

**MEMORANDUM OF UNDERSTANDING FOR FUNDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
BEAR RIVER BAND OF THE ROHNERVILLE RANCHERIA
FOR FISCAL YEARS 2018-19 THROUGH 2019-20**

This Memorandum of Understanding (MOU), entered into this ____ day of _____, 2018, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Bear River Band of the Rohnerville Rancheria, a federally recognized tribe, hereinafter referred to as "TRIBE," is made upon the following considerations:

WHEREAS, the California Environmental Quality Act (CEQA) mandates that in the preparation of an Environmental Impact Report, Mitigated Negative Declaration, or Negative Declaration, the lead agency shall consult with Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project (Pub. Res. Code §§ 21080.3.1, 21080.3.2, 21082.3) and shall avoid, when feasible, damaging effects to any tribal cultural resource. (Pub. Res. Code § 21084.3). The CEQA requirements for tribal consultation are commonly referred to by the legislation by which they were adopted – AB 52 (Gatto), Statutes of 2014, Chapter 532; and

WHEREAS, the County of Humboldt's Commercial Cultivation Medical Marijuana Land Use Ordinance contains additional consultation provisions and, in practice, the Humboldt County Planning and Building Department refers cannabis projects that are in a Native American tribe's area of traditional tribal cultural affiliation to that tribe for referral through coordination with the tribe's Tribal Historic Preservation Officer, or other tribal representative(s); and

WHEREAS, COUNTY received over 2,000 permit applications for cannabis cultivation permits within the TRIBE's area of traditional tribal cultural affiliation; and

WHEREAS, COUNTY refers application to TRIBE for project referral, review, and any required cultural resource studies prior to issuing a permit; and

WHEREAS, TRIBE is currently unable to conduct project or cultural resource study reviews in a timely manner due to the extremely high volume of permit applications located within TRIBE's area of traditional tribal cultural affiliation; and

WHEREAS, the TRIBE's review and performance of cultural resource studies involves the performance of professional, expert and technical services and requires familiarity with TRIBE's areas of traditional tribal cultural affiliation, cultural resources, and cultural practices; and

WHEREAS, TRIBE represents that it does not have the funding to pay for more than one staff member to review the permit applications or cultural resource studies; and

WHEREAS, COUNTY, by and through its Planning and Building Department, desires to assist the TRIBE and its Tribal Historic Preservation Office in the completion of project reviews and cultural resource studies through a grant of funding.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. GRANT OF FUNDING:

COUNTY agrees to provide funding to TRIBE in the amount of thirty-seven thousand two hundred dollars (\$37,200.00) and, in exchange, TRIBE agrees to exercise its independent discretion to hire an employee (or employees) to assist TRIBE in responding to cannabis project referrals from COUNTY in a timely fashion, and to facilitate the completion and return of all cultural resource studies to COUNTY within thirty (30) days of submission to TRIBE.

2. TERM:

This MOU shall begin on the effective date listed above and shall remain in full force and effect until December 31, 2019 unless sooner terminated by expenditure of the funds allocated.

3. TERMINATION:

A. This MOU shall terminate automatically upon expenditure of the thirty-seven thousand two hundred dollars (\$37,200.00) allocated as grant funding in this MOU.

B. During the term of this MOU, the TRIBE or the COUNTY, through its Director of Planning and Building, shall have the authority to terminate this MOU. Any notice of intent to revoke this MOU must be express, in writing, and delivered via certified mail thirty (30) days prior to the date of termination.

C. Compensation Upon Termination. In the event of the termination of this MOU, TRIBE shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination, but which shall in no event exceed thirty-seven thousand two hundred dollars (\$37,200.00). This provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by TRIBE.

4. COMPENSATION:

Maximum Amount Payable. The maximum amount payable by COUNTY for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is thirty-seven thousand two hundred dollars (\$37,200.00). Payments from COUNTY to TRIBE shall be made on a monthly basis after receipt of an invoice prepared by TRIBE as specified in section 5, below.

5. PAYMENT:

TRIBE shall submit to COUNTY monthly invoices, itemizing all salaries and benefits paid to its new employee(s) for services rendered pursuant to the terms and conditions of this MOU. Invoices shall be in a format approved by, and shall include backup documentation as specified by, the Director of Planning and Building and the Humboldt County Auditor-Controller. TRIBE shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this MOU. Payment for services rendered pursuant to the terms and conditions of this MOU will be made within thirty (30) days after the receipt of approved invoices. All invoices submitted by TRIBE shall be sent to COUNTY at the following address:

COUNTY: Planning and Building Department
Attention: Paula Mushrush
3015 H Street
Eureka, CA 95501
pmushrush@co.humboldt.ca.us

6. NOTICES:

Any and all notices required to be given pursuant to the terms of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Planning and Building
Attention: John H. Ford
3015 H Street
Eureka, CA 95501
jford@co.humboldt.ca.us

TRIBE: Bear River Band of the Rohnerville Rancheria
Attention: Erika Cooper, M.A.
Tribal Historic Preservation Officer
266 Keisner Road
Loleta, CA 95551
erikacooper@brb-nsn.gov

7. REPORTS:

TRIBE agrees to provide COUNTY with any and all reports that may be required by local, state and/or federal agencies to ensure that the funds awarded pursuant to this MOU are being expended in accordance with the MOU. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

8. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. TRIBE agrees to timely prepare accurate and complete financial and payroll records, documents and other evidence relating to the expenditure of funds granted hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the services provided pursuant to the terms and conditions of this MOU.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of TRIBE, and its subcontractors, related to expenditure of the funds provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. TRIBE hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any duly authorized local, state and/or federal agencies. TRIBE further agrees

to allow interviews of any of its employees who might reasonably have information related to such financial records by COUNTY and any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the expenditure of funds awarded under this.

9. MONITORING:

TRIBE agrees that COUNTY has the right to monitor TRIBE's expenditure of funds related to the MOU in order to ensure compliance with the terms and conditions of this MOU. However, COUNTY is not responsible, will have no control over, and will not be held accountable, for overseeing or evaluating the adequacy of the product produced by the TRIBE with the funding granted pursuant to and described in this MOU. Further, COUNTY will not be involved in TRIBE's intellectual process or in any decision-making conducted by TRIBE in relation to project referrals or cultural resource surveys. COUNTY's role pursuant to this MOU is solely to provide funding, but does not extend to any other involvement.

10. CONFIDENTIAL INFORMATION:

In the performance of this MOU, TRIBE and COUNTY may receive information that is confidential under local, state or federal law. PARTIES hereby agree to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards.

11. NON-DISCRIMINATION COMPLIANCE:

Professional Services and Employment. In connection with the execution of this MOU, TRIBE, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons. Nothing in this MOU shall waive TRIBE's exception under the Title VII of the 1964 Civil Rights Act to give preference to qualified applicants who are members of a Federally Recognized American Indian tribe (42 U.S. Code § 2000e-2)

12. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

TRIBE certifies by its signature below that it is not a Nuclear Weapons Contractor, in that TRIBE is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. TRIBE agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if TRIBE subsequently becomes a Nuclear Weapons Contractor.

13. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, TRIBE certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace.

14. MUTUAL INDEMNIFICATION:

A. Hold Harmless, Defense and Indemnification.

TRIBE shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, TRIBE's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.

COUNTY shall hold harmless, defend and indemnify TRIBE and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, COUNTY's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of TRIBE.

- B. Effect of Insurance. Acceptance of insurance, if required by this Agreement, does not relieve TRIBE from liability under this provision. This provision shall apply to all claims for damages related to the services performed by TRIBE pursuant to the terms and conditions of this Agreement regardless if any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided by TRIBE hereunder.

15. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and TRIBE is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting TRIBE's indemnification obligations provided for herein, TRIBE shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of TRIBE and its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one incident,

including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.

2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONTRACTOR may be exposed to liability. CONTRACTOR shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, TRIBE. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that TRIBE shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
3. The inclusion of more than one insured shall not operate to impair the rights of one

insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

4. For claims related to this Agreement, TRIBE's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to TRIBE's insurance and will not be used to contribute therewith.
 5. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.
 6. TRIBE shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If TRIBE does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and TRIBE agrees to pay the cost thereof. COUNTY is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to TRIBE under this Agreement.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and TRIBE shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this MOU shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: Planning and Building
Attention: John H. Ford
3015 H Street
Eureka, CA 95501
jford@co.humboldt.ca.us

CONTRACTOR: Bear River Band of the Rohnerville Rancheria
Attention: Erika Cooper, M.A.
Tribal Historic Preservation Officer
266 Keisner Road
Loleta, CA 95551
erikacooper@brb-nsn.gov

16. LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY:

Tribe does not waive its sovereign immunity or consent to suit in any court except as expressly stated in this MOU.

- a. Limited Waiver and Consent to Suit. TRIBE waives its sovereign immunity and consents to suit as to "Covered Claims" as defined in Section (b)(1) below. TRIBE's governing body has executed a formal Resolution of Limited Waiver of Sovereign Immunity which is attached

hereto as Exhibit A.

- b. Conditions and Limitations. This waiver and consent is subject to the following conditions and limitations:
1. Covered Claims. This waiver and consent only applies to claims by COUNTY that TRIBE has violated any provision of this MOU or that seeks to resolve a dispute concerning the interpretation, implementation or enforcement of this MOU. It does not include tort claims, claims for exemplary or punitive damages, or any other claims not sounding in contract.
 2. Covered Claimants. This waiver and consent only applies to COUNTY, and not to any other person, entity, including any commercial or governmental entity, or group.
 3. Covered Courts. This consent to suit only applies to the California State Courts in Humboldt County, and appropriate state appellate courts. Tribe does not consent to suit in any other court.
 4. Remedies. This waiver and consent is specifically limited to an award of monetary damages covered by insurance constituting a reimbursement of funds for obligations not performed by TRIBE under the terms of this MOU, and/or specific performance to compel enforcement of this MOU. This waiver of immunity specifically does not allow for recovery of attorneys' fees associated with litigation of Covered Claims.
 5. Duration. Notwithstanding any applicable statute of limitations or other law, this limited waiver shall be enforceable only as to claims arising during the effective period of this MOU, except that this limited waiver of sovereign immunity shall remain effective for any proceeding then pending and all appeals therefrom until the underlying legal claim or claims have been finally determined.

17. DISPUTE RESOLUTION:

In recognition of the government-to-government relationship of the TRIBE and COUNTY, the parties will make their best efforts to resolve disputes that occur under this MOU by good faith negotiations whenever possible. In the event either party believes that a violation of this MOU has occurred, or is occurring, that party will provide written notice to the other party setting forth with specificity, the issues to be resolved. The Parties hereby establish a threshold requirement that disputes between TRIBE and COUNTY first be subject to a process of meeting and conferring in good faith in order to foster a spirit of cooperation. Should the initial meeting and conferring fail to resolve the dispute, any issues regarding interpretation and enforcement of this MOU will be attempted to be resolved through mediation. The mediation will consist of a mediator to be mutually agreed upon by the parties hereto, in concert with a representative of COUNTY and a representative of TRIBE.

Any dispute between TRIBE and COUNTY relating to this MOU not resolved by way of mediation will be brought in the California State Court in Humboldt County or the United States District Court for the Northern District of California. This MOU shall be construed in accordance with the laws of the State of California.

18. RELATIONSHIP OF PARTIES:

It is understood that this is an MOU by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that TRIBE shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. TRIBE shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

19. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

TRIBE agrees to comply with any and all applicable local, state and federal laws, regulations, policies and procedures applicable to the services provided pursuant to the terms and conditions of this MOU. TRIBE further agrees to comply with any and all applicable local, state and federal licensure and certification requirements.

20. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

21. SEVERABILITY:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

22. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by TRIBE in violation of this provision shall be void, and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

23. MOU SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

24. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this MOU.

25. AMENDMENT:

This MOU may be amended at any time during the term of this MOU upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in

writing and signed by the parties hereto.

26. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

27. SURVIVAL:

The duties and obligations of the parties set forth in Section 3(C) – Compensation Upon Termination, Section 8 – Record Retention and Inspection, Section 10 – Confidential Information and Section 14 – Indemnification shall survive the expiration or termination of this MOU.

28. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

29. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

30. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this MOU are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this MOU.

31. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

32. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.


33. AUTHORITY TO EXECUTE:

33. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, this MOU has been executed by and on behalf of the Bear River Tribal Council, the Humboldt County Planning and Building Department, and the Humboldt County Board of Supervisors as of the dates shown below.

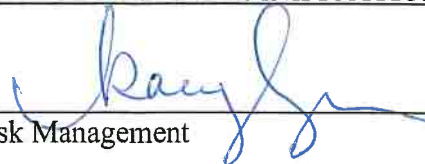
Dated: 8-14-18


EDWIN SMITH
Acting Chairman of the Bear River
Band of the Rohnerville Rancheria

Dated: _____

BEV PIXLEY,
Purchasing Agent, County of Humboldt

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Risk Management

Date: 12/14/18

LIST OF EXHIBITS:

Exhibit A – Limited Waiver of Sovereign Immunity



BEAR RIVER BAND of the ROHNERVILLE RANCHERIA



RESOLUTION 18-25

DATE APPROVED: June 19, 2018

**A RESOLUTION OF LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR THE
MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF HUMBOLDT AND
THE BEAR RIVER BAND OF THE ROHNERVILLE RANCHERIA RELATING TO THE
FUNDING AGREEMENT FOR FISCAL YEARS 2017-2018 THROUGH 2019-2020**

WHEREAS, the Bear River Band of the Rohnerville Rancheria is a federally recognized Indian Tribe located in California; and

WHEREAS, the Bear River Band of the Rohnerville Rancheria is eligible for all rights and privileges afforded to federally-recognized tribes; and

WHEREAS, the California Environmental Quality Act (CEQA) mandates that in the preparation of an Environmental Impact Report, Mitigated Negative Declaration, or Negative Declaration, the lead agency shall consult with Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project (Pub. Res. Code 21080.3.1, 21080.3.2, 21082.3) and shall avoid, when feasible, damaging effects to any tribal consultation are commonly referred to by the legislation by which they were adopted – AB 52 (Gatto), Statutes of 2014, Chapter 532; and

WHEREAS, the County of Humboldt's Commercial Cultivation Medical Marijuana Land Use Ordinance contains additional consultation provisions and, in practice, the Humboldt County Planning and Building Department refers cannabis projects that are in a Native America tribe's area of traditional tribal cultural affiliation to that tribe for referral through coordination with the tribe's Tribal Historic Preservation Officer, or other tribal representative(s); and

WHEREAS, COUNTY received over 2,000 permit applications for cannabis cultivation permits within the Tribe's area of traditional tribal cultural affiliation; and

WHEREAS, COUNTY refers application to TRIBE for project referral, review, and any required cultural resource studies prior to issuing a permit; and

WHEREAS, TRIBE is currently unable to conduct project or cultural resource study reviews in a timely manner due to the extremely high volume of permit applications located within TRIBE's area of traditional tribal cultural affiliation; and

WHEREAS, the TRIBES review and performance of cultural resource studies involves the performance of professional, expert and technical services and requires familiarity with TRIBES areas of traditional tribal cultural affiliation, cultural resources, and cultural practices; and

WHEREAS, TRIBE represents that it does not have the funding to pay for more than one staff member to review the permit applications or cultural resource studies; and

WHEREAS, COUNTY, by and through its Planning and Building Department, desires to assist the TRIBE and its Tribal Historic Preservation Office in the completion of project reviews and cultural resource studies through a grant of funding.

WHEREAS, the Bear River Band of the Rohnerville Rancheria and County are entering into an Agreement entitled "MEMORANDUM OF UNDERSTANDING FOR FUNDING BY AND BETWEEN THE COUNTY OF HUMBOLDT AND BEAR RIVER BAND OF THE ROHNERVILLE RANCHERIA FOR FISCAL YEARS 2017-2018 THROUGH 2019-2020" for purposes of defining the parties responsibilities and legal obligations; and

WHEREAS, said agreement requires in paragraph 16A that the TRIBE execute and attach as an exhibit A formal Resolution of Limited Waiver of Sovereign Immunity; and

NOW THEREFORE BE IT RESOLVED, that the Bear River Band of the Rohnerville Rancheria agrees to a limited waiver of its sovereign immunity in favor of the County. The Tribe agrees to waive its sovereign immunity in favor of the County of Humboldt as to any dispute which arises out of the above reference Agreement or the activities undertaken by the Tribe pursuant to the terms set forth therein for enforcement.

BE IT FURTHER RESOLVED, that the Bear River Tribal Council hereby incorporates this Resolution by reference into the above referenced Agreement and authorizes its attachment thereto as an exhibit.

C*E*R*T*I*F*I*C*A*T*I*O*N

This is to certify that the Bear River Band of the Rohnerville Rancheria Tribal Council duly assembled in Loleta, CA adopted the foregoing Resolution on June 19, 2018 by a vote of 5 in FAVOR, 0 OPPOSED, 0 ABSTAINING, and 2 ABSENT.

Attested by:

Edwin Smith
Edwin Smith, Vice Chairperson

6-26-18
Date

Edward Bowie
Edward Bowie, Secretary

6-26-18
Date

