

LOCAL COOPERATION AGREEMENT FOR LOW INCOME INDIAN HOUSING

This Local Cooperation Agreement ("Agreement") is made and entered into between the Federated Indians of Graton Rancheria, a federally recognized Indian Tribe ("Tribe") and the County of Sonoma ("County"), a political subdivision of the State of California, together referred to as the Parties.

RECITALS:

A. The Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. §4101 et seq. ("NAHASDA") provides block grants to federally recognized Indian Tribes to undertake affordable housing activities.

B. The Tribe has acquired real property located in the County for the purpose of developing, constructing, and maintaining affordable low income housing for members of the Tribe on tribally-owned fee land.

C. NAHASDA prohibits the Tribe from using NAHASDA block grants for rental or lease-purchase housing for low income tribal members unless the local government with jurisdiction over the proposed housing site or sites enters into an agreement with the Tribe for local cooperation ("Local Cooperation Agreement"). (25 U.S.C. § 4111(c))

D. NAHASDA also prohibits tribes from paying any real and personal property taxes levied or imposed by any State, city or county on lease-purchase homeownership units assisted with IHBG or United States Housing Authority of 1937 funds and owned either by a tribe or a Tribally Designated Indian Housing Authority Entity (TDHE). (25 U.S.C. §4111(d) and 24 C.F.R. §10000.240)

E. Section 237 of the California Revenue and Taxation Code exempts from taxation property that is owned and operated by a tribe that is continuously available to, or occupied by, lower income households, as defined in Section 50079.5 of the Health and Safety Code or applicable federal, state, or local financing agreements, at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or rents that do not exceed those prescribed by the terms of the applicable federal, state, or local financing agreements or financial assistance agreements ("Tribal Housing Exemption"). Section 237 permits a tribe to agree to make in-lieu payments to a county for services, including but not limited to police and fire protection, roads, water and sewage ("County Services"), so long as the payments do not exceed the estimated cost of the County Services provided.

F. For purposes of this Agreement, the County is the local government with taxing jurisdiction over any proposed housing sites purchased in fee by the Tribe located within County boundaries and which receive County Services. Parties acknowledge that this Agreement does not apply to tribally-owned housing units in the County that are located in a municipality or jurisdiction with which the Tribe has entered into a separate Local Cooperation Agreement.

G. The purpose of this Agreement is to satisfy the requirements of NAHASDA for a Local Cooperation Agreement, thereby furthering the Parties' mutual interest in increasing affordable housing opportunities for low income persons and families residing in the County.

AGREEMENT:

In reliance upon these recitals and the contents of this Agreement, the Parties agree as follows:

1. The recitals above are hereby made a part of this Agreement. This Agreement applies to the Property identified in Exhibit A to this Agreement, subject to the restrictions under Section D of the recitals, that are acquired in fee simple by the Tribe with NAHASDA funds and upon which property the Tribe has or will construct, own, or administer housing units for rent to low income households as defined in NAHASDA during the term of this Agreement (the "Property").
2. Tribe shall annually file claim form BOE-237, Exemption of Low-Income Tribal Housing, and form BOE-237-A, Supplemental Affidavit for BOE-237, Housing—Lower-Income Households Eligibility Based on Family Income (Yearly Filing) with the County Assessor.
3. Pursuant to California Revenue & Taxation Code section 237, the Tribal Housing Exemption may not be granted unless the Tribe has submitted the following documents to the County Assessor:
 - a. Documents establishing that the Tribe is federally recognized;
 - b. Documents establishing that the housing entity has been designated by the Tribe (if applicable); and
 - c. Documents establishing that there is a deed restriction, agreement, or other legally binding document requiring that the property be used in compliance with Section 237(a)(2)(A).
4. Upon approval of the Exemption, the County Assessor shall generate an annual tax bill with any applicable direct charges and a line item for the payment in lieu of taxes ("PILOT").
5. The Tribe shall pay to the County Tax Collector a PILOT payment of \$150 per dwelling unit owned by the Tribe and leased to a low income family on the Tribe's fee-owned land in the County. The PILOT payments shall be made at the time when real property taxes would be paid if the property were not subject to the Tribal Housing Exemption. In the event that the Tribe fails to make any PILOT payments when due, the penalties and penalty interest on delinquent amounts which would be applicable to the tax payments on the properties but for the exemption described in this Agreement shall apply. For purposes of this Agreement, the term "dwelling unit" refers to each individual housing unit or home, or as otherwise defined under NAHASDA.
6. The County shall furnish or cause to be furnished the same County Services to the Property or inhabitants of the Property that the County provides to other similarly situated property and inhabitants in the County. In order to receive any County Services for which user fees are normally charged, the Tribe shall pay such fees and charges.
7. In addition to the payments provided for above, the Tribe shall pay special assessments for local improvements (such as sewer, water and road maintenance assessments)

and direct charges to the extent that such special assessments and direct charges are not deemed to be real property taxes under California law and to the extent the other organizations which are exempt by law from California real property taxes would be required to pay such special assessments and direct charges; provided that, such special assessments and direct charges do not exceed the actual value of services provided. In addition, nothing in this Agreement shall be deemed to negate any obligation the Tribe or any of its tenants have under law to pay periodic service charges (which are not real property taxes) for the furnishing of governmental services such as water and utilities.

8. Payments by Tribe to the County under paragraph 5 shall not exceed the amount of taxes which would have been paid on the Property for such year if the Property were not exempt from taxes.

9. In the event 25 U.S.C. section 4111 is amended to increase, decrease, or otherwise modify the formula for the in-lieu payments provided for herein, the Parties agree to act in good faith to renegotiate said in-lieu payments in view of such changes.

10. This Agreement shall remain in effect for three (3) years from the effective date of this Agreement. This agreement shall be renewed automatically at the end of each term for successive one (1) year terms unless either party gives written notice of its intention not to renew at least sixty (60) days before expiration of the current term.

11. Parties shall make their best efforts to resolve any disputes specifically arising under this Agreement by good faith negotiations whenever possible and shall meet and confer in good faith to resolve any such disputes.

12. In the event a dispute arising under this Agreement remains unresolved despite the Parties' best efforts, the Parties agree to at least three (3) hours of mediation facilitated by a mediator mutually agreeable to Parties. The parties agree to share equally in the costs of the mediation. If mediation is unsuccessful in resolving one or both Parties' grievances, then Parties may pursue their claims in the Small Claims Court of Sonoma County.

13. The sovereign immunity of the Tribe shall continue in full force except to the extent that it is expressly waived by this Agreement. Members of the Tribal Council and officials, employees, and agents of the Tribe or any other wholly-owned tribal entity, instrumentality or department remain immune from suit for actions taken during the course and within the scope of their duties in their respective roles.

Pursuant to the terms and conditions of General Council Resolution No. GC-17-15, approved on June 10, 2017, and subject to the provisions of this section, the Tribe expressly and irrevocably waives its sovereign immunity (and any defenses based thereon) in favor of the County, but not as to any other person or entity, for any breach of this Agreement and not as to any other action, matter or dispute. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties; or (ii) disputes between the Tribe and the County other than a breach of this Agreement. The waiver of sovereign immunity by the Tribe as agreed to in this section shall be further limited to the County's right to collect unpaid PILOT payments that may

be owed by the Tribe under the terms of this Agreement. In no instance shall the County be entitled to special, incidental, indirect, consequential or punitive damages.

14. This Agreement constitutes the entire agreement between Parties concerning the subject matter of the Agreement. This Agreement supersedes all prior and contemporaneous agreements not specifically identified in this Agreement, and all prior representations and understandings of the Parties, which are merged into this Agreement.

15. No supplement, modification, waiver or amendment with respect to this Agreement shall be binding unless executed in writing by both parties.

16. The Parties may execute two or more duplicate originals of this Agreement, each bearing the original signatures of the parties. When so executed, each such duplicate shall be admissible as evidence of the terms of the agreement between the parties.

16. The signatories to this Agreement warrant and represent that they have authority to execute this Agreement and to bind the parties on whose behalf they execute this Agreement.

17. The Parties hereto shall reasonably cooperate with each other, including executing all necessary further documents, if any, to carry out the purpose and intent of this Agreement.

18. All notices required by this Agreement shall be deemed to have been given when made in writing and delivered or mailed to the respective Parties and their representatives at their respective addresses as set forth below or such other addresses as they may provide to the other Party from time to time:

For the County:

County Counsel
Office of the Sonoma County Counsel
575 Administration Drive
Santa Rosa, CA 95403
ATTN: County Counsel
Tel: (707) 565-2421
Fax: (707) 566-2624

575 Administration Drive
Santa Rosa, CA 95403
ATTN: County Administrator
Tel: (707) 565-2431
Fax: (707) 565-3778

With copies to:
County Administration
For the Tribe:

Federated Indians of Graton Rancheria
6400 Redwood Drive, Suite 300
Rohnert Park, CA. 94928
ATTN: Chairperson
Tel: (707) 566-2288
Fax: (707) 566-2291

With copies to:

Maier Pfeffer Kim Geary & Cohen, LLP
1970 Broadway, Suite 825
Oakland CA 94612
ATTN: Jenny Y. Kim, Esq.
Tel: (510) 835-7910
Fax: (510) 835-3040

Either party may change the address to which notices must be sent by providing notice of that change as provided in this paragraph.

19. No party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other parties.

20. This Agreement shall not become effective unless and until the following events have occurred:

(i) this Agreement has been approved by the County Board of Supervisors of the County, approved as to form by County Counsel and executed and delivered by the County; and


(ii) this Agreement and any limited waivers of sovereign immunity included herein have been approved by the Tribal Council and General Council of the Tribe, approved as to form by legal counsel to the Tribe, and executed and delivered by the Tribe.

The effective date of this Agreement shall be the date of the last signature or approval required under this section.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the effective date set forth above.


SONOMA COUNTY, CALIFORNIA

Date: July 25, 2017

By: 
Name: Shirlee Zane
Its: Chair of the Board of Supervisors


APPROVED AS TO FORM BY COUNTY COUNSEL

Date: July 24, 2017

By: 
Bruce Goldstein
County Counsel

FEDERATED INDIANS OF GRATON
RANCHERIA

Date: July 14, 2017

By: 
Greg Sarris
Chairperson

APPROVED AS TO FORM BY LEGAL
COUNSEL FOR THE TRIBE

Date: July 19, 2017


By: 
Jenny Y. Kim, Esq.
Maier Pfeffer Kim Geary & Cohen, LLP

Exhibit A
Local Cooperation Agreement for Low Income Indian Housing

Property owned by the Federated Indians of Graton Rancheria subject to the Local Cooperation Agreement for Low Income Indian Housing entered into by the County of Sonoma and Federated Indians of Graton Rancheria:

1. 2786 Cumberland Street, Santa Rosa, California: APN 043-320-062-000
2. 2139 Onyx Way, Santa Rosa, California: APN 044-360-052-000



FEDERATED INDIANS OF GRATON RANCHERIA

RESOLUTION AUTHORIZING EXECUTION BY THE TRIBAL CHAIRMAN OF THE LOCAL COOPERATION AGREEMENT FOR LOW INCOME INDIAN HOUSING AND RECOMMENDING THAT THE GENERAL COUNCIL GRANT A LIMITED WAIVER OF SOVEREIGN IMMUNITY FROM SUIT TO THE COUNTY OF SONOMA WITH RESPECT TO DISPUTES ARISING OUT OF SUCH AGREEMENT.

TRIBAL COUNCIL RESOLUTION NO.: 17-34

DATE APPROVED: June 9, 2017

WHEREAS: The Federated Indians of Graton Rancheria ("Tribe") is a federally recognized Indian tribe, organized pursuant to the Constitution of the Federated Indians of Graton Rancheria, adopted by the Tribe on July 21, 2012 and approved by the Secretary of the Interior on January 14, 2013 ("Constitution"); and

WHEREAS: Article III, Section 1 of the Constitution provides that the governing body of the Tribe is the Tribal Council; and

WHEREAS: Article III, Section 3 of the Constitution reserves to the General Council of the Tribe the power to waive the Tribe's sovereign immunity from unconsented suit; and

WHEREAS: The Constitution, at Article III, Section 2(A)(2), provides that the Tribal Chair shall execute on behalf of the Tribe all contracts, leases and other documents approved by the Tribal Council or the General Council; and

WHEREAS: Greg Sarris is the duly elected Chairman of the Tribe; and

WHEREAS: The Tribe receives federal housing grants from the U. S. Department of Housing and Urban Development ("HUD") under the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA"), as amended, which funding, including block grants, is used for a range of authorized affordable housing activities including the construction, acquisition, development, renovation, and maintenance of housing units and related facilities for the benefit of eligible Tribal Citizens; and

WHEREAS: The Tribe's Housing Services Department and Housing Committee are authorized to operate the Tribe's Indian housing program, including administration of HUD block grants aimed at providing a range of housing services and affordable housing opportunities for eligible Tribal Citizens; and

WHEREAS: Increasing the availability of safe and affordable housing for Tribal Citizens is an important priority and goal of the Tribe; and

WHEREAS: With the assistance of HUD block grants, the Tribe has acquired real property located in Sonoma County for the purpose of acquiring, constructing, and maintaining affordable low income housing for members of the Tribe on tribally-owned fee land and intends to acquire additional real property for same purpose, subject to funding; and

WHEREAS: NAHASDA prohibits the Tribe from using NAHASDA block grants for rental or lease-purchase housing for low income tribal members unless the local government with jurisdiction over the proposed housing site or sites enters into an agreement with the Tribe for local cooperation; and

WHEREAS: NAHASDA also requires that property acquired with NAHASDA funds be exempted from real and personal property taxes to help ensure that scarce housing funds be spent directly on low-income housing; and

WHEREAS: Section 237 of the California Revenue and Taxation Code exempts from taxation property that is owned and operated by a tribe for low-income housing, permitting tribes to agree to make in-lieu payments subject to a Local Cooperation Agreement for Low Income Indian Housing ("Agreement") with the county, for services, including but not limited to police and fire protection, roads, water and sewage ("County Services"), so long as the payments do not exceed the estimated cost of the County Services provided; and

WHEREAS: The Agreement calls for the Tribe to pay \$150 per year per property, plus applicable "direct charges" and special assessments to the county in lieu of property taxes; and

WHEREAS: The Tribe and the County both wish to enter into the Agreement to comply with federal law, to entitle the Tribe to the property tax exemption and to expand affordable housing activities; and

WHEREAS: To ensure enforceability, the Agreement contains a limited waiver of the Tribe's sovereign immunity in favor of the County; and

WHEREAS: The Tribal Council wishes to approve the Agreement; and

WHEREAS: The Tribal Council desires to have the General Council approve by Resolution the Limited Waiver of Sovereign Immunity applicable to the Agreement; and

WHEREAS: The waiver of sovereign immunity in the Agreement limits actions that may be taken against the Tribe to those set forth in the Agreement, and is stated as:

Parties shall make their best efforts to resolve any disputes specifically arising under this Agreement by good faith negotiations whenever possible and shall meet and confer in good faith to resolve any such disputes.

In the event a dispute arising under this Agreement remains unresolved despite the Parties' best efforts, the Parties agree to at least three (3) hours of mediation facilitated by a mediator mutually agreeable to Parties. The parties agree to share equally in the costs of the mediation. If mediation is unsuccessful in resolving one or both Parties' grievances, then Parties may pursue their claims in the Small Claims Court of Sonoma County.

The sovereign immunity of the Tribe shall continue in full force except to the extent that it is expressly waived by this Agreement. Members of the Tribal Council and officials, employees, and agents of the Tribe or any other wholly-owned tribal entity, instrumentality or department remain immune from suit for actions taken during the course and within the scope of their duties in their respective roles.

Pursuant to the terms and conditions of General Council Resolution No. ____, and subject to the provisions of this section, the Tribe expressly and irrevocably waives its sovereign immunity (and any defenses based thereon) in favor of the County, but not as to any other person or entity, for any breach of this Agreement and not as to any other action, matter or dispute. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties; or (ii) disputes between the Tribe and the County other than a breach of this Agreement. The waiver of sovereign immunity by the Tribe as agreed to in this section shall be further limited to the County's right to collect unpaid PILOT fees that may be owed by the Tribe under the terms of this Agreement. In no instance shall the County be entitled to special, incidental, indirect, consequential or punitive damages.

NOW, THEREFORE, BE IT RESOLVED THAT the Tribal Council approves the Agreement and authorizes Chairman Greg Sarris to execute the Agreement and its delivery to the County, subject to approval by the General Council of a Limited Waiver of Sovereign Immunity by Resolution; and

BE IT FURTHER RESOLVED THAT the Tribal Council hereby requests that the General Council authorize and consent to a waiver of the Tribe's sovereign immunity from suit for dispute resolution under the same terms and conditions as those set forth in the Agreement, in favor of the County but not as to any other person or entity, as to any dispute which specifically arises under the Agreement and not as to any other action, matters or disputes, and to specifically state in its resolution that the Tribe does not waive its sovereign immunity with respect to (i) actions by third parties; or (ii) disputes between the Tribe and the County which do not specifically arise under the Agreement.


CERTIFICATION

We, the undersigned, do hereby certify that the foregoing Tribal Council Resolution was presented and duly adopted by the Tribal Council of the Tribe on the 9th day of June, 2017, at a Tribal Council meeting at which a quorum was present, by a vote of 7 for, 0 opposed, and 0 abstaining, and that said Tribal Council Resolution has not been rescinded or amended in any way.


Greg Sarris, Tribal Chairman

6-9-17
Date

ATTEST:


Melissa Elgin, Secretary

6-9-17
Date