

**OPERATING SERVICES AGREEMENT
BETWEEN THE OLIVEHURST PUBLIC UTILITY DISTRICT
AND THE ENTERPRISE DEVELOPMENT AUTHORITY**

This OPERATING SERVICES AGREEMENT (this “**Agreement**”) is dated for convenience _____, 2022, and effective on the date of the last party signature below (“**Effective Date**”), between the OLIVEHURST PUBLIC UTILITY DISTRICT, a public utility district formed and operating under California Public Utilities Code sections 15501 et seq. (the “**District**”) and the ENTERPRISE DEVELOPMENT AUTHORITY (the “**Authority**”), an unincorporated governmental instrumentality of the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “**Tribe**”). (The capitalized terms shall have the meanings set forth in Section 1 below.)

RECITALS

WHEREAS: The Tribe is the beneficial owner of 40 acres of land in Yuba County, California held by the United States of America in trust for the Tribe, located approximately 4 miles southeast of the Community of Olivehurst at 3317 Forty Mile Road, as generally located as indicated in Exhibit A attached hereto and as specifically located as indicated in Exhibit A-1 attached hereto (“**Yuba Site**”); and

WHEREAS: The Tribe has established the Authority to construct, own and operate the Tribe’s gaming facility on the Yuba Site, known as the Hard Rock Hotel & Casino Sacramento at Fire Mountain, currently as generally indicated on Exhibit A-2 attached hereto (“**Casino**” or “**Project**”), to promote tribal economic development, self-sufficiency and the health and welfare of its members pursuant to IGRA; and

WHEREAS, The Tribe designed and constructed the Project to meet or exceed the California Building Code and the California Public Safety Code applicable to the County, as set forth in Titles 19 and 24 of the California Code of Regulations, as required under the Secretarial Procedures and the County MOU; and

WHEREAS, The Record of Decision establishes certain mitigation measures to address wastewater issues from the Project; and

WHEREAS: The Authority requires a qualified operator to operate and maintain the Project’s Potable Water System and Wastewater System; and

WHEREAS: The District currently provides fire and emergency medical services to the Project pursuant to the Fire Services MOU; and

WHEREAS: The Tribe has asked the District to provide operation and maintenance services for the Project’s Potable Water System and Wastewater System, and the District has agreed to do so pursuant to this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereby agree as follows:

1. Definitions

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

“**Agreement**” is defined in the Preamble.

“**Aquality**” means Aquality Water Management, the current operator of the Water Systems.

“**Authority**” is defined in the Preamble.

“**Confirmation of Commencement Date**” means the Confirmation of Commencement Date, substantially in the form attached hereto as Exhibit D, to be executed by the parties as provided in Section 2.

“**Commencement Date**” means the date on which District commences performing Services under Section 3 of this Agreement, to be determined as provided in Section 2.

“**County**” means the County of Yuba, a subdivision of the State.

“**County MOU**” means the Memorandum of Understanding between the Tribe and the County dated December 17, 2002.

“**District**” is defined in the Preamble and means the Olivehurst Public Utility District, a public utility district formed and operating under California Public Utilities Code sections 15501 *et seq.*

“District Proposal” is defined in Section 3(a) of this Agreement.

“**Effective Date**” is defined in the Preamble.

“**Fire Services MOU**” means that certain Memorandum of Understanding, dated April 19, 2018 between the District and the Tribe, as amended by the Amendment to MOU dated March 21, 2019, and the Second Amendment to MOU dated January 7, 2022.

“**Force Majeure**” is defined in Section 7.

“**Governing Requirements**” means non-statutory requirements regarding the Authority’s design, construction and operation of the Project, including without limitation the Record of Decision, Secretarial Procedures, the County MOU, and this Agreement.

“**Guarantor**” means the Tribe, pursuant to the Guaranty.

“Guaranty” means that certain Guaranty, substantially in form attached hereto.

“IGRA” means the Indian Gaming Regulatory Act of 1988 (18 U.S.C. §§ 1166-1168 and 25 U.S.C. §§ 2701 *et seq.*), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

“MMRP” means the Monitoring and Reporting Program R5-2019-0910 for Enterprise Rancheria Estom Yumeka Maidu Tribe and Yuba County Entertainment and Yuba County Motorplex, LLC, Hard Rock Hotel & Casino Sacramento at Fire Mountain WWTF, Yuba County, issued by the California Regional Water Quality Control Board, Central Valley Region, dated October 31, 2019, as may be amended and supplemented from time to time.

“Potable Water System” means the elements of the treatment facility, storage and distribution system on the Yuba site associated with the Potable Water System in Exhibit C, including as shown on Exhibit C-1.

“Quarter” means any one of the following three-month periods (or portions thereof) following the Commencement Date: January through March, April through June, July through September, and October through December.

“Record of Decision” means the record of decision issued by the Bureau of Indian Affairs of the United States Department of the Interior pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*, which approved the proposed action in the environmental impact statement for the Project and was noticed on December 3, 2012 (77 Fed. Reg. 71612) and January 2, 2013 (78 Fed. Reg. 114).

“Secretarial Procedures” means the procedures issued on August 12, 2016, by the Secretary in lieu of a tribal-state compact pursuant to the remedial provisions of IGRA, 25 U.S.C. § 2710(d)(7), governing the conduct of class III gaming by the Tribe on the Yuba Site, or any Tribal-State Compact that the Tribe may enter into with the State and which is approved pursuant to IGRA.

“Secretary” means the Secretary of the Interior of the United States of America.

“Services” means the District’s obligations during the Term.

“State” means the State of California.

“Term” means the period of time during which the District performs the Services specified in Section 6 below.

“Tribe” is defined in the Preamble.

“Waste Water System” means the elements of the wastewater treatment plant and collection system on the Yuba Site associated with the Waste Water System in Exhibit C, including as shown on Exhibit C-1.

“**Water Systems**” means the Potable Water System and Waste Water System, collectively.

“**Yuba Site**” is defined in the Recitals.

2. Pre-Commencement Date Activities.

(a) District Due Diligence.

Following the Effective Date, the Authority shall provide the District with all relevant plans, specifications, operations manuals, repair records, and other records, documents and information regarding the design, construction and operation of the Water Systems, including records and documents in the possession of the Water Systems’ current operator Aquality, as the District may reasonably request to permit the District to become sufficiently familiar with the Water Systems to permit the District to perform the Services. The District shall diligently review the provided materials and notify the Authority of any questions or concerns.

(b) Assistance in Transitioning from Current Operator.

Authority shall use reasonable efforts to cause Aquality to cooperate with the District in transitioning Water Systems operations and maintenance to the District, including meeting with the District and providing the District with all reasonably requested records, documents and information. If the Aquality services period does not automatically terminate immediately preceding the Commencement Date, Authority shall terminate Aquality, to be effective immediately preceding the Commencement Date.

(c) Determination of Commencement Date. The Commencement Date shall be August 1, 2022, or such other date approved by District and Authority. Upon determination of the Commencement Date, District and Authority shall complete and execute the Confirmation of Commencement Date and cause the Confirmation of Commencement Date to be delivered to the other party.

3. Obligations During the Term.

(a) District Responsibilities.

During the Term, District shall, in addition to all other obligations set forth on the District’s Proposal – Operations & Maintenance of Fire Mountain Water Distribution, Sewer Collections Systems, & Wastewater Treatment Facility (the “District Proposal”), which is attached hereto as Schedule 1 (any conflicts between the main body of this Agreement and the District Proposal shall be resolved in favor of the main body of this Agreement):

i. Perform overall operations and scheduled preventive maintenance of the Water Systems, including sampling and testing, in compliance with all applicable laws and codes, including without limitation Governmental Requirements and the MMRP, and maintaining appropriate records. District shall not be responsible for equipment breakdowns, the costs for which Authority shall be responsible. District shall assist Authority with the process of finding

the proper company to resolve problems that arise. In some breakdown circumstances, if District is capable of addressing the issue, District shall do so on a time and materials basis.

- ii. Supply the Designated Chief Plant Operator in compliance with regulatory requirements.
- iii. Provided District staff possesses required qualifications, prepare all technical reports to submit to State, so as to comply with the reporting requirements of the current Waste Discharge Requirements (WDR) Order issued by the Central Valley Water Quality Control Board, e.g., standard NPDES reports.
- iv. Maintain minimum insurance as stipulated in Exhibit E.
- v. Electronically submit to State reports prepared by District regarding operations of the Water Systems and fulfillment of permitting requirements.
- vi. Submit periodic invoices to Authority as provided in paragraph 4 below.
- vii. Participate in the periodic evaluation of expenses and level of effort review for up or down adjustment pursuant to Section 4(c).
- viii. Seek approval from Authority for any equipment expenditures in excess of one thousand dollars (\$1,000.00).

(b) Authority Obligations During the Term.

During the Term, the Authority shall:

- i. Provide a primary point of contact for District to direct all questions, correspondence, and expenditure requests;
- ii. Perform all administrative tasks associated with the fiscal operations of the Water Systems;
- iii. Process payments to the District for Services rendered; and
- iv. Participate in the periodic evaluation of expenses and level of effort review for up or down adjustment pursuant to Section 4(c).

4. Payments.

(a) Billing Periods.

District shall bill Authority for Services rendered under this Agreement, and Authority shall pay District for such Services, in arrears, every Quarter. Invoices for Services shall be paid within thirty (30) days of receipt.

(b) Compensation Elements. Authority shall pay District the following amounts:

- i. The District shall be paid the hourly rates provided in the attached District Proposal for the staffing level, operating level, hours and hourly rates provided therein;

ii. Direct reimbursement, without markup, for all District third-party hard costs (laboratory analysis, miscellaneous equipment purchased, etc.), subject to Section 3(a)viii for individual items exceeding one thousand dollars (\$1,000.00); and

iii. Mileage reimbursement for the mileage provided in the District Proposal at the then applicable federal vehicle rate (58.5 cents per mile for 2022).

(c) Periodic Evaluation And Adjustments.

At the end of the first full Quarter, and at the end of each Quarter thereafter during the Term, the parties shall evaluate the level of effort (amount of labor provided by District) required to provide Services, and adjust the full-time employee (FTE) equivalent percentages up or down accordingly for the next Quarter for current charges and projected charges 1 FTE vs .5 FTE with Chief Plant Operator (CPO) and with LRO. These figures will be updated after every billing cycle to make sure all costs are correct. If the Parties are unable to agree on any proposed quarterly adjustment, the Parties shall address any such dispute in accordance with the Dispute Resolution provision of this Agreement.

Commented [A1]: Please clarify.

5. Funding Mechanism

This Agreement only creates a funding mechanism for the provision of the Services. The District acknowledges and agrees that the District does not exercise jurisdiction over the Yuba Site or have legal authority to deliberate on, approve, deny, or otherwise exercise judgment over any aspect of the Facility, including without limitation the Authority's gaming operations. Further, nothing in this Agreement contemplates or commits the District to any project which may result in a potentially significant physical impact on the environment.

Commented [A2]: The District had requested the Authority to represent that this agreement is not a management agreement. The Authority's representation alone is meaningless given that it is the NIGC that determines whether management is implicated in a contract. To address the issue, we have amended the concern with the standard acknowledgment and agreement by the parties that this is not a management contract under a new section 16.

6. Term

This Agreement shall have a term of two (2) years from the Commencement Date and may be renewed by the parties' mutual agreement for up to two (2) additional five (5)-year terms.

7. Termination

(a) Termination for Cause.

This Agreement may be terminated by either Party at any time during the term upon provision of written notice and opportunity to cure to the other Party of any perceived default of this Agreement or of any Party's ability to carry out its obligations under this Agreement. Subject to the notice and cure provisions set forth in this Section, such termination shall be effective immediately or upon such later date of termination as may be stated in the Party's notice.

(b) Termination for Convenience.

Either Party may terminate this Agreement at any time upon 90-days' prior written notice to the other Party. In the event of a wrongful termination for cause by the District, the termination shall automatically convert to a termination for convenience.

(c) Orderly Transition.

In the event of any termination of this Agreement, (i) District shall (x) immediately deliver to Authority all files and documents in District's possession or control relating to operation of the Water Systems, and (y) cooperate with Authority to effect an orderly transition of the management and operation of the Water Systems and (ii) Authority shall immediately pay District any and all amounts owed to District which have accrued under this Agreement up to the date of termination. The obligations set forth in this Section 7 shall survive the termination of this Agreement.

(d) Rights Which Survive Termination or Expiration.

The termination of this Agreement shall in no event terminate or prejudice (x) any right arising out of or accruing in connection with the terms of this Agreement attributable to events and circumstances occurring prior to termination or (y) any rights or obligations specified in this Agreement to survive termination.

8. Suspension Events.

At the Authority's election, if, due to Force Majeure (as hereinafter defined), an act of God, or valid business considerations, a material portion of the gaming operations previously conducted by the Authority on the Yuba Site are suspended or terminated, the parties' obligations under this Agreement 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; pandemics; other natural disasters; changes in law, regulation or governmental policy that has a material adverse effect on the gaming revenues of the Facility; riots; war; or terrorism. Nothing in this Section shall reduce the Authority's liability for contributions or other payments which become due and payable prior to the date such gaming operations are suspended or terminated. Nothing herein will limit the District's rights and obligations under California laws.

9. Indemnification.

(a) Indemnification by District.

The District shall defend, indemnify and hold harmless the Authority, the Tribe, and each of their respective board members, officers, employees, departments, officials, representatives, inspectors, contractors, consultants and agents ("**Authority Parties**") from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies, to the extent caused by the negligence, gross negligence or intentional misconduct of the District or the District's board members, officers, employees, departments, officials, representatives, inspectors, contractors, consultants and agents ("**District Parties**").

(b) Indemnification by Authority.

The Authority shall defend, indemnify and hold harmless the District and other District Parties from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies, to the extent caused by the negligence, gross negligence or intentional misconduct of the Authority or other Authority Parties, or any deficiencies in any of the Water Systems not caused by the District Parties.

10. Dispute Resolution.

The parties, and by its execution of the Guaranty the Tribe, agree to the dispute resolution procedures set forth in this Section 10.

(a) Meeting and Mediation.

The parties shall make their best efforts to resolve any dispute specifically arising under this Agreement by good faith negotiations whenever possible. The parties shall meet and confer in good faith to resolve any disputes arising under the Agreement or concerning its terms or administration as follows:

i. 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.

ii. 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.

iii. If such dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may request the dispute to be mediated. Mediation shall be confidential, non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by JAMS. The mediation shall be held at the JAMS office in Sacramento, California, or at such other location as is mutually agreeable to the parties. The cost of mediation shall be equally shared by both parties.

(b) Arbitration.

If the dispute is not resolved to the satisfaction of the parties within either sixty (60) calendar days after the first meeting or forty-five (45) days after a request for mediation, then the parties may seek to have the dispute resolved by arbitration in accordance with the following procedures:

i. Upon the request of a party in writing, the dispute shall be submitted to binding arbitration in accordance with this subsection.

ii. The disputes to be submitted to arbitration shall be limited to disputes specifically arising under this Agreement.

iii. In the event that there is any dispute as to whether a matter is subject to the arbitration provisions of this Agreement, 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 Agreement or the scope of such arbitration shall be resolved by the courts referenced in subsection (d) of this Section.

iv. The arbitration shall be held before a JAMS arbitrator in Sacramento, California, or at such other location as is mutually agreeable to the parties.

v. The arbitration shall be administered in accordance with the Streamlined Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent) as modified by the provisions of this Agreement. Service of any document on the parties may be made and shall be effective as provided in such rules.

vi. The provisions of section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.

vii. Each side shall bear its own costs, attorneys' fees and one-half the costs and expenses of the arbitrator.

viii. Subject to the provisions of this Section, the arbitrator shall be empowered to grant compensatory and declaratory relief only.

ix. The decision of the arbitrator shall be in writing and shall give reasons for the decision.

(c) Confirmation of Decisions.

Any party to an arbitration in which a decision has been made pursuant to this Section may petition the federal District Court for the Eastern District of California or the State Superior Court for the County of Yuba to affirm the decision. The parties expressly consent to be sued in such courts for affirmation of any such decision and as otherwise provided in subsection (d) of this Section. A decision shall be affirmed, provided that:

i. The decision is limited to matters specifically arising under this Agreement.

ii. No monetary damages may be awarded except those which require the payment of sums pursuant to breaches of obligations of the parties under this Agreement and which are not inconsistent with Section 11 and the Authority's limited waiver of sovereign immunity as set forth in Section 10.

iii. 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.

iv. If an award is affirmed, 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.

(d) Actions.

The express waivers and consents provided for in this Section shall only extend to the following: civil actions specifically arising under this Agreement; 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 Agreement, no other waivers or consents to be sued, either express or implied, are granted by either party.

(e) 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, utilization of a technical advisor to the parties; provided, however, that no party is under an obligation to agree to such alternative method of dispute resolution.

11. Limited Waiver of Sovereign Immunity.

Pursuant to General Council Resolution GC-22- attached hereto as Exhibit B, and subject to the provisions of this Section 11, the Authority, in conformity with section 10.2 of the Enterprise Development Authority Statute, and the Tribe as Guarantor, expressly and irrevocably waive sovereign immunity (and any defenses based thereon) in favor of the District, but not as to any other person or entity, as to any dispute which specifically arises under this Agreement and not as to any other action, matters or disputes. The Authority and Tribe do not waive any sovereign immunity with respect to (i) actions by third parties; or (ii) disputes between the Authority or Tribe and the District which do not specifically arise under this Agreement. The Authority and Tribe further agree that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Section 10, Dispute Resolution.

Aside from the foregoing Limited Waiver, nothing in this Agreement constitutes, nor shall it be construed as constituting, a waiver of the sovereign immunity of the Authority or Tribe, including sovereign immunity from suit.

12. Limitation of Liability.

The parties hereby agree that, in the event of default, any damages awarded or arising under this MOU shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. Neither party shall be liable to the other party under

or in connection with this Agreement for (i) loss of actual or anticipated profit; (ii) losses caused by business interruption; (iii) loss of goodwill or reputation; or (iv) any indirect, special or consequential cost, expense, loss or damage even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

13. Representations and Warranties.

Each party represents, warrants and covenants to the other party as follows:

(a) Authority. Such party has the legal power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(b) Due Authorization. The approval, execution, and delivery of this Agreement, and waiver of sovereign immunity, and the performance by such party of its obligations under this Agreement, have been authorized by all requisite actions of such party.

(c) Due Execution and Delivery. The persons executing this Agreement on behalf of such party are duly authorized to execute and deliver this Agreement on behalf of such party.

(d) No Conflict. The approval, execution, delivery and performance of this Agreement does not conflict with any other agreement to which such party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to such party.

14. Notices.

Except as provided in Section 5 above, any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered via the U.S. Postal Services, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each party may designate by subsequent written notice to each other:

For the Authority:

Enterprise Development Authority
c/o Estom Yumeka Maidu Tribe of the Enterprise Rancheria
2133 Monte Vista Ave.
Oroville, CA 95966
Attn: President

With a copy to:

Maier Pfeffer Kim Geary & Cohen, LLP
1970 Broadway, Suite 825
Oakland, CA 94612
Attn: John Maier

For the District:

Olivehurst Public Utility District
P.O. Box 670
Olivehurst, California 95961
Attn: General Manager

With a copy to:

Burke, Williams & Sorensen, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Attn: Deirdre Joan Cox

15. Assignment.

Neither party may assign or transfer this Agreement, or any rights or obligations herein, without the written consent of the other, which shall not unreasonably be withheld, delayed or conditioned. Additionally, District may, with only notice to the Authority, assign all of its rights and obligations under this Agreement to another local California governmental entity which (i) results from a merger, consolidation, or other combination with District, or (ii) succeeds to all or substantially all of potable water and/or wastewater services operations; provided that, in all cases, the assignee expressly assumes all of District's obligations under this Agreement.

16. No Management Contract.

Notwithstanding any other possible construction of any provision(s) contained herein, the parties acknowledge and agree that: (a) this agreement does not provide for the management of all or any part of the facilities within the meaning of IGRA by any person other than the Tribe or a third party manager; (b) this agreement does not deprive the Tribe of the sole proprietary interest and responsibility for the conduct of the facilities within the meaning of IGRA; (c) District will not exercise any remedy or otherwise take action under this agreement in a manner that would constitute management of all or any part of the facilities within the meaning of IGRA; and (d) District will not exercise any remedy or otherwise take any action under this agreement that would deprive the Tribe of the sole proprietary interest and responsibility for the conduct of the facilities within the meaning of IGRA.

17. General Provisions.

(a) No Third-Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as a third-party beneficiary or otherwise.

(b) Modification. No provision of this Agreement shall be amended, modified, or waived other than by an instrument in writing signed by an authorized representative of the Authority and the District.

(c) Successors and Assigns. This Agreement shall inure to the benefit of the parties and their permitted successors and assigns.

(d) Waivers. A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision or of any other provisions.

(e) No Submission to Jurisdiction. The parties acknowledge and agree that this Agreement, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the Authority or Tribe to the jurisdiction of (i) the District, (ii) any of its or their respective officials, employees, inspectors or contractors, or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans or specific plans.

(f) Indemnification. The Authority agrees to indemnify, defend and hold harmless the District (with counsel reasonably acceptable to the District) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the District which challenges the District's approval, execution or delivery of this Agreement.

(g) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, including its statutes of limitations but excluding its choice of law rules.

(h) Construction of Agreement. This Agreement, including all recitals, together with all Exhibits (including without limitation the Guaranty), constitutes the entire agreement between the District, on the one hand, and the Authority or Tribe, on the other, with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, representations, and drafts regarding this Agreement, whether written or oral. In the event of a dispute between or among the District, Authority or Tribe as to the language of this Agreement or any amendment to this Agreement or the construction or meaning of any term contained in this Agreement or any amendment to this Agreement, this Agreement or any amendment to this Agreement 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, either party based on the preparation or negotiation of this Agreement or any amendment to this Agreement. The headings contained in this Agreement are for convenience of reference only and shall not effect this Agreement's construction or interpretation.

(i) Binding Agreement. This Agreement 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 all officers, agents and employees, and, once executed and delivered, cannot be invalidated

pursuant to any subsequent action of, in the case of the District, future District Board of Directors, and, in the case of the Authority or Tribe, future Tribal Councils or General Councils.

(j) Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document and any counterpart signature pages may be detached and assembled to form a single original document. Counterpart signature pages delivered by facsimile or other electronic means shall have the same force and effect as a wet-ink original.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth below.

OLIVEHURST PUBLIC UTILITY DISTRICT

Date: _____, 2021

By: _____
John Floe
Board President

APPROVED AS TO FORM BY LEGAL
COUNSEL FOR THE OLIVEHURST PUBLIC
UTILITY DISTRICT

Date: _____, 2021

By: _____
Deirdre Joan Cox
Burke, Williams & Sorensen, LLP

ENTERPRISE DEVELOPMENT AUTHORITY

Date: _____, 2021

By: _____
Glenda Nelson
President

APPROVED AS TO FORM BY LEGAL
COUNSEL FOR THE AUTHORITY AND TRIBE

Date: _____, 2021

By: _____
John Maier, Esq.
Maier Pfeffer Kim Geary & Cohen, LLP

GUARANTY

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, stipulated and agreed, the undersigned ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “**Tribe**” or “**Guarantor**”), of which the Enterprise Development Authority (the “**Authority**”) is an unincorporated governmental instrumentality, does hereby guaranty the full, prompt and timely performance of all obligations of the Authority to the Olivehurst Public Utility District, a public utility district formed and operating under California Public Utilities Code sections 15501 et seq. (the “**District**”) pursuant that certain Operating Services Agreement between the Authority and the District, dated _____, 2022 (including any subsequent amendments or modifications approved by the District and the Authority, the “**Agreement**”).

Additionally:

1. Guarantor hereby waives any right to require the District to proceed against the Authority or any other person or to proceed against or exhaust any security held by the District at any time or to pursue any other remedy in the District’s power before proceeding against Guarantor. Guarantor further hereby waives demand, presentment, protest and notice of any kind.

2. The District may, without notice to or approval from Guarantor, alter, compromise, accelerate, extend or change the time or manner for the payment or performance of any guaranteed obligation, substitute or add any one or more guarantors or sureties, accept security or substitute security therefor, or subordinate any security therefor. No exercise or non-exercise of any right held by the District, no dealing by the District with the Authority or any other guarantor, surety or any other person, and no change or impairment of all or any portion of the guaranteed obligations or suspension of any right or remedy of the District against any person, including, without limitation, the Authority or any other such guarantor, surety or other person, shall in any way affect any of Guarantor’s obligations hereunder. No agreement by the District to exculpate the Authority or any other person from personal liability in whole or in part, or agreement to look solely to any property for the satisfaction of any Authority obligations under the Agreement, shall affect Guarantor’s obligations hereunder. Guarantor further acknowledges that if any such exculpation or agreement has been given or is hereafter given to the Authority, the District shall have done so or shall be entitled to do so in reliance upon Guarantor’s agreements herein.

3. Without limiting the foregoing, Guarantor hereby waives (i) all rights of subrogation, reimbursement, indemnification, contribution and any other rights and defenses that are or may become available to the Guarantor or other surety by reason of California Civil Code Sections 2787 to 2855, inclusive and (ii) any rights or defenses the Guarantor or other surety may have in respect of its obligations as a guarantor or surety by reason of any election of remedies by the District or other creditor.

4. Anything to the contrary herein notwithstanding, District may not encumber or seek satisfaction of judgment arising under the Agreement from anything other than undistributed revenues from casino operations, and no other monies or interest in land, whether tangible,

intangible, legal or beneficial, vested or contingent, or any occupancy or other rights or entitlements therein related thereto, shall be subject to attachment, execution, lien, judgments or other enforcement or satisfaction of any kind, in whole or in part, with respect to any claim of the District on any basis whatsoever.

By execution of this Guaranty, the undersigned Guarantor specifically agrees to the dispute resolution procedures set forth in Agreement Section 10, the limited waiver of sovereign immunity contained in Agreement Section 11, and the limitation of damages contained in Agreement Section 12.

ESTOM YUMEKA MAIDU TRIBE OF THE
ENTERPRISE RANCHERIA

Date: _____, 2022

By: _____
Glenda Nelson
Tribal Chairperson

List of Exhibits and Schedules

Exhibit A:	Yuba Site Location Map
Exhibit A-1:	Specific Location of Yuba Site
Exhibit A-2:	Site Plan
Exhibit B:	General Council Resolution No.: GC-21-XX
Exhibit C:	Water Systems Descriptions
Exhibit C-1:	Locations of Water Systems Elements
Exhibit D-1:	Waste Water Systems Descriptions
Exhibit D-2:	Locations of Waste Water Systems Elements
Exhibit E:	Form of Confirmation of Commencement Date
Exhibit F:	District Insurance
Schedule 1	Proposal – Operations & Maintenance of Fire Mountain Water Distribution, Sewer Collection Systems, & Waste Water Treatment Facility

Commented [A3]: To be reviewed.

Commented [A4]: Obtain from Aquality?

Commented [A5]: Obtain from Aquality?

Commented [A6]: OPUD to obtain from SDRMA

EXHIBIT A
GENERAL LOCATION MAP YUBA SITE

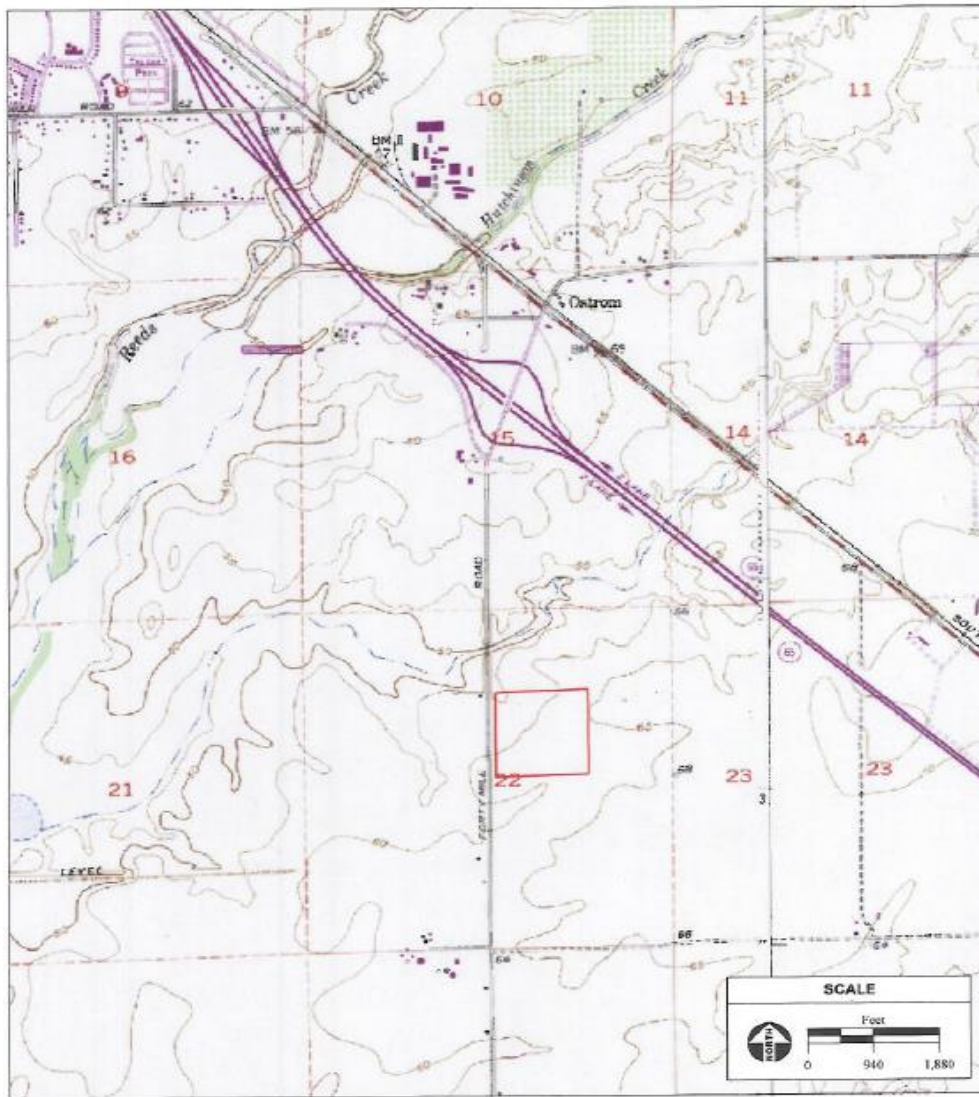


EXHIBIT A-2
SITE PLAN

[To be provided by Tribe/Authority if available]

EXHIBIT B
RESOLUTION GC- 21-XX

(TO BE ATTACHED)

GENERAL COUNCIL RESOLUTION: GC-21-

Commented [A7]: Draft for consideration

RESOLUTION AUTHORIZING THE ENTERPRISE DEVELOPMENT AUTHORITY TO (i) NEGOTIATE, EXECUTE AND DELIVER THE DISTRICT AGREEMENT ON BEHALF OF THE AUTHORITY AND A GUARANTY THEREOF BY THE TRIBE, AND (ii) GRANT A LIMITED WAIVER OF THE TRIBE AS GUARANTOR AND AUTHORITY'S SOVEREIGN IMMUNITY IN FAVOR OF THE DISTRICT.

WHEREAS: The Estom Yumeka Maidu Tribe of the Enterprise Rancheria is a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the "**Tribe**") and organized pursuant to the Constitution of the Enterprise Rancheria Estom Yumeka Maidu, as amended, revised and ratified on June 4, 2016 (the "**Constitution**"); and

WHEREAS: The Constitution, at Article V, Section 3, provides that the governing body of the Tribe is the General Council, and that the General Council delegates to the Tribal Council the authority to oversee and regulate the operations of the Tribe in accordance with Article VI of the Constitution; and

WHEREAS: The Constitution, at Article VI, Section 3, authorizes the Tribal Council to regulate, manage and oversee all gaming and business activities of the Tribe, to enact laws to manage or otherwise deal with the Tribe's interest in Tribal lands and assets, and to charter and regulate corporations and other organizations for economic or other purposes; and

WHEREAS: The Constitution, at Article XIV, Section 1, reserves to the General Council the power to waive the Tribe's sovereign immunity to unconsented suit; and

WHEREAS: The Constitution, at Article VII, Section I, authorizes the Tribal Chairperson to execute all contracts, leases, resolutions, statutes, codes, ordinances or other official documents on behalf of the Tribe; and

WHEREAS: The General Council, through General Council Resolution No. 15-01 dated August 8, 2015, ratified, approved and affirmed the authority of the Tribal Council to create the Enterprise Development Authority (the "**Authority**") and delegate and assign to it such Tribal assets, property, and Tribal land on such terms as the Tribal Council found necessary; and

WHEREAS: The Tribal Council by and through Resolution No. 15-10 dated July 30, 2015 and the Enterprise Economic Development Authority Statute (the "**Authority Statute**") enacted therein, created the Authority as a subordinate entity of the Tribe that serves as an instrumentality of the Tribal government for the purposes of the development of economic opportunities through the exclusive ownership, oversight, and

operation of the Tribe’s gaming activities and other Tribal businesses, and to manage all assets and revenues related thereto solely on behalf of and for the benefit of the Tribe and its members; and

WHEREAS: The Authority owns and operates the Tribe’s gaming facility known as the Hard Rock Hotel & Casino Sacramento at Fire Mountain (“**Resort**”) and located on the approximately 40 acres of land in Yuba County taken in trust for the Tribe for gaming purposes (the “**Yuba Site**”) pursuant to the Record of Decision issued in November 2012 by the Bureau of Indian Affairs; and

WHEREAS: The Olivehurst Public Utility District (the “**District**”) currently provides fire and emergency medical services to a service area near the Yuba Site, as well as to the Resort, pursuant to a Memorandum of Understanding, [*originally*] between the Tribe and District, dated April 19, 2018 as amended and assigned to the Authority by operation of Tribal law pursuant to the Authority Statute, (the “**Fire Services MOU**”); and

Commented [A8]: Include if the Fire Services MOU was formally assigned to the Authority.

WHEREAS: Whereas the District also operates and maintains potable water and wastewater systems for service areas near the Yuba Site; and

Commented [A9]: QUERY—This is true, right?

WHEREAS: The Authority has asked the District to operate and maintain the Project’s potable water system and wastewater system (collectively, the “**Water Systems**”) pursuant to an Operations Service Agreement (“**District Agreement**”) between the Authority and the District, based on labor at the District’s fully loaded rate, direct reimbursement for third-party costs, and mileage at the applicable IRS rate, the annual cost for which is currently estimated at approximately \$ _____; and

Commented [A10]: Revise to conform to changes to compensation structure.

WHEREAS: The District Agreement includes an express guaranty of the Authority’s obligations by the Tribe as guarantor (“Guarantor”); and

WHEREAS: The District Agreement provides for a limited waiver of the Tribe as Guarantor and Authority’s sovereign immunity so that the District can enforce the terms of the District Agreement; and

WHEREAS: The Tribal Council has requested that the General Council authorize the Authority and the Tribe as Guarantor to finalize, execute, and deliver the District Agreement, including, without limitation, the limited waiver of sovereign immunity by the Authority and the Tribe as Guarantor, (b) consents to arbitration or court action as specified in the District Agreement, and (c) waives of the doctrine of the exhaustion of tribal remedies.

NOW, THEREFORE, BE IT RESOLVED THAT the General Council hereby authorizes (i) the Authority, acting upon the advice of legal counsel, to negotiate a final form of the District Agreement, (ii) the Authority President, Glenda Nelson, to execute and deliver the District

Agreement on behalf of the Authority, and (iii) the Tribal Chairperson, Glenda Nelson, to execute the guaranty thereof by the Tribe.

BE IT FURTHER RESOLVED THAT the General Council authorizes the Authority, in conformity with section 10.2 of the Enterprise Development Authority Statute, and the Tribe as Guarantor expressly and irrevocably waive sovereign immunity (and any defenses based thereon) in favor of the District, but not as to any other person or entity, as to any dispute which specifically arises under the District Agreement and not as to any other action, matters or disputes. The Authority and Tribe do not waive any sovereign immunity with respect to (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Authority or Tribe, or the District; or (ii) disputes between the Authority or Tribe, and the District which do not specifically arise under this Agreement. The Authority and Tribe further agree that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Section **10**, Dispute Resolution, of the District Agreement.

CERTIFICATION

We the undersigned do hereby certify that the foregoing resolution #GC-21-__ was duly adopted by the General Membership on the ___ day of _____, 20___, at a General Council meeting at which a quorum of the registered voters was present, by a vote of ___ for, __ opposed and __ abstaining, and that said Resolution has not been rescinded or amended in any way.

By: _____
Glenda Nelson, Tribal Chairperson

ATTEST:

Cindy Smith, Tribal Secretary

EXHIBIT C
DESCRIPTIONS OF WATER SYSTEMS

The Water Systems incorporate the following components:

- A Raw Water Well for Potable Water Supply
- Potable Water Chlorination System
- Potable Water Storage Reservoir
- Potable Water Pumping System & Fire Pump
- Wastewater Treatment System with Flow Equalization & UV Disinfection
- Reclaimed Water Pumping System
- Reclaimed Water Storage Pond

The Potable Water System operates in the following manner. Raw well water is disinfected prior to entering the onsite reservoir. There is the ability for additional disinfection into the potable water system prior to delivery, should it be required. The finished potable water is delivered to the casino via a series of low-pressure high flow pumps. In addition, there is a high flow pump system for supplying fire suppression.

The wastewater plant consists of the following components:

- Influent Wet Well and Pump Station
- Influent Fine Screening
- Anoxic Basin
- Aeration Basins
- Membrane Basins
- UV Disinfection
- Waste Sludge Holding Tank
- Sludge Dewatering
- EQ Storage Tank

The wastewater system is an Ovivo MicroBlox MBR and has a design flow of 140K/day.

The WWTP consists of two separate MBR trains with a common anoxic and preair basin. There is a flow equalization system controlled by level of the process tanks. At a given setpoint level excess mixed liquor is removed and stored in an aerated EQ tank and is returned to the process after the flows have lowered. The effluent from the treatment process is UV disinfected and sent to either the onsite reclaimed storage tank or if that is full it overflows to the reclaimed storage pond. There is a series of low-pressure high flow reclaimed water pumps for delivery of the reclaimed water for the onsite landscaping. Waste Activated Sludge is held in an aerated tank and periodically dewatered and hauled away to a landfill.

Commented [A11]: This comes from current operator Aquality's website--to be reviewed and revised for accuracy. **In particular, any off-site elements should be noted, and parties should consider whether they are within scope of Agreement.**

Commented [A12]: Is this correct? The ROD says (my emphasis) "The existing WWTP is designed and permitted for an average flow of 170,000 gallons per day, however to accommodate the existing weekend flow and the additional weekend flow of 141,000 gpd... the WWTP would be expanded to have a capacity of 325,000 gpd."

EXHIBIT C-1
LOCATIONS OF WATER SYSTEMS ELEMENTS

[To be provided by Tribe/Authority if available]

EXHIBIT D
FORM OF CONFIRMATION OF COMMENCEMENT DATE

The undersigned OLIVEHURST PUBLIC UTILITY DISTRICT and ENTERPRISE DEVELOPMENT AUTHORITY, an unincorporated governmental instrumentality of the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California, the “parties” under that certain OPERATING SERVICES AGREEMENT, dated for convenience _____, 2021 (“Agreement”), hereby confirm that the “Commencement Date” under the Agreement is _____, 2021.

The Agreement has not been modified, altered or amended. All Agreement terms and provisions of the Agreement are ratified and confirmed.

IN WITNESS WHEREOF, the parties have executed this Confirmation as of the Commencement Date.

OLIVEHURST PUBLIC UTILITY DISTRICT

By: _____
John Floe
Board President

ENTERPRISE DEVELOPMENT AUTHORITY

By: _____
Glenda Nelson
Tribal Chairperson

EXHIBIT E
DISTRICT INSURANCE
[OPUD to Provide]

**OPERATING SERVICES AGREEMENT
BETWEEN THE OLIVEHURST PUBLIC UTILITY DISTRICT
AND THE ENTERPRISE DEVELOPMENT AUTHORITY**

This OPERATING SERVICES AGREEMENT (this “**Agreement**”) is dated for convenience _____, ~~2021~~2022, and effective on the date of the last party signature below (“**Effective Date**”), between the OLIVEHURST PUBLIC UTILITY DISTRICT, a public utility district formed and operating under California Public Utilities Code sections 15501 et seq. (the “**District**”) and the ENTERPRISE DEVELOPMENT AUTHORITY (the “**Authority**”), an unincorporated governmental instrumentality of the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “**Tribe**”). (The capitalized terms shall have the meanings set forth in Section 1 below.)

RECITALS

WHEREAS: The Tribe is the beneficial owner of 40 acres of land in Yuba County, California held by the United States of America in trust for the Tribe, located approximately 4 miles southeast of the Community of Olivehurst at 3317 Forty Mile Road, as generally located as indicated in Exhibit A attached hereto and as specifically located as indicated in Exhibit A-1 attached hereto (“**Yuba Site**”); and

WHEREAS: The Tribe has established the Authority to construct, own and operate the Tribe’s gaming facility on the Yuba Site, known as the Hard Rock Hotel & Casino Sacramento at Fire Mountain, currently as generally indicated on Exhibit A-2 attached hereto (“**Casino**” or “**Project**”), to promote tribal economic development, self-sufficiency and the health and welfare of its members pursuant to IGRA; and

Commented [A1]: For consideration if available.

WHEREAS, The Tribe designed and constructed the Project to meet or exceed the California Building Code and the California Public Safety Code applicable to the County, as set forth in Titles 19 and 24 of the California Code of Regulations, as required under the Secretarial Procedures and the County MOU; and

WHEREAS, The Record of Decision establishes certain mitigation measures to address wastewater issues from the Project; and

WHEREAS: The Authority requires a qualified operator to operate and maintain the Project’s Potable Water System and Wastewater System; and

WHEREAS: The District currently provides fire and emergency medical services to the Project pursuant to the Fire Services MOU; and

WHEREAS: The Tribe has asked the District to provide operation and maintenance services for the Project’s Potable Water System and Wastewater System, and the District has agreed to do so pursuant to this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereby agree as follows:

1. Definitions

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

“**Agreement**” is defined in the Preamble.

“**Aquality**” means Aquality Water Management, the current operator of the Water Systems.

“**Authority**” is defined in the Preamble.

“**Confirmation of Commencement Date**” means the Confirmation of Commencement Date, substantially in the form attached hereto as Exhibit D, to be executed by the parties as provided in Section 2.

“**Commencement Date**” means the date on which District commences performing Services under Section 3 of this Agreement, to be determined as provided in Section 2.

“**County**” means the County of Yuba, a subdivision of the State.

“**County MOU**” means the Memorandum of Understanding between the Tribe and the County dated December 17, 2002.

“**District**” is defined in the Preamble and means the Olivehurst Public Utility District, a public utility district formed and operating under California Public Utilities Code sections 15501 *et seq.*

“**District Proposal**” is defined in Section 3(a) of this Agreement.

“**Effective Date**” is defined in the Preamble.

“**Fire Services MOU**” means that certain Memorandum of Understanding, dated ~~March 21, 2009~~ April 19, 2018 between the District and the Tribe, as amended by the Amendment to MOU dated March 21, 2019, and the Second Amendment to MOU dated January 7, 2022.

“**Force Majeure**” is defined in Section 7.

“**Governing Requirements**” means non-statutory requirements regarding the Authority’s design, construction and operation of the Project, including without limitation the Record of Decision, Secretarial Procedures, the County MOU, and this Agreement.

“**Guarantor**” means the Tribe, pursuant to the Guaranty.

“**Guaranty**” means that certain Guaranty, substantially in form attached hereto.

“**IGRA**” means the Indian Gaming Regulatory Act of 1988 (18 U.S.C. §§ 1166-1168 and 25 U.S.C. §§ 2701 *et seq.*), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

“**MMRP**” means the Monitoring and Reporting Program R5-2019-0910 for Enterprise Rancheria Estom Yumeka Maidu Tribe and Yuba County Entertainment and Yuba County Motorplex, LLC, Hard Rock Hotel & Casino Sacramento at Fire Mountain WWTF, Yuba County, issued by the California Regional Water Quality Control Board, Central Valley Region, dated October 31, 2019, as ~~may be~~ amended and supplemented from time to time.

“**Potable Water System**” means the elements of the treatment facility, storage and distribution system on the Yuba site associated with the Potable Water System in Exhibit C, including as shown on Exhibit C-1.

Commented [A2]: If something like this is available.

“**Quarter**” means any one of the following three-month periods (or portions thereof) following the Commencement Date: January through March, April through June, July through September, and October through December.

“**Record of Decision**” means the record of decision issued by the Bureau of Indian Affairs of the United States Department of the Interior pursuant to ~~NEPA, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*~~, which approved the proposed action in the EIS environmental impact statement for the Project and was noticed on December 3, 2012 (77 Fed. Reg. 71612) and January 2, 2013 (78 Fed. Reg. 114).

“**Secretarial Procedures**” means the procedures issued on August 12, 2016, by the Secretary in lieu of a tribal-state compact pursuant to the remedial provisions of IGRA, 25 U.S.C. § 2710(d)(7), governing the conduct of class III gaming by the Tribe on the Yuba Site, or any Tribal-State Compact that the Tribe may enter into with the State and which is approved pursuant to IGRA.

“**Secretary**” means the Secretary of the Interior of the United States of America.

“**Services**” means the District’s obligations during the Term.

“**State**” means the State of California.

“**Term**” means the period of time during which the District performs the Services specified in Section ~~sss6~~ below.

“**Tribe**” is defined in the Preamble.

“**Waste Water System**” means the elements of the wastewater treatment plant and collection system on the Yuba Site associated with the Waste Water System in Exhibit C, including as shown on Exhibit C-1.

Commented [A3]: If something like this is available.

“Water Systems” means the Potable Water System and Waste Water System, collectively.

“Yuba Site” is defined in the Recitals.

2. Pre-Commencement Date Activities.

(a) District Due Diligence.

Following the Effective Date, the Authority shall provide the District with all relevant plans, specifications, operations manuals, repair records, and other records, documents and information regarding the design, construction and operation of the Water Systems, including records and documents in the possession of the Water Systems’ current operator Aquality, as the District may reasonably request to permit the District to become sufficiently familiar with the Water Systems to permit the District to perform the Services. The District shall diligently review the provided materials and notify the Authority of any questions or concerns.

(b) Assistance in Transitioning from Current Operator.

Authority shall use reasonable efforts to cause Aquality to cooperate with the District in transitioning Water Systems operations and maintenance to the District, including meeting with the District and providing the District with all reasonably requested records, documents and information. If the Aquality services period does not automatically terminate immediately preceding the Commencement Date, Authority shall terminate Aquality, to be effective immediately preceding the Commencement Date.

(c) Determination of Commencement Date. The Commencement Date shall be [Date], August 1, 2022, or such other date approved by District and Authority. Upon determination of the Commencement Date, District and Authority shall complete and execute the Confirmation of Commencement Date and cause the Confirmation of Commencement Date to be delivered to the other party.

Commented [A4]: To be filled in by Tribe

3. Obligations During the Term.

(a) District Responsibilities.

~~During the Term, District shall:~~

During the Term, District shall, in addition to all other obligations set forth on the District’s Proposal – Operations & Maintenance of Fire Mountain Water Distribution, Sewer Collections Systems, & Wastewater Treatment Facility (the “District Proposal”), which is attached hereto as Schedule 1 (any conflicts between the main body of this Agreement and the District Proposal shall be resolved in favor of the main body of this Agreement):

i. Perform overall operations and scheduled preventive maintenance of the Water Systems, including sampling and testing, in compliance with all applicable laws and codes, including without limitation Governmental Requirements and the MMRP, and maintaining appropriate records. District shall not be responsible for equipment breakdowns, the costs for

which Authority shall be responsible. District shall assist Authority with the process of finding the proper company to resolve problems that arise. In some breakdown circumstances, if District is capable of addressing the issue, District shall do so on a time and materials basis.

- ii. Supply the Designated Chief Plant Operator in compliance with regulatory requirements.
- iii. Provided District staff possesses required qualifications, prepare all technical reports to submit to State, so as to comply with the reporting requirements of the current Waste Discharge Requirements (WDR) Order issued by the Central Valley Water Quality Control Board, e.g., standard NPDES reports.
- iv. Maintain minimum insurance as stipulated in Exhibit E.
- v. Electronically submit to State reports prepared by District regarding operations of the Water Systems and fulfillment of permitting requirements.
- vi. Submit periodic invoices to Authority ~~as provide~~provided in paragraph 4 below.
- vii. Participate in the periodic evaluation of expenses and level of effort review for up or down adjustment pursuant to Section 4(c).
- viii. Seek approval from Authority for any equipment expenditures in excess of ~~One thousand dollars (\$1,000.00-)~~.

(b) Authority Obligations During the Term.

During the Term, the Authority shall:

- i. Provide a primary point of contact for District to direct all questions, correspondence, and expenditure requests;
- ii. Perform all administrative tasks associated with the fiscal operations of the Water Systems;
- iii. Process payments to the District for Services rendered; and
- iv. Participate in the periodic evaluation of expenses and level of effort review for up or down adjustment pursuant to Section 4(c).

4. Payments.

(a) Billing Periods.

District shall bill Authority for Services rendered under this Agreement, and Authority shall pay District for such Services, in arrears, every Quarter. Invoices for Services shall be paid within thirty (30) days of receipt.

(b) Compensation Elements. Authority shall pay District the following amounts:

i. ~~Reimbursement for labor at the District's fully loaded rate (salary, benefits) for _____ full time employee (FTE) equivalent for four days per week and _____ full time employees three days per week, calculated pursuant to the then-current payment rate attachment (the current one of which is attached "_____");~~

i. ~~The District shall be paid the hourly rates provided in the attached District Proposal for the staffing level, operating level, hours and hourly rates provided therein;~~

~~ii. Direct reimbursement, without markup, for all District third-party hard costs (laboratory analysis, miscellaneous equipment purchased, etc.), subject to Section 3(a)viii for individual items exceeding ~~one thousand dollars (\$1,000.00-);~~ and~~

~~iii. Mileage reimbursement for the milage provided in the District Proposal at the then applicable federal vehicle rate (~~\$6.058.5~~ cents per mile for ~~2021-2022~~).~~

(c) Periodic Evaluation And Adjustments.

At the end of the first ~~complete (three-month)full~~ Quarter, and at the end of each Quarter thereafter during the Term, the parties shall evaluate the level of effort (amount of labor provided by District) required to provide Services, and adjust the ~~FTEfull-time employee (FTE) equivalent~~ percentages up or down accordingly for the next Quarter for current charges and projected charges 1 FTE vs .5 FTE with Chief Plant Operator (CPO) and with LRO. These figures will be updated after every billing cycle to make sure all costs are correct. If the Parties are unable to agree on any proposed quarterly adjustment, the Parties shall address any such dispute in accordance with the Dispute Resolution provision of this Agreement.

Commented [A5]: Please clarify.

5. Funding Mechanism

This Agreement only creates a funding mechanism for the provision of the Services. The District acknowledges and agrees that the District does not exercise jurisdiction over the Yuba Site or have legal authority to deliberate on, approve, deny, or otherwise exercise judgment over any aspect of the Facility, including without limitation the Authority's gaming operations. ~~The Authority represents that this Agreement is not a "management contract" as defined in IGRA. FurtherFurther,~~ nothing in this Agreement contemplates or commits the District to any project which may result in a potentially significant physical impact on the environment.

Commented [A6]: The District had requested the Authority to represent that this agreement is not a management agreement. The Authority's representation alone is meaningless given that it is the NIGC that determines whether management is implicated in a contract. To address the issue, we have amended the concern with the standard acknowledgment and agreement by the parties that this is not a management contract under a new section 16.

6. Term

This Agreement shall have a term of two (2) years from the Commencement Date and may be renewed by the parties' mutual agreement for up to two (2) additional five (5)-year terms.

7. Termination

(a) Termination for Cause.

This Agreement may be terminated by either Party at any time during the term upon provision of written notice and opportunity to cure to the other Party of any perceived default of this Agreement or of any Party's ability to carry out its obligations under this Agreement. Subject

to the notice and cure provisions set forth in this Section, such termination shall be effective immediately or upon such later date of termination as may be stated in the Party's notice.

(b) Termination for Convenience.

Either Party may terminate this Agreement at any time upon 90-days' prior written notice to the other Party. In the event of a wrongful termination for cause by the District, the termination shall automatically convert to a termination for convenience.

(c) Orderly Transition.

In the event of any termination of this Agreement, (i) District shall (x) immediately deliver to Authority all files and documents in District's possession or control relating to operation of the Water Systems, and (y) cooperate with Authority to effect an orderly transition of the management and operation of the Water Systems and (ii) Authority shall immediately pay District any and all amounts owed to District which have accrued under this Agreement up to the date of termination. The obligations set forth in this Section 7 shall survive the termination of this Agreement.

(d) Rights Which Survive Termination or Expiration.

The termination of this Agreement shall in no event terminate or prejudice (x) any right arising out of or accruing in connection with the terms of this Agreement attributable to events and circumstances occurring prior to termination or (y) any rights or obligations specified in this Agreement to survive termination.

8. Suspension Events.

~~If~~At the Authority's election, if, due to Force Majeure (as hereinafter defined), an act of God, or valid business considerations, a material portion of the gaming operations previously conducted by the Authority on the Yuba Site are suspended or terminated, the parties' obligations under this Agreement 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; pandemics; other natural disasters; changes in law, regulation or governmental policy that has a material adverse effect on the gaming revenues of the Facility; riots; war; or terrorism. Nothing in this Section shall reduce the Authority's liability for contributions or other payments which become due and payable prior to the date such gaming operations are suspended or terminated. Nothing herein will limit the District's rights and obligations under California laws.

9. Indemnification.

(a) Indemnification by District.

The District shall defend, indemnify and hold harmless the Authority, the Tribe, and each of their respective board members, officers, employees, departments, officials, representatives, inspectors, contractors, consultants and agents (“**Authority Parties**”) from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies, to the extent caused by the negligence, gross negligence or intentional misconduct of the District or the District’s board members, officers, employees, departments, officials, representatives, inspectors, contractors, consultants and agents (“**District Parties**”).

(b) Indemnification by Authority.

The Authority shall defend, indemnify and hold harmless the District and other District Parties from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies, to the extent caused by the negligence, gross negligence or intentional misconduct of the Authority or other Authority Parties, or any deficiencies in any of the Water Systems not caused by the District Parties.

10. Dispute Resolution.

The parties, and by its execution of the Guaranty the Tribe, agree to the dispute resolution procedures set forth in this Section 10.

(a) Meeting and Mediation.

The parties shall make their best efforts to resolve any dispute specifically arising under this Agreement by good faith negotiations whenever possible. The parties shall meet and confer in good faith to resolve any disputes arising under the Agreement or concerning its terms or administration as follows:

i. 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.

ii. 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.

iii. If such dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may request the dispute to be mediated. Mediation shall be confidential, non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by JAMS. The mediation shall be held at the JAMS office in Sacramento, California, or at such other location as is mutually agreeable to the parties. The cost of mediation shall be equally shared by both parties.

(b) Arbitration.

If the dispute is not resolved to the satisfaction of the parties within either sixty (60) calendar days after the first meeting or forty-five (45) days after a request for mediation, then the parties may seek to have the dispute resolved by arbitration in accordance with the following procedures:

i. Upon the request of a party in writing, the dispute shall be submitted to binding arbitration in accordance with this subsection.

ii. The disputes to be submitted to arbitration shall be limited to disputes specifically arising under this Agreement.

iii. In the event that there is any dispute as to whether a matter is subject to the arbitration provisions of this Agreement, 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 Agreement or the scope of such arbitration shall be resolved by the courts referenced in subsection (d) of this Section.

iv. The arbitration shall be held before a JAMS arbitrator in Sacramento, California, or at such other location as is mutually agreeable to the parties.

v. The arbitration shall be administered in accordance with the Streamlined Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent) as modified by the provisions of this Agreement. Service of any document on the parties may be made and shall be effective as provided in such rules.

vi. The provisions of section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.

vii. Each side shall bear its own costs, attorneys' fees and one-half the costs and expenses of the arbitrator.

viii. Subject to the provisions of this Section, the arbitrator shall be empowered to grant compensatory and declaratory relief only.

ix. The decision of the arbitrator shall be in writing and shall give reasons for the decision.

(c) Confirmation of Decisions.

Any party to an arbitration in which a decision has been made pursuant to this Section may petition the federal District Court for the Eastern District of California or the State Superior Court for the County of Yuba to affirm the decision. The parties expressly consent to be sued in such courts for affirmation of any such decision and as otherwise provided in subsection (d) of this Section. A decision shall be affirmed, provided that:

i. The decision is limited to matters specifically arising under this Agreement.

ii. No monetary damages may be awarded except those which require the payment of sums pursuant to breaches of obligations of the parties under this Agreement and which are not inconsistent with Section 11 and the Authority's limited waiver of sovereign immunity as set forth in Section 10.

iii. 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.

iv. If an award is affirmed, 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.

(d) Actions.

The express waivers and consents provided for in this Section shall only extend to the following: civil actions specifically arising under this Agreement; 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 Agreement, no other waivers or consents to be sued, either express or implied, are granted by either party.

(e) 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, utilization of a technical advisor to the parties; provided, however, that no party is under an obligation to agree to such alternative method of dispute resolution.

11. Limited Waiver of Sovereign Immunity.

Pursuant to General Council Resolution GC-2122- attached hereto as Exhibit B, and subject to the provisions of this Section ~~40,11~~, the Authority, in conformity with section 10.2 of the Enterprise Development Authority Statute, and the Tribe as Guarantor, expressly and irrevocably waive sovereign immunity (and any defenses based thereon) in favor of the District, but not as to any other person or entity, as to any dispute which specifically arises under this Agreement and not as to any other action, matters or disputes. The Authority and Tribe do not waive any sovereign immunity with respect to (i) actions by third parties, ~~except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Authority or Tribe or the District~~; or (ii) disputes between the Authority or Tribe and the District which do not specifically arise under this Agreement. The Authority and Tribe further agree that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Section ~~9,10~~, Dispute Resolution.

Aside from the foregoing Limited Waiver, nothing in this Agreement constitutes, nor shall it be construed as constituting, a waiver of the sovereign immunity of the Authority or Tribe, including sovereign immunity from suit.

12. Limitation of Liability.

The parties hereby agree that, in the event of default, any damages awarded or arising under this MOU shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. Neither party shall be liable to the other party under or in connection with this Agreement for (i) loss of actual or anticipated profit; (ii) losses caused by business interruption; (iii) loss of goodwill or reputation; or (iv) any indirect, special or consequential cost, expense, loss or damage even if such cost, expense, loss or damage was

reasonably foreseeable or might reasonably have been contemplated by the parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

13. Representations and Warranties.

Each party represents, warrants and covenants to the other party as follows:

(a) Authority. Such party has the legal power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(b) Due Authorization. The approval, execution, and delivery of this Agreement, and waiver of sovereign immunity, and the performance by such party of its obligations under this Agreement, have been authorized by all requisite actions of such party.

(c) Due Execution and Delivery. The persons executing this Agreement on behalf of such party are duly authorized to execute and deliver this Agreement on behalf of such party.

(d) No Conflict. The approval, execution, delivery and performance of this Agreement does not conflict with any other agreement to which such party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to such party.

14. Notices.

Except as provided in Section 5 above, any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered via the U.S. Postal Services, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each party may designate by subsequent written notice to each other:

For the Authority:

Enterprise Development Authority
c/o Estom Yumeka Maidu Tribe of the Enterprise Rancheria
2133 Monte Vista Ave.
Oroville, CA 95966
Attn: ~~Tribal Chairperson~~President

With a copy to:

Maier Pfeffer Kim Geary & Cohen, LLP
1970 Broadway, Suite 825
Oakland, CA 94612
Attn: John Maier

For the District:

Olivehurst Public Utility District
P.O. Box 670
Olivehurst, California 95961
Attn: General Manager

With a copy to:

Burke, Williams & Sorensen, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Attn: Deirdre Joan Cox

15. Assignment.

Neither party may assign or transfer this Agreement, or any rights or obligations herein, without the written consent of the other, which shall not unreasonably be withheld, delayed or conditioned. Additionally, District may, with only notice to the Authority, assign all of its rights and obligations under this Agreement to another local California governmental entity which (i) results from a merger, consolidation, or other combination with District, or (ii) succeeds to all or substantially all of potable water and/or ~~waste water~~wastewater services operations; provided that, in all cases, the assignee expressly assumes all of District's obligations under this Agreement.

16. No Management Contract.

Notwithstanding any other possible construction of any provision(s) contained herein, the parties acknowledge and agree that: (a) this agreement does not provide for the management of all or any part of the facilities within the meaning of IGRA by any person other than the Tribe or a third party manager; (b) this agreement does not deprive the Tribe of the sole proprietary interest and responsibility for the conduct of the facilities within the meaning of IGRA; (c) District will not exercise any remedy or otherwise take action under this agreement in a manner that would constitute management of all or any part of the facilities within the meaning of IGRA; and (d) District will not exercise any remedy or otherwise take any action under this agreement that would deprive the Tribe of the sole proprietary interest and responsibility for the conduct of the facilities within the meaning of IGRA.

16.17. General Provisions.

(a) No Third-Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as a third-party beneficiary or otherwise.

(b) Modification. No provision of this Agreement shall be amended, modified, or waived other than by an instrument in writing signed by an authorized representative of the Authority and the District.

(c) Successors and Assigns. This Agreement shall inure to the benefit of the parties and their permitted successors and assigns.

(d) Waivers. A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision or of any other provisions.

(e) No Submission to Jurisdiction. The parties acknowledge and agree that this Agreement, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the Authority or Tribe to the jurisdiction of (i) the District, (ii) any of its or their respective officials, employees, inspectors or contractors, or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans or specific plans.

(f) Indemnification. The Authority agrees to indemnify, defend and hold harmless the District (with counsel reasonably acceptable to the District) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the District which challenges the District's approval, execution or delivery of this Agreement.

(g) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, including its statutes of limitations but excluding its choice of law rules.

(h) Construction of Agreement. This Agreement, including all recitals, together with all Exhibits (including without limitation the Guaranty), constitutes the entire agreement between the District, on the one hand, and the Authority or Tribe, on the other, with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, representations, and drafts regarding this Agreement, whether written or oral. In the event of a dispute between or among the District, Authority or Tribe as to the language of this Agreement or any amendment to this Agreement or the construction or meaning of any term contained in this Agreement or any amendment to this Agreement, this Agreement or any amendment to this Agreement 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, either party based on the preparation or negotiation of this Agreement or any amendment to this Agreement. The headings contained in this Agreement are for convenience of reference only and shall not effect this Agreement's construction or interpretation.

(i) Binding Agreement. This Agreement 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 all officers, agents and employees, and, once executed and delivered, cannot be invalidated pursuant to any subsequent action of, in the case of the District, future District Board of Directors, and, in the case of the Authority or Tribe, future Tribal Councils or General Councils.

(j) Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document and any counterpart signature pages may be detached and assembled to form a single original document. Counterpart signature pages delivered by facsimile or other electronic means shall have the same force and effect as a wet-ink original.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth below.

OLIVEHURST PUBLIC UTILITY DISTRICT

Date: _____, 2021

By: _____
John Floe
Board President

APPROVED AS TO FORM BY LEGAL
COUNSEL FOR THE OLIVEHURST PUBLIC
UTILITY DISTRICT

Date: _____, 2021

By: _____
Deirdre Joan Cox
Burke, Williams & Sorensen, LLP

ENTERPRISE DEVELOPMENT AUTHORITY

Date: _____, 2021

By: _____
Glenda Nelson
~~Tribal Chairperson~~
President

APPROVED AS TO FORM BY LEGAL
COUNSEL FOR THE AUTHORITY AND TRIBE

Date: _____, 2021

By: _____
John Maier, Esq.
Maier Pfeffer Kim Geary & Cohen, LLP

GUARANTY

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, stipulated and agreed, the undersigned ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “**Tribe**” or “**Guarantor**”), of which the Enterprise Development Authority (the “**Authority**”) is an unincorporated governmental instrumentality, does hereby guaranty the full, prompt and timely performance of all obligations of the Authority to the Olivehurst Public Utility District, a public utility district formed and operating under California Public Utilities Code sections 15501 et seq. (the “**District**”) pursuant that certain Operating Services Agreement between the Authority and the District, dated _____, ~~2021~~2022 (including any subsequent amendments or modifications approved by the District and the Authority, the “**Agreement**”).

Additionally:

1. Guarantor hereby waives any right to require the District to proceed against the Authority or any other person or to proceed against or exhaust any security held by the District at any time or to pursue any other remedy in the District’s power before proceeding against Guarantor. Guarantor further hereby waives demand, presentment, protest and notice of any kind.

2. The District may, without notice to or approval from Guarantor, alter, compromise, accelerate, extend or change the time or manner for the payment or performance of any guaranteed obligation, substitute or add any one or more guarantors or sureties, accept security or substitute security therefor, or subordinate any security therefor. No exercise or non-exercise of any right held by the District, no dealing by the District with the Authority or any other guarantor, surety or any other person, and no change or impairment of all or any portion of the guaranteed obligations or suspension of any right or remedy of the District against any person, including, without limitation, the Authority or any other such guarantor, surety or other person, shall in any way affect any of Guarantor’s obligations hereunder. No agreement by the District to exculpate the Authority or any other person from personal liability in whole or in part, or agreement to look solely to any property for the satisfaction of any Authority obligations under the Agreement, shall affect Guarantor’s obligations hereunder. Guarantor further acknowledges that if any such exculpation or agreement has been given or is hereafter given to the Authority, the District shall have done so or shall be entitled to do so in reliance upon Guarantor’s agreements herein.

3. Without limiting the foregoing, Guarantor hereby waives (i) all rights of subrogation, reimbursement, indemnification, contribution and any other rights and defenses that are or may become available to the Guarantor or other surety by reason of California Civil Code Sections 2787 to 2855, inclusive and (ii) any rights or -defenses the Guarantor or other surety may have in respect of its obligations as a guarantor or surety by reason of any election of remedies by the District or other creditor.

4. Anything to the contrary herein notwithstanding, District may not encumber or seek satisfaction of judgment arising under the Agreement from anything other than undistributed revenues from casino operations, and no other monies or interest in land, whether tangible, intangible, legal or beneficial, vested or contingent, or any occupancy or other rights or entitlements therein related thereto, shall be subject to attachment, execution, lien, judgments or other enforcement or satisfaction of any kind, in whole or in part, with respect to any claim of the District on any basis whatsoever.

By execution of this Guaranty, the undersigned Guarantor specifically agrees to the dispute resolution procedures set forth in Agreement Section 10, the limited waiver of sovereign immunity contained in Agreement Section 11, and the limitation of damages contained in Agreement Section 12.

ESTOM YUMEKA MAIDU TRIBE OF THE
ENTERPRISE RANCHERIA

Date: _____, 2021~~2022~~ By: _____
Glenda Nelson
Tribal Chairperson

List of Exhibits and Schedules

Exhibit A:	Yuba Site Location Map
Exhibit A-1:	Specific Location of Yuba Site
Exhibit A-2:	Site Plan
Exhibit B:	General Council Resolution No.: GC-21-XX
Exhibit C:	Water Systems Descriptions
Exhibit C-1:	Locations of Water Systems Elements
Exhibit D-1:	Waste Water Systems Descriptions
Exhibit D-2:	Locations of Waste Water Systems Elements
Exhibit E:	Form of Confirmation of Commencement Date
Exhibit F:	District Insurance

Commented [A7]: To be reviewed.

Commented [A8]: Obtain from Aquality?

Commented [A9]: Obtain from Aquality?

Commented [A10]: OPUD to obtain from SDRMA

<u>Schedule 1</u>	<u>Proposal – Operations & Maintenance of Fire Mountain Water Distribution, Sewer Collection Systems, & Waste Water Treatment Facility</u>
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EXHIBIT A
GENERAL LOCATION MAP YUBA SITE

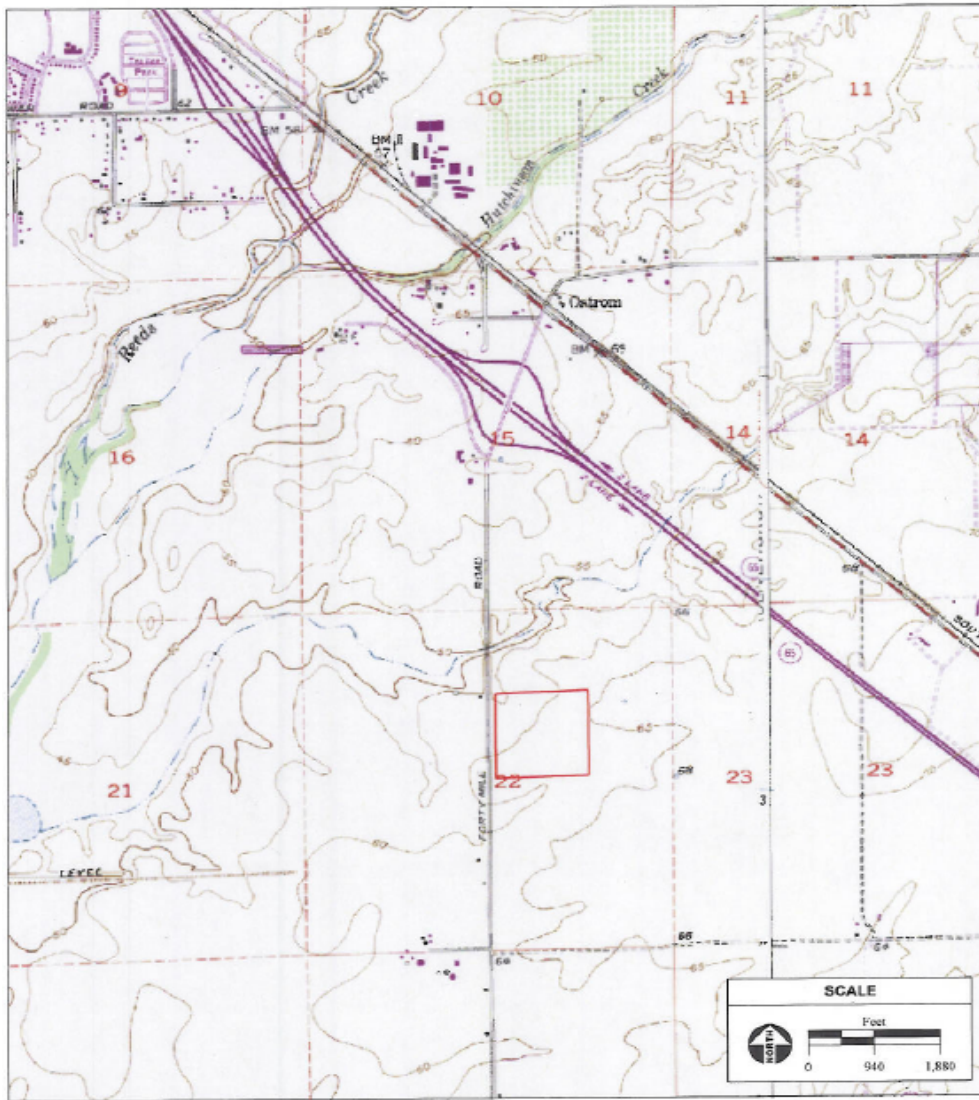
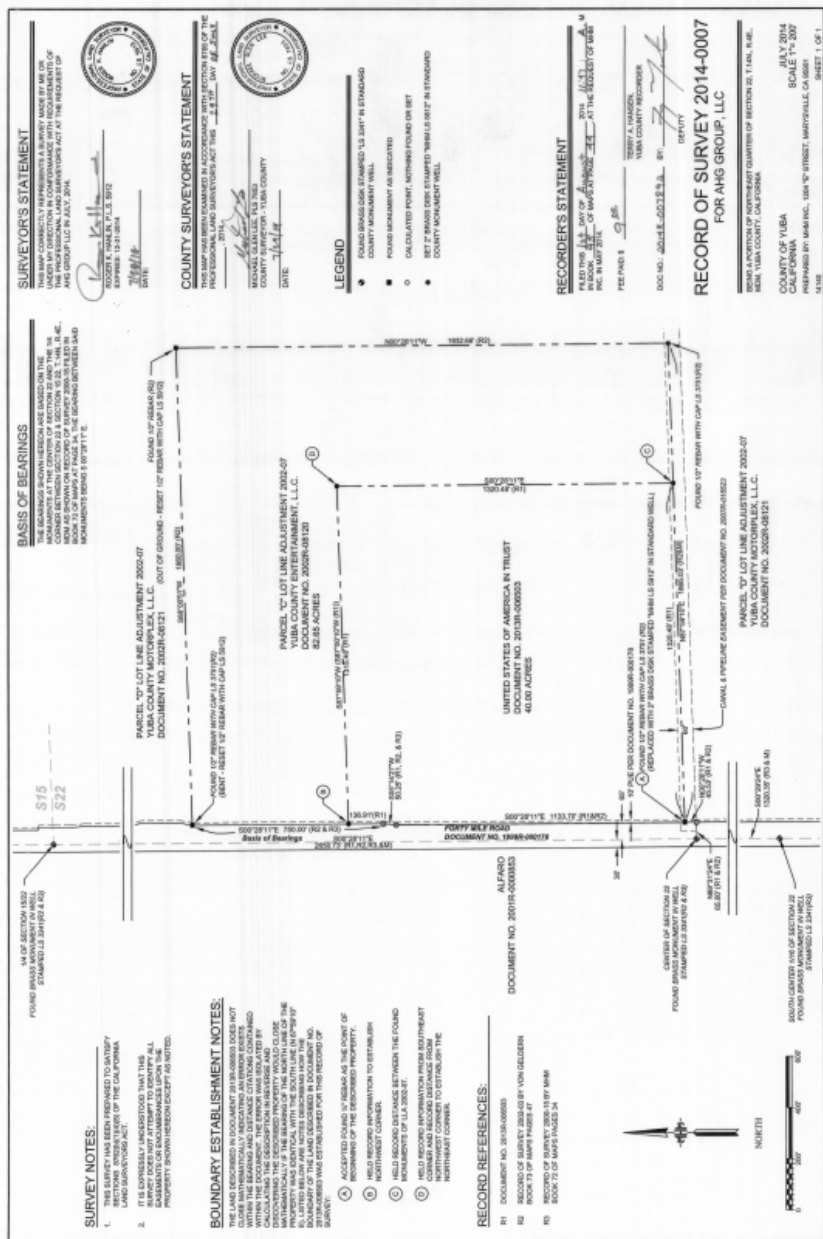


EXHIBIT A-1
SPECIFIC LOCATION OF YUBA SITE



BK 95 Pg 44

EXHIBIT A-2
SITE PLAN

[To be provided by Tribe/Authority if available]

EXHIBIT B
RESOLUTION GC- 21-XX

(TO BE ATTACHED)

GENERAL COUNCIL RESOLUTION: GC-21-

Commented [A11]: Draft for consideration

RESOLUTION AUTHORIZING THE ~~TRIBAL COUNCIL ENTERPRISE DEVELOPMENT AUTHORITY~~ TO (i) NEGOTIATE, EXECUTE AND DELIVER THE DISTRICT AGREEMENT ON BEHALF OF THE ~~ENTERPRISE DEVELOPMENT~~ AUTHORITY AND A GUARANTY THEREOF BY THE TRIBE, AND (ii) GRANT A LIMITED WAIVER OF THE TRIBE ~~AS GUARANTOR~~ AND AUTHORITY'S SOVEREIGN IMMUNITY IN FAVOR OF THE DISTRICT.

WHEREAS: The Estom Yumeka Maidu Tribe of the Enterprise Rancheria is a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the "**Tribe**") and organized pursuant to the Constitution of the Enterprise Rancheria Estom Yumeka Maidu, as amended, revised and ratified on June 4, 2016 (the "**Constitution**"); and

~~WHEREAS: The Enterprise Development Authority (the "**Authority**") is an unincorporated governmental instrumentality of the Tribe, established to construct, own and operate the Tribe's gaming facility known as the Hard Rock Hotel & Casino Sacramento at Fire Mountain ("**Casino**" or "**Project**") and located on the approximately 40 acres of land in Yuba County taken in trust for the Tribe for gaming purposes (the "**Yuba Site**"), pursuant to the Record of Decision issued in November 2012 by the Bureau of Indian Affairs; and~~

WHEREAS: The Constitution, at Article V, Section 3, provides that the governing body of the Tribe is the General Council, and that the General Council delegates to the Tribal Council the authority to oversee and regulate the operations of the Tribe in accordance with Article VI of the Constitution; and

~~**WHEREAS:** The Constitution, at Article VI, Section 3, authorizes the Tribal Council to regulate, manage and oversee all gaming and business activities of the Tribe, to enact laws to manage or otherwise deal with the Tribe's interest in Tribal lands and assets, and to charter and regulate corporations and other organizations for economic or other purposes; and~~

WHEREAS: The Constitution, at Article XIV, Section 1, reserves to the General Council the power to waive the Tribe's sovereign immunity to unconsented suit; and

WHEREAS: The Constitution, at Article VII, Section I, authorizes the Tribal Chairperson to execute all contracts, leases, resolutions, statutes, codes, ordinances or other official documents on behalf of the Tribe; and

~~**WHEREAS:** The General Council, through General Council Resolution No. 15-01 dated August 8, 2015, ratified, approved and affirmed the authority of the Tribal Council to create the Enterprise Development Authority (the "**Authority**") and delegate and assign to~~

it such Tribal assets, property, and Tribal land on such terms as the Tribal Council found necessary; and

WHEREAS: The Tribal Council by and through Resolution No. 15-10 dated July 30, 2015 and the Enterprise Economic Development Authority Statute (the “Authority Statute”) enacted therein, created the Authority as a subordinate entity of the Tribe that serves as an instrumentality of the Tribal government for the purposes of the development of economic opportunities through the exclusive ownership, oversight, and operation of the Tribe’s gaming activities and other Tribal businesses, and to manage all assets and revenues related thereto solely on behalf of and for the benefit of the Tribe and its members; and

WHEREAS: The Authority owns and operates the Tribe’s gaming facility known as the Hard Rock Hotel & Casino Sacramento at Fire Mountain (“Resort”) and located on the approximately 40 acres of land in Yuba County taken in trust for the Tribe for gaming purposes (the “Yuba Site”) pursuant to the Record of Decision issued in November 2012 by the Bureau of Indian Affairs; and

WHEREAS: The Olivehurst Public Utility District (the “District”) currently provides fire and emergency medical services to a service area near the Yuba Site, as well as to the ~~Project~~Resort, pursuant to a Memorandum of Understanding, *[originally]* between the Tribe and District, dated ~~March 21, 2009~~ (April 19, 2018 as amended ~~and assigned to the Authority~~ by operation of Tribal law pursuant to the Authority Statute, (the “Fire Services MOU”); and

Commented [A12]: Include if the Fire Services MOU was formally assigned to the Authority.

Commented [A13]: Same

WHEREAS: Whereas the District also operates and maintains potable water and wastewater systems for service areas near the Yuba Site; and

Commented [A14]: QUERY—This is true, right?

WHEREAS: The ~~Tribe, on behalf of the~~ Authority, has asked the District to operate and maintain the Project’s potable water system and wastewater system (collectively, the “Water Systems”) pursuant to an Operations Service Agreement (“District Agreement”) between the Authority and the District, based on ~~labor at the District’s fully loaded rate, direct reimbursement for third-party costs, and mileage at the applicable IRS rate, the annual cost for which is currently estimated at approximately \$ _____; and~~

Commented [A15]: Revise to conform to changes to compensation structure.

WHEREAS: The District Agreement includes an express guaranty of the Authority’s obligations by the Tribe ~~and~~as guarantor (“Guarantor”); and

WHEREAS: The District Agreement provides for a limited waiver of the Tribe ~~as~~ Guarantor and Authority’s sovereign immunity so that the District can enforce the terms of the District Agreement; and

WHEREAS: The Tribal Council has requested that the General Council authorize the ~~Tribal Council~~Authority and the Tribe as Guarantor to finalize, execute, and deliver the District Agreement, including, without limitation, the limited waiver of sovereign

immunity by the ~~Tribe and~~ Authority and the Tribe as Guarantor, (b) consents to arbitration or court action as specified in the District Agreement, and (c) waivers of the doctrine of the exhaustion of tribal remedies.

NOW, THEREFORE, BE IT RESOLVED THAT the General Council hereby authorizes (i) the ~~Tribal Council~~ Authority, acting upon the advice of legal counsel, to negotiate a final form of the District Agreement, ~~and~~ (ii) the ~~Tribal Chairperson~~ Authority President, Glenda Nelson, to execute and deliver the District Agreement on behalf of the Authority ~~and~~, and (iii) the Tribal Chairperson, Glenda Nelson, to execute the guaranty thereof by the Tribe.

BE IT FURTHER RESOLVED THAT the General Council authorizes the ~~Tribe and~~ Authority ~~to, in conformity with section 10.2 of the Enterprise Development Authority Statute, and the Tribe as Guarantor~~ expressly and irrevocably waive ~~its~~ sovereign immunity (and any defenses based thereon) in favor of the District, but not as to any other person or entity, as to any dispute which specifically arises under the District Agreement and not as to any other action, matters or disputes. The Authority and Tribe ~~does~~do not waive ~~its~~any sovereign immunity with respect to (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Authority or Tribe, or the District; or (ii) disputes between the Authority or Tribe, and the District which do not specifically arise under this Agreement. The Authority and Tribe further ~~agrees~~agree that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Section ~~19~~,10, Dispute Resolution, of the District Agreement.

CERTIFICATION

We the undersigned do hereby certify that the foregoing resolution #GC-21-__ was duly adopted by the General Membership on the ___ day of _____, 20___, at a General Council meeting at which a quorum of the registered voters was present, by a vote of ___ for, ___ opposed and ___ abstaining, and that said Resolution has not been rescinded or amended in any way.

By: _____
Glenda Nelson, Tribal Chairperson

ATTEST:

Cindy Smith, Tribal Secretary

EXHIBIT C

DESCRIPTIONS OF WATER SYSTEMS

The Water Systems incorporate the following components:

- A Raw Water Well for Potable Water Supply
- Potable Water Chlorination System
- Potable Water Storage Reservoir
- Potable Water Pumping System & Fire Pump
- Wastewater Treatment System with Flow Equalization & UV Disinfection
- Reclaimed Water Pumping System
- Reclaimed Water Storage Pond

The Potable Water System operates in the following manner. Raw well water is disinfected prior to entering the onsite reservoir. There is the ability for additional disinfection into the potable water system prior to delivery, should it be required. The finished potable water is delivered to the casino via a series of low-pressure high flow pumps. In addition, there is a high flow pump system for supplying fire suppression.

The wastewater plant consists of the following components:

- Influent Wet Well and Pump Station
- Influent Fine Screening
- Anoxic Basin
- Aeration Basins
- Membrane Basins
- UV Disinfection
- Waste Sludge Holding Tank
- Sludge Dewatering
- EQ Storage Tank

The wastewater system is an Ovivo MicroBlox MBR and has a design flow of 140K/day.

The WWTP consists of two separate MBR trains with a common anoxic and preair basin. There is a flow equalization system controlled by level of the process tanks. At a given setpoint level excess mixed liquor is removed and stored in an aerated EQ tank and is returned to the process after the flows have lowered. The effluent from the treatment process is UV disinfected and sent to either the onsite reclaimed storage tank or if that is full it overflows to the reclaimed storage pond. There is a series of low-pressure high flow reclaimed water pumps for delivery of the reclaimed water for the onsite landscaping. Waste Activated Sludge is held in an aerated tank and periodically dewatered and hauled away to a landfill.

Commented [A16]: This comes from current operator Aquality's website—to be reviewed and revised for accuracy. In particular, any off-site elements should be noted, and parties should consider whether they are within scope of Agreement.

Commented [A17]: Is this correct? The ROD says (my emphasis) "The existing WWTP is designed and permitted for an average flow of 170,000 gallons per day, however to accommodate the existing weekend flow and the additional weekend flow of 141,000 gpd. . . the WWTP would be expanded to have a capacity of 325,000 gpd."

EXHIBIT C-1
LOCATIONS OF WATER SYSTEMS ELEMENTS

[To be provided by Tribe/Authority if available]

EXHIBIT D
FORM OF CONFIRMATION OF COMMENCEMENT DATE

The undersigned OLIVEHURST PUBLIC UTILITY DISTRICT and ENTERPRISE DEVELOPMENT AUTHORITY, an unincorporated governmental instrumentality of the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California, the “parties” under that certain OPERATING SERVICES AGREEMENT, dated for convenience _____, 2021 (“**Agreement**”), hereby confirm that the “Commencement Date” under the Agreement is _____, 2021.

The Agreement has not been modified, altered or amended. All Agreement terms and provisions of the Agreement are ratified and confirmed.

IN WITNESS WHEREOF, the parties have executed this Confirmation as of the Commencement Date.

OLIVEHURST PUBLIC UTILITY DISTRICT

By: _____
John Floe
Board President

ENTERPRISE DEVELOPMENT AUTHORITY

By: _____
Glenda Nelson
Tribal Chairperson

EXHIBIT E
DISTRICT INSURANCE
[OPUD to Provide]