

**ELECTRONIC HOME DETENTION AGREEMENT BETWEEN  
THE YUOK TRIBE AND COUNTY OF HUMBOLDT**

The Yurok Tribe (hereinafter referred to as "Tribe"), a sovereign, federally-recognized Indian Tribe, and the County of Humboldt, a political subdivision of the State of California (hereinafter referred to as "County"), and the Sheriff of Humboldt County (hereinafter referred to as the "Sheriff") enter into this Agreement on this \_\_\_\_\_ day of March, 2012.

**FINDINGS:**

The Tribe, County and Sheriff of Humboldt County find:

1. That there is a need to provide safe, alternative, confinement options for low-risk inmates due to jail overcrowding that continues to pose critical fiscal, operational, and safety issues for counties in the State of California; and
2. That it is the desire of the Yurok Tribe and the County to offer an electronic home detention program to offending Yurok Tribal Members; and
3. That it is desired for minimum security inmates and low-risk offenders that have been committed to a county jail to serve their sentence on an electronic home detention program in lieu of confinement in the county jail; and
4. That this Electronic Home Detention Program is contracted by the Yurok Tribe.

**POLICIES:**

In light of the findings herein, the Tribe and County, in concurrence with the Sheriff of Humboldt County, mutually agree to implement and abide by the following policies:

1. **ELECTRONIC HOME DETENTION**

In compliance with California Penal Code Section 1203.016 (effective July 1, 2011), the Sheriff agrees, in conjunction with the Yurok Tribal Court (hereinafter referred to as "Yurok Court"), to offer an electronic home detention program (hereafter referred to as "EHDP") to minimum security inmates and low-risk offending Yurok Tribal Members involved in the Humboldt County criminal justice system.

The Tribe agrees to provide the infrastructure, equipment and administrative oversight of the EHDP through the Yurok Tribal Court.

2. **PROGRAM EQUIPMENT MONITORS CURFEW COMPLIANCE AND ALCOHOL CONSUMPTION**

The EHDP equipment utilizes an ankle bracelet that electronically monitors two parameters, 1) curfew compliance and 2) alcohol consumption. Curfew compliance shall be monitored in all cases in order for participant's EHDP to qualify as mandatory time in jail. Alcohol consumption shall also be monitored if participant's offense(s) are alcohol-related.

3. **QUALIFIES AS MANDATORY TIME IN JAIL**

If participant serves time in an EHDP in lieu of confinement in a county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in the EHDP shall qualify as mandatory time in jail. (Calif. Penal Code § 2900.5 (f).)

4. **SOLE DISCRETIONARY AUTHORITY**

The Sheriff shall have the sole discretionary authority to permit program participation as an alternative to physical custody. (Calif. Penal Code § 1203.016(d)(2).)

The Sheriff shall confer closely with the Yurok Court to make sure that the Yurok Court will accept the participant in the EHDP (See Section 7).

5. **RECOMMENDATION OF PROGRAM**

The Superior Court may recommend or refer a Yurok Tribal Member to the Sheriff for consideration for placement in the EHDP. (Calif. Penal Code § 1203.016(e).) The recommendation or referral shall be given great weight in the determination of acceptance or denial. (Id.)

The Yurok Court shall also have the discretion to recommend or refer a Yurok tribal member for consideration for placement in the EHDP. Recommendation shall be made by filing a petition to the Superior Court in the form of a letter or legal pleading, and copies sent to the Humboldt District Attorney and defendant's defense attorney. The Superior Court shall review the Yurok Court's recommendation, and then make the final recommendation or referral to the Sheriff for consideration of placement in the program.

A referral to the EHDP may be made at the time of pre-sentencing or sentencing.

6. **PROGRAM ELIGIBILITY**

Yurok Tribal Members that are minimum security inmates and low-level offenders related to substance abuse and/or alcohol abuse are eligible for the program.

7. **REFERRAL TO THE YUROK COURT'S ELECTRONIC HOME DETENTION PROGRAM THROUGH THE SHERIFF'S WORK ALTERNATIVE PROGRAM ("SWAP")**

Upon the Superior Court's recommendation of the program, the defendant shall attend a SWAP interview at the Sheriff's Office. Sheriff shall review and assess the following regarding the defendant to determine whether defendant may participate in the EHDP:

- Criminal background information
- Security-risk to public while on home detention
- Flight-risk
- Previous custody credits that may have been earned prior to sentencing

If the defendant is a minimum security risk, the Sheriff shall approve the defendant's participation in the program and refer the defendant to the Yurok Court for program design. The Yurok Court shall make the final determination as to whether the defendant may participate in the EHDP.

The Yurok Court shall meet with participant and design a program with the Yurok Wellness Court that facilitates participant's daily activities and necessary treatment program.

The start date of the EHDP shall begin on the first day the participant is on home detention. The start date must begin within three (3) weeks after the Sheriff's final determination and referral that participant may participate in the program.

8. **PROGRAM DESIGN OF ELECTRONIC HOME DETENTION PROGRAM**

The Yurok Court shall design a consistent weekly schedule of participant's activities while on the EHDP. The schedule shall allow for participant to attend work or school, counseling sessions, chemical dependency treatment, worship, personal business, court appearances, medical appointments, cultural activities, or any other necessary activity for participant's wellness.

All participant's serving time on the electronic home detention program shall be drug tested on a random basis. The repetitiveness of the drug tests shall depend on the participant's chemical dependency.

Participant's weekly schedule shall be inputted into the Scram Network website to effectively monitor participant's curfew compliance while on home detention. (<https://lca.scramnetwork.com/>).

9. **SHERIFF'S REVIEW AND APPROVAL OF DEFENDANT'S ACTIVITIES WHILE ON THE ELECTRONIC HOME DETENTION PROGRAM**

The Yurok Court shall forward the participant's weekly activity schedule to Sheriff for review and approval of activities.

10. **PARTICIPATION AGREEMENT** Upon beginning the EHDP, the participant shall review and sign a participation agreement that explains the policies and procedures of the program. A signed copy of the participation agreement shall be forwarded to the Sheriff and participant.

11. **COMPLETION OF ELECTRONIC HOME DETENTION PROGRAM**

The Yurok Court shall identify the participant's completion date of home detention. The Yurok Court shall notify Sheriff upon participant's completion of home detention.

12. **ADMINISTRATIVE FEES**

All participants shall pay the \$135.00 administrative SWAP fee (but not ongoing SWAP fees) and \$196.32 booking fee. Payment may be made to the County of Humboldt, Revenue Recovery Team, 825 5<sup>th</sup> Street, Room 130, Eureka, CA 95501, Tel: (707) 476-2398.

13. **REPORTS**

The Yurok Court shall monitor the participant's compliance with the EHDP on a daily basis. The Yurok Court shall report the participant's compliance with the program on a weekly basis to Sheriff.

14. **VIOLATIONS**

The following are the tolerance levels for the monitored activities:

- Curfew compliance: Three (3) violations.
- Alcohol: Zero tolerance.
- Drugs: Zero tolerance.

Upon violating the program, participant shall automatically submit to Sheriff, Custody Services Division.

If participant does not automatically submit, the Sheriff shall send a letter of commitment to participant that requires participant to commit himself by a particular date to Sheriff, Custody Services Division.

If participant does not commit by the date indicated in the letter, Sheriff shall file a motion with the Humboldt Superior Court requesting an order for the arrest of participant. Upon issuance of the order, the Sheriff and/or Yurok Public Safety shall pick up client to commit to jail.

15. **NOTICE OF YUROK TRIBAL MEMBER IN CRIMINAL JUSTICE SYSTEM**

If the Sheriff has any notice that a Yurok Tribal Member is involved in the Humboldt County criminal justice system, the Sheriff shall give notice to the Yurok Court of the Yurok Tribal Member's name, offense(s), criminal background information, mailing address, and contact information.

The Sheriff shall give notice to: Yurok Tribal Court Director  
P.O Box 1027  
Klamath, CA 95548  
T. (707) 482-1350 x.392  
F. (707) 482-0415.

16. **INSURANCE**

Each party shall maintain insurance equivalent to Comprehensive or Commercial General Liability Insurance with coverage as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in the amount of two-million-dollars (\$2,000,000) per occurrence for law enforcement professional liability and/or personal injury, to cover any injuries and/or death resulting from officers executing their lawful duties. This insurance should extend to reserve officers and mutual aid agreements.

Each party will ensure that an insurance certificate is issued for their policy containing an endorsement covering the other party, its officers, employees and agents as additional insureds for liability arising out of operations performed by, or on behalf of, the insuring party. The policy shall impose no special limitations on the scope of protection afforded the other party, its officers, agents and employees.

Except as provided by law, sovereign immunity shall not be a bar to a recovery otherwise provided by such insurance.

17. **LIMITATION OF GRANT AUTHORITY**

The Tribe and County agree that any authority granted under this Agreement is applicable only to activity occurring within the geographical boundaries of Humboldt County and the Yurok Reservation.

18. **NO THIRD PARTY BENEFICIARY**

This Agreement is neither intended to, nor meant to be construed as, creating any rights in any third party to bring an action to enforce any of its terms.

19. **SOVEREIGN IMMUNITY**

This Agreement is not intended nor will it be so interpreted to be a waiver of sovereign immunity of the Tribe, or its employees, officials and agents. Nothing in this Agreement subjects or limits the sovereign rights of the Tribe.

20. **CIVIL REMEDY**

Title 28 U.S.C. § 2671 et seq. and 25 CFR § 1000.270 et seq., more commonly known as the Federal Tort Claims Act (FTCA) allows the district courts to have exclusive jurisdiction of civil actions on claims against the United States. The FTCA provides immunity from common law tort claims against tribal entities and individuals and has been expanded to cover activities such as providing law enforcement services under 25 U.S.C. § 2802. Any claims against Tribal employees while acting within the scope of their office or employment must be brought in accordance with the procedures of the FTCA. County agrees to cooperate with the Tribe to enforce the procedures of the FTCA to the extent it is in the County's power to do so and at the County's expense.

21. **EX PARTE YOUNG DOCTRINE**

Both parties agree that the doctrine of Ex Parte Young, 209 U.S. 123 applies to this Agreement. The Ex Parte Young doctrine generally allows suits against an official for prospective relief such as injunctive or declaratory relief, but not for retrospective relief such as damages. The government entity may not be named as a defendant and only an individual officer in his or her official capacity can be sued for injunctive or declaratory relief. The individual officer must have a direct connection with either the law or action for which a plaintiff requests injunctive or declaratory relief. Under this Agreement, Yurok Tribal Council Members and the members of the Humboldt County Board of Supervisors will be the appropriate officers under the Ex Parte Young doctrine.

22. **DISPUTES**

Recognizing the government-to-government relationship between the Tribe and the County, and in order to foster a spirit of cooperation, the parties will make a good-faith effort to resolve all disputes arising under this Agreement first through an informal meeting. In the event either party believes that a violation of this Agreement has occurred, the aggrieved party will provide written notice to the other party setting forth with specificity the issues to be resolved. Should the initial meeting fail to resolve the dispute, resolution of any issues regarding interpretation and/or enforcement of this Agreement will be attempted through mediation. The mediator will be chosen by way of mutual agreement by the parties, in concert with a representative of the County and a representative of the Tribe. Any dispute not resolved by way of mediation shall be brought in the United States District Court, Northern District of California. By agreeing to this venue, the Tribe does not waive its sovereign immunity, or its right to raise sovereign immunity as a defense.

23. **TERM**

Following execution thereof, this Agreement will be in full force and effect for a period of 3 (three) years or until either the Yurok Tribal Council or the Humboldt County Board of Supervisors and the Humboldt County Sheriff exercise their authority to revoke this Agreement. Any notice of intent to revoke must be express, in writing, and delivered via certified mail ninety (90) days prior to the effective date of revocation. During that ninety (90) day time frame, both parties agree to meet and discuss the issues surrounding the revocation in an attempt to resolve the issues. This Agreement shall be reviewed by the Sheriff and the Yurok Tribal Council on an annual basis.

24. **NOTICES**

Any notice provided for, or concerning this Agreement, will be in writing and deemed sufficiently given when sent by certified or registered mail to the addresses as set forth in this section:

If to the County: Humboldt County Sheriff's Office  
826 Fourth Street  
Eureka, CA 95501

If to the Tribe: Yurok Tribal Council  
P.O. Box 1027  
Klamath, CA 95548

25. **WAIVER**

The failure of either party to this Agreement to insist on the performance of any terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, will not be construed as waiving those terms and conditions, and the terms and conditions at issue will remain in full force and effect.

26. **SEVERABILITY**

Any provisions of this Agreement subsequently deemed invalid will not invalidate any remaining provisions.

27. **MODIFICATION OF AGREEMENT**

Any modification to this Agreement will be binding only if written and signed by each party, or each party's authorized representative, and will be attached hereto as if part of the original Agreement.

28. **PARAGRAPH HEADINGS**

The headings and captions of the various paragraphs in this Agreement are for convenience only and will not limit, expand, or otherwise affect the construction or interpretation of this Agreement.

29. **GOOD FAITH**

Throughout the term of this Agreement, the parties agree to exercise good faith and observe the covenants herein. The County and the Tribe also agree to comply with all laws applicable to the County and to the Tribe.

30. **INTEGRATION**

This Agreement constitutes the entire Agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement will not be binding on either party except to the extent incorporated into this Agreement. This Agreement will be construed pursuant to applicable federal laws, laws of the State of California and laws of the Yurok Tribe.

31. **NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE**


The Tribe certifies by its signature below that the Tribe is not a nuclear weapons contractor in that the Tribe is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear



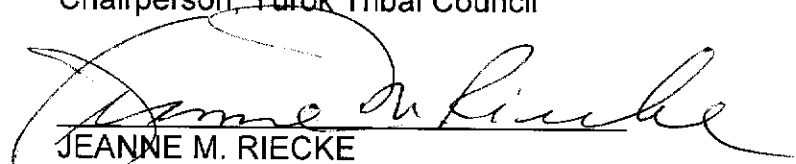
weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. The Tribe agrees to notify the County immediately if it becomes a nuclear weapons contractor as defined above. The County may immediately terminate this Agreement if it determines that the foregoing certification is false, or if the Tribe becomes a nuclear weapons contractor.

IN WITNESS THEREOF, this Agreement has been executed by and on behalf of the Yurok Tribe, the Yurok Tribal Court, the County of Humboldt, and the Sheriff of Humboldt County as of the dates shown below.

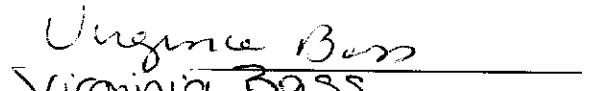
Date: 3-5-12

  
THOMAS P. O'ROURKE  
Chairperson, Yurok Tribal Council

Dated: 3-1-2012

  
JEANNE M. RIECKE  
Director, Yurok Tribal Court

Dated: 3/27/2012

  
Virginia Bass  
Chairperson, Humboldt County Board of Supervisors

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL T. DOWNEY,  
Sheriff of Humboldt County

3/1/2012