

**MEMORANDUM OF UNDERSTANDING AND INTERGOVERNMENTAL
AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND
SHINGLE SPRINGS BAND OF MIWOK INDIANS**

This Memorandum of Understanding and Intergovernmental Agreement (hereinafter “Agreement”) is entered and effective on this 22nd day of February, 2022, between the **County of El Dorado**, a political subdivision of the State of California and the **Shingle Springs Band of Miwok Indians**, a federally-recognized Indian tribe (individually “Party” and collectively “Parties”).

RECITALS

1. The Shingle Springs Band of Miwok Indians (the “Tribe”) is a federally recognized Indian tribe, which is the beneficiary of trust land that is owned by the United States, entitled Shingle Springs Rancheria and located within the geographical boundaries of the County of El Dorado. The Tribe protects and enhances the quality of life of its members by preserving, protecting and promoting its history, culture and traditions; promoting self-sufficiency and a strong work ethic; exercising the powers of self-government and sovereign immunity; and providing social, health, economic and educational resources, opportunities and services that contribute to the well-being of the tribal community

2. Pursuant to the Indian Gaming Regulatory Act (“IGRA”), the Tribe has entered a tribal-state gaming compact with the State of California (“Compact”) authorizing Class III (also known as “Las Vegas-style”) gaming activities. The Tribe originally entered the Compact in 1999. The Compact was subsequently amended in 2008, 2012, and 2020.

3. In September 2006, the Parties entered a *Memorandum Of Understanding and Intergovernmental Agreement Between The County Of El Dorado And Shingle Springs Band Of Miwok Indians* (the “2006 MOU/IGA”). Among other things, the 2006 MOU/IGA acknowledges that, absent an agreement providing otherwise, applicable law does not obligate the Tribe to pay many taxes and fees that would otherwise be applicable to non-Tribal commercial interests. The 2006 MOU/IGA addresses that fact by setting forth compensation and other commitments designed to enhance the government-to-government relationship between the Parties.

4. Consistent with IGRA, the Compact, and the 2006 MOU/IGA, the Tribe operates a gaming facility on its trust lands as a means to promote tribal economic development and self-sufficiency and to generally protect the health and welfare of its members. Potential environmental and other impacts of the gaming facility (including casino, hotel, and related facilities) were identified, evaluated, and addressed in previous environmental review processes conducted by the Bureau of Indian Affairs, the National Indian Gaming Commission, the California Department of Transportation, and the El Dorado Irrigation District pursuant to federal and state law.

5. Operative terms of the Compact specify certain procedures applicable to “Projects,” defined to include renovation, expansion or modification of an existing gaming facility. Those procedures address (a) preparation of a Tribal Environmental Impact Report (“TEIR”) analyzing any potentially significant off-reservation impacts of the Project; and (b) negotiation of an intergovernmental agreement addressing timely mitigation of any significant off-reservation impacts of the Project, compensation for law enforcement, fire protection, emergency medical services and other public services to be provided by the County, and mitigation of any effect on public safety attributable to the Project (“Required Commitments”).

5. Operative terms of the Compact also allow, but do not require, the Tribe to provide to the County payments and/or services above and beyond those mandated by the Compact for mitigation of significant off-reservation impacts, compensation for law enforcement, fire protection, emergency medical services, or other public services provided by the County, or public safety (“Additional Commitments”). Under certain circumstances, the Tribe may claim credits, pursuant to Section 5.3 of the Compact, for payments made to the County in connection with Additional Commitments.

6. The Tribe has proposed to develop a 75,000-square foot entertainment center (“Entertainment Center Project” or “Project”) above the northern portion of an existing eight-level parking garage on its trust lands. The Entertainment Center Project would include a bowling alley, virtual reality gaming suites, indoor go-karting, food and beverage venues, and meeting rooms. The Project would also involve adding three parking levels to the southern portion of the existing parking garage.

6. In compliance with the Compact, the Tribe caused to be prepared a TEIR reviewing off-reservation impacts of the Entertainment Center Project. The TEIR describes the Project, the environmental conditions in the vicinity of the Project, potentially significant impacts of the Project on the off-reservation environment, mitigation measures proposed to address potential impacts on the off-reservation environment, and alternatives to the Project, among other things. The TEIR process included multiple opportunities for the County and other agencies, stakeholders, and members of the public to review and provide comments on the Project and the scope and contents of the TEIR.

7. Through the public TEIR process, the Tribe identified mitigation measures that are designed to timely eliminate or reduce to a less-than-significant level any potentially significant off-reservation impacts of the Entertainment Center Project. The Tribe has also identified Additional Commitments addressing environmental issues.

8. The County of El Dorado (“County”) is a political subdivision of the State of California.

9. The Tribe has addressed compensation to the County for law enforcement, and emergency medical services, as well as public safety, including by identifying Additional Commitments.

9. The Parties have discussed the mutual benefits that could be derived from entering an enforceable Agreement with respect to the Entertainment Center Project, and the County appreciates the Tribe's desire to operate the Project in a manner that benefits both the Tribe and the community as a whole.

11. This Agreement represents the Parties' concerted effort to enhance their government-to-government relationship and to maintain a continuing relationship that is both positive and responsive to the Parties' respective needs and desires.

NOW THEREFORE, the Parties hereby agree as follows:

A. Annual Payments. The Tribe will pay the County \$250,000 (in quarterly payments of \$62,500) each year, with the first payment due 365 days after the Entertainment Center Project opens to the public. The purposes of these recurring payments are to compensate and reimburse the County for any costs of the Project, to maintain competitive fairness for local businesses, and to support the County's general operations. These recurring payments will be subject to a 2% annual escalator.

B. Non-Recurring Public Safety/Law Enforcement Payment. The Tribe will pay the County \$500,000 by September 15, 2022. The purpose of this payment is to fund the purchase of certain specialized equipment for the El Dorado County Sheriff's Department. The County shall promptly provide the Tribe with invoices, receipts, or other similar written confirmation of purchase and delivery of the equipment.

C. Traffic/Transportation Payments. The Tribe will pay the County a total of \$150,000 (in three annual payments of \$50,000), with the first payment due 30 days after the Entertainment Center Project opens to the public. The purposes of these payments are to compensate and reimburse the County for any costs of the Project, to maintain competitive fairness for local businesses, and generally to support efforts to develop and maintain the roadway network in El Dorado County.

D. Environmental Measures. The Tribe also agrees to the following environmental measures, which include both Required Commitments and Additional Commitments:

1. The Tribe agrees to be bound by the beneficial design commitments set forth in the Entertainment Center Project TEIR, whether or not expressly characterized as mitigation measures.

2. The Tribe will comply with all mitigation measures set forth in the Entertainment Center Project TEIR.

3. The Tribe will install 10 additional electric vehicle charging stations in the parking area(s) that serve the Entertainment Center Project and/or the Tribe's gaming facility.

4. Within 30 days after the Entertainment Center Project opens to the public, the Tribe will provide to the County a written report identifying steps taken to construct and operate the Entertainment Center Project in a manner that is generally consistent with relevant County standards, as identified in the Entertainment Center Project TEIR.

5. The Tribe shall ensure that employees of the Entertainment Center Project are provided with financial incentives for carpooling and/or other ridesharing or public transportation options.

E. Good-Faith Discussion of Qualifying Health Care Payment Mechanics. The Tribe agrees to meet and confer, within 365 days of the execution of this Agreement, in a good-faith effort to discuss and resolve any issues between the Parties resulting from the mechanics of Qualifying Health Care Payments, as that term is used in Amendment 1 to the 2006 MOU/IGA.

F. Term/Due Dates. The term of this Agreement shall run from February 22, 2022, until the earliest of the following: (1) termination pursuant to section K.4; (2) closure of the Entertainment Center Project, defined as cessation of commercial operation for a period of six consecutive months; (3) the Compact expires, is terminated, or otherwise ceases to be in effect; or (4) February 22, 2047 (provided, however, that if the Entertainment Center Project, as defined in the TEIR, remains in operation beyond February 22, 2047, the Parties shall meet, confer, and work in good faith to negotiate an agreement addressing such operations, consistent with the terms of the then-applicable version of the Compact).

G. Dispute Resolution.

1. Meet and Confer. In recognition of the government-to-government relationship of the Tribe and the County, the Parties hereby agree to use their best efforts to resolve any disputes that may arise under this Agreement through good faith negotiations whenever possible. Therefore, without prejudice to the right of either Party to seek injunctive relief against the other when circumstances reasonably warrant, the Parties hereby agree to work to resolve any disputes informally first, through a process of meeting and conferring in good faith. The Parties agree that such a process would foster cooperation and efficiency in the administration of and compliance with the terms of this Agreement. The dispute resolution process will proceed as follows:

(a) Either Party will give to the other Party, as soon as possible after an event giving rise to concern, a written notice specifically detailing the concern and issues to be resolved;

(b) No later than 10 days after the notice is actually received, the Parties will meet and confer in a good-faith attempt to resolve the dispute through negotiation, unless both Parties agree in writing to extend the time;

(c) If any dispute is not resolved to the Parties' mutual satisfaction within 30 calendar days of the first meeting, then either Party may seek to have the dispute resolved by a mediator, but neither Party is required to agree to submit to such mediation.

2. Judicial Resolution. Disputes that arise under this Agreement and that are not resolved through informal negotiation or mediation may be resolved in U.S. District Court in the Eastern District of California (and all relevant courts of appeal), assuming the existence of jurisdiction, or the Superior Court of the State of California, County of Sacramento or other Superior Court as described in Section N below. The Parties nonetheless agree that, except in the case of imminent threat to the public health or safety, they will take reasonable efforts to explore alternative dispute resolution before resorting to the judicial process.

3. Alternative Methods of Resolution. The above provisions may not be construed to preclude, limit or restrict the Parties' ability to pursue, by mutual agreement, other methods of dispute resolution, including, without limitation, binding or non-binding arbitration.

H. Limited Waiver of Sovereign Immunity. The Tribe hereby agrees to waive its sovereign immunity (and any requirement of exhaustion of tribal remedies) in favor of the County for the limited purpose of resolving any dispute arising out of this Agreement, and consents to the jurisdiction of certain courts solely for purposes of enforcing the terms of this Agreement. To that end, the Tribe consents only to the jurisdiction of the U.S. District Court for the Eastern District of California (and all relevant courts of appeal), or alternatively, to the jurisdiction of the Superior Court of California (and all relevant courts of appeal), for judicial resolution of disputes with the County over this Agreement. Notwithstanding the foregoing, the County and the Tribe agree that jurisdiction and venue for any such dispute shall be in (and the Tribe's waiver of sovereign immunity shall extend to) any superior court other than El Dorado County Superior Court unless it is determined by another superior court, *sua sponte* and without motion or suggestion by the County, that the action must be heard in El Dorado County Superior Court. The County agrees to jurisdiction and venue in Sacramento County Superior Court and will not assert that jurisdiction and venue lie in El Dorado County Superior Court unless there is no other superior court that will accept jurisdiction and venue for the matter. The waiver is also limited to amounts due under the terms of this Agreement, and in no instance shall the waiver be read to extend to allow judicial enforcement of any kind against any assets of the Tribe, other than the Revenue Stream of the Event Center Project. For purposes of this Agreement, the Revenue Stream is defined as net profits due and owing to the Tribe that are derived from the operation of the Event Center Project after all costs of operation, repayment of debt service, payments to the State under any Compact, and payments to the Tribe for any necessary

governmental functions associated with the operation of the Event Center Project have been made.) The waiver is further limited to the Tribe and shall not be construed as a waiver of any immunity of any elected or appointed officer, official, citizen, manager, employee, or agent of the Tribe. The Tribe does not agree to waive any aspect of its sovereign immunity with respect to actions by parties other than the County.

I. No Third-Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer a benefit or create any right for a third party. The Parties agree no third party possesses the right or power to bring an action to enforce any of the terms of this Agreement.

J. Notices. Any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered vi the U.S. Postal Service, 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 Tribe:
Chairperson
Shingle Springs Rancheria Band of Indians
5281 Honpie Road
Placerville, CA 95667

For the County:
County of El Dorado Chief Administrative Officer
El Dorado County
330 Fair Lane
Placerville, CA 95667

K. Additional Matters.

1. Amendments. This Agreement may be amended only by written instrument signed by the County and the Tribe and authorized by the Board of Supervisors and the Tribal Council.

2. Waiver. Failure by either party or any of its officers to take action with respect to any right conferred by, or any breach of any obligation or responsibility arising under, this Agreement will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

3. Authorized Representatives. The persons executing this Agreement on behalf of the Parties affirmatively represent that each has the requisite legal authority to enter this Agreement on behalf of their respective Party and to bind their respective Party to the terms and conditions of the Agreement.

4. Non-Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, following exhaustion of all appeals and pursuit of all remedies, regardless of the perceived or actual materiality of such provision the remainder of the Agreement will also be deemed invalid and unenforceable, the Agreement shall terminate, and the Parties agree to promptly renegotiate in good faith. In such event, the Agreement will not be subject to reformation or other legal or equitable remedy. The Parties expressly intend that a court of competent jurisdiction not substitute its determination with respect to the intent of the Parties.

5. Force Majeure/Acts of God. In the event the Entertainment Center Project temporarily closes due to causes beyond the reasonable control of the Tribe, including but not limited to fire, flood, pandemic, embargo, war, acts of war, insurrections, riots, strikes, lockouts or other labor disturbances, or acts of God, the Tribe shall be relieved of its payment obligations under this Agreement for those days that the Entertainment Center Project is closed. Payments to the County from the Tribe, under Section A of this Agreement, shall be prorated based on the number of days that the Entertainment Center Project was closed during the preceding calendar year. This clause shall only apply when the Entertainment Center Project is closed for an entire day (and shall be inapplicable to situations where the Project remains open for limited or reduced hours).

6. California Environmental Quality Act. Pursuant to Government Code Section 12012.58, execution of this Agreement is not – and nothing in this Agreement shall be interpreted as – a project within the meaning of the California Environmental Quality Act (“CEQA”). Further, with respect to the County, this Agreement sets forth a funding mechanism that does not involve any irrevocable commitment of resources to any project which may result in a potentially significant impact on the environment within the meaning of CEQA. The County acknowledges that, as and to the extent required by law, it will comply with CEQA before approving any project within its regulatory authority. Nothing in this Agreement shall be interpreted in a manner that limits the County’s full discretion to fund, approve, authorize, disapprove, or modify any project subject to CEQA. With respect to any CEQA obligation required of the County, no action or failure to act by the County is construed as a default of any obligation under this Agreement.

7. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Tribe with respect to the Event Center Project and supersedes all prior negotiations, representations, or other agreements, whether written or oral. However, for avoidance of ambiguity, nothing in this Agreement shall be interpreted as amending, terminating, or extinguishing 2006 MOU/IGA, as amended.

WHEREFORE, IN WITNESS THEREOF, the parties hereby execute and enter this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

COUNTY OF EL DORADO

Lori Parlin
Chair, Board of Supervisors

Date

SHINGLE SPRINGS BAND OF
MIWOK INDIANS

Regina Cuellar
Tribal Chairperson

Date

APPROVED AS TO FORM:

David A. Livingston
County Counsel
El Dorado County

Date

Nicholas C. Bryson
Attorney General
Shingle Springs
Band of Miwok Indians

Date