

**MEMORANDUM
OF
AGREEMENT**

**BETWEEN
THE
ELEM INDIAN COLONY**

AND

THE CITY OF CLEARLAKE

Memorandum of Agreement

This Memorandum of Agreement (hereinafter “Agreement”) is made this 7th day of December, 2023, by and between the City of Clearlake, California and the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California (hereinafter “Elem Indian Colony” or “Tribe”).

RECITALS

WHEREAS, the historical existence of a separate, cohesive band of Pomo Indians, occupying the present day City of Clearlake and surrounding areas in Lake County (hereinafter "County"), which survived the gold rush and subsequent settlement of Lake County by non-Indians, has been documented by the United States Department of the Interior; and

WHEREAS, the United States acquired land in trust for the Tribe near the City of Clearlake and formally established a reservation there, known as the Elem Indian Colony, on which tribal members continued to live as a community despite great adversity; and

WHEREAS, in 1953, as part of a federal policy designed to assimilate the nation's Indian tribes, the United States Congress enacted the Rancheria Act, P.L. 85-671, authorizing the termination of federal-trust responsibilities to a number of California Indian tribes, including many of the Indian Tribes in Lake County; and

WHEREAS, the Elem Indian Colony of the Sulphur Gulch Rancheria did not suffer termination and has remained a tribe since time immemorial located in and around Lake County; and

WHEREAS, in 1970 President Richard Nixon issued a formal policy statement on Indian affairs in which he declared the policy of termination a failure and called upon Congress to repudiate it, Cong. Rec. 2.258; and

WHEREAS, in 1978, Congress enacted the Indian Self Determination Act, 25 U.S.C. §450, et seq.; and

WHEREAS, in 2018, the Tribe, desiring economic development and employment opportunities for its membership, the Tribe identified land in the City of Clearlake that would meet the Tribe’s

economic development needs. The Tribe purchased two (2) parcels of fee land comprising an acre of land for the purpose of developing a travel center/convenience store, and other business, that could be compatible with the surrounding area land uses and minimizing adverse impacts to city services and residents; and

WHEREAS, in 2022, the Tribe initiated the federal environmental review process necessary to comply with the National Environmental Policy Act (“NEPA”), as a first step to taking said parcels into trust with the federal government for purposes of economic development; and

WHEREAS, the Tribe has now requested the City’s support its request to the Bureau of Indian Affairs to take these parcels into trust, and in consideration for such support, the Tribe has entered into an agreement with the City which would provide the City with certain land use, law enforcement and related jurisdiction over the Tribe's trust lands, as well as compensate the City for the potential impact of the Tribe's use of these parcels on City services; and

WHEREAS, the economic development the Tribe proposes is not a City project and is not a project subject to the discretionary approval of the City, County, or State of California, and therefore is not subject to the California Environmental Quality Act (“CEQA”); and

WHEREAS, the City would not otherwise have any jurisdiction over the Tribe’s trust lands nor receive any compensation for alleged impacts such transfer of jurisdiction would cause; and

WHEREAS, the City and Tribe enter into this Memorandum of Agreement (“MOA”)

to mitigate impacts of this acquisition, including, but not limited to, conforming to certain specific land use restrictions identified in City ordinances; to mitigate environmental impacts of its planned uses of the trust land as identified in an environmental assessment evaluating the Tribe’s proposed development; to compensate the City for law enforcement and other public services to be provided on the Tribe's reservation lands; to pay fees for the review to determine conformance with certain building and design standards set out in City ordinances;

NOW, THEREFORE, the parties agree as follows:

1 Land to be Taken into Trust. The Tribe has requested the United States to take into trust for its benefit the parcels (2) identified in subsection A below. The Tribe agrees to request the United States to take into trust for its benefit only these two (2) parcels detailed in Exhibit A, appended hereto (hereinafter "Trust Lands"), and to use said parcels exclusively for economic development purposes and subject to the restrictions set out below, unless and until this Agreement is amended as provided herein to authorize any other trust acquisition;

A. Parcel A: APN 040-240-080.

B. Parcel B: APN 040-240-070.

2. Compliance with City Ordinances. The Trust Lands identified in Exhibit A and any new structures and changed uses, shall be used and developed in a manner consistent with and in compliance with all applicable City general and community plans, zoning ordinances and design guidelines in effect at the time of the execution of this Agreement. Any future changes, additions or modifications in the use or development of the parcels shall be subject to the then existing City review process and ordinances, City Plans, and City development standards, design guidelines and fees in effect at the time of the change. The City's review of the Tribe's project shall determine only if the uses are in compliance with the City ordinances, plans, development standards, design guidelines and fees. The City shall not approve the Tribe's development project, designs or methods of construction or construction delivery.

3. Environmental Review

A. The Tribe's development projects are not governed by CEQA, and the Tribe does not agree to submittal of its projects for discretionary approvals by the City, County or State. However, the Tribe does agree to process all its development applications for review by City staff to determine compliance with City Ordinances, Development Standards, Design guidelines and fees; and

B. The Director of the City Planning Department shall only determine that the Tribe has complied with the terms of this Section 3; provided that the Director shall not delay or unreasonably withhold said determination; and

C. While it is understood the Tribe is not submitting its projects for approval, it shall make reasonable efforts to comply with City Ordinances, Development Standards, and Design Guidelines

4. Reimbursement for Law Enforcement Services and Scope of Police Jurisdiction on Trust Lands

As a matter of federal law, P.L. 280, most state criminal laws continue to apply on Indian trust lands, including Parcel A. This jurisdiction over the enforcement of those laws presently lies with the State or its designee the City. The parties recognize that the economic development the Tribe intends to occur and operate on the parcels comprising Exhibit A may require law enforcement services that the Tribe currently does not have. While the Tribe could seek to develop a police department and seek retrocession of P.L. 280 jurisdiction to the tribe from the State of California, the Tribe desires to utilize the existing law enforcement services provided by the City.

A. Reimbursement for Law Enforcement. Effective on the date that final certification is submitted to the City pursuant to Section 13, the Tribe shall reimburse the City Police Department a payment in lieu of taxes equivalent to sum currently paid by City businesses and residents for police services, including any Special fees currently applicable commonly referred to as Measure P. Payments in lieu of Measure P shall be made monthly, similar to other businesses sales tax payments. The parties agree that the fee represents reasonable compensation for any potential additional burdens undertaken by the Police Department with respect to the enforcement of state law on Exhibit A Parcels.

B. Scope of Police Department Jurisdiction. The Chief of Police shall have authority to enforce all state criminal laws on Trust Lands, including the Parcels identified in Exhibit A, in the same manner and to the same extent as the Chief as such jurisdiction elsewhere in the City; provided that prior to entering any facility on the Trust Lands identified in Exhibit A, for the purpose of investigating or enforcing state criminal laws, the Chief or their designee shall notify the Tribe's public safety or security director, if any, and shall coordinate and cooperate

with appropriate Tribal officers, if any, except when, in the good faith and reasonable judgment of the law enforcement officers involved, their safety, or the safety of patrons or employees of the facility, or the integrity of an investigation or enforcement action, would be materially compromised by doing so.

5. Video or Audio Surveillance. The Tribe shall assist when, asked by the Chief or their designee and provide video or audio materials, if available, to be used in the police investigation of a crime on Parcel A.

6. Sale of Flavored Tobacco Products. The City acknowledges that local and State civil laws are inapplicable to the Tribes trust lands located within the City and are therefore non-enforceable by local law enforcement. Despite this, the Tribe shall not sell any flavored tobacco product consistent with California Proposition 31 which prohibits the sale of certain flavored tobacco products within the state.

7. Liquor License Support. The City shall support the Tribe's California Alcoholic Beverage Control ("ABC") license application and ABC licensure of liquor sales on the Ex. A property. The City shall forward a support correspondence similar to Ex. B to the ABC when requested by the Tribe and respond to inquiries from the ABC consistent with Ex. B.

8. Roads and Traffic Circulation. The Tribe will mitigate traffic and circulation issues in conformity to City requirements as finalized through the process discussed in Sections 2 and 3. The Tribe agrees to pay all required traffic mitigation fees consistent with City fee programs/ordinances. The Tribe is not required to pay other fees commonly paid for project development by other businesses or residents, unless negotiated pursuant to this agreement. The Tribe shall pay to the City, in-lieu of taxes, the equivalent of the City Measure V (1%) for City Road improvements. Payments for City Road improvements shall be made monthly, similar to other businesses sales tax payments.

9. Sewer Service. The Tribe shall provide for sewage and disposal for Parcel A waste through either of the following means:

- A. Connection to the City or County existing sewage lines and treatment plant initially, and then then to any proposed new regional treatment plan, according to terms and conditions agreed to by the City or County and the Tribe; or
- B. Connection to the existing City or County sewage collection system, according to the terms and conditions agreed to by the City or County and the Tribe.

If services are provided under subsection A or B of this Section, the Tribe will annex to the City or County Service Area for sewer service and pay fees consistent with that annexation and pay appropriate connection fees, obtain required easements for sewer infrastructure, construct to City or County sewer infrastructure standards, and dedicate to the City or County such sewer infrastructure. All approvals referred to in this Section shall not be unreasonably be withheld, and the standards referred to in this Section shall be substantially identical to those applied to similarly situated users.

10. Water Supply. The Tribe shall use its best efforts to obtain a surface water supply for Parcel A through an agreement with either the City’s water provider or another water district and shall conform to all standard requirements imposed by the water provider and or City. If approval cannot be obtained, the Tribe shall provide water for Parcel A with wells.

11. Fire Safety and Emergency Services. The Tribe shall use its best efforts to obtain fire services through an agreement with either the City’s fire service provider or CAL-FIRE, the designated first responder to Indian trust lands in California. The entity providing fire services shall be responsible for providing all necessary fire suppression equipment and personnel.

12. Electrical. The Tribe shall use its best efforts to obtain electricity for Parcel A through an agreement with either the City’s electrical provider or another electricity provider and shall conform to all standard requirements imposed by the electricity provider or the City.

13. Reimbursement for Other Public Services. The Tribe shall provide reasonable reimbursement to the City, or other local jurisdictions, for the impact of providing public

services including administrative impacts to said Trust Lands or to invitees of commercial facilities on said lands, including, where applicable, existing development standards, processing fees, schedules, rates and charges, assessed to other developers in the City, for services other than Fire, Wastewater, Electricity and Water services. The Tribe shall not pay any more for Public Services than other similarly situated businesses or entities in the City.

14. Impact on City Revenues. The City acknowledges that pursuant to federal law the Tribe is under no obligation to pay City for tax revenue impacts. The City claims that the impact of the Tribe's project on the City revenues is close to \$500,000 annually. The Tribe agrees to pay the City a fee in lieu of tax equal to 60% of the 1% Bradley Burns sales tax and thereafter increase the sum by ten (10) basis points, annually, until the Tribe has reached the 1% paid by other City businesses that pay sales taxes to the City. Payments in lieu of the Bradley Burns sales tax shall be made monthly, similar to other businesses sales tax payments.

15. Building Standards. The Tribe shall adopt the building standards set out in all Uniform Building Codes, as adopted or supplemented by the City, and prior to the use of any structure constructed on the Trust Lands, provide the City, at its own expense, with written certification from the International Conference of Building Officials or a similarly qualified organization used or recommended by the City, that said structures have been constructed in accordance with said standards. The Tribe shall submit construction plans to the City after the final certification is submitted pursuant to this Section 13, provided that the City shall, consistent with State law, keep such plans confidential in light of the interest of the parties in maintaining the security of the facility.

16. Public Benefit Fund: The Tribe shall fund a "Public Benefit Fund", to assist with funding projects that benefit the community at large. The Tribe will provide a \$100,000 grant as initial Public Benefit funding. A Public Benefit Board ("Board") representing two (2) members from the City and (2) members of the Tribe's Council or Executive Committee shall determine what projects shall be funded on an annual basis. The Tribe shall determine future grants to the fund at the end of the third quarter of each fiscal year and thereafter

provide grant funding on an annual basis as recommended by the Board. The Tribe's goal is to continue contributing to the Public Benefit Fund as revenue allows.

17. Future Tribe - City Collaboration : The Tribe and City shall, when possible, collaborate on the acquisition of grants and other funds and training opportunities, whether federal, state or local, in furtherance of the Community interest and collaborate on projects that add value to the City and local community, including but not limited to, increasing tourism.

18. Dispute Resolution.

A. **Meet and Confer Process.** In the event the City or the Tribe believe that the other has committed a violation of this Agreement, either party may request in writing that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request; provided that if the complaining party believes that the problem identified creates a threat to public health or safety, the complaining party may proceed directly to arbitration as provided in Subsection E below.

B. **Notice of Disagreement.** If the complaining party is not satisfied with the result of the meet and confer process, the complaining party may provide written notice to the other identifying and describing any alleged violation of this Agreement ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the alleged violation.

C. **Response to Notice of Disagreement.** Within fifteen (15) business days of service of a Notice of Disagreement, the recipient shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or will take to cure the alleged violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Subsection E below.

D. **Expedited Procedure for Threats to Public Safety.** If the City or the Tribe reasonably believes that in violation of this Agreement the other's conduct has caused or will cause a significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this section, the complaining party may proceed directly to the Arbitration Procedures set out in Subsection E below, without reference to the Meet and Confer or Notice of Disagreement processes set out in Subsections A, B & C above, and seek immediate equitable relief: At least twenty-four (24) hours before proceeding in this manner, the complaining party shall provide to the other a written request for correction and notice of intent to exercise its rights under this subsection, setting out the legal and/or factual basis for its reasonable belief that there is a present or an imminent threat to public health or safety.

E. **Binding Arbitration Procedures.** Subject to prior compliance with the Meet and Confer process set out above in Subsection A, and the Notice and Response process in Subsections B and C, and except as provided in Subsection D, either party may initiate binding arbitration to resolve any dispute arising under this Agreement. The arbitration shall be conducted in accordance with the following procedures:

- (1) The arbitration shall be administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules.
- (2) The arbitration shall be held in Sacramento, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable, and declaratory relief: The provisions of California Code of Civil Procedure section 1283.05 et seq. 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 such dispute.

(3) If either party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

(4) The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof: The costs and expenses of the American Arbitration Association and the arbitrator shall be shared equally by and between the parties unless the arbitrator rules otherwise.

F. **Judicial Review**. The parties consent to judicial enforcement of any award in arbitration, which enforcement shall be in the Superior Court in and for Lake County.

19. **Waiver of Tribal Sovereign Immunity**. The Tribe agrees to waive its sovereign immunity in favor of the City as to any dispute which arises out of this Memorandum of Agreement or the activities undertaken by the Tribe, pursuant to the terms set forth herein for enforcement. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to attached Exhibit C.

20. **Attorney's Fees**. In any arbitration or judicial action brought pursuant to the provisions of this Memorandum of Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees and costs as are determined by the arbitrator or court.²

21. **Indemnification**. The Tribe agrees to indemnify and defend the City, its agents or employees against any judicial or administrative claim brought or filed by any third party, including federal, state or local agencies which challenges the validity of or performance by the City under this agreement, the authority of City to enter into this agreement, including the letter of support attached as Exhibit D, or any approval by the City called for in this Agreement.

22. **Support for Trust Application**. In consideration for the obligations undertaken by the Tribe herein, the City shall provide the attached correspondence, Exhibit E, to the United States Department of interior, Bureau of Indian Affairs, which supports the application of the Tribe to the United States, and requests the United States to take the lands identified in Exhibit A into

trust for the benefit of the Tribe, and respond to inquiries about the Tribe's trust application from the Bureau of Indian Affairs in a manner that is consistent with Exhibit E.

23. Tribe-City Advisory Committee. City and the Tribe agree to establish a permanent committee, to be known as the “Tribal - City Advisory Committee”. The jurisdiction of the Committee shall include questions related to implementation of this Agreement, proposals for amendments to this Agreement, and concerns over any matter within the scope of this Agreement.

24. Composition of Committee. The Committee shall be composed of two (2) members of the City Council or its designees and two (2) members of the Tribal Council or Executive Committee.

A. **Open Meetings.** Committee meetings shall be open to the public, and Committee members may invite staff and associates as they deem appropriate to participate.

B. **Meeting Times.** The Committee shall meet on a quarterly basis, or more frequently, according to procedures established by the Committee.

C. **Authority of Committee.** The Committee may make recommendations to the Tribe and the City, including amendments to this Agreement, which both parties shall consider before implementing any future actions concerning the subject matter of this Agreement

25. Authority to Enter Agreement. Each party represents that: (a) it is validly formed and in good standing in the jurisdiction in which it is formed; (b) it has the legal right and all requisite power and authority to enter into this Agreement and to execute, deliver, and perform its obligations under this Agreement; and (c) the execution, delivery, and performance of this Agreement has been duly authorized by all necessary organizational action of such party, and when executed and delivered by both parties, this Agreement will constitute a legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms and conditions and will not violate or constitute a breach of any agreement binding upon such party.

26. **No Third Party Beneficiaries.** With the sole exception of Section 16 above, this Agreement is not intended to, and shall not be construed to, create any right on the part of any Third Party to bring an action to enforce any of its terms.

27. **Successors in Interest.** If local jurisdiction over the area in which any of the parcels identified in Exhibits A, is located is transferred from the City to a local government other than the City, that local government shall have the right to succeed to the rights and obligations of the City under this Agreement by providing written notice to the Tribe of its intent to do so. Similarly, this agreement will bind any future tribes who may succeed the Elem Indian Colony in owning and/or operating the subject Property. Before such transfer, the City, the Tribe and the other local jurisdiction shall meet to discuss and resolve by amendment to this Agreement all issues of remaining impacts on City services or revenues as set out in this agreement that will or reasonably can be expected to continue after the transfer of responsibility.

28. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the United States of America and where applicable California law.

29. **Severability.** If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the Parties.

30. **Effectiveness.** This Agreement shall become effective immediately following execution by each of the Parties.

31. **Counterparts.** This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with the other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all Parties.

Signatures of the Parties transmitted by fax or pdf shall be deemed to be their original signatures for all purposes.

32. No Contra Proferentem. This Agreement shall not be construed against either party as though one particular party had drafted it, but shall be interpreted as if both parties had prepared it.”

32. Length of Agreement. This Agreement shall be valid for a period of twenty (20) years and thereafter automatically renew for a period of ten (10) years unless Amended by the parties.

33. Amendment to Agreement. No amendment to this Agreement shall be valid unless reduced to writing, signed by an authorized representative of each party.

34. Approval by the Department of the Interior. The parties shall submit this Agreement to the Department of the Interior for either: (1) approval pursuant to 25 U.S.C. § 81, or (2) a written response that this Agreement does not require approval under 25 U.S.C. §81. Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail- Return Receipt Requested to the following:

For the Tribe:

Augustin Garcia
Tribal Chairman
Elem Indian Colony
1400 Dutton Rd. S-7
Santa Rose, CA 95401

Jack Duran, Jr., Esq.
Duran Law Office, PC
1100 Melody Ln.
Roseville, CA 95747
Telephone: (916) 779-3316
Facsimilie: (916) 520-3526

For the City:

City of Clearlake
14050 Olympic Dr.
Clearlake, CA 95422

Ryan Jones – City Attorney
Jones Mayer
6349 Auburn Blvd.
Citrus Heights, CA 95621
(916) 771-0635

EX A

Parcels to be taken into Federal Trust

APN #040-240-080

APN # 040-240-070



EX. B
City Letter of Support to ABC

[City Letterhead]

SENT VIA CERTIFIED MAIL

[DATE]

California Department of
Alcohol Beverage Control
50 D Street, Room 130
Santa Rosa, CA 95404
Attn: District Manager

2400 Del Paso Rd. S-155
Sacramento, CA 95834
Attn: District Manager

RE: Support for Elem Indian Colony’s ABC Liquor License Application

The City of Clearlake, California, Lake County, hereby supports the Elem Indian Colony’s (“Elem” or “Elem Indian Colony”) request for licensure by the California Alcohol Beverage Control (“ABC”) for a license at their 14855 Lakeshore Drive Travel Center and Convenience Store, located on what is now federal Indian lands. The Elem are an area historical federally recognized Indian tribe with a rancheria located not far from the City. In 2017, the Tribe purchased lands within the City for purposes of economic development. Those lands were taken into federal trust on or about ____2023, with the City’s full support. The Elem have demonstrated support for City interests and concerns and the responsible sale of alcohol, in compliance with the Tribe’s Liquor Control Ordinance and State law. If you have any questions please contact my office at 14050 Olympic Drive Clearlake, CA 95422 Phone: 707-994-8201 Fax: 707-995-2653 Email: aflora@clearlake.ca.us

Sincerely,

Alan Flora
City Manager

Cc: City of Clearlake, City Council
City of Clearlake - City Attorney’s Office
Elem Indian Colony, Tribal Council

Ex. C

**Tribal Resolution Memorializing Limited
Waiver of Sovereign Immunity and
Limited Waiver of Sovereign Immunity**

**A Resolution of Limited Waiver of Sovereign Immunity to the
City of Clearlake, CA for Purposes of Dispute Resolution
No. _____**

WHEREAS, the Elem Indian Colony of Pomo Indians (“Tribe”) **IS A
FEDERALLY RECOGNIZED** Indian Tribe with the inherent sovereignty to make its
own laws and be governed by them; and

WHEREAS, the Tribe adopted a Constitution and Bylaws and the Tribal
Resolution adopting such Constitution and Bylaws was accepted and approved by the
Department of Interior, Bureau of Indian affairs; and

WHEREAS, the Tribes Constitution at Article VII, Section 1 “Powers”, authorizes
the Tribe’s Executive Committee to plan and manage all economic affairs of the
Reservation/Rancheria; and

WHEREAS, the Tribe has identified land acquisition as a priority and desires to
preserve land by putting fee land into trust for the Tribe and/or Tribal members for
economic development purposes; and

WHEREAS, the Tribe desires to enter into a Memorandum of Agreement
(“MOA”) with the City of Clearlake to memorialize terms and conditions related to the
Tribe’s development of the proposed trust lands in the City of Clearlake located on
Lakeshore Drive, Ex. A to the MOA, said terms and conditions both the Tribe and City
enter into for purposes of advancing collaboration between the parties and provide certain
jurisdiction and entitlements to the City over the Tribe’s trust lands the City would not
ordinarily have under federal law; and

WHEREAS, both parties desire to include dispute resolution in the MOA that
would provide the parties a means to resolve disputes, and

WHEREAS, the Tribe as a federally recognized Indian Tribe is cloaked with tribal
sovereign immunity which prevents the City from engaging the Tribe for dispute
resolution by traditional means either in federal or state court; and

WHEREAS, the Tribe desires to provide a limited waiver of its tribal sovereign
immunity to the City to provide a means of resolving issues that arise out of or are related
to the terms and conditions of the MOA; and

NOW THEREFORE BE IT, the Elem Executive Committee hereby approve the attached limited waiver of Tribal sovereign immunity, Ex. C on behalf of the City of Clearlake as stated in Section 18 of the Tribe-City MOA

CERTIFICATION

Whereby the Tribal Council, by a vote of ____, Yes,____ No and ____ Abstain, hereby pass this resolution.

IN WITNESS WHEREOF, the undersigned has affixed his/her signature on this ____ day of _____, 2023_.

Chairman, Agustine Garcia

Secretary, Sarah Garcia

Ex. D

Limited Waiver of Sovereign Immunity

The Elem Indian Colony is a federally recognized Indian tribe that possesses tribal sovereign immunity against unconsented suit pursuant to its inherent sovereign powers and as recognized under state and federal law.

The Tribe desires to enter into a Tribe-City of Clearlake Memorandum of Agreement (“MOA”) that provides both parties certain powers and benefits related to the development of the Tribe’s Travel Center/Convenience Store located on Indian lands within the City’s jurisdiction. The Tribe’s sovereign powers include the power to waive its immunity.

The Tribe hereby provides a limited waiver of its tribal sovereign immunity to the dispute resolution process at Section 18 of the MOA. This limited waiver of the Tribe’s sovereign immunity is a clear and express assent to the American Arbitration Association (“AAA”), Commercial Arbitration Rules and or Expedited Hearing procedures, if applicable, as a means of resolving disputes arising out of or related to the terms and conditions of the Tribe-City MOA.

The Arbitration shall be by a single arbitrator selected by AAA by traditional selection means. The Arbitration shall utilize California Code of Civil Procedure Section 1280 et seq. arbitration rules, including discovery and enforcement. The Arbitration shall issue any order, including injunctive relief. Each Party shall pay one-half of the arbitration fees. The Arbitrator may issue an order for Attorney’s fees and expenses only if a claim or defense is deemed frivolous.

This limited waiver of sovereign immunity is granted to the City, exclusively, and or its legal successor in interest and does not extend to any third party. Any monetary award or fine received by the City as a result of this limited waiver, via the arbitration process, shall not inure to the Tribe’s treasury, federal or grant funds, but is limited solely to the revenues of the Tribe’s Travel Center/Convenience Store. Nor shall any lien be placed on or attached to tribal assets. This limited waiver of sovereign immunity has been granted by the Tribe’s Executive Committee consistent with tribal law, custom and tradition and is irrevocable.

Both parties hereby acknowledge and agree that by executing the MOA they forever waive their rights to a trial by judge or jury trial.

CERTIFICATION

Whereby the Tribal Council, by a vote of ____, Yes,____ No and ____ Abstain, hereby pass this resolution.

IN WITNESS WHEREOF, the undersigned has affixed his/her signature on this ____ day of _____, 2023_.

Chairman, Agustine Garcia

Secretary, Sarah Garcia

Ex. E

City Letter of Support for Tribe's Trust Acquisition

[City Letterhead]

SENT VIA CERTIFIED MAIL

[Date]

United States Department
Of the Interior, Bureau of
Indian Affairs- Pacific Region
2700 Cottage Way, W-2820
Sacramento, CA 95825
Attn: Amy Dutschke
Pacific Regional Director

RE: Support for Elem Indian Colony's Fee to Trust Application

The City of Clearlake, California, Lake County, hereby supports the Elem Indian Colony's ("Elem" or "Elem Indian Colony") Fee to Trust application to take two (2) parcels of land, comprising less than one (1) acre, within the jurisdiction of the City of Clearlake. The parcels, pursuant to the application, are to be used for tribal economic development, specifically a Travel Center and Convenience Store and or other related uses. The Elem are an area historical federally recognized Indian tribe with a rancheria located not far from the City boundaries. In 2017, the Tribe purchased lands within the City for purposes of economic development. The Tribe and City have entered into a Memorandum of Agreement ("MOA") that addresses both parties concerns with the land development and potential impacts to City revenues and City jurisdictional concerns. The City looks forward to the Tribe's development which represents a substantial financial investment and employment creator within the City or Clearlake. If you have any questions please contact my office at 14050 Olympic Drive Clearlake, CA 95422 Phone: 707-994-8201 Fax: 707-995-2653 Email: aflora@clearlake.ca.us

Sincerely,

Alan Flora
City Manager

Cc: City of Clearlake, City Council
City of Clearlake - City Attorney's Office
Elem Indian Colony, Tribal Council