

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE WIYOT TRIBE
HUMBOLDT COUNTY
MCKINLEYVILLE COMMUNITY SERVICES DISTRICT**

I. Parties

The Memorandum of Understanding ("MOU") is made on 11/7/23 (date), between the Wiyot Tribe, a federally recognized Indian tribe ("Tribe"); and County of Humboldt, a political subdivision of the State of California ("County"); and the McKinleyville Community Services District, an independent special district established in 1970, in the County of Humboldt, a political subdivision of the State of California ("District") (each, a "Party", and collectively referred to as the "Parties").

RECITALS

- A. The Parties intend to establish a cooperative government-to-government relationship regarding a McKinleyville Regenerative and Transformative Community (MRTC). The MRTC project will create a planning process for affordable housing that lowers greenhouse gas emissions and creates neighborhoods that reduce automobile usage.
- B. Initial funding is sought from the California Strategic Growth Council's Transformative Climate Communities Program.

NOW, THEREFORE, the Parties, in order to achieve these purposes, agree as follows:

1. Scope of Agreement.

- i. The planning process will be completed within 2 years of the date of the Award.
- ii. The project will engage in pre-planning for affordable housing development in west McKinleyville, CA and the unincorporated areas north and west of Arcata, CA as outlined on the project map (Appendix 1).
- iii. The activity under this agreement involves planning for affordable housing, renewable energy, ecologically regenerative workforce training, and climate smart transportation. This includes, but is not limited to:
 - i. Property evaluation and selection, including environmental, historical, and cultural evolution, title issues etc.
 - ii. Pre-development planning, including engineering, architectural, traffic analysis, landscape architecture, and restoration planning.
 - iii. Community interaction and participation activities, including outreach meetings, translations, newsletters and updates on-line and/or in print, and tribal citizen participation opportunities.
 - iv. Creating a Collaborative Governance Structure for a Transformative Climate Communities Implementation Grant (if it is secured).
 - v. Creating a masterplan for the development of several connected projects to be implemented over the following 5 years after the planning grant has been concluded, and work to get them shovel ready by the end of the planning process.
 - vi. Other activities outlined in the project application or such activities that arise

during the execution of the project activities.

2. Tribe's Commitments, Obligations, Responsibilities

- i. **Wiyot Tribe, Grantee/Lead Applicant** – The Wiyot tribe is the Lead applicant and Grantee for the TCC (Transformative Climate Communities) grant. They will be responsible for all the grant administration, including fiscal and legal responsibilities towards the Strategic Growth Council.
- ii. The Tribe will be responsible for coordinating and managing the planning activities as outlined in the grant application, including community outreach, pre-development, and collaborative governance. This includes resolving any challenges arising from having multiple jurisdictions contained within the Project Area.
- iii. The Tribe will develop and implement appropriate policies for this initial planning work, and the future management of the projects.
- iv. The Wiyot Tribe will supply one (100%) Full Time Equivalent, as staff and/or subcontractors, to execute the planning grant, if it is awarded.
- v. Each Party is responsible for their own subcontractors and other commitments they make outside of this MOU, in conjunction with the TCC (Transformative Climate Communities) grant.

3. County's Commitments, Obligations Responsibilities.

- i. **Humboldt County, Partner/Co-applicant** - Humboldt County is a co-applicant and will support the planning process with a staff position at five percent (5%) for a Planner II at a rate of \$50.81/hour or as may be modified by the Board of Supervisors, subcontracted under the Tribe from the grant if it is awarded. They will participate in the collaborative governance of the project at regular meetings.
- ii. The county is offering supportive services from the planning department and any other relevant departments, to identify properties, any planning policy or zoning blocking the use of these properties for purposes consistent with the awarded grant and this MOU, public transportation possibilities, and other relevant planning activities.
- iii. They will also be Interfacing with other county departments that might be necessary to include in the planning activities. The County will support the tribe in navigating the regulations and administration of planning and pre-development.
- iv. If the parties find it necessary the County will process applications to develop and implement policies, including changes to planning documents or zoning, as far as they are able. This does not include a commitment by the Zoning Administrator, Planning Commission or Board of Supervisors to act on a project in any given way.
- v. Representatives from the County may participate in the community outreach part of the project but are not required to under this MOU.
- vi. Each Party is responsible for their own subcontractors and other commitments they make outside of this MOU, in conjunction with the TCC grant.

4. District's Commitments, Obligations Responsibilities.

- i. **McKinleyville Community Services District, Partner/Co-applicant** – The District is a co-applicant and will support the planning process with a staff position at a 5% FTE at a fully loaded rate of \$68.90/hr, subcontracted under the Tribe from the grant, if it is awarded. They will participate in the collaborative governance of the project at regular meetings.
- ii. The District will provide supportive services from any relevant departments, to identify potential properties, any policies blocking the use of these properties, public transportation possibilities, and other relevant planning activities.
- iii. They will be interfacing with their internal departments that might be necessary to include in the planning activities. The District will support the tribe in navigating the regulations and administration of planning and pre-development
- iv. If the parties find it necessary, the District will develop and implement appropriate policies, as far as they are able.
- v. Representatives from the District may participate in the community outreach part of the project but are not required to under this MOU.
- vi. Each Party is responsible for their own subcontractors and other commitments they make outside of this MOU, in conjunction with the TCC grant.

5. Mutual Support

- i. The Parties to this MOU agree to work cooperatively toward the common goals as set forth in the TCC grant application.
- ii. The Parties mutually agree to meet on a regular basis or as needed and to share information and necessary documents relevant to the grant objectives.
- iii. The County and District will provide the Tribe with all necessary reports on its work as needed to comply with the grant requirements.

6. Voluntary Resolution; Reference to Other Means of Resolution.

- i. The Parties will use their best efforts to resolve any disputes that may occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of either Party to seek injunctive relief against the other to enforce terms and conditions of this Agreement when circumstances are deemed to require immediate relief, the Parties hereby establish a threshold requirement that disputes between the Tribe, the County, and MCSD first be subject to a process of meeting and conferring in good faith to foster a spirit of cooperation and efficiency in the performance and compliance with this Agreement as follows:
- ii. Any Party will give the others, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.
- iii. The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation no later than ten (10) days after receipt of the notice, unless both Parties agree to an extension of time in writing.
- iv. If the dispute is not resolved to the Parties' satisfaction within thirty (30) calendar days after the first meeting, then either Party may seek to terminate the Agreement.
- v. This Agreement may be terminated by either party upon written notice. Notice of termination must be delivered to all parties at least thirty (30) calendar days prior to the intended date of termination. Notice of termination does not nullify obligations already incurred prior to the date of termination.

- vi. No Waiver or Preclusion of Other Means of Dispute Resolution. This Section may not be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual Agreement any other method of dispute resolution, including, but not limited to, mediation, provided, that neither Party is under any obligation to agree to such alternate method of dispute resolution.

7. Tribal Sovereignty.

- i. The County and District acknowledge and agree that the Tribe:
 - a. is a federally recognized Indian tribe;
 - b. on trust lands is not generally subject to the jurisdiction of the County and/or District or its laws, rules, regulations, and ordinances;
 - c. has the right to have land taken into trust by the United States for the benefit of the Tribe; and
 - d. has not submitted to, and nothing in this Agreement is intended to constitute, or shall be construed as constituting, a submission by the Tribe to, the jurisdiction of the County and/or District.
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8. Limited Waiver of Sovereign Immunity.

- i. Nothing contained in this Agreement shall constitute a waiver of sovereign immunity except the limited waiver of sovereign immunity for the purpose of enforcement of the terms of this MOU.

9. **Notices.** Any notices required under this Agreement shall be in writing and may be personally delivered, or delivered by United States Postal Service, first-class mail, or by a reputable overnight delivery service, addressed as follows or to other such places as either Party may designate by written notice to the other.

- i. Points of Contact for Tribe:
Michelle Vassel, Tribal Administrator
Wiyot Tribe
1000 Wiyot Drive
Loleta, California 95551
Phone: 707-733-5055
- ii. Point of contact County
Cliff Johnson, Planning Manager
Humboldt County Planning and Building Department
3015 H Street
Eureka, CA 95501
Phone: (707) 268-3723
- iii. Points of Contact District
Greg Orsini, General Manager
McKinleyville CSD
1656 Sutter Rd
McKinleyville, CA 95519
Phone: 707-839-3251

10. Miscellaneous Provisions.

- i. Term of Agreement. This Agreement will take effect immediately upon execution by the Parties and will remain in effect for two years from the date of execution of the Agreement or until modified by written consent of all the Parties.
- ii. No Third-Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer a benefit or create any right for any person or entity that is not a Party.
- iii. Amendments. This Agreement may be amended only by written instrument signed by all the Parties.
- iv. Waiver. The waiver by either Party or any of its officers, agents or employees or the failure of either Party or any of its officers, agents or employees to act with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of the same, or of any terms, covenants or conditions of this Agreement.
- v. Authorized Representatives. The persons executing this Agreement on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective Party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective Party understand that both Parties are relying on these representations in entering into this Agreement.
- vi. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each Party.
- vii. Non-Severability. It is the express intent of the Parties to this Agreement that if any provision of this Agreement is held by a court of competent jurisdiction, following exhaustion of all appeals, to be invalid or unenforceable, then that provision shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect. The Parties shall enter into good faith negotiations to replace the invalid or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to the invalid or unenforceable provision.
- viii. Timely Performance. The Parties acknowledge that time is of the essence in the performance of this Agreement. Each Party hereby covenants to act diligently and in good faith, and without undue delay in the performance of any of its obligations under this Agreement.
- ix. Entire Agreement.
 1. This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations, or other agreements, whether written or oral.
 2. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

11. Contingency

- i. This agreement and the details here in are contingent on edits made in the post award consultations with the Strategic Growth Council or their representatives and will be finalized if the grant has been awarded.

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.

Execution Signatures:

Michelle Vassel
For the Wiyot Tribe: Tribal Administrator

For the County of Humboldt:

Signature
Date:

Signature
Date:

Steve Madrone
11-07-23

For the McKinleyville Community Service District: Greg Orsini
General Manager

Signature
Date:

2/16/23