tribe wishes to support. Therefore, in recognition of the need for all sovereigns in the area to cooperate to reduce the potential devastating impacts of wildfires by creating and implementing preventative and remediation programs, the Tribe agrees to make a one-time contribution to the NFPD in the total amount of Six Hundred Sixty Two Thousand Dollars (\$662,000.00) to be paid in three installments of Two Hundred Twenty Thousand Six Hundred and Sixty Six Dollars and 67 Cents (\$220,666.67) occurring on September 1, 2021, October 15, 2021 and December 15, 2021.

III. SERVICES TO BE PROVIDED BY NFPD.

A. General Services. The NFPD and the Tribe recognize and agree there is a significant need for emergency and fire services provided by the NFPD at or near the Tribe’s properties and facilities with the Reservation Area and the adjacent area. Therefore, in recognition of these potential needs, the NFPD agrees to provide emergency and fire services to the Tribe within the Reservation Area and the adjacent area 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. In particular, while acknowledging the lack of jurisdiction over Trust Lands and facilities located thereon by the State, the NFPD shall aid the Tribe directly by:

- (a) reviewing and providing comments and non-binding suggestions to the Tribe within two months of receipt a copy of any of the Tribe's Emergency Evacuation Plans for a Tribal Facility;
- (b) upon request from the Tribe, inspecting any Tribal Facilities for fire and emergency readiness and provide non-binding advice for improvements to the Tribe;
- (c) inspecting at least quarterly all access roads to Tribal property and Facilities and all Tribal fire hydrants for readiness and proper maintenance providing non-binding advice to the Tribe of NFPD's findings;
- (d) in cooperation with the Tribe, developing and implementing a fuel mitigation program to protect the Reservation Area, Tribal Members and the general community including an information transfer from the regarding the Tribe's culturally significant fire prevention strategies and historic practices;
- (e) in cooperation with the Tribe, developing and implementing a fire protection plan for all Tribal lands within or near the Reservation Area that ensures the lands and property of the Tribe and Tribal Members will be equally protected in all wildfire events;

- (f) provide training and employment for one Fire Captain and ten crew members with special outreach and focus on recruiting and training tribal citizens including Tribal Members;

B. Tribal Recognition. To the extent possible, the Tribe's logo shall be included on sponsored crews' uniforms and will provide other recognition to the Tribe when possible.

IV. JOINT POWERS AGREEMENTS

The NFPD and the Tribe recognize the need to more efficiently mobilize and deploy scarce public resources and agree that a Joint Powers Agreement pursuant to California Government Code Section 6500 et. al. is a prudent mechanism to explore. In addition to other consideration in this agreement, the NFPD and the Tribe agree to devote the resources to develop a Joint Powers Agreement for proposal the appropriate approval authorities no later than June 1, 2022. For clarity, this provision does not obligate NFPD nor the Tribe to enter into a Joint Powers Agreement and recognizes that certain approval for both parties are required.

V. TERM AND TERMINATION

A. Effective Date. The general effective date of this MOU is the date that it has been signed by the Tribe and the NFPD.

B. Termination.

1. Written Notice for Termination unless terminated as provided herein. This MOU will remain in effect until superseded by a signed, mutual agreement of the Parties. A Party may withdraw from or otherwise terminate its participation in this MOU with no less than thirty (30) days written notice provided to the other Parties.

2. Information Retained After Termination of MOU. To the extent that a Party retains information upon termination of this MOU, all information provided by either Party shall continue to be treated in accordance with the terms of this MOU.

VI. DISPUTE RESOLUTION PROVISIONS.

In an effort to foster good relationships, the Parties agree that the highest ranking official of each Party shall meet with the other Parties and shall make their best efforts to resolve claims of any dispute specifically arising under this MOU by good faith negotiations.

VII. MISCELLANEOUS.

A. Severability. If any provision of this MOU is held by 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 effect of which comes as close as possible to that of the invalid provision.

B. 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.

C. Amendments. The Parties may amend this MOU from time to time, provided that such amendments are agreed to in writing by all Parties.

D. Execution. This MOU may be executed in counterparts and by signature sent by facsimile or electronically, each of which shall be deemed an original for all purposes.

E. Authority. Each Party to this MOU represents and warrants that it has the requisite legal authority to enter into this MOU.

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

NORTH SHORE FIRE PROTECTION DISTRICT



By: Gerald Shepherd
Title: Board Chairman

HABEMATOLEL POMO OF UPPER LAKE



By: Sherry Treppa
Title: Chairperson