

AGREEMENT FOR RESOLUTION OF LITIGATION

THIS AGREEMENT FOR RESOLUTION OF LITIGATION (“Agreement”) is made and entered into by, between and among the following persons and entities, each of which is a party to this Agreement, and when fully executed by all of such persons and entities shall be effective as of the date of the last signature hereon:

1. Shingle Springs Band of Miwok Indians, also known as Shingle Springs Band of Indians, also known as Shingle Springs Rancheria (collectively, “Tribe”);
2. Each of the present members of the Tribal Council of the Tribe (collectively, the “Tribal Council,”), in their official capacities, and as successors in interest to, and on behalf of, the former members of the Tribal Council;
3. Grassy Run Community Services District (“CSD”);
4. Each of the present officers and directors of the CSD (“CSD Directors”), in their official capacities, and as successors in interest to and on behalf of the former officers and directors of CSD;
5. Grassy Run Homeowners’ Association, as it presently exists, and on behalf of any successor or successors in interest thereto, in whole or in part (“GRHA”); and
6. Each of the present officers and directors of GRHA (“GRHA Directors”), in their official capacities, and as successors in interest to and on behalf of the former officers and directors of GRHA.

The above-named persons and entities are sometimes hereinafter referred to collectively as the “parties to this Agreement,” and singularly as a “party to this Agreement.” The Tribe and Tribal Council are sometimes referred to collectively as the “Tribal Interests,” and CSD, the CSD Directors, GRHA and the GRHA Directors are sometimes referred to collectively as the “Grassy Run parties.”

RECITALS

This Agreement is based upon the following agreed facts:

A. Litigation (“the Lawsuit”) is presently pending between the parties to this Agreement, some of their predecessors in interest, and All Persons Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest In or Over the Grassy Run Roads Adverse to the Right, Title, Estate, Lien or Interest of the Owners of Parcels of Property Located Within the Boundaries of Grassy Run (“All Persons”), in the United States District Court, Eastern District of California (“the District Court”), and is captioned therein as *Shingle Springs Rancheria v. Grassy Run Community Services District, etc., et al.*, and docketed as case No. Civ. S-96-1414-DFL.

1. The Tribe is the plaintiff and a counterdefendant and cross-defendant, and a counterdefendant and cross-defendant in intervention, in the Lawsuit. Predecessors in interest of the

Tribal Council are also named as counterdefendants and cross-defendants, and counterdefendants and cross-defendants in intervention, in the Lawsuit.

2. The CSD and some of its former officers and directors are defendants, and the CSD is a counterclaimant and cross-claimant, in the Lawsuit asserting claims against the Tribe, former members of the Tribal Council, and the County of El Dorado (the “County”), and against All Persons. The County was originally a party cross-defendant in the Lawsuit, but the CSD and the County settled the CSD’s claims against the County in 1998.

3. GRHA and one of its former officers and directors are intervenor-defendants, and intervenor-counterclaimants and cross-claimants, in the Lawsuit asserting claims against the Tribe, former members of the Tribal Council, the County, and All Persons. The County was originally a party cross-defendant in intervention in the Lawsuit, but GRHA and the County settled GRHA’s claims against the County in 1998.

B. The Tribe’s complaint filed in the Lawsuit asserts various claims for relief against CSD and its officers and directors in their official capacities, including, *inter alia*, claims for injunctive and declaratory relief and claims for damages.

C. CSD’s first amended and supplemental counterclaim and cross-claim filed in the Lawsuit asserts various claims for relief against the Tribe and others, including, *inter alia*, claims for injunctive and declaratory relief and claims for damages.

D. GRHA’s counterclaim and cross-claim in intervention filed in the Lawsuit asserts various claims for relief against the Tribe and others, including, *inter alia*, claims for injunctive and declaratory relief and claims for damages.

E. The District Court has entered certain orders in the Lawsuit, including a Preliminary Injunction order which the Tribe has appealed to the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”). That appeal has been stayed for several years at the request of the parties to this Agreement due in part to other litigation, including other litigation between the County and the Tribe.-

F. On December 4, 1998, the District Court entered a Default Judgment confirming the private status of the Grassy Run roads against All Persons (“the All-Persons Judgment”), subject to specified conditions set forth therein for the benefit of tribal members and Rancheria residents. The District Court reserved jurisdiction to modify that Judgment at the conclusion of the Lawsuit.

G. On September 28, 2006, the County and the Tribe entered into a Memorandum of Understanding (“MOU”), settling and resolving the disputes among them.

H. The parties to this Agreement agree that the existence of the MOU and other factors makes

this a propitious time to resolve the Lawsuit. The Grassy Run parties wish to obtain a final, non-appealable judicial ruling that the Grassy Run roads are completely and entirely under and subject to their control, without exception, save and except as hereinafter, and in the Judgment to be entered in the Lawsuit based on this Agreement, expressly and specifically set forth, and to resolve the remaining claims in the Lawsuit without the time, expense and inconvenience of further litigation. The Tribal Interests also wish to resolve the remaining claims in the Lawsuit without the time, expense and inconvenience of further litigation.

I. This Agreement represents the parties' concerted effort to achieve a positive and constructive resolution of significant issues that have otherwise obstructed their relationship to their collective and respective detriment. This Agreement will enhance that relationship and effectuate a desire to maintain a continuing relationship that is both positive and responsive to the Parties' respective needs and desires.

WITNESSETH:

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT, FOR AND IN CONSIDERATION OF THE MATTERS HEREIN SET FORTH, DO HEREBY AGREE AS FOLLOWS:

1. STIPULATION FOR ENTRY OF JUDGMENT AND DISMISSAL OF CLAIMS. The parties to this Agreement shall, both individually and by and through their respective counsel of record, sign and file a Stipulation for Entry of Judgment in the form attached hereto as Exhibit A (the "Stipulation"), including the form of Judgment attached to the Stipulation as Exhibit 1 thereto (the "Judgment") to be entered by the District Court pursuant to the Stipulation.^{1/} The parties to this Agreement hereby waive and abjure any right to appeal the Judgment entered pursuant to that Stipulation and any right to seek collateral relief from that Judgment. Both this Agreement and the Stipulation shall be executed by the respective presiding officers of the Tribe, CSD and GRHA, with the approval, evidenced by authenticated resolutions of the Tribal Council (for the Tribe) and the respective Boards of Directors of CSD and GRHA. By executing this Agreement, the respective counsel for each of the parties to this Agreement represents to the other parties and counsel that his

¹ In the event that, as of February 28, 2008, either (1) the Tribal Council has failed to adopt a resolution approving and authorizing the execution of this Agreement, or (2) the Tribe, through its counsel, has failed to submit a formal written request to the Secretary of the Interior, through the Bureau of Indian Affairs, seeking review of this Agreement pursuant to 25 U.S.C. § 81 and either approval of this Agreement and any easement(s) granted hereby or a written statement that such approval is not necessary, then paragraph 5 of Exhibit 1 to Exhibit A hereto shall be changed to reflect that the amount of the Judgment shall be Sixty Thousand Dollars (\$60,000.00).

clients have full authority, both legal and factual, to sign and execute this Agreement.

2. LIMITED WAIVER OF SOVEREIGN IMMUNITY. Solely for the purposes of the interpretation, implementation and enforcement of the terms and provisions of this Agreement, the Stipulation and the Judgment, the Tribe hereby grants a limited waiver of its sovereign immunity to allow the District Court to resolve any and all disputes which may arise out of, or be related to, the execution, interpretation, implementation and enforcement of the terms and provisions of this Agreement, the Stipulation and the Judgment. The parties to this Agreement expressly consent and agree that the District Court shall retain continuing jurisdiction over the Lawsuit for the purpose of such dispute resolution. If for any reason the District Court refuses to exercise jurisdiction over such a dispute, the parties may seek relief in the Superior Court of the State of California in Sacramento County or such other county to which the matter may be transferred by that court, other than El Dorado County, which has an interest in the outcome of any such dispute and therefore is not a proper venue. The Tribe's foregoing limited waiver of sovereign immunity applies only to GRHA and the CSD, and/or to their successors in interest as to all or any portion of the parcels subject thereto, but not to their individual officers, directors, parcel owners or residents.

3. GRHA'S RIGHT TO ERECT AND/OR MAINTAIN BARRIERS ON ROADS. The parties to this Agreement agree that, subject to the limitations set forth herein, GRHA shall have the right, in its sole and exclusive discretion, to erect and maintain a gate or gates or other barrier or barriers of any kind ("barrier") at any location within the Grassy Run community (the "Community").

a. No barrier may be erected on any road within the Community leading from the Grassy Run Court cul-de-sac to Grassy Run Road to Rolling Rock Road to Reservation Road to the Rancheria preventing access to the Rancheria until at least seven (7) days after the date on which the California Department of Transportation ("Caltrans") has opened for public use a freeway interchange allowing transit to and from U.S. Highway 50 and the Rancheria (the "Interchange").

b. Any barrier erected on any road within the Community must provide for access to the Rancheria by County, state or other emergency vehicles and related equipment (if any) in the event of an emergency situation. For purposes of this Agreement, "emergency situation" is defined as including any fire, flood, earthquake or natural disaster, any medical emergency, and any closure of the Interchange to through traffic for any reason beyond the control of the Tribe.

c. Any barrier erected on any road within the Community leading from the Grassy Run Court cul-de-sac to Grassy Run Road to Rolling Rock Road to Reservation Road to the Rancheria

must provide for access from the Rancheria to Greenstone Road in the event of an emergency situation.

d. Any barrier erected on any road within the Community leading from the Grassy Run Court cul-de-sac to Grassy Run Road to Rolling Rock Road to Reservation Road to the Rancheria must provide for access to the Rancheria for residents of the Rancheria and for government officials and parties designated by Caltrans in the event of a temporary or permanent closure of the Interchange.

4. TRIBE'S RIGHT TO LIMIT ACCESS. The parties to this Agreement agree that, subject to the limitations set forth herein, the Tribe shall have the right, in its sole and exclusive discretion, to limit access to portions of the Rancheria not generally made open to the public by the Tribe or to which access can only be obtained by use of roads constructed, repaired or maintained by the Tribe with Tribal funds rather than with funds obtained from the United States, and to erect and maintain barriers or otherwise to restrict access to such portions of the Rancheria or use of such roads.

a. Owners and residents of certain parcels currently within the Grassy Run Community to which access currently can be accomplished only by transit through the Rancheria ("the landlocked parcels"), and their invitees, shall be allowed access at all times from the Interchange to the landlocked parcels over the roads within the Rancheria, for residential purposes, including service provider vehicles and delivery vehicles, for non-commercial purposes only, so long as such access is not available by transit other than through the Rancheria. The landlocked parcels are presently more particularly described as follows:

i. Assessor's Parcel No. 319-100-20, more particularly described as Parcel B as shown in Book 12 at Page 46 of Parcel Maps, in the Official Records of El Dorado County, State of California;

ii. Assessor's Parcel No. 319-100-21, more particularly described as Parcel A as shown in Book 12 at Page 46 of Parcel Maps, in the Official Records of El Dorado County, State of California;

iii. Assessor's Parcel No. 319-100-29, more particularly described as Parcel B as shown in Book 17 at Page 95 of Parcel Maps, in the Official Records of El Dorado County, State of California;

iv. Assessor's Parcel No. 319-100-32, more particularly described as Parcel 1 as shown in Book 20 at Page 43 of Parcel Maps, in the Official Records of El Dorado County, State of California;

v. Assessor's Parcel No. 319-100-33, more particularly described as

Parcel 2 as shown in Book 20 at Page 43 of Parcel Maps, in the Official Records of El Dorado County, State of California;

vi. Assessor's Parcel No. 319-100-34, more particularly described as Parcel 3 as shown in Book 20 at Page 43 of Parcel Maps, in the Official Records of El Dorado County, State of California;

vii. Assessor's Parcel No. 319-100-38, more particularly described as Parcel 1 as shown in Book 25 at Page 105 of Parcel Maps, in the Official Records of El Dorado County, State of California; and

viii. Assessor's Parcel No. 319-100-39, more particularly described as Parcel 2 as shown in Book 25 at Page 105 of Parcel Maps, in the Official Records of El Dorado County, State of California.

b. The Tribe will allow access to any emergency vehicles and related equipment from the Interchange to any barrier erected by GRHA at the boundary of the Rancheria and the Community on Reservation Road in the event of an emergency situation.

c. The Tribe will allow access by Grassy Run residents from the boundary of the Rancheria and the Community at Reservation Road to the Interchange in the event of an emergency situation.

5. LOCATION OF MAIL AND NEWSPAPER DELIVERY RECEPTACLES. At such time as Caltrans has opened the Interchange for use by the public, or at such earlier time as may be agreed upon by the parties to this Agreement, the Tribe, on behalf of itself and its members who reside on the Rancheria, and GRHA, on behalf of the owners and/or residents of the landlocked parcels, shall contact the Postmaster in Placerville and request that mailboxes for residents of the Rancheria and for residents of the landlocked parcel be moved from their current location to a location accessible by roads on the Rancheria leading to the Interchange. The parties to this Agreement shall make a similar request to newspapers that have delivery receptacles at the entrance to the Community at Grassy Run Court.

6. RELEASE OF CLAIMS. Except as otherwise expressly set forth herein or in the Stipulation or the Judgment, GRHA, the CSD, and their respective officers and directors, and the Tribe and the Tribal Council, both individually and on behalf of their respective past, present and future, direct and indirect, members, agents, servants, employees, attorneys, representatives, predecessors in interest, successors in interest, vendees, transferees, parent entities, subsidiary entities, divisions, companies, directors, officers, stockholders, partners, and all other persons and entities acting for or on

behalf of said party, all together hereinafter collectively referred to as “Releasor,” do hereby expressly release and forever discharge each other, both individually and on behalf of their respective past, present and future, direct and indirect, members, agents, servants, employees, attorneys, representatives, predecessors in interest, successors in interest, vendees, transferees, parent entities, subsidiary entities, divisions, companies, directors, officers, stockholders, partners, and all other persons and entities acting for or on behalf of said party, all together hereinafter collectively referred to as “Releasee,” of and from any and all presently existing claims, demands, damage, injury, grievances, actions or causes of action, known or unknown, either at law or in equity, which Releasor, at any time prior to the effective date of this Agreement, had or now has against Releasee, arising out of or in any way related to, directly or indirectly, the dispute referenced in the Recitals to this Agreement.

7. WAIVER OF UNKNOWN CLAIMS. Except as otherwise expressly set forth herein or in the Stipulation or the Judgment, this Agreement is intended to be complete and final and to cover not only presently existing claims, demands, damage, injury, grievances, actions and causes of action which are known, but also presently existing claims, demands, damage, injury, grievances, actions and causes of action that the parties to this Agreement (or any of them) do not know or suspect to exist in their respective favors which, if known at the time of executing this Agreement, might have affected the Agreement and that party’s willingness to enter into and execute it. Accordingly, except as otherwise expressly set forth herein and in the Stipulation or the Judgment, each of the parties to this Agreement expressly waives the benefit of the provisions of Section 1542 of the California Civil Code, and the benefit of any other statutes and/or common law principles of similar effect arising in any other jurisdiction. Section 1542 of the California Civil Code provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

GRHA, the CSD, and their respective officers and directors, and the Tribe and the Tribal Council, each warrant and represent to each other that they understand and acknowledge the significance and consequences of the waivers set forth in this Agreement and the exceptions thereto, and do hereby assume full responsibility for any damage or loss that may be incurred as a result of such waiver. GRHA and the CSD, and their respective officers and directors, and the Tribe and the Tribal Council, further warrant and represent to each other that if any fact with respect to any matter covered by this Agreement is found hereafter to be other than or different from the facts now believed by that party to be true, this Agreement shall nevertheless be and remain effective notwithstanding any such difference.

8. NO ADMISSION OF LIABILITY. Each party to this Agreement disputes and denies any legal liability on the part of such party to this Agreement to each other party to this Agreement, in connection with the matters that are the subject of this Agreement, the Stipulation and /or the Judgment. This Agreement, the Stipulation and the Judgment have each resulted from a compromise of disputed claims, demands and defenses, and each of the parties to this Agreement agrees that the Agreement is not to be construed by any person or entity, including without limitation any administrative, judicial or other deliberative body, as an admission of liability or responsibility, or non-liability or non-responsibility, on the part of any of the parties to this Agreement to any other of the parties to this Agreement, or to any other person or entity, or as an admission of the existence or non-existence of any fact whatsoever, except as otherwise expressly set forth herein.

9. WARRANTIES OF THE PARTIES. Each party to this Agreement does hereby warrant and represent to each of the other parties to this Agreement as follows:

a. That no promises, representations, understandings or warranties have been made to it by any other party to this Agreement other than those which are expressly contained herein;

b. That it and its signing representative have full legal and factual authority and capacity to execute and enter into this Agreement;

c. That it is the sole owner of, and has not made or purported to make any sale, assignment, transfer, conveyance or other disposition of, any of the rights, claims, demands, grievances, action or causes of action, obligations or any other matters covered by this Agreement;

d. That it has not filed any complaint, grievance or claim (other than in the Lawsuit) against any Releasee with any state, federal or local administrative agency or court, that it will not do so at any time hereafter with regard to any matter which is the subject of this Agreement, and that if any administrative agency or court assumes jurisdiction over any complaint, grievance or claim against any party to this Agreement arising out of any matter which is the subject of this Agreement, each other party to this Agreement will request that agency or court to withdraw from or dismiss with prejudice the matter before it, and will refuse to cooperate or participate voluntarily in the investigation or prosecution of any such complaint, grievance or claim;

e. That the contents of this Agreement, and the legal consequences of it, have been completely and carefully read by and/or explained to it and/or its representatives;

f. That it and its signing representative has made or has been able to make full and complete inquiry of counsel, with whose advice and representation it is fully satisfied, concerning

and pertaining to the legal effect and consequences of this Agreement and each and every term hereof, and each and every term of the Stipulation and the Judgment, and that it fully understands and appreciates the factual and legal significance of the terms and provisions contained therein;

g. That it is executing this Agreement voluntarily and of its own free will and accord;

h. That no other person (whether a party hereto or not) has made any threats, promises or representations of any kind whatsoever to induce the execution of this Agreement, other than the performance of the terms and provisions of this Agreement; and

i. All warranties and representations set forth elsewhere in this Agreement are incorporated into this paragraph by reference thereto, as though fully set forth herein.

10. INTERPRETATION OF AGREEMENT. This Agreement shall, in all respects, be interpreted, enforced and governed by and under federal law, and to the extent that federal law may not be applicable then under the laws of the State of California, excluding its conflict of law rules. This Agreement is the result of negotiations between counsel for the respective parties to it, and is therefore to be deemed to have been prepared jointly by such counsel, and any uncertainty or ambiguity existing in this Agreement shall not be interpreted presumptively either in favor of or against any party to this Agreement on the basis of the manner of its preparation. To the contrary, if any such uncertainty or ambiguity exists, this Agreement shall be interpreted according to federal law, and to the extent that federal law may not be applicable then under the laws of the State of California pertaining to the interpretation of contracts, without regard to any such presumption. By reason of the participation of counsel for the Tribe in the preparation and finalization of this Agreement, the interpretative canon whereby contractual ambiguities are construed in favor of Indians shall not apply to the construction of this Agreement.

11. ENFORCEMENT OF AGREEMENT. This Agreement, and the Stipulation and Judgment, may be pleaded as a full and complete defense to, and may be used as the basis for seeking an injunction against any party pursuing any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement, except in accordance with the reserved jurisdiction of the District Court. The parties to this Agreement agree that damages suffered by any of them by reason of any breach of any provision of this Agreement, or of the Stipulation and/or the Judgment, shall include (a) the amount of any judgment that might be entered against any party to this Agreement by reason of that party's breach of this Agreement, (b) all damages suffered, sustained or incurred, including reasonable attorneys' fees and other costs and expenses involved in instituting,

preparing, prosecuting or defending any action, lawsuit and/or motion resulting from a breach of this Agreement, and (c) all damages suffered, sustained or incurred, including reasonable attorneys' fees and other costs and expenses involved in instituting, preparing, prosecuting or defending any counterclaim, lawsuit, motion or other action to enforce this Agreement.

In the event that any proceeding is initiated in connection with the enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and expenses, separate from and in addition to the damages described in the immediately preceding paragraph, provided, however, that no double recovery of attorneys' fees and expenses shall be permitted.

12. SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstance, the deletion of which shall not adversely affect the receipt of any material benefit provided for by this Agreement, shall be declared or determined by any administrative agency or court of competent jurisdiction to be illegal, invalid or unenforceable to any extent, the legality, validity and enforceability of the remaining terms and provisions of this Agreement, and the application thereof to other persons, entities or circumstances shall not be affected thereby, and shall be enforced to the fullest extent permitted by law, and the term or provision declared or determined to be illegal, invalid or unenforceable shall be deemed not to be a part of this Agreement.

13. EXECUTION OF AGREEMENT IN COUNTERPARTS. This Agreement may be executed by the parties hereto on multiple signature pages to be attached to separate photocopies of this Agreement, and all such separate counterparts bearing original signatures shall be treated together as the original. Each party to this Agreement shall execute at least four separate sets of signature pages, and the Agreement may consist of multiple signature pages. This Agreement shall not become binding upon any of the parties to it until all parties have executed it, but upon the completion of its execution by the last of those parties and the transmittal of those execution pages to all other parties to this Agreement, their duly authorized representatives, and their respective counsel, it shall be deemed effective.

14. INTEGRATED CONTRACT. The terms and provisions of this Agreement are intended by the parties to it as a complete integration and final and exclusive expression of the terms of their agreement. This Agreement contains all of the inducements and agreements of the parties to each other; there are no other promises or inducements or agreements between the parties except as set forth in this Agreement. This Agreement supersedes all prior or contemporaneous oral and written understandings,

statements, representations and promises. The terms and provisions of this Agreement, including its Recitals, are contractual.

IN WITNESS WHEREOF, this Agreement is executed by the hereunder parties and duly authorized persons.

Shingle Springs Band of Miwok Indians

By: _____
Nicholas H. Fonseca
Chairman

Dated: _____

Grassy Run Homeowners' Association

By: _____
Janice Masterton
President

Dated: _____

Grassy Run Community Services District

By: _____
Janice Masterton
President

Dated: _____

Tribal Council Members of the Shingle
Springs Band of Miwok Indians

Nicholas H. Fonseca
Dated: _____

John Tayaba
Dated: _____

Stephanie Cuellar
Dated: _____

Directors of the Grassy Run Homeowners'
Association, and Directors of the Grassy
Run Community Services District

Janice Masterton
Dated: _____

Richard W. Nichols
Dated: _____

Steven J. Hersh
Dated: _____

Rhonda Dickerson

Dated: _____

Cary Seabaugh

Dated: _____

Tony Fonseca, Sr.

Dated: _____

Robin L. Stears

Dated: _____

Malissa Tayaba

Dated: _____

Kenneth B. Lee

Dated: _____

Elaine Whitehurst

Dated: _____