

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement ("Right of Entry") is entered into this ____ day of _____, 2018, by and between the CITY OF EUREKA ("City"), a municipal corporation of the State of California and the WIYOT TRIBE ("Tribe"), a sovereign federally-recognized Indian Tribe.

RECITALS

WHEREAS, City is the owner in fee of that certain real property commonly referred to as Indian Island, in Humboldt Bay, California, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (Property).

WHEREAS, the Tribe has retained a consultant to conduct an Initial Study under the California Environmental Quality Act (CEQA) and a Phase I Environmental Site Assessment (ESA) for a project involving the Property;

WHEREAS, the Tribe and its consultant desire to obtain the City's permission to enter onto the Property, on a temporary basis, to perform the CEQA review and Phase I ESA;

WHEREAS, City and the Tribe wish to enter into this Right of Entry whereby the City will allow the Tribe, its employees, authorized agents and contractors to enter the Property, on a temporary basis, for the purpose of CEQA and Phase I ESA investigations within the Property;

NOW, THEREFORE, the City and the Tribe agree as follows:

AGREEMENT

1. Right of Entry. The City hereby grants to the Tribe and its agents, employees and contractors the temporary right to enter on the Property for the purpose of site inspection related to a CEQA Initial Study and Phase I ESA and for no other purpose.

2. Term. The term of this Right of Entry shall automatically terminate in ten (10) days following the last entered signature below. The term may be extended by written notice to City from Ted Hernandez, Chairman of the Wiyot Tribe, for an additional period not to exceed ten (10) days.

3. Insurance. The Wiyot Tribe shall maintain, during the life of the Agreement, General Liability and Property Damage Insurance; Automobile Insurance; and Workers' Compensation Insurance for all of its employees and shall under the same policies insure City, its officers, officials, employees and volunteers, who are performing activities covered by this Agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from the Wiyot Tribe's or its employees' or consultants' operations under this Agreement. The amounts of insurance shall be as follows:

A. General Liability Insurance in the amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage.

The policy shall be endorsed to name City as an additional insured and shall be endorsed to provide this insurance as a primary insurance as to City, its officials, officers, employees, and volunteers, so that any other policies held by City shall not contribute to any loss under said insurance. Said policy shall provide for thirty (30) days prior written notice by certified mail return receipt requested has been given to the City.

B. Automobile Liability Insurance covering bodily injury and property damage in an amount no less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance of Two Million Dollars (\$2,000,000.00) per accident for bodily injury or disease.

The insurance company shall agree to waive all rights of subrogation against the City of Eureka, its officers, officials, employees, and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured.

D. Other Insurance Requirements. City or its authorized representatives or agents shall have the right to require additional insurance, or higher limits of insurance, at any time during this Agreement should it be deemed necessary.

The general liability policy shall contain, or be endorsed to contain, the following provisions:

- (1) City, its officers, officials, employees and volunteers are to be covered additional insureds with respect to liability arising out of the Tribe's use of Indian Island for purposes of this Agreement.
- (2) The Tribe's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Tribe's insurance and shall not contribute with it.
- (3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

The Tribe shall furnish City concurrently with the execution hereof, satisfactory evidence of the insurance required above.

4. Indemnification and Hold Harmless. The Tribe hereby agrees to indemnify, defend, assume all liability for and hold harmless the City and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to personal or real property, claims or injuries to persons, which may be caused by the site inspection activities pursuant to this Right of Entry or arising out of or in connection with such activities, whether such activities or performance thereof is by the Tribe or anyone directly or indirectly employed or under contract with the Tribe and whether such damage or claim shall accrue or be discovered before or after the termination of this Right of Entry. This indemnity and other rights afforded to the City by this section shall survive the revocation or termination of this Right of Entry.

5. Restoration of Property. Upon the termination of this Right of Entry, the Tribe shall, at its own cost and expense, restore the Property to the same condition in which it was prior to its commencement of work.

6. Permits. The Tribe shall, at its sole cost and expense, obtain any and all permits which may be required by any law, regulation or ordinance for any activities the Tribe or its consultant desire to conduct pursuant to this Right of Entry.

7. No Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to the Tribe or its consultant.

8. Attorneys' Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Right of Entry, the prevailing party shall be entitled to collect from the other reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

9. Entire Agreement. This Agreement contains the sole and entire agreement between the parties and can only be modified, in writing, upon the consent of all parties.

10. Authorization. Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity, which he/she represents.

11. Counterparts. This Agreement may be signed in counterparts and together the signed copies shall be deemed to be an original


12. Sovereign Immunity. The Tribe agrees to waive its sovereign immunity from suit for the limited purpose of enforcing the provisions of this Right of Entry Agreement.

City of Eureka:


Greg L. Sparks
City Manager

5/16/18
Date

Approved as to Form:

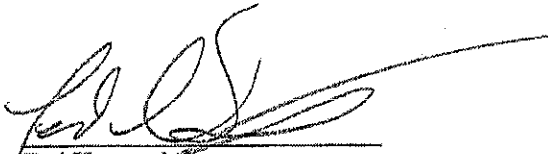

Cyndy Day-Wilson
City Attorney

5/15/18
Date

Attest:



Pam Powell
City Clerk

5/16/18
Date


Ted Hernandez
Chairman, Wiyot Tribe

Date

Approved as to Form:


Curtis G. Berkey
Attorney, Wiyot Tribe

May 3, 2018
Date

Exhibit A

Legal Description of Property

That real property situated in the City of Eureka, County of Humboldt, State of California, described as follows:

PARCEL ONE:

The following described lands located in Sections 14, 15, 21, and 22 in Township 5 North, Range 1 West, Humboldt Meridian, and described as follows:

All lands embraced within the boundaries of Swamp and Overflowed Surveys No. 47, 100, 172, and 173, and being more particularly described in Patents therefor, issued by the State of California to Robert Gunther, and recorded in Book 2 of Patents, Pages 438 and 442, Humboldt County Records.

ALSO, all lands embraced within the boundaries of State Tide Land Surveys Nos. 65, 66, 69, and 70, and being more particularly described in Patents therefor issued by the State of California to Robert Gunther, and recorded in Book 2 of Patents, Pages 440 and 444, Humboldt County Records.

EXCEPTING from the lands herein described that portion described as follows:

BEGINNING at the most Southerly corner of State Tide Land Survey No. 65;

and running hence North 51 ½ degrees East 60 feet;
thence North 38 ½ degrees West 360 feet;
thence South 51 ½ degrees West 1093 feet;
thence South 32 ¾ degrees East to low water mark (as the same
existed September 8, 1903);
thence following said low water mark Northeasterly 325 feet;
and thence North 51 ½ degrees East 708 feet to the point of beginning.

EXCEPTING therefrom that portion thereof conveyed to the State of California for highway purposes by Deed recorded November 3, 1970, in Book 1067 of Official Records, Page 147, under Recorder's Serial No. 17335, Humboldt County Records.

ALSO EXCEPTING therefrom those portions conveyed to:

(1) Heirs or devisees of Richard Young, deceased, subject to the Administration of his Estate, by Quitclaim Deed recorded June 29, 1994, as Instrument No. 1994-18669-2, Humboldt County Records.

(2) Robert Mason Ducey, Dennis Lee Ducey, and Jacqueline D. Ducey, as to an undivided one-third interest each, by Quitclaim Deed recorded June 29, 1994, as Instrument No. 1994-18671-2, Humboldt County Records.

(3) Carmen T. Smith, an unmarried woman, as to an undivided one-half interest, and Carmen Smith, as Trustee of the J & J West Trust dated April 2, 1982, as to an undivided one-half interest, by Quitclaim Deed recorded June 29, 1994, as Instrument No. 1994-18673-2, Humboldt County Records.

(4) Ken G. Bates and Mary Jo Bates, formerly known as Mary Jo Hopkins, husband and wife as joint tenants, by Quitclaim Deed recorded June 29, 1994, as Instrument No. 1994-18675-2, Humboldt County Records.

ALSO EXCEPTING from the lands herein described that portion which lies Northeasterly of the Southwest boundary of the land conveyed to the State of California for highway purposes, by Deed recorded November 3, 1970, in Book 1067 of Official Records, Page 147, under Recorder's Serial No. 17335, Humboldt County Records.

PARCELTWO:

Any portion of the land first excepted from Parcel One above which lies within the lands conveyed by Richard Young, a widower, Carmen T. Smith, an unmarried woman, Individually and as Trustee of the J & J West Trust dated April 2, 1982, Ken G. Bates, Jacqueline D. Ducey, a widow, the sole heir of Richard Walton Ducey, deceased, Robert Mason Ducey, a single man, Dennis L. Ducey and Patricia G. Ducey, husband and wife, said Richard Walton Ducey, Robert Mason Ducey, and Dennis L. Ducey being the only heirs of Dollie Viola Gabrielson, and Mary Jo Bates, formerly Mary Jo Hopkins, and Richard D. Young, Executor of the Estate of Richard Young, deceased, to City of Eureka, a Municipal Corporation in the County of Humboldt, State of California, by Quitclaim Deed recorded June 29, 1994, as Instrument No. 1994-18667-6, Humboldt County Records.

PARCEL THREE:

All oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within or under the parcel of land hereinabove described, together with the perpetual right of drilling, mining, exploring and operating therefor and removing the same from the land conveyed to the State of California by Deed recorded November 30, 1970, in Book 1067 of Official Records, Page 147, under Recorder's Serial No. 17335, Humboldt County Records, or any other land, including the right to whipstock or directionally drill and mine from lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinabove described, and to bottom such whipstock or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel,

equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, explore and operate through the surface or the upper 100 feet of the subsurface of said land conveyed to the State of California or otherwise in such manner as to endanger the safety or any highway that may be constructed on said lands.

PARCEL FOUR:

The right of free use and passage across the land conveyed to the State of California by Deed recorded November 30, 1970, in Book 1067 of Official Records, Page 147, under Recorder's Serial No. 17335, Humboldt County Records, beneath the bridge structures to be constructed thereon, between E.S. 111+05 to E.S. 129+20, E.S. 135+90 to E.S. 146+70, and E.S. 172+50 to E.S. 197+55, all of said Control Line, with no right of access to the traveled way of said freeway except as hereinabove set forth.