

Standard Monitoring Agreement
Between
Yocha Dehe Wintun Nation
And
Solano Community College District

This MONITORING AGREEMENT (“Agreement”) is made and entered into as of May 3, 2023, by and between the **Yocha Dehe Wintun Nation**, a federally recognized Indian tribe (“Yocha Dehe” or “Tribe”) on the one hand, and **Solano Community College District (hereinafter “Contractor”)** on the other hand. Yocha Dehe and Contractor 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 Fairfield, Solano County, California, and which is the subject of development by Contractor. The development is commonly known as Exhibit A hereinafter referenced as the “Projects” and is described in Attachment I of this Agreement. As used herein, the Area of Potential Effect (or APE) includes approximately 3,840 square-foot new building and associated site improvements located near existing buildings on the South side of campus, new Solar Electric System covering the majority of Parking Lot 2 located on the North side of campus, and an approximately 2,000 square-foot new concrete pad located in the center of campus near the existing tennis courts (see Attachment 1).

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 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 Contractor.

D. Fee Schedule:

The fee schedule for the use of Yocha Dehe Wintun Nation monitors and staff is as follows;

Native American Monitoring	\$82.50 hourly rate (per monitor)
Overtime (over 8 hrs in a day)	\$123.75 hourly rate (per monitor)
Weekend and Holiday Hours	\$123.75 hourly rate Saturday; and \$165.00 hourly rate Sunday and Holiday
Cultural Resources Manager (4 hour minimum)	\$192.50 (per hour)
Tribal Historic Preservation Officer/ Cultural Resources Director (4 hour minimum)	\$220.00 (per hour)
Tribal Executives (4 hour minimum)	\$220.00 (per hour)
Cultural Sensitivity Training	\$300.00
Tribal Records Search	\$150.00
Ground Penetrating Radar	\$1,000 (per day)
Administrative Fee	15% of Invoice

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).

E. Coordination with County Coroner's Office. In the event human remains are discovered on or near the Project site during its development, Contractor shall immediately contact the Coroner, the Yocha Dehe Director of Cultural Resources, Cultural Resources Manager, the Cultural Resources Committee Chairperson, and the Tribal Chairman. 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 Contractor the needed contact information in order to comply with this provision. The Coroner shall be asked by the Contractor to determine if the remains are (1) human, (2) prehistoric, and further, the Contractor 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 Contractor 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 Contractor 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 Contractor 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. Contractor 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 Contractor 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. Contractor 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 Contractor.**

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.

Executed by:

Yocha Dehe Wintun Nation

Solano Community College District

Signature: _____ Signature: _____

Print Name: _____

Print Name: Lucky Lofton_____

Title: Tribal Historic Preservation Officer

Title: VP, Facilities & Executive Bonds Manager

Date: _____

Date: _____

ATTACHMENT I

Projects List:

- Early Learning Center (ELC)
- Solar Energy Project (SOLAR)
- Central Plant Replacement Project (CP)
- Substations #3 & #4 Replacement Project (SUB)



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 Contractor. 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 project area depicted on Attachment 1, 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 Resource 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 Contractor 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 Contractor upon request.

- V. **Compensation:** Contractor shall directly compensate the Tribe in accordance with the following compensation rates and 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.

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

Contractor's Compensation dollar amount per project as well as overall sum are listed in **Attachment III** located at the end of this document.

- VI. **Rights of Access/Stoppage/Consultation Upon Discovery:** Contractor 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 Contractor 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 Contractor'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, Contractor agrees unnecessary personnel will leave the site during the relevant time period.

Attachment III

Project List:

- Early Learning Center Expansion Project– \$10,000
- Solar Energy Project – \$46,000
- Substations #3 & #4 Replacement Project – \$52,000
- Central Plant Replacement Project – \$3,000

Compensation:

Contractor agrees to pay the Tribe for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **ONE HUNDRED ELEVEN THOUSAND Dollars (\$111,000)**. Contractor shall pay Tribe according to the following terms and conditions:

- A. Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the Contractor. Payment shall be made within thirty (30) days after the Tribe submits an invoice to the Contractor for Work actually completed and after the Contractor's written approval of the Work, or the portion of the Work for which payment is to be made.
- B. The itemized invoice shall reflect the hours spent by the Tribe in performing its Services pursuant to this Agreement. The Services shall be performed at the hourly billing rates included in **Article II "D."**
- C. Tribe shall invoice for each project separately.