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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE**

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE LITTLE COLORADO RIVER
SYSTEM AND SOURCE

Contested Case No. CV6417-300

PROTECTIVE ORDER

The Court, having reviewed the Navajo Nation's Motion for a Protective Order dated January 14, 2022, and good cause appearing,

IT IS HEREBY ORDERED that the following Protective Order shall govern the disclosure, handling, and use of documents and data as specified below:

I. Definitions.

1. “Navajo Nation Gaming Enterprise Project Documents” include designated documents of the Navajo Nation Gaming Enterprise (“NNGE”) pertaining to economic development projects contemplated or proposed by NNGE. “Navajo Nation Hospitality Enterprise Documents” include designated documents of the Navajo Nation Hospitality Enterprise (“NNHE”) pertaining to economic development projects contemplated or proposed by NNHE. Some of these documents of NNGE or of NNHE contain sensitive business information, the disclosure of which would potentially be damaging to the Navajo Nation’s (“Nation’s”) competitive position or existing or potential business relationships, or personal identifying information that is or may be subject to nondisclosure protections under applicable provisions of federal, state, tribal, or common law. Such documents and

1 information may include, in varying degrees:

2 (a) “Confidential Information,” which shall mean all documents and testimony,
3 and all information contained therein, containing, or referring to any one or all of
4 the following:

5 (i) Information not generally available to or accessible by the general
6 public at the time the information or documents are received, or information that
7 a Party previously has received from a third party and which the Party has
8 contractually agreed with that third party to keep confidential, or information that
9 if disclosed would tend to damage the disclosing person or entity's competitive
10 position; or

11 (ii) Any of the Parties' sensitive business or technical information, trade
12 secrets, confidential research, development, business plans, new business
13 development, proprietary information, competitor market analysis, internal
14 financial accounting information, or other technical, policy, or commercial
15 information; or

16 (iii) The personal identifying information (e.g., social security numbers,
17 dates of birth, addresses) that is or may be subject to additional nondisclosure
18 protections under applicable provisions of federal, state, tribal, or common law; or

19 (b) “Confidential Attorneys’ Eyes Only Information,” which shall mean any
20 Confidential Information of a nature requiring extraordinary protection,
21 containing highly sensitive and proprietary cultural or religious information,
22 strategic planning, financial, technical, or trade secret information that the
23 Disclosing Party in good faith believes would cause severe damage if it were to be
24 disclosed to another Party.

25 2. “Action” shall mean the *In re Navajo Nation* (No. CV 6417-300) contested
26 case, and any appeals from decisions in the contested case.

27 3. “Party” shall refer to a claimant or objector actively participating in this Action.
28 A claimant or objector is actively participating in this Action if that claimant has filed a

1 disclosure statement or made any formal appearance before the Court or the Special Master
2 in this Action.

3 4. "Document" shall have the same meaning as defined in Ariz. R. Evid. 1001,
4 and shall include, without limitation, all original, written, recorded, electronic, or graphic
5 materials, and all copies, duplicates or abstracts thereof including, but not limited to, notes
6 on documents including information contained therein or derived therefrom.

7 **II. Limitations on Use.**

8 5. Designating Confidential or Confidential Attorneys' Eyes Only Information.
9 All documents, testimony, or information designated Confidential or Confidential Attorneys'
10 Eyes Only under this Order shall be labeled as such by a stamp or label (electronic or
11 otherwise) indicating the status of the material as "CONFIDENTIAL" or "CONFIDENTIAL
12 ATTORNEYS' EYES ONLY" on each page, as appropriate. The use of a document as an
13 exhibit at a deposition shall not in any way affect its designation as Confidential or
14 Confidential Attorneys' Eyes Only.

15 6. Maintenance of Confidential or Confidential Attorneys' Eyes Only
16 Information by ADWR. ADWR shall maintain the Navajo Nation Gaming Enterprise Project
17 Documents and Navajo Nation Hospitality Enterprise Documents in a sealed envelope with
18 the caption of the case and the following notice: "CONTAINS CONFIDENTIAL [or
19 CONFIDENTIAL ATTORNEYS' EYES ONLY] INFORMATION SUBJECT TO
20 PROTECTIVE ORDER DATED JANUARY 18, 2022. ACCESS LIMITED AS
21 PRESCRIBED BY PROTECTIVE ORDER." ADWR shall not post unredacted copies of
22 the Navajo Nation Gaming Enterprise Project Documents or Navajo Nation Hospitality
23 Enterprise Documents on the ADWR website and shall provide access to the Navajo Nation
24 Gaming Enterprise Project Documents and Navajo Nation Hospitality Enterprise Documents
25 only as authorized by this Order.

26 7. Disclosure of Confidential or Confidential Attorneys' Eyes Only Information.
27 Except with the prior written consent of the Navajo Nation or as provided in Sections 11
28 through 16 hereof, the Confidential or Confidential Attorneys' Eyes Only Navajo Nation

1 Gaming Enterprise Project Documents and Navajo Nation Hospitality Enterprise Documents
2 may be disclosed only to the following:

3 As to Confidential Attorneys' Eyes Only documents:

4 (a) Counsel for any Party and any attorneys, paralegals, office clerks, secretaries,
5 outside copying services and other personnel working under their supervision and assigned
6 to perform duties in connection with the prosecution or defense of this action.

7 (b) Any Consultants or experts retained by any counsel of record for any Party,
8 subject to compliance with the paragraphs above.

9 (c) Any other person whom the Navajo Nation agrees in writing should have
10 access to the Navajo Nation Gaming Enterprise Project Documents or the Navajo Nation
11 Hospitality Enterprise Documents.

12 (d) The Court and its personnel, subject to the provisions for filing under seal set
13 forth in the Arizona Rules of Civil Procedure and other applicable rules.

14 As to Confidential documents:

15 (a) Those listed in 7(a) through (d), above, as well as;

16 (b) Any of the Parties' governmental officials or employees, or the Parties'
17 principals, executives, officers, directors, and employees, to whom disclosure is reasonably
18 necessary.

19 8. Execution of Exhibit A. Prior to obtaining access to the Confidential or
20 Confidential Attorneys' Eyes Only Navajo Nation Gaming Enterprise Project Documents or
21 Navajo Nation Hospitality Enterprise Documents, all persons described in Paragraph 7(a)
22 through (c) above shall be shown a copy of this Protective Order and shall execute the
23 document attached as Exhibit A.

24 9. Disclosure of Parties' Own Confidential or Confidential Attorneys' Eyes Only
25 Information. Nothing herein shall restrict or preclude the Navajo Nation from disclosing
26 information contained in the Confidential or Confidential Attorneys' Eyes Only Navajo
27 Nation Gaming Enterprise Project Documents or Navajo Nation Hospitality Enterprise
28 Documents to any person or entity without regard to the provisions of this Protective Order.

1 10. Use of Confidential or Confidential Attorneys' Eyes Only Information. Each
2 Party's use of the Confidential or Confidential Attorneys' Eyes Only Navajo Nation Gaming
3 Enterprise Project Documents and Navajo Nation Hospitality Enterprise Documents is
4 limited to purposes reasonably necessary for the effective prosecution or defense of this
5 action.

6 **III. Subpoenas Issued In Other Litigation And Public Records Requests.**

7 11. Certain of the Parties are subject to the Arizona Public Records Act,
8 A.R.S. §§ 39-121 to -128 ("PRA") or the federal Freedom of Information Act, 5 U.S.C. § 552
9 ("FOIA"). For purposes of this Protective Order, a written request for documents received
10 by a Party pursuant to either the PRA or FOIA is referred to as a "Public Records Request."

11 12. If a Receiving Party is served with a subpoena or other court order issued in
12 another proceeding or a Public Records Request (collectively, "Subpoena") that compels
13 disclosure of any Protected Information, that Receiving Party must, if permitted by law:
14 (a) promptly notify in writing the Disclosing Party and provide it with a copy of the
15 Subpoena; (b) promptly notify in writing the individual or entity who caused the Subpoena
16 to issue that some or all of the Documents covered by the Subpoena are subject to this Order
17 and provide a copy of this Order; and (c) cooperate with respect to all reasonable procedures
18 pursued by the Disclosing Party whose Protected Information may be affected.

19 13. The Disclosing Party must notify the Receiving Party within 5 business days
20 of receiving the notice, or such earlier time as may be specified for the Receiving Party's
21 compliance with the Subpoena if it intends to seek a protective order to avoid disclosure of
22 the Protected Information.

23 14. If the Disclosing Party timely seeks a protective order, the Receiving Party
24 served with the Subpoena shall not produce any Protected Information before a determination
25 by the court in which the request for protective order is filed, unless the Disclosing Party
26 consents to such production in writing, or unless ordered to produce the Protected
27 Information by a court. The Disclosing Party shall bear the burden and expense of seeking
28 protection of its Protected Information in the court.

1 15. If the Disclosing Party fails to object or seek a protective order from a court
2 within 10 business days of receiving the notice and accompanying information, or such
3 earlier time for compliance as may be specified in the Subpoena, the Receiving Party may
4 produce the Protected Information responsive to the Subpoena.

5 16. Nothing in these provisions should be construed as authorizing or encouraging
6 a Receiving Party in this Action to disobey a lawful directive from a court or to violate any
7 applicable provisions of the PRA or FOIA.

8 **IV. Other Provisions.**

9 17. Non-Waiver of Rights. Entering into and complying with the terms of this
10 Protective Order shall not constitute a waiver of any rights to object to discovery or to the
11 authenticity or admissibility into evidence of any documents or other materials produced in
12 discovery. Neither the production of the Confidential or Confidential Attorneys' Eyes Only
13 Navajo Nation Gaming Enterprise Project Documents or Navajo Nation Hospitality
14 Enterprise Documents, nor the receipt of the Confidential or Confidential Attorneys' Eyes
15 Only Navajo Nation Gaming Enterprise Project Documents or Navajo Nation Hospitality
16 Enterprise Documents by a Party, shall be deemed to waive any privileges or evidentiary
17 objections that a Party may otherwise have as to the documents.

18 18. Additional Parties. Any additional Party who joins or is joined in this action
19 shall not have access to the Confidential or Confidential Attorneys' Eyes Only Navajo Nation
20 Gaming Enterprise Project Documents or Navajo Nation Hospitality Enterprise Documents
21 until its counsel of record has executed and filed with the Court its agreement to this
22 Protective Order.

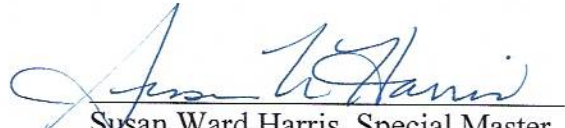
23 19. Conclusion of Action. Unless otherwise agreed in writing or ordered, all
24 provisions of this Protective Order shall continue to be binding after the conclusion of this
25 action. The Court shall retain jurisdiction over all Parties bound hereby for purposes of this
26 Protective Order and may impose appropriate sanctions for violation of this Protective Order.

27 20. Copies and Return of Confidential Information. The Confidential or
28 Confidential Attorneys' Eyes Only Navajo Nation Gaming Enterprise Project Documents

1 and Navajo Nation Hospitality Enterprise Documents shall be copied only as necessary for
2 the effective prosecution or defense of this action. Upon conclusion of this action, including
3 appeals, any Party in the possession of the Confidential or Confidential Attorneys' Eyes Only
4 Navajo Nation Gaming Enterprise Project Documents or Navajo Nation Hospitality
5 Enterprise Documents and shall provide for the return or destruction of those documents and
6 any copies thereof, and shall certify to the Navajo Nation that all copies of the Confidential
7 or Confidential Attorneys' Eyes Only Navajo Nation Gaming Enterprise Project Documents
8 or Navajo Nation Hospitality Enterprise Documents made or possessed by or for the
9 certifying Party have been returned to the Navajo Nation or destroyed.

10 21. Modification by Court Order. This Order may be amended only by order of the
11 Court, whether upon stipulation, motion, or upon the Court's own order.

12 DATED this 18th day of January, 2022.

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15 Susan Ward Harris, Special Master
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EXHIBIT A

AGREEMENT TO TERMS OF PROTECTIVE ORDER

I, _____, being a person authorized in this Protective Order to have access to documents and information covered by the Protective Order, have read and understood the Protective Order, and hereby agree to be bound by the Protective Order.

s/ _____ Date: _____

Print name: _____