

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE HABEMATOLEL POMO OF UPPER LAKE
AND THE LAKE COUNTY SHERIFF**

This Memorandum of Understanding ("MOU") is made this 9th day of July, 2019 by and between the Habematolel Pomo of Upper Lake (the "Tribe") a federally recognized Indian Tribe, and the government of Lake County, California (the "County") for the benefit of the Lake County Sheriff's Department (the "Sheriff"), an agency of County. This MOU is entered into on a government to government basis by and between the Tribe and the County.

RECITALS

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

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

WHEREAS, having been deprived of a traditional tax base, the Tribe has built business enterprises to provide it with governmental revenues for its operations and programs and to play an important role in the economy of the region. The Tribe believes strongly in the concept that all sovereigns (federal, state and local) should work cooperatively to better the quality of life for all because the best way to advance Tribal members' opportunities is to advance the region, the state and nation, and the County concurs in such belief; and

WHEREAS, the Tribe's jurisdiction exists within the geographical boundaries of the County and as adjacent sovereigns, the Tribe and the County have an excellent history of working cooperatively to improve the quality of life for the local area; and

WHEREAS, in this spirit of advancing the region for all peoples, the Tribe and the County previously entered into an MOU in June of 2016 addressing the Tribe's Trust Land acquisition and casino project (the "Gaming MOU"); and for clarity, this MOU is separate from and does not supersede, preempt, amend or in any way affect the Gaming MOU; and

WHEREAS, due to its location in a beautiful, yet remote area, the Tribe, pursuant to its inherent sovereign authority and right to self-determination as recognized by the United States Congress in, among other statutes, the Native American Business Development, Trade Development and Tourism Act of 2000 (25 U.S.C. § 4301 et. seq.), has turned to electronic commerce to bring customers to its wholly-owned tribal businesses including its online consumer financial services

enterprises pursuant to duly enacted tribal laws authorizing the conduct of these business operations and subjecting each to intense regulation for the protection of all consumers by the Tribal Financial Services Regulatory Commission; and the County recognizes the Tribe's sovereign and regulatory authority over these enterprises and the importance of these enterprises to the local economy; and

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

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

WHEREAS, the Sheriff is the chief law enforcement officer of the County and is charged with protecting the citizens of the County and is a guardian of the public interest serving as a consumer advocate protecting against fraud and other issues; and the Sheriff and the Tribe have jointly developed and fostered an important, cooperative relationship including investigating potentially fraudulent transactions that are reported to the Tribe's business enterprises and other law enforcement services protecting Tribal property and Tribal members; and

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

WHEREAS, although no legal requirement exists for the Tribe to enter into this MOU or to make any payments to the County for benefit of the Lake County Sheriff's Department, the Tribe nevertheless desires to enter into this MOU and to make an annual voluntary contribution to the County for the benefit of the Sheriff which is not intended to be, and does not constitute a tax, fee, charge or assessment by the County or the Sheriff imposed on the Tribe; and

WHEREAS, the County and the Sheriff enter into this MOU, through the authority of the government of Lake County, California out of respect for the sovereignty of the Tribe; in recognition that the Tribe's financial services enterprises are an important component of economic development for the Tribe and local economy and to continue the era of government-to-government cooperation in areas of mutual concern between the County and the Tribe; and

WHEREAS, this MOU shall serve as evidence of the continued goodwill and cooperation between the Tribe, the County and the Sheriff in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the County, Sheriff and the Tribe.

NOW THEREFORE, the Parties hereby agrees as follows:

I. Definitions

Terms not defined elsewhere in this MOU shall have the following meanings:

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

"Commission" means the Tribal Consumer Financial Services Regulatory Commission as established by Tribal law.

"Commissioner" means the Commissioner appointed by the Tribe's Executive Council to head the Commission.

"County" means the government of Lake County, California.

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

"Financial Services Enterprises" means those financial services entities wholly-owned and operated by the Tribe and regulated by the Commission.

"Gaming MOU" means the MOU voluntarily entered into by and between the County of Lake and the Tribe on June 11th, 2006 regarding the Tribe's Trust Land acquisition and subsequent casino project.

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

"Party" means the County (including the Sheriff) or the Tribe.

"Parties" means the County (including the Sheriff) and the Tribe.

"Sheriff" means the Lake County, California Sheriff's Department, an agency of the County of Lake, California.

"State" means the State of California.

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

"Trust Land" means the property which is held in trust by the United States for the exclusive benefit of the Tribe.

II. GENERAL AGREEMENTS BETWEEN THE PARTIES

The County and the Tribe agree to the general principles set forth below:

- A. A well-funded and organized Sheriff's department plays an important role in the quality of life for all citizens of the County and the Tribe;
- B. The Tribe and the County strongly believe the concept that all sovereigns (federal, state and local) should work cooperatively to better the quality of life for all;
- C. Due to its lack of a traditional tax base, the Tribe maintains business entities that are "arms of the Tribe" for purposes of creating Tribal governmental revenues;
- D. Due to its remote location, the Tribe must seek opportunities through the internet-the great equalizer of opportunities for remote locations;
- E. The Tribe has successfully brought electronic commerce opportunities through its Financial Services Enterprises that have significantly contributed to the economic development and well-being of the Tribe and the region;
- F. Using revenues from its electronic commerce businesses, the Tribe has created programs for its members that has reduced the demands on County and State services;
- G. The Tribe and County share a long-term goal of creating a well-educated and experienced labor pool in the area from which the Tribe intends to hire to support its electronic commerce businesses and other economic development opportunities;
- H. The Tribe and County both agree that any negative impacts on the Tribe's electronic businesses will have an immediate and negative impact on the Tribal and local economy and all peoples of the region;
- I. The Tribe has provided assurances to the County and the Sheriff that it has established the Commission to provide protections to customers accessing services offered by the Tribe's Financial Services Entities through the internet;
- J. The Tribe and Sheriff have established effective, cooperative processes for addressing consumer issues and for other law enforcement response and support at Tribal facilities on the Tribe's Trust Land; and
- K. The Tribe wishes to provide, and the County wishes to receive, financial contributions to benefit the Sheriff's office made directly possible by the revenues the Tribe receives from Tribe's electronic commerce businesses.

III. DUTIES AND RESPONSIBILITIES OF THE TRIBE

The Tribe and the Commission shall maintain and voluntarily demonstrate the following to the County and the Sheriff under this MOU:

- A. The Tribe's governing body shall maintain Tribal laws for the provision and regulation of financial services by its wholly-owned arms of the Tribe and shall provide the County and the Sheriff with any amendments to these Tribal laws; and
- B. The Commission shall pursue compliance programs that ensure the protection of consumers and will act quickly and appropriately in addressing any consumer complaints; the Commission shall also ensure that each of the Financial Services Enterprises operates under bona fide Tribal law and regulations, maintains all applicable licenses, and follows all applicable consumer protection and other laws including such federal laws and regulations as: the Truth in Lending Act, the Electronic Fund Transfer Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, and the Equal Credit Opportunity Act; and
- C. The Tribe agrees to maintain an open dialogue with the County and the Sheriff regarding any law enforcement needs of the Tribe and to create a cooperative environment for the provision of such needs; and
- D. The Chairperson and the Commissioner shall be the primary contacts for all issues pertaining to the Financial Services Enterprises. The Chairperson and the Sheriff shall be the primary contacts for all other law enforcement issues.

IV. DUTIES AND RESPONSIBILITIES OF THE SHERIFF

- A. The County and the Sheriff recognize that the Tribe has the sovereign authority to engage in providing consumer financial services on the Tribe's Tribal Trust Lands and to establish its regulatory framework applicable to its Financial Services Enterprises; and
- B. In acknowledgment of the government-to-government relationship between the Tribe and County, the Executive Council, Commissioner and Sheriff all agree to consult in resolving any consumer complaints or issues related to the Tribe's Financial Services Enterprises and to follow such protocols as are jointly developed; and
- C. The Sheriff shall meet with the Executive Council at least semi-annually to discuss law enforcement issues of the Tribe and its businesses.

V. EFFECT OF THIS MOU

- A. No Limitations. No provision of this MOU is intended to, and no provision of the MOU shall be construed to, limit or otherwise affect the authority of the County, the Sheriff, the Tribe, or the Commission to administer, implement, or enforce any provision of any law subject to their respective jurisdictions.
- B. Sovereign Immunity. Nothing in this MOU shall be construed as a waiver of any of the Parties' sovereign immunity, express or implied, or the sovereign immunity of any of its instrumentalities, political subdivisions, business entities, agents, departments, or agencies, or their respective officers, directors, employees, or agents.

VI. GENERAL CONTRIBUTION TO THE COUNTY FOR USE BY THE LAKE COUNTY SHERIFF'S DEPARTMENT

A. Annual Payment.

The Tribe shall make an annual contribution to the Lake County Sheriff's Department in the amount of twenty-five thousand dollars (\$25,000) in four equal installments within ten days of the close of each quarter commencing at the end of the second quarter 2019 and continuing so long as this MOU is in effect or as modified below.

B. Term or Modification of Annual Payment.

The Tribe shall continue to make the contributions set forth in Section VI.A above unless:

- (1) The Tribe's Executive Council determines that its Financial Services Enterprises have insufficient cash flows in any particular quarter to fund that quarter's contribution; or
- (2) The occurrence of a Force Majeure event pursuant to Article VII of this MOU; or
- (3) Either the County or the Tribe terminate this MOU pursuant to Article VII.B of this MOU.

VII. TERM AND TERMINATION

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

B. Termination.

- (1) **Written Notice for Termination.** This MOU will remain in effect until superseded by a signed, mutual agreement of the Parties. A Party may withdraw from or otherwise terminate its participation in this MOU with no less than thirty (30) days written notice provided to the other Parties.
- (2) **Information Retained After Termination of MOU.** To the extent that a Party retains information upon termination of this MOU, all information provided by either Party shall continue to be treated in accordance with the terms of this MOU.

VIII. FORCE MAJEURE.

If, due to Force Majeure (as hereinafter defined), an act of God, valid business

considerations or in the event the Tribe ceases or suspends operations of its Financial Services Enterprises, the Parties' obligations under this MOU shall be suspended as of the date of such suspension or termination until such time as such operations are resumed. For the purposes of this Section, the term "Force Majeure" shall include, without limitation, the following: earthquake; flood; fire; other natural disasters; riots; war; terrorism; or the action of any state government or the federal government that impinges upon or negatively affects the Tribe's ability to conduct business.

IX. DISPUTE RESOLUTION PROVISIONS.

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

X. MISCELLANEOUS

- A. Severability. If any provision of this MOU is held by a court of competent jurisdiction to be illegal, invalid, unenforceable, unauthorized, annulled, voided or set aside, under present or future laws, the remaining provisions of this MOU shall remain in full force and effect and shall not be affected by such provision or by its severance from this MOU. In the event of any such determination, the Parties shall enter into good faith negotiations to replace the prohibited or invalid provision with a valid provision, the effect of which comes as close as possible to that of the invalid provision.
- B. Binding Agreement. This MOU is intended to be, and shall be construed to be, binding upon the Parties and all successors and successors-in-interest of each Party.
- C. Amendments. The Parties may amend this MOU from time to time, provided that such amendments are agreed to in writing by all Parties.
- D. Execution. This MOU may be executed in counterparts and by signature sent by facsimile or electronically, each of which shall be deemed an original for all purposes.
- E. Authority. Each Party to this MOU represents and warrants that it has the requisite legal authority to enter into this MOU.

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

COUNTY OF LAKE COUNTY, CALIFORNIA



By: Tina Scott
Title: Chair, Board of Supervisors



HABEMATOLEL POMO OF UPPER LAKE



By: Sherry Treppa
Title: Chairperson


Acknowledged by:

Sheriff's Department of Lake County, an Agency of Lake County



By: Brian Martin
Title: Sheriff

The Tribal Consumer Financial Services Regulatory Commission



By: David Tomas
Title: Commissioner

**REVIEW AS TO FORM
COUNTY COUNSEL**



Ahita L. Grant