

Standard Monitoring Agreement  
Between  
Yocha Dehe Wintun Nation  
And  
Napa Sanitation District

This MONITORING AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, \_\_\_\_\_, by and between the **Yocha Dehe Wintun Nation**, a federally recognized Indian tribe ("Yocha Dehe" or "Tribe") on the one hand, and **the Napa Sanitation District, a California special district (hereinafter "District")** on the other hand. Yocha Dehe and District are collectively referenced hereinafter as the "Parties".

**I. RECITALS**

**A. Subject Matter:** This Agreement concerns the use and/or development of real property located within the area of Napa County, California, and which is the subject of development by District. The development is commonly known as the 66-inch Trunk Sewer Rehabilitation Project, hereinafter referenced as the "Project" and is described in Attachment I of this Agreement. As used herein, the Area of Potential Effect (or APE) generally includes planned excavation sites along the project alignment, which is generally bounded by Kaiser Road to the north, the District's Soscol Water Recycling Facility to the south, the Napa River to the west, and Napa Valley Corporate Drive to the east.

**B. Purpose:** The purpose of this Agreement is to establish fee schedules and terms for the use of Yocha Dehe tribal monitors for the Project; establish protocols for the relationship between Yocha Dehe and the Contractor; formalize procedures for the treatment of Native American human remains, grave goods, ceremonial items and any cultural artifacts, in the event that any are found in conjunction with the Project's development, including archaeological studies, excavation, geotechnical investigations, grading and any ground disturbing activity. This Agreement is entered into as mitigation under the California Environmental Quality Act ("CEQA") and/or the National Environmental Policy Act ("NEPA") and Section 106 of the National Historic Preservation Act ("Section 106"), and any such mitigation may be a condition of approval for said Project.

**C. Cultural Affiliation:** The Tribe traditionally occupied, and can trace its historical ties to, land in the Project's Area of Potential Effect ("APE" or "Project Area"). The Project is within the boundaries of the Yocha Dehe Linguistic Territory. Thus, cultural resources identified in the APE are related to the history and tradition of the Yocha Dehe Wintun Nation and Patwin speaking peoples. Yocha Dehe has designated its Cultural Resources Department to act on its behalf with respect to the provisions of this Agreement. Any Native American human remains, grave goods, ceremonial items, and cultural items or artifacts that are found in conjunction with the development of this Project shall be treated in accordance with the Provisions of this Agreement.

**II. TERMS**

**A. Incorporation of Recitals.** All of the foregoing recitals are accurate and are incorporated in this Agreement by reference.

**B. Term.** This Agreement shall be effective as of the date of execution and it shall remain in effect until the District Board of Directors accepts the Project's completion.

**C. Scope of Services and Specifications.** Given the nature and sensitivity of archaeological sites and cultural resources that are or may be within the Project area (a map of which is shown and attached hereto as Attachment I). Yocha Dehe shall provide tribal monitoring and consultation for the Project during the archaeological investigations and all ground disturbing activities required for the Project. Yocha Dehe monitors will work in collaboration with the archaeologists, inspectors, project managers and other consultants hired/employed by the District.

**D. Compensation.**

**I. Fee Amount.** The compensation, fees, and/or other charges paid by the District pursuant to this Agreement shall not exceed twenty thousand dollars (\$20,000), as authorized by the District Board of Directors. In the event the compensation, fees, and/or other charges authorized by this Agreement are anticipated to exceed the limit set forth in this section, the Parties shall execute an amendment to this Agreement increasing such limit as authorized by the District Board of Directors.

**II. Fee Schedule.** The fee schedule for the use of Yocha Dehe Wintun Nation monitors and staff is as follows;

Native American Monitoring	\$65.00 hourly rate (per monitor)
Tribal Historic Preservation Officer/ Cultural Resources Director (4 hour minimum)	\$200.00 (per hour)
Tribal Executives (4 hour minimum)	\$200.00 (per hour)
Cultural Resources Manager (4 hour minimum)	\$175.00 (per hour)
Overtime (over 8 hrs in a day)	\$112.50 hourly rate (per monitor)
Weekend and Holiday Hours	\$112.50 hourly rate Saturday; and \$150.00 hourly rate Sunday and Holiday
Cultural Sensitivity Training	\$250.00 one time charge
Administrative Fee	15% of Invoice

**III. Travel Costs.** Yocha Dehe's monitors will bill for time spent traveling to and from any Project site. In addition, Yocha Dehe shall be reimbursed for all costs associated with travel to and from the Project. Eligible items for cost reimbursement shall include, but

not be limited to, mileage (or fuel purchases, at the submitter's election), hotel, and per diem (GSA rate).

**IV. Payment.** District shall directly compensate the Tribe in accordance with this Section D and the following procedures. Invoices will be submitted on a monthly basis and shall be paid within 30 days of submittal to assure timely tribal monitor compensation and to further assure that tribal monitoring will not be terminated for the Project.

**V. Unannounced Work Stoppage.** A minimum half-day charge ("show up" time) shall be charged to District for unannounced work stoppages of the tribal monitors that are not due to actions by Yocha Dehe.

**E. Coordination with County Coroner's Office.** In the event human remains are discovered on or near the Project site during its development, District shall immediately contact the Coroner, the Yocha Dehe Cultural Site Protection Manager, the Cultural Resources Manager, Cultural Committee Chairman, the Tribal Chairman and/or the Yocha Dehe Cultural Resources Director. In order to facilitate this Agreement's implementation, the appropriate County Coroner's Office shall be provided a copy of this Agreement either before any earth disturbing activities or upon request of the Tribe. Yocha Dehe agrees to provide District the needed contact information in order to comply with this provision. The Coroner shall be asked by the District to determine if the remains are (1) human, (2) prehistoric, and further, the District shall request the Coroner notify the State of California's Native American Heritage Commission in the event the remains are determined to be Native American. The District will compensate the Coroner for reasonable fees and costs, if applicable and required by the County Coroner's office.

**F. Most Likely Descendant (MLD).** The Yocha Dehe Wintun Nation as the MLD for any Human Remains, Associated Funerary Objects and Artifacts found within the exterior boundaries of the Yocha Dehe Wintun Nation Linguistic Territory. Human Remains have been discovered within the Yocha Dehe Wintun Nation Linguistic Territory on occasion and in all of those cases, the Native American Heritage Commission ("NAHC") designated the Yocha Dehe Wintun Nation as the Most Likely Descendant ("MLD") under California Public Resources Code section 5097.98.

**G. Treatment and Disposition of Remains.** Where Native American human remains are discovered during the Project's development, and where Yocha Dehe has been designated the Most Likely Descendant (MLD), the following provisions shall apply to the Parties:

I. The Tribe shall be allowed, under California Public Resources Code sections 5097.98 (a) and 21083.2 and State CEQA Guidelines section 15064.5 (e), to: (1) inspect the site of the discovery; and (2) make recommendations as to how the human remains and grave goods shall be treated and disposed of with appropriate dignity.

II. The Tribe shall complete its inspection within twenty-four (24) hours of receiving notification from either the District or the NAHC, as required by California Public Resources Code section 5097.98 (a). The Parties agree to discuss, in good faith, what constitutes "appropriate dignity" as that term is used in the applicable statutes.

III. Reburial of human remains shall be accomplished in compliance with the California Public Resources Code sections 5097.98 (a) and (b) and 21083.2 and State CEQA Guidelines section 15064.5 (e).

IV. The Parties are aware that Yocha Dehe may wish to rebury the human remains and associated ceremonial and cultural items (artifacts) on or near the site of their discovery, in an area that shall not be subject to future subsurface disturbances. Should Yocha Dehe recommend reburial of the human remains and associated ceremonial and cultural items (artifacts) on or near the site of their discovery, the District shall make good faith efforts to accommodate the Tribe's request.

V. The term "human remains" encompasses more than human bones because Yocha Dehe's traditions periodically necessitated the ceremonial burning of human remains, and monitors shall make recommendations for removal of cremations. Grave goods are those artifacts associated with any human remains. These items and the soil, in an area encompassing up to two (2) feet in diameter around the burial, and other funerary remnants and their ashes, are to be treated in the same manner as human bone fragments or bones that remain intact

**H. Treatment and Disposition of Cultural Items (Artifacts).** Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Tribe. District agrees to return all Native American ceremonial items and items of cultural patrimony that may be found on the Project site to the MLD for appropriate treatment, unless District is ordered to do otherwise by a court or agency of competent jurisdiction. In addition, the Tribe requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations on or adjacent to the Project site. Where appropriate (from the perspective of Yocha Dehe), and agreed upon in advance by Yocha Dehe, certain analyses of certain artifact types will be permitted, which may include, but which may not necessarily be limited to, shell, bone, ceramic, stone and/or other artifacts.

**I. Ownership Relinquishment.** District waives any and all claims to ownership of Native American ceremonial and cultural artifacts that may be found on the Project site. If examination of cultural artifacts by an entity or individual other than the MLD is necessary, that entity or individual shall return said artifacts to the MLD within thirty (30) days, or any other agreed upon time frame from the initial recovery of the items.

**J. The Description of Work.** Description of work for Yocha Dehe monitors for the grading and ground disturbing operations at the Project site is provided in **Attachment II** to this Agreement and incorporated herein by this reference. **Section I of Attachment II specifies the duties and responsibilities of the identified tribal monitoring crew and other specified parties. Section II of Attachment II identifies the geographical area over which the tribal monitoring crew shall oversee cultural resource mitigation and monitoring in accordance with California Public Resources Code section 21083.2 (c) and (k). Sections III and IV of Attachment II mandate compensation of the tribal monitoring crew by the District.**

**K. Confidentiality.** Unless otherwise required by law, the site of any reburial of Native American human remains shall not be disclosed and will not be governed by public disclosure

requirements of the California Public Records Act, Cal. Govt. Code § 6250 et seq. The County Coroner shall withhold public disclosure of information related to such reburial pursuant to the specific exemption set forth in California Government Code Section 6254(r). Moreover, all records relative to consultation between the Parties shall be confidential and not subject to public disclosure as required by the California Public Records Act, Cal. Govt. Code § 6250 et seq.

**J. General Provisions.**

**I. Headings.** The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

**II. Severability.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this Section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

**III. Governing Law, Jurisdiction, and Venue.** The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California, except to the extent an issue is governed by federal law, in which case federal law shall control. Any suit, claim, or legal proceeding of any kind related to this Agreement may be filed and heard in a court of competent jurisdiction in the County of Napa.

**IV. Attorney's Fees.** If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses.

**V. Assignment and Delegation.** This Agreement will not be assigned or transferred in whole or in part. Any attempt to assign, transfer, or delegate this Agreement, in whole or any part without the respective Party's prior written consent will be void and of no force or effect. Any consent to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

**VI. Modifications.** This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

**VII. Waivers.** No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

**VIII. Entire Agreement.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

**IX. Interpretation.** Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

**X. Counterparts.** This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

**XI. Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of NapaSan and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

**Yocha Dehe Wintun Nation**

**Napa Sanitation District**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Tribal Historic Preservation Officer

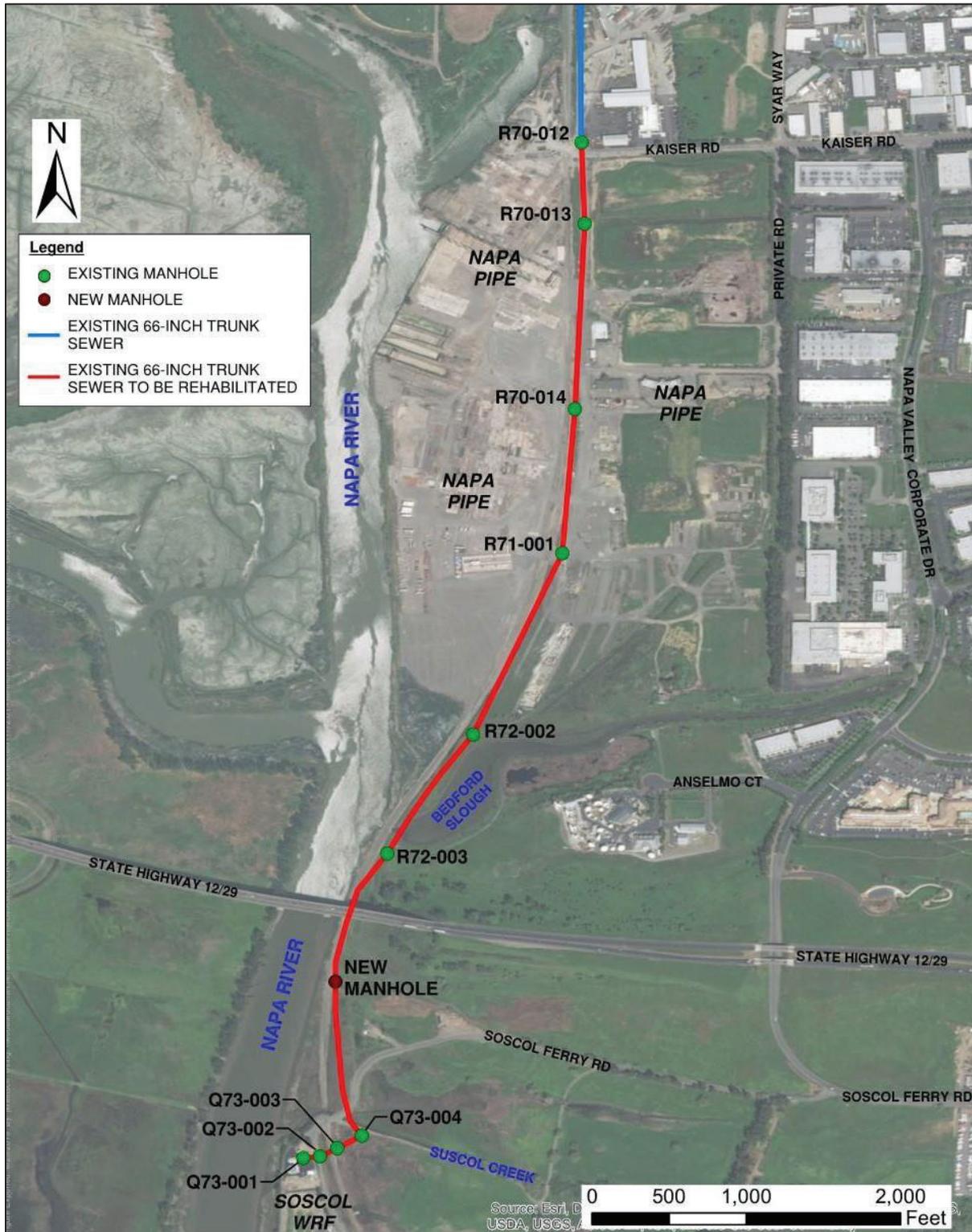
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# ATTACHMENT 1: PROJECT OVERVIEW

## NAPA SANITATION DISTRICT 66-INCH TRUNK SEWER REHABILITATION PROJECT



## Attachment II

### NATIVE AMERICAN MONITORING OF GRADING AND GROUND DISTURBING ACTIVITIES

- I. **Specifications:** Given the nature and sensitivity of the archaeological sites and cultural resources that are in or may be within the Project area, the Yocha Dehe Wintun Nation, a federally recognized Indian tribe and the Most Likely Descendant as identified by the Native American Heritage Commission, shall provide the tribal monitoring, consultation and facilitation for this Project during the archeological investigations, and all ground disturbing activities for the Project. Yocha Dehe's monitors will work in concert with the archaeologists and Project engineers hired/employed by District. The tribal monitors or Project archaeologists will be empowered to halt all earthmoving equipment in the immediate area of discovery when cultural items or features are identified until further evaluation can be made in determining their significance. It is understood that all surface and subsurface artifacts of significance shall be collected and mapped during this operation following standard archaeological practices.

After discovery of cultural items or features' discussions between the tribal monitors and project archaeologist will occur to determine the significance of the situation and best course of action for avoidance, protection of resources, and/or data recovery, as applicable.

- II. **Project to be Monitored:** Monitoring shall encompass the area known as The 66-inch Trunk Sewer Rehabilitation Project, and shall be known as the Project area. It is agreed that monitoring shall be allowed for all archaeological studies, excavations, and groundbreaking activities occurring in conjunction with the development of the Project.
- III. **Project Crew Size:** The Parties to this Agreement project the need for a tribal monitoring crew size to be determined by the Cultural Site Protection Manager, in accordance with Yocha Dehe Wintun Nation Cultural Law. If the scope of the work changes (*e.g.*, inadvertent discoveries of cultural resources or simultaneous grading of area that requires multiple tribal monitors), additional tribal monitors may be required. Developer agrees to directly compensate Yocha Dehe for all of the work performed by the tribal monitors. The compensation rate shall be made directly from District to the Tribe in accordance with Section IV. If human remains are found, the coordination of the reburial of those remains and any associated cultural and ceremonial items shall be conducted in accordance with Sections III and IV of this Agreement.
- IV. **Insurance and Indemnity:** Yocha Dehe shall provide the tribal monitoring crew for the Project and shall be responsible for coordinating the tribal monitors' activities on the Project. The Tribe recognizes that dangerous conditions may exist on the work site, particularly during grading operations, and agrees to assume responsibility for the safety of the tribal monitoring crew while the crew remains on the Project site. The Tribe possesses the necessary insurance to cover any bodily injury or property damage that

may be suffered by the tribal monitors and proof of such insurance shall be made available to District upon request.

- V. **Rights of Access/Stoppage/Consultation Upon Discovery:** District shall provide Yocha Dehe tribal monitors with unencumbered access to the Project site as reasonably necessary for the monitors to effectively perform the services required by this Agreement. The tribal monitors and/or project archaeologist will be empowered to halt all earthmoving equipment in the immediate area of discovery when cultural items or features are identified until further evaluation can be made in determining their significance. It is understood that all surface and subsurface artifacts, Native American human remains, funerary objects, items of cultural patrimony, and any other cultural items shall be treated in accordance with an agreed upon artifact treatment and disposition plan.

After discovery of cultural items or features, discussions between the tribal monitors and project archaeologist will occur to determine its significance and the best course of action for avoidance, protection of resources, and/or data recovery, as applicable. While determinations will be mostly in the field, Yocha Dehe's tribal monitors may need to seek further guidance from the Most Likely Descendent, Yocha Dehe Tribal Council and/or the Cultural Resources Committee. If this rare occurrence should arise, Yocha Dehe reserves the right to request a 30-day stoppage of work.

Where circumstances warrant, the District may be required, at its sole expense, to provide security personnel or remove unnecessary persons from the Project site. For example, where the safety of tribal monitors is at risk due to controversy or other circumstances surrounding a particular Project's development, security personnel would be provided at the District's expense and members of the public excluded from the site. Likewise, where the protocol for the treatment of Native American human remains, funerary objects, artifacts, or items of cultural patrimony deems culturally required or appropriate, District agrees unnecessary personnel will leave the site during the relevant time period.

3697540.1