

Yolo County Agreement No. __ - ____

Intergovernmental Agreement Between the County of Yolo and the Yocha Dehe Wintun Nation Regarding State-Appropriated Funds for the Capay Valley Health and Community Center

This Intergovernmental Agreement (“Agreement”) is entered into as of _____, 2023 (“Effective Date”) by and between the County of Yolo, a political subdivision of the State of California (“County”), and the Yocha Dehe Wintun Nation, a federally recognized Indian Tribe whose reservation is located within the Capay Valley of Yolo County (“Yocha Dehe” or “Tribe”) (collectively with County, the “Parties”).

RECITALS

WHEREAS, Yocha Dehe is constructing the Wihne da Puchuma da Kewe – Capay Valley Health & Community Center (the “Project”) in the unincorporated community of Esparto; and

WHEREAS, the Project will provide critical health care and social welfare services to rural Yolo County residents; and

WHEREAS, Yocha Dehe and the County successfully collaborated to seek an appropriation of \$6.5 million in state funding for the Project as part of the annual budget process, set forth in Section 19.56(g)(1)(A) of the Budget Act of 2022 (approved on September 6, 2022); and

WHEREAS, the California Department of Transportation is administering the state appropriation for the Project and the County is coordinating with Caltrans on a Funds Transfer Agreement (“FTA”) for receipt of the appropriated funds, a final draft version of which is attached hereto as **Attachment A** and incorporated herein by this reference; and

WHEREAS, the purpose of this Agreement is to facilitate the County’s provision of the full \$6.5 million appropriation to the Tribe promptly after receiving the funds and, in turn, to ensure the County’s ability to fully perform all provisions of the FTA in connection with its receipt of state funding;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

AGREEMENT

1. **County Obligations.** County agrees to execute the FTA and faithfully perform its terms and conditions in a complete and timely manner to ensure, among other things, the receipt of all appropriated funds and compliance with all related reporting, audit, and similar requirements. County further agrees to pass through all appropriated funds, whether received incrementally or as a single-lump sum, to the Tribe within 15 calendar days of its receipt of such funding from Caltrans. Nothing in this Agreement obligates the County to provide any County

funds to the Tribe to remedy any failure on the part of Caltrans to provide the full appropriation to the County.

2. **Tribe Obligations.** The Tribe acknowledges the requirements of Sections 3.1-3.2, 4.2-4.7, 6.3 and 6.8 of the FTA and commits to cooperate in good faith with the County to facilitate County's compliance with those terms and provisions in connection with its receipt and expenditure of the funds provided pursuant to this Agreement, including but not limited to:

A. Applying all funds received toward the Project in accordance with the terms and provisions of the FTA and the State Budget Act of 2022. Any other use of such funds is prohibited consistent with Section 3.2 of the FTA. If the Project cannot be built as contemplated by the FTA or if the state funding is not fully expended, the Tribe shall collaborate in good faith with the County to ensure the return or repayment of funding to Caltrans consistent with applicable provisions of the FTA.

B. Consistent with Section 4.3 of the FTA, working in good faith with the County upon the expenditure of all state funding provided pursuant to the FTA and this Agreement or upon completion or termination of the Project, whichever comes first, to ensure the timely preparation and submission of a Project Closeout Report, as described in the FTA.

C. Maintaining records for at least three years after Project completion pertaining to the expenditure of funds received pursuant to this Agreement and cooperating as necessary in the event of a state or federal audit pursuant to Section 6.8 of the FTA or other applicable state and federal laws, including but not limited to Government Code section 8546.7.

3. **Term; Termination.** The term of this Agreement shall commence on the Effective Date and terminate upon the County's pass-through of the full appropriation to the Tribe pursuant to this Agreement. However, if Caltrans requires any substantive changes to the FTA or imposes any obligations upon the use or receipt of the appropriated funds that are not directly contemplated in this Agreement prior to the County's full performance of its pass-through obligations, the Parties shall cooperate in good faith to amend this Agreement to include such obligations. If no such amendment is successfully concluded within 30 days after the commencement of negotiations, or within such additional time as the Parties may mutually agree, either party may elect to terminate this Agreement in its sole discretion.

Section 2.C, Section 4, and the indemnity and defense provisions of Section 6 shall survive the expiration or termination of this Agreement.

4. **Indemnity.** The Tribe hereby agrees to defend, indemnify and hold harmless the County and its respective officers, agents and employees from any and all claims, losses or liabilities against the County and its respective officers, agents and employees arising or alleged to arise in connection with the Project, including but not limited to its duty to design and construct the Project and its responsibility to comply or ensure compliance with all applicable laws relating to Project construction (however, with respect to claims by the Department of Industrial Relations regarding state prevailing wage laws, this Section 4 shall only be applicable

commencing on August 30, 2022). The County shall not have any liability for claims relating to the Project or other matters within the responsibility of the Tribe. In the event of any claim or litigation within the scope of this provision, the Tribe shall retain counsel reasonably acceptable to the County Counsel to defend the County.

5. **Relationship of Parties.** The Tribe and its contractors, subcontractors, and other vendors shall perform all services under this Agreement as independent contractors, and not as employees, officers or agents of the County.

6. **Prevailing Wage.** The Tribe represents that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. (“Prevailing Wage Laws”) and that as of August 30, 2022, any construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds constitutes “public works.” Although there has not yet been any payment of money by the state or political subdivision, in recognition of the County’s conditional approval of a funding contribution on August 30, 2022, the Tribe represents that it has taken steps to ensure that commencing August 30, 2022, its contractors and subcontractors that perform work described in this Agreement have complied, and will continue to comply, with the Prevailing Wage Laws and other applicable provisions of the California Labor Code. The Tribe agrees that as of August 30, 2022, it, its contractors and subcontractors that perform work described in this Agreement following the acceptance of public funding for Project construction will comply with the Prevailing Wage Laws and other applicable provisions of the California Labor Code. The Tribe further agrees that it waives any rights, claims or causes of action against the County, its officials, officers, employees and agents for any claims, liabilities, costs, penalties or interest the Tribe incurs out of any failure or alleged failure to comply with the Prevailing Wage Laws claim or liability arising out of stop orders issued by the Department of Industrial Relations against it, its contractors, or any subcontractors.

7. **Other Terms and Conditions.**

A. The Parties agree to cooperate as needed to ensure the full and timely of all obligations set forth in this Agreement.

B. This Agreement will be governed by and construed in accordance with the laws of the State of California.

C. Neither party may assign its interest in this Agreement or the rights under it to any third party, voluntarily or otherwise, without the prior written consent of the other party. The Parties do not intend to benefit any third party by this Agreement and only the Parties may enforce it.

D. The Tribe affirms that it will ensure its contractor(s) and any subcontractors completing work in furtherance of the Project will hold all applicable licenses and/or certifications required for the performance of such work. The Tribe further represents that it has obtained all permits and regulatory approvals necessary for the Project.

E. The waiver by any of the Parties of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or

of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by the Parties unless in writing signed by one authorized to bind the party to be charged with the waiver.

F. If any term or provision of this Agreement the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

G. This Agreement may be amended only by a writing executed on behalf of the Parties to be bound.

H. This instrument contains the entire agreement among Parties with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the Parties. This Agreement and any amendment may be executed in counterparts, including electronic counterparts, each of which when taken together shall constitute a single agreement.

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this Agreement:

YOCHA DEHE WINTUN NATION

APPROVED AS TO FORM:

By: _____
Anthony Roberts, Tribal Chairman
Yocha Dehe Wintun Nation

By: _____
Sarah Choi, Deputy Attorney General

COUNTY OF YOLO

APPROVED AS TO FORM:

By: _____
Oscar E. Villegas, Chair
Yolo County Board of Supervisors

By:  _____
Philip J. Pogledich, County Counsel

ATTEST: Julie Dachtler, Senior Deputy Clerk
Yolo County Board of Supervisors

By: _____
Deputy (Seal)