

MEMORANDUM OF UNDERSTANDING

BETWEEN THE ESTOM YUMEKA MAIDU TRIBE,

ENTERPRISE RANCHERIA AND THE COUNTY OF YUBA

This Memorandum of Understanding (hereinafter "Agreement") is made this 17<sup>th</sup> day of December, 2002, between the County of Yuba, California, (hereinafter "the County") and the Estom Yumeka Maidu Tribe, Enterprise Rancheria (hereinafter, "the Tribe").

RECITALS

WHEREAS, the Tribe is a federally recognized Indian Tribe which has been recognized by the Government of the United States, continuously, since 1915; and

WHEREAS, the Tribe is in need of land for tribal economic development purposes and the Tribe intends to acquire and purchase land located in the County and use that land for operation of a destination resort hotel, gaming enterprise and ancillary facilities within the terms of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 et seq.; and

WHEREAS, the Yuba County Sports Entertainment Zone, consisting of some 900 acres, is an area of land located in the County which has been zoned for purposes of sports and entertainment, including racing, hotels and other compatible uses; and

WHEREAS, it has been determined by the County of Yuba Board of Supervisors that the proposed destination resort hotel, gaming enterprise, and ancillary facilities would be consistent with both the County of Yuba General Plan and the current zoning for the Property, which is zoned for sports and entertainment pursuant to County Measure R, a ballot initiative approved by County voters in January, 1998 ("Measure R"); and

WHEREAS, the Tribe has entered into an agreement with Yuba County Entertainment, LLC, to purchase 40 acres of land located within the aforesaid sports and entertainment zone in order to develop a tribal resort hotel and gaming facility, and the Tribe has applied to the United States to have the United States accept title to the land in trust for the benefit of the Tribe; and

WHEREAS, a ruling on the Tribe's trust acquisition application constitutes a federal discretionary action subject to the National Environmental Policy Act (NEPA); and

WHEREAS, the County is prepared to support the Tribe's trust acquisition

application only if the County is assured that anticipated detrimental impacts to the County and the surrounding communities can be mitigated through a binding and enforceable agreement between the County and the Tribe, and the Tribe is willing to enter into such a binding and enforceable agreement;

NOW, THEREFORE, the County and the Tribe agree to the following:

1. Land To Be Taken Into Trust

The Tribe has requested that the United States take into trust for its benefit the parcel of land identified by the legal description attached hereto in Exhibit A, consisting of 40 acres, hereinafter referred to as "the Property."

By way of this Memorandum of Understanding the Tribe agrees that should the Property be taken into trust for its benefit, the Tribe will construct and operate a resort hotel and gaming facility along with related ancillary facilities such as restaurants, parking, etc. The Parties to this Memorandum of Understanding agree that should the Property not be taken into trust for the benefit of the Tribe, this Memorandum of Understanding shall be null and void in its entirety.

2. Payments In Lieu Of Taxes

The Parties recognize and agree that the Tribe will require a number of services from the County including, but not limited to, law enforcement services from the Yuba County Sheriff's Department. The Parties further recognize that operation of a resort hotel and gaming facility and related businesses on the Property will result in a number of impacts to the County services and an increased financial burden to County. The Parties recognize and agree that although the Tribe and its trust Property would be exempt from County taxation, it is in the interest of both Parties to insure a regular and sufficient revenue stream from the Tribe to the County to enable the County to provide such services and to be able to meet the increased burdens resulting from the Tribe's operation of a resort hotel and gaming facility. It is the intent of the County and the Tribe that, to the fullest extent possible, the Tribe will bear the same financial burdens as would any other non-Indian business in the County. To this end, the Tribe agrees to pay to the County the following payments in lieu of taxes:

(a) Development Costs

The Tribe agrees to pay, in lieu of the ordinary development fees that would be required under Title 13.15.030 of the Yuba County Ordinance Code, the sum of \$697,120.00 as an initial, one-time payment, to be paid before commencement of construction activities, including any grading work. It is agreed and understood that this payment is in lieu of development fees and does not constitute a submission by the Tribe to the jurisdiction of the County or to any provision of the Yuba County Ordinance Code.

(b) Ongoing Revenue Stream

For purposes of this section, operation of the destination resort hotel, gaming enterprise or ancillary facilities shall be deemed to begin once any such business entity on the Property is opened to the public.

The Tribe further agrees to pay, in lieu of taxes, the following annual amounts on a quarterly basis, commencing 90 days after the date that the Tribe begins operation of the destination resort hotel, gaming enterprise or ancillary facilities on the subject Property.

First Year of Operation	\$800,000.00
Second Year of Operation	\$1,000,000.00
Third Year of Operation	\$1,400,000.00
Fourth Year of Operation	\$2,200,000.00
Fifth Year of Operation	\$3,400,000.00
Sixth Year of Operation	\$5,000,000.00

Commencing on the seventh year of operation, the Tribe will pay to the County the sum of \$5,000,000.00, adjusted by the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose area ("CPI") over the amount paid by the Tribe for the sixth year ("the Base Year"). Thereafter, throughout the remainder of this Agreement, the Tribe will continue to pay the County on a quarterly basis, annual payments equal to the amount paid in the previous year, adjusted by the CPI. Through the sixteenth year of operation, regardless of the actual CPI for the particular year, the amount of the percentage increase applied pursuant to the section shall not exceed four percent (4%). Commencing with the seventeenth year of operation, the amount shall continue to be adjusted by the CPI pursuant to this section without such four percent (4%) limitation; however, there shall be no retroactive increases beyond the annual increase of the CPI from the previous year even if such increases exceeded 4% in any given year between the seventh and sixteenth years of operation.

In the event that the Tribe, in good faith, concludes that the County has failed to employ adequate personnel or acquire adequate equipment to provide law enforcement services to the Tribe at the proposed resort hotel, gaming facility and ancillary facilities on the Property at a level at least equal to that provided to the County as a whole, the Tribe may withhold up to the sum of \$565,000.00, in 2003 dollars, from amounts due from the Tribe to the County under this Agreement. Such withholding may occur, if at all, on an equal quarterly basis, but such withheld amounts shall not exceed the sum total of \$565,000.00 in 2003 dollars in any twelve (12) month period. If the County disagrees with the Tribe's conclusion, the dispute shall be resolved in the same manner as other disputes are resolved and as otherwise provided in this Agreement. In the event the Tribe's conclusion is found to be erroneous, the Tribe will immediately pay all sums found to be erroneously withheld to the County plus simple annual interest at the rate of 7%, calculated from the date the amount was erroneously withheld until paid.

It is agreed and understood between the Tribe and the County that the intent of the Parties is that the County will provide law enforcement services to the Property which are at

least equal to those provided to the County as a whole, and that as of the date of the execution of this Agreement, to do so would require the addition of enough personnel and equipment for one additional deputy per shift.

3. Building, Planning, Health and Safety Coordination

The Parties recognize that pursuant to federal law, once the Property is taken into trust by the United States for the benefit of the Tribe, most state and local laws and ordinances would not be applicable to activities conducted on the Property. Both Parties to this Agreement agree to work together in a cooperative and good faith manner to the benefit of both governments to insure public health and safety as follows:

1. The Tribe shall adopt and comply with standards no less stringent than state public health standards for food and beverage handling, and shall provide a copy of said standards to the County. The Tribe will allow inspection of food and beverage services by County health inspectors during normal hours of operation upon 24 hours advance notice to assess compliance with the standards. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of County health inspectors; however, any violations of the standards described herein shall be treated as a violation of this Agreement.

2. The Tribe shall adopt and comply with standards no less stringent than water quality and safe drinking water standards applicable in California, by operation of either state or federal law, and shall provide a copy of said standards to the County. The Tribe will allow inspection and testing of water quality by County health inspectors during normal hours of operation upon 24 hours advance notice to assess compliance with these standards. Nothing herein shall be construed as a submission of the Tribe to the general jurisdiction of County inspectors; however, any violations of the standards described herein shall be treated as a violation of this Agreement.

3. The Tribe shall adopt and comply with building standards no less stringent than applicable building codes, fire codes, plumbing, electrical and related codes applicable in the County of Yuba by either state law or County codes, as would apply to the construction of any similar buildings or facilities located elsewhere in the County of Yuba. The Tribe shall provide the County with a copy of said standards. The Tribe shall allow inspection by County building inspectors during construction upon 24 hours advance notice. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of the County building inspectors; however, any violations of the standards described herein shall be treated as a violation of this Agreement.

4. The Tribe shall adopt and comply with standards no less stringent than any County ordinances and California state laws dealing with fire safety pertaining to the operation of the resort hotel, gaming facility and ancillary facilities. The Tribe shall provide a copy of said standards to the County. The Tribe shall allow access by the County Fire Marshall or an appropriate designee fire inspector, during normal hours of operation upon 24 hours advance notice, to assess compliance with the standards. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of the County Fire Marshall, or his designee;

however, any alleged violation of the standards provided for herein shall be treated as a violation of this Agreement.

4. Law Enforcement

Pursuant to federal law, the County does not have jurisdiction over the Tribe. In the spirit of comity between two governments, the County and the Tribe wish to develop procedures by which the County may obtain records and documents necessary for its criminal investigations which may be in the possession of the Tribe. The Tribe shares the County's interest in preventing, detecting and prosecuting crimes which may be committed against the Tribe, its members, personnel, business entities or patrons. Therefore, if the District Attorney for the County of Yuba or the County of Yuba Sheriff's Department desire to obtain records or documents, including but not limited to any video recordings, electronic media and/or any other documents from the Tribe for use in prosecuting crimes over which the State of California has jurisdiction pursuant to Public Law 280, the Sheriff or District Attorney may obtain such evidence, provided that it would lawfully be able to obtain such evidence by subpoena from an entity or individual other than an Indian tribe, by serving upon the person designated by the Tribe for this purpose a written request therefor, specifying the reason the records or documents are requested. The Tribe shall respond to all such requests by either, at its option, providing the requesting Party with the documents or copies thereof, or permitting the requesting Party's agents or employees to copy such evidence under the supervision of the Tribe. At the request of the Sheriff or District Attorney, the Tribe shall certify the authenticity and accuracy of any copies or materials provided or made available for inspection and copying. If records are sought in connection with the investigation of any employee of the Tribe relating to public benefits, the written request shall include a redacted copy of the page of the welfare application that clearly indicates that employment records for individuals seeking public assistance were subject to review by county officials.

Nothing in this Agreement does or is intended to create County or State jurisdiction over the Tribe. This Section 4 of this Agreement does not waive the Tribe's sovereign immunity nor any of the rights or remedies available to the Tribe at law for violations of its rights. Any disputes between the County and the Tribe relating to this Section 4 shall be subject to the dispute resolution provisions of Section 12 of this Agreement. Nothing in this section shall be construed as in any way limiting the jurisdiction of County law enforcement authorities under Public Law 280.

5. Fire and Emergency Medical Services

The Tribe agrees that prior to the opening to the public of any facility located on the Property, it will enter into a binding agreement with the Plumas-Brophy Fire District or another fire protection district located within the County of Yuba, or will make other private arrangements in lieu of an agreement with an existing fire protection district, for the provision of fire and emergency medical services both on the Property as well as any emergency medical services arising out of the operation of the Tribe's business operations on the Property. This fire district agreement or other private arrangement will insure that there is

an adequate level of fire protection and emergency service available in accordance with any and all federal, state and/or local standards applicable. The fire district agreement or other private arrangement described herein shall be subject to the approval of the County, which approval shall be required prior to opening of any facility located on the Property to the public. The County's approval shall not be unreasonably withheld.

6. Prevailing Wage

The Tribe shall adopt and comply with an ordinance regarding payment of prevailing wages substantially similar to prevailing wage ordinances now in effect for construction operations within the County of Yuba. The Tribe shall provide a copy of said ordinance to the County. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of the County; however, a violation of this provision shall be construed as a violation of this Agreement.

7. Workplace, Health, Safety, and Fair Employment Practices

The Parties anticipate that the Tribe will conduct Class III gaming on the Property subject to the provisions of the model compact now in effect between the State of California and other Indian tribes conducting gaming operations in California. It is the Parties' intent, by way of the following sections, to further agree that the Tribe's operations of Class III gaming on the subject premises will be subject to the same workplace health, safety and fair employment rules as set forth in the model compact such that even if the model compact is amended or modified by the State of California in its ongoing negotiations with tribal interests, that the following terms will remain applicable as to the operations governed by this Agreement. To this end, the Tribe agrees to the following:

1. Prior to opening to the public any business operations on the Property, the Tribe will adopt and comply with standards no less stringent than federal work place and occupational health and safety standards. The Tribe will provide a copy of said standards to the County. The Tribe will allow inspection of the facility's work places by state inspectors, during normal business hours of operation, to assess compliance with the standards, unless inspections are regularly made by an agency of the United States Government to insure compliance with federal work place and occupational health and safety standards. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of such state inspectors; however, any alleged violation of the standards shall be treated as alleged violations of this Agreement.

2. The Tribe shall adopt and comply with standards that are no less stringent than federal laws and state laws forbidding employers from discriminating in the employment of persons who work for the Tribe's business operation conducted on the Property on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability; provided that nothing herein shall preclude the Tribe from giving a preference in employment to Native Americans and Yuba County residents, pursuant to a duly adopted Tribal ordinance. The Tribe will provide a copy of any such ordinance to the County.

3. The Tribe shall adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state, county or city fund including, but not limited to, social security, unemployment insurance, disability payments or public assistance payments. The Tribe will provide a copy of said standards to the County.

4. The Tribe shall adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no-charge or at reduced prices at a gaming establishment or lodging facility as an incentive or enticement. The Tribe will provide a copy of said standards to the County.

5. The Tribe shall adopt and comply with standards that are no less stringent than state laws, if any, prohibiting the extensions of credit. The Tribe will provide a copy of said standards to the County.

6. The Tribe shall participate in State of California statutory workers' compensation system, or, in lieu thereof, the Tribe may create and maintain a system that provides redress for employees' work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, availability of an independent medical examination, right to notice and hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state law. The Tribe shall further insure that any independent contractor doing business with the Tribe must comply with all state workers' compensation laws and obligations.

7. The Tribe agrees that its business operations conducted on the Property will participate in the State of California program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the business facilities located on the Property, including compliance with the provisions of the California Unemployment Insurance Code. The Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the court of the State of California for the purposes of such enforcement.

8. As a matter of comity, with respect to persons employed at the Tribe's business facilities located on the Property, other than members of the Tribe, such business operations shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code and shall forward such amounts as provided in said codes to the State.

9. With respect to the ongoing operations of the Tribe's resort hotel, gaming facility and ancillary facilities, the Tribe shall adopt and comply with employee wage standards no less stringent than the requirements of the Fair Labor Standards Act (FLSA) (29 U.S.C. § 201-219) and California minimum wage laws as provided for in Labor Code sections 1182 et

seq. and related California administrative regulations (8 Cal.Code Regs. Section 11000 et seq.)  
The Tribe will provide a copy of said standards to the County.

8. Minimum Gambling and Drinking Ages

The Tribe shall not allow Class II or Class III gambling to be conducted in any of its business operations on the Property by persons who are under 21 years of age.

The Tribe shall not serve alcohol in any of its business operations on the Property to individuals under 21 years of age.

9. Problem Gambling

The Tribe shall make a contribution of no less than \$60,000.00 per year to a charitable organization dedicated to the treatment and prevention of pathological gambling disorders and which is located and/or providing services within Yuba County. The recipient organization shall be determined by mutual agreement between the Tribe and the County.

10. Indemnification

The Tribe agrees that, to the fullest extent permissible by law and to the extent such Claims do not arise as a result of the County's negligence or other misconduct, the Tribe will defend, indemnify and hold the County harmless from any and all third party claims, demands, actions, causes of action, losses, liabilities, or costs (including reasonable attorney fees) ("Claims") arising out of or related to the third party challenge or action taken against the County as a result of any action by the County undertaken to enter into, approve, ratify, or adopt this Agreement or as a result of the Tribe's development, construction or operation of a resort hotel and gaming operation that is in material violation of the Tribe's obligations to the County under this Agreement

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

Notwithstanding the above, nothing in this provision shall preclude the County Counsel's Office to be associate counsel on behalf of the County and to participate as such in any legal processes or proceedings or to be a member of any such defense team.

11. Future Acquisition of Contiguous Parcels

The Tribe shall not file an application with the Secretary of the Interior for trust acquisition of any parcel of land contiguous to the Property unless the Tribe and the County have entered into a separate written Memorandum of Understanding concerning such contiguous parcel or parcels.

## 12. Dispute Resolution Provisions

In recognition of the government-to-government relationship of the Tribe and the County, the Parties will make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice of the right of either Party to seek injunctive relief by means of arbitration against the other when circumstances are deemed to require immediate relief, the Parties hereby establish a threshold requirement that disputes between the Tribe and the County first be subject to a process of meeting and conferring in good faith in order to foster a spirit of cooperation in the efficiency and the administration and monitoring of the performance and compliance by each other with the terms, provisions and conditions of this Agreement as follows:

1. In the event that either Party believes that a violation of this Agreement has occurred, or is occurring, that Party will provide written notice to the other Party setting forth, with specificity, the issues to be resolved.

2. The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of notice set forth above unless both Parties agree in writing to an extension of time.

3. If the dispute is not resolved to the satisfaction of the Parties within 30 calendar days after the first meeting, then either Party may seek to have the dispute resolved by a panel of three arbitrators in accordance with the following procedures:

1. The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

2. The arbitration shall be held in Sacramento, California, unless otherwise agreed. The arbitrators shall be empowered to grant compensatory, equitable and declaratory relief. The provisions of California Code of Civil Procedure section 1283.05 are incorporated into, and made a part of this Agreement; provided, however, that no discovery authorized by said section may be conducted without leave of the arbitrator, who shall decide to grant leave based on the need of the requesting Party and the burden of such discovery in light of the nature and complexity of the dispute.

3. If either Party requests an oral hearing, the arbitrators shall set the matter for hearing. Otherwise, the arbitrators shall decide whether to set the matter for hearing.

4. The resulting award shall be in writing and give the reasons for the decision. The costs and expenses of the American Arbitration Association and the arbitrators shall be shared equally by and between the Parties unless the arbitrators rule otherwise.

5. The Parties consent to entry of any judgment by the arbitrators and judicial enforcement of any award in arbitration in the Superior Court for Sacramento County.

This section may not be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution including, but not limited to, mediation, provided that neither Party is under an obligation to agree to such alternative method of dispute resolution.

In the event that either Party to this Agreement concludes, in good faith, that the other Party is in material breach, or is about to commit a material breach, of this Agreement with potential to cause irreparable harm or significant danger to the public, and that circumstances require immediate relief, that Party may seek an immediate hearing before a three-person arbitration panel without first exhausting the requirement of this section 12 to meet and confer. In such case, both Parties to this Agreement shall take all reasonable actions to expedite a hearing before the arbitration panel.

### 13. Limited Waiver of Sovereign Immunity

The Tribe expressly and irrevocably waives its sovereign immunity (and any defenses based thereon) in favor of the County, but not as to any other person or entity, as to any dispute which arises out of this Agreement or the activities undertaken by the Tribe pursuant to this Agreement. The Tribe consents hereby to the jurisdiction of the courts of the State of California for the purpose of enforcing any arbitration award with respect to any dispute arising out of this Agreement against the Tribe, and in favor of the County, as is set forth above.

The Tribe's waiver of sovereign immunity from suit is specifically limited to permitting, and does permit, the following actions and judicial remedies:

#### (a) Monetary Awards

The enforcement of any monetary award and/or damages; provided that the arbitrators and/or the court will have no authority or jurisdiction to order the execution against any existing assets or revenues of the Tribe except undistributed or future net revenues or accounts receivable, both as defined by generally accepted accounting principles, of the gaming facility or hotel that are the subject of this Agreement.

#### (b) Enforcement of Determinations

The enforcement of a determination by arbitrators or a court that the Tribe has breached this agreement.

(c) Injunctive Relief and Specific Performance

The enforcement of a determination by arbitrators or a court that prohibits the Tribe from taking any action or requires the Tribe to take such actions in performance of its obligations pursuant to the terms of this Agreement.

The Tribe does not waive its sovereign immunity with respect to actions by third Parties.

The Tribe will adopt a tribal resolution providing for a limited waiver of sovereign immunity to the extent as is set forth in this section and will provide a copy of said resolution to the County.

14. Reopen Provision

Either Party may request that the other Party renegotiate one or more of the terms of this Agreement if, and only if: (1) there is a significant change that directly or indirectly relates to the Party's expectations under this agreement; (2) that change materially impacts that Party; (3) that change could not have been reasonably anticipated at the time of entering into this Agreement. Such changes may include, but are not limited to, a change in state or federal law relating to gaming on Indian lands or ending the prohibition on Class III Gaming outside of Indian Country in California, a change in the financial obligations of the Tribe to the State under the tribal-state compact, a reduction in the scope of gaming on Indian lands mandated by federal or state law, or a change in state law or in the state's manner of doing business that increases the costs and responsibilities of the County, which increased costs or responsibilities are related to or arise out of the Tribe's operation of a resort hotel and gaming facility.

A request to renegotiate one or more of the terms of this Agreement will be made in writing, delivered to the other Party. The request will specify the basis for the request.

If the request is determined to meet the requirements for renegotiations pursuant to this section, the Party will commence to renegotiate in good faith. However, except for the obligations to renegotiate as is set forth in this section, neither Party is obligated to agree to a new Agreement or to any new terms or conditions as a result of the renegotiations process.

If, due to force majeure, an Act of God, or valid business reason excluding labor disputes, all commercial operations within the Property are ceased, the Tribe's obligations to make payments pursuant to Section 2 of this Memorandum of Understanding shall be suspended as of the date of such cessation of all commercial operations until such time as commercial operations are again commenced on the Property. Nothing in this paragraph shall impact the Tribe's liability for payments which became due and payable prior to the date commercial operations are ceased.

15. Termination Upon Land Going Out Of Trust

In the event that the Property is removed from trust or protected status such that the Property is no longer held in trust by the United States of America for the benefit of the

Tribe, or otherwise would no longer constitute Indian Country as that term is understood pursuant to federal law, the provisions of this Memorandum of Understanding would become void as of that date as to any further obligations of the Tribe for the payment of any amounts which would become due and payable to the County after the date that the Property is removed from trust or Indian Country status.

1. Notice

All notices required by this Agreement will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of the County and the Tribe at their respective addresses as follows:

For the Tribe:

Tribal Chairman  
Enterprise Rancheria  
1940 Feather River Blvd., Suite B  
Oroville, CA 95965

And to:

California Indian Legal Services  
510 16<sup>th</sup> St., Suite 401  
Oakland, CA 94612

For the County:

Yuba County Administrator  
215 Fifth Street, 3rd Floor  
Marysville, CA 95901

And to:

Yuba County Counsel  
215 Fifth Street, 3rd Floor  
Marysville, CA 95901

2. No Third Party Beneficiary

This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

3. Approval By The Department Of Interior

The Parties shall submit this Agreement to the Department of Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response from the Department of Interior that this Agreement does not require approval under 25 U.S.C. § 81 to be enforceable. The County's signature to this Agreement and the County's willingness to support the Tribe's trust application in the form of a letter as attached hereto as Exhibit B is expressly contingent upon approval of this Agreement pursuant to 25 U.S.C. § 81 or a determination that approval is not required. The County therefore reserves the right to withdraw its support for the application of the Tribe if this Agreement is rejected by the Department of Interior as unacceptable and/or unenforceable.

4. County Obligation

In return for the covenants of the Tribe as set forth above, the County agrees to support the Tribe's application to have the land taken into trust by way of the letter set forth in Exhibit B to the United States Department of Interior, to be delivered upon approval of this Memorandum of Understanding.

50 Successors In Interest

The terms of this Agreement will be binding on all successors in interest of each Party.

60 Entire Agreement

This Agreement constitutes the entire agreement between the County and the Tribe and supersedes all prior negotiations, representations, or other agreements, whether written or oral. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, 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 any Party to this Agreement.

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

DATE:

ESTOM YUMEKA MAIDU TRIBE  
ENTERPRISE RANCHERIA

By   
HARVEY ANGLE, Chairperson

DATE: 12-17-02

COUNTY OF YUBA

BY Al Amaro  
AL AMARO, Chairman  
Board of Supervisors

APPROVED BY COUNSEL FOR THE TRIBE.

DATE: 12/23/02

BY J. E. Cohen  
JAMES E. COHEN, ESQ.

APPROVED BY COUNSEL FOR THE COUNTY

DATE: 12-20-02

BY Daniel Montgomery  
DANIEL MONTGOMERY, ESQ.

That parcel of land lying within the northeast quarter of Section 22, T. 14 N., R. 4 E., M.D.B.&M. in Yuba County, California and being described as follows:

Commence at the quarter section corner common to said Section 22 and Section 15, T. 14 N., R. 4 E., M.D.B.&M. and being marked by a brass monument stamped LS3341 in a monument well as shown on Record of Survey No. 2000-15, filed in Book 72 of Maps, page 34, Yuba County Records; thence South  $0^{\circ} 28' 11''$  East, along the line dividing said Section 22 into east and west halves, 2650.73 feet to a brass monument stamped LS3341 in a monument well as shown on said Record of Survey No. 2000-15 and marking the center of said Section 22; thence North  $89^{\circ} 31' 24''$  East, 65.00 feet to a point on the east right-of-way line of Forty Mile Road; thence North  $0^{\circ} 28' 11''$  West, along said east right-of-way line of Forty Mile Road, 45.53 feet to the POINT OF BEGINNING; thence from said point of beginning continue along said east right-of-way line of Forty Mile Road the following courses and distances: North  $0^{\circ} 28' 11''$  West, 1133.70 feet; thence North  $5^{\circ} 14' 27''$  East, 50.25 feet; thence North  $0^{\circ} 28' 11''$  West, 136.91 feet; thence leaving said east right-of-way line of Forty Mile Road run North  $87^{\circ} 59' 10''$  East, 1315.48 feet; thence South  $0^{\circ} 28' 11''$  East, 1320.48 feet; thence South  $87^{\circ} 59' 10''$  West, 1320.48 feet to the point of beginning and containing 40.00 acres more or less.

The Honorable Gale Norton  
Secretary, Department of Interior  
1849 C St., NW  
Washington, DC 20240

Date

Re: Enterprise Rancheria Trust Application

Dear Secretary Norton:

On (insert date of Board action) the County of Yuba, through its Board of Supervisors, entered into a formal binding Memorandum of Understanding with Enterprise Rancheria, a federally recognized Indian tribe, regarding the Tribe's application for trust acquisition of a 40-acre parcel of land within the County. Enterprise Rancheria seeks to have the land taken into trust for gaming purposes consistent with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq. The County has found that the Tribe's proposed uses of the property which is the subject of the trust application are consistent and compatible with the County's general plan and the zoning of the property.

The County and the Tribe negotiated in good faith over a period of months to arrive at the Memorandum of Understanding, and have arrived at an agreement which more than adequately mitigates all anticipated impacts of the proposed development. The Memorandum of Understanding will compensate the County for the loss of tax revenues resulting from the anticipated trust acquisition and provide revenue to support public services to the property. In addition, the agreement creates a framework for government-to-government cooperation, ensuring the public health, safety and welfare of the public as well as of the Tribe's employees.

The Board of Supervisors of Yuba County has determined that a resort hotel and gaming establishment on the subject property would be in the best interest of, and not detrimental to, the surrounding community and Yuba County as a whole. We therefore respectfully request that you approve the application of Enterprise Rancheria to have the subject parcel taken into trust status for the benefit of the Tribe, for gaming purposes.

Very truly yours,

COUNTY OF YUBA

By:



# Enterprise Rancheria

Estom Yumeka Maidu Tribe

1940 Feather River Blvd., Suite B  
Oroville, CA. 95965-5723

PH: (530) 532-9214  
FAX: (530) 532-1768  
Email: [eranch@cncnet.com](mailto:eranch@cncnet.com)

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## RESOLUTION OF THE ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA REGARDING LIMITED WAIVER OF SOVEREIGN IMMUNITY AND APPROVAL OF MOU WITH COUNTY OF YUBA

### RESOLUTION NO. 02-27

- WHEREAS: The Estom Yumeka Maidu Tribe of Enterprise Rancheria ("the Tribe") is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government; and
- WHEREAS: The Tribe has entered into a purchase and sale agreement regarding forty acres of land ("the Property") in southern Yuba County and has applied to the United States government to take the Property into trust for the Tribe's benefit; and
- WHEREAS: The Tribe intends to conduct Class II and Class III gaming, as defined by the Indian Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S.C. §§ 2701 *et seq.*, on the Property; and
- WHEREAS: In return for the support of the County of Yuba for the Tribe's fee-to-trust application for the Property, the Tribe has negotiated a Memorandum of Understanding with the County; and
- WHEREAS: Pursuant to Article VI, Section 1 of the Constitution of the Enterprise Rancheria, the Tribal Council has the power to negotiate agreements and to provide a limited waiver of sovereign immunity for business purposes by a two-thirds (2/3) vote; and
- WHEREAS: In order to provide a binding and enforceable agreement between two sovereign entities, the Tribe has agreed to a limited waiver of sovereign immunity in the Memorandum of Understanding, as set forth below, applicable only pursuant to the terms of the Memorandum of Understanding approved by the Yuba County Board of Supervisors on December 17, 2002:

#### Limited Waiver of Sovereign Immunity

The Tribe expressly and irrevocably waives its sovereign immunity (and any defenses based thereon) in favor of the County, but not as to any other person or entity, as to any dispute which arises out of this Agreement or the activities undertaken by the Tribe pursuant to this Agreement. The Tribe consents hereby to the jurisdiction of the courts of the State of California for the purpose of enforcing any arbitration award with respect to any dispute arising out of this Agreement against the Tribe, and in favor of the County, as is set forth [in the Memorandum of Understanding].

The Tribe's waiver of sovereign immunity from suit is specifically

limited to permitting, and does permit, the following actions and judicial remedies:

(a) Monetary Awards

The enforcement of any monetary award and/or damages; provided that the arbitrators and/or the court will have no authority or jurisdiction to order the execution against any existing assets or revenues of the Tribe except undistributed or future net revenues or accounts receivable, both as defined by generally accepted accounting principles, of the gaming facility or hotel that are the subject of this Agreement.

(b) Enforcement of Determinations

The enforcement of a determination by arbitrators or a court that the Tribe has breached this agreement.

(c) Injunctive Relief and Specific Performance

The enforcement of a determination by arbitrators or a court that prohibits the Tribe from taking any action or requires the Tribe to take such actions in performance of its obligations pursuant to the terms of this Agreement.

The Tribe does not waive its sovereign immunity with respect to actions by third Parties.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Memorandum of Understanding with the County of Yuba is hereby approved; and
2. The Tribe agrees to the limited waiver of sovereign immunity as set forth above.

**CERTIFICATION**

The foregoing resolution was enacted by the Tribal Council of the Estom Yumeka Maidu Tribe, Enterprise Rancheria, on the 18<sup>th</sup> day of December, 2002, by a vote of 5 for, 0 opposed, 1 staining; at a duly called meeting at which a quorum of Tribal Council was present.

  
\_\_\_\_\_  
Harvey Angle, Tribal Council Chairman

December 18, 2002  
Date

Attest:  
  
\_\_\_\_\_  
Lisa Angle, Tribal Council Secretary

December 18, 2002  
Date

# The County of Yuba

OFFICE OF THE BOARD OF SUPERVISORS



(530) 749-7510  
FAX (530) 749-7353



Millennium  
Community

December 17, 2002

The Honorable Gale Norton  
Secretary, Department of Interior  
1849 "C" Street, NW  
Washington, DC 20240

Re: **Enterprise Rancheria Trust Application**

Dear Secretary Norton:

On December 17, 2002, the County of Yuba, through its Board of Supervisors, entered into a formal binding Memorandum of Understanding with Enterprise Rancheria, a federally recognized Indian tribe, regarding the Tribe's application for trust acquisition of a 40-acre parcel of land within the County. Enterprise Rancheria seeks to have the land taken into trust for gaming purposes consistent with the Indian Gaming Regulatory Act, 25 U.S.C. §2701, et seq. The County has found that the Tribe's proposed uses of the property which is the subject of the trust application are consistent and compatible with the County's general plan and the zoning of the property.

The County and the Tribe negotiated in good faith over a period of months to arrive at the Memorandum of Understanding, and have arrived at an agreement which more than adequately mitigates all anticipated impacts of the proposed development. The Memorandum of Understanding will compensate the County for the loss of tax revenues resulting from the anticipated trust acquisition and provide revenue to support public services to the property. In addition, the agreement creates a framework for government-to-government cooperation, ensuring the public health, safety and welfare of the public as well as of the Tribe's employees.

The Board of Supervisors of Yuba County has determined that a resort hotel and gaming establishment on the subject property would be in the best interest of, and not detrimental to, the surrounding community and Yuba County as a whole. We, therefore, respectfully request that you approve the application of Enterprise Rancheria to have the subject parcel taken into trust status for the benefit of the Tribe, for gaming purposes.

Very truly yours,

A handwritten signature in cursive script that reads "Al Amaro".

Al Amaro  
Chairman of the Board of Supervisors

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