

**SOLANO COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD AGENDA ITEM**

TO: Members of the Governing Board

**SUBJECT: RATIFICATION OF CONTRACT TO YOCHA DEHE
WINTUN NATION FOR CULTURAL RESOURCES
MONITORING SERVICES FOR THE CAMPUS ENTRY
SIDEWALK PROJECT**

REQUESTED ACTION:

Information OR Approval
 Consent OR Non-Consent

SUMMARY:

Board approval is requested to ratify a professional services agreement to Yocha Dehe Wintun Nation to provide cultural resources monitoring services to meet California Environmental Quality Act (CEQA) requirements for the Fairfield Campus Entry Sidewalk Project.

Because of the potential for undiscovered cultural resources within the project area, monitoring of ground disturbing construction activities by a Tribal Cultural Monitor is required. The scope of

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STUDENT SUCCESS IMPACT:

- Help our students achieve their educational, professional and personal goals
- Basic skills education
- Workforce development and training
- Transfer-level education
- Other: Enhance safety and security for students, faculty, and staff

Ed. Code: Board Policy: 3225; 3520 Estimated Fiscal Impact: \$5,000 Measure Q Funds

SUPERINTENDENT'S RECOMMENDATION:

APPROVAL DISAPPROVAL
 NOT REQUIRED TABLE

Lucky Lofton
Executive Bonds Manager

PRESENTER'S NAME

4000 Suisun Valley Road
Fairfield, CA 94534

ADDRESS

(707) 863-7855

TELEPHONE NUMBER

Robert V. Diamond
Vice President, Finance & Administration

VICE PRESIDENT APPROVAL

January 26, 2018

**DATE SUBMITTED TO
SUPERINTENDENT-PRESIDENT**

Celia Esposito-Noy, Ed.D.
Superintendent-President

January 26, 2018

**DATE APPROVED BY
SUPERINTENDENT-PRESIDENT**

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SUMMARY:

CONTINUED FROM THE PREVIOUS PAGE

work of this contract includes Tribal cultural monitoring of any excavation and examination of all displaced soils before trenches are infilled.

Yocha Dehe Wintun Nation can trace its historical ties to land in the Project Area, and is considered the Most Likely Descendent tribe. Execution of this contract was needed in a timely manner in order that the monitor could be on site for current and future ground disturbing activities during the project.

The contract amount has been established to allow up to 40 hours of monitoring. However, consultant will bill only actual hours of monitoring required by construction ground disturbing activities.

The Board is asked to ratify this contract to Yocha Dehe Wintun Nation in an amount not to exceed \$5,000.

The contract amendment is available online at: <http://www.solano.edu/measureq/planning.php>.

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

This MONITORING AGREEMENT ("Agreement") is made and entered into as of January 29, 2018 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 "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 Fairfield, Solano County, California, and which is the subject of development by District. The development is commonly known as the Fairfield Campus Entry Sidewalk Improvements, hereinafter referenced as the "Project" and is described in **Attachment I** of this Agreement. As used herein, the Area of Potential Effect (or APE) includes approximately 4,800 square-foot site area mostly on the west side of the inner campus road from the south intersection at Suisun Valley Road east and northward. (see Attachment I).

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 District; formalize procedures for the treatment of any potentially significant cultural resources, 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. Cultural resources under this Agreement include stone, bone, glass, ceramics, fossils, wood, or shell artifacts, or features including hearths, structural remains, or historic dumpsites. This Agreement is entered into to meet identified mitigation measures for cultural resources 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. Subject to the designation of Yocha Dehe as the Most Likely Descendant tribe, any cultural resources 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. **Description and Scope of Work:**

1) Given the high potential for undiscovered 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**), from this date forward all construction activity for the Project resulting in subsurface disturbance shall be monitored by an archaeologist who meets the Secretary of Interior's Professional Qualification Standards for archaeology ("Archaeologist") and a tribal cultural monitor designated by Yocha Dehe. Yocha Dehe monitors will work in collaboration with the Archaeologist, Project engineers, and other consultants or contractor(s) hired/employed by the District for the Project. Yocha Dehe monitors shall be provided 24 hour notice for all work that is to be done that requires a tribal monitor, including, but not limited to, ground disturbance activities. In addition, Yocha Dehe shall have the right to provide cultural sensitivity training to any agent or contractor engaged by the District on site.

2) Description and scope of work for Yocha Dehe monitors under this Agreement is provided in **Attachment II** to this Agreement and incorporated herein by this reference. The Fee Schedule for District's compensation to the Yocha Dehe monitors also are set forth in **Attachment II**.

D. **Coordination with Archaeologist.** In the event potentially significant cultural resources are encountered during subsurface earthwork activities, all construction activities within a 100-foot radius of the find shall cease and District's workers will avoid altering or collecting the materials until the Archaeologist or Yocha Dehe monitor has evaluated the find and provided appropriate recommendations. Potential significance is to be determined through consultation by the Archaeologist with the Yocha Dehe Monitors. The Archaeologist shall follow this process:

1) Any previously undiscovered cultural resources found during construction activities for the Project shall be recorded on appropriate Department of Parks and Recreation forms and evaluated for significance in terms of CEQA criteria by the Archaeologist.

2) If the Archaeologist determines the cultural resource is significant under CEQA, after consultation with the Yocha Dehe monitors, the Archaeologist shall prepare and implement a research design and archaeological data recovery plan that will capture those categories of data for which the site is significant in accordance with CEQA Guidelines section 15064.5.

- 3) The Archaeologist shall perform appropriate technical analyses, prepare a comprehensive report complete with methods, results, and recommendations, and provide for the permanent curation of the recovered resources.
- 4) The Archaeologist's report shall be submitted to the City of Fairfield, the Northwest Information Center, and the State Historic Preservation Office, if required.

E. Coordination with County Coroner's Office. In the event of the discovery or recognition of human remains on or near the Project site during its development, District shall take the following steps in accordance with and pursuant to CEQA Guidelines section 15064.5, Health and Safety Code section 7050.5, Public Resources Code section 5097.94 and 5097.98. Specifically:

- 1) The District shall contact the County Coroner and conduct no further excavation or disturbance within 100 feet of the remains until the County Coroner determines whether the remains are Native American and if an investigation of the cause of death is required. The Tribe will also contact the Tribal Chairman, Cultural Resource Committee Chairman, Tribal Historic Preservation Officer, Director of Cultural Resources, and/or the Cultural Resource Manager.
- 2) If the County Coroner determines the remains to be Native American, the County Coroner shall contact the State of California's Native American Heritage Commission ("NAHC") within 24 hours, and the NAHC shall identify the person it believes to be the most MLD (defined below) of the deceased Native American. If the NAHC determines the MLD to be the Tribe, the Tribe's recommendations for treatment and disposition of any remains are set forth below.
- 3) The District shall rebury the Native American human remains and any associated grave goods with appropriate dignity on the Project site in a location not subject to further subsurface disturbance:
 - a) If the NAHC is unable to identify a MLD, or the MLD (other than the Tribe) failed to make a recommendation on how to treat and dispose of the remains within 48 hours after being notified; or
 - b) If the descendant identified fails to make a recommendation; or
 - c) If the District rejects the recommendation of the descendent, and mediation by the NAHC fails to provide measures acceptable to the District.

F. Most Likely Descendant (MLD): The Yocha Dehe Wintun Nation has been determined to be the most likely descendent ("MLD") for any cultural resources (including 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, NAHC designated the Yocha Dehe Wintun Nation as the 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 determined to be the MLD by the NAHC, the following provisions shall apply to the Parties:

- 1) 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.
- 2) The Tribe shall complete its inspection within forty-eight (48) hours of receiving permission to access the Project site, in accordance with 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.
- 3) Reburial of human remains shall be accomplished in consultation with Yocha Dehe and 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).
- 4) 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 other cultural resources on or near the site of their discovery, the District shall make good faith efforts to accommodate the Tribe's request.
- 5) For purposes of this Agreement, 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. The Parties agree that 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 Ceremonial Items and Other Cultural Resources. 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 potentially significant cultural resources that are recovered during the course of archaeological investigations on or adjacent to the Project site when the Tribe has been determined to be the MLD and the Archaeologist has determined the finds to be potentially significant cultural resources. Where appropriate (from the perspective of Yocha Dehe), and agreed upon in advance by Yocha Dehe and Archaeologist, 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. **Payment of Costs and Fees.** District agrees to hire the Archaeologist for purposes of this Agreement. District also agrees to pay for any fees and costs related to the County Coroner's participation under this Agreement, if any. District also agrees to compensate Yocha Dehe for all work completed by its monitors, pursuant to the payment schedule in Attachment II. This contract amount shall be established as not exceed FIVE THOUSAND DOLLARS (\$5,000). This amount allows for approximately 40 hours of Tribal Monitor time. Should circumstances require more efforts from Yocha Dehe, by mutual agreement with the District an Amendment may be made to this contract, subject to the approval of the District's Governing Board.

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.

L. **Independent Contractor.** The Yocha Dehe monitor, in the performance of this Agreement, shall be and act as an independent contractor. The Tribe understands and agrees that the monitor shall not be considered officers, employees, agents, partners, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. The Yocha Dehe monitor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including but not limited to unemployment insurance, State disability, social security and income taxes with respect to the Tribe's employees.

M. **Materials.** The Tribe shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

N. **Indemnification.** To the furthest extent permitted by California law, the Tribe shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Tribe and/or its monitor in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or

willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that the Tribe proposes to defend the indemnified parties.

O. Insurance.

1) The Tribe shall procure and maintain at all times it performs any portion of the work under this Agreement the following insurance with minimum limits equal to the amount indicated below.

a) **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Tribe, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from performing any portion of the Services. (Form CG 0001 and CA 0001)

b) **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the work of this Agreement. In accordance with provisions of section 3700 of the California Labor Code, the Tribe shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the work under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

TYPE OF COVERAGE	MINIMUM REQUIREMENT
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 10,000,000
General Aggregate	\$ 10,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 10,000,000
General Aggregate	\$ 10,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

2) **Proof of Carriage of Insurance.** The Tribe shall not commence performing any portion of this Agreement until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

a) A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

b) Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

c) An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, and Employers' Liability Insurance. An endorsement shall also state that Tribe's insurance policies shall be primary to any insurance or self-insurance maintained by District and include a waiver of subrogation.

d) All policies shall be written on an occurrence form.

3) **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

P. Assignment. The obligations of the Tribe pursuant to this Agreement shall not be assigned without the prior written consent of the District.

Q. Termination by District. District may, at any time, terminate this Agreement, or terminate a specific tribal monitor, providing the Tribe the District's basis for doing so. District shall compensate the Tribe for services performed through the date of termination. Written notice by District shall be sufficient to stop further performance of services by the Tribe. Notice shall be deemed given when received by the Tribe or no later than three (3) days after the day of mailing, whichever is sooner. In the case of request for termination due to a specific tribal monitor's conduct or performance, the Parties may conduct informal discussions to select another monitor for purposes of this Agreement. The Parties agree to discuss in good faith any concern on the part of District about the quality of performance and payment for same.

R. Compliance with Laws. The Tribe shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. The Tribe shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the work as indicated or specified. If Tribe's monitor observes that any of the work required by this Agreement is at variance with any such laws, ordinances, rules or regulations, the monitor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon the Tribe's receipt of a written termination notice from the District. If the Tribe performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation of which it is aware, the Tribe shall bear all costs arising therefrom.

S. Safety and Security: The Tribe and its monitor are responsible for maintaining safety in their performance of this Agreement. The Tribe shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when students are present.

T. Integration/Entire Agreement of Parties. This Agreement, in addition to any exhibits, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

U. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California, except to the extent an issue may be governed by federal law. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's main administrative offices are located.

Executed by:

Date: _____, 2018 Yocha Dehe Wintun Nation

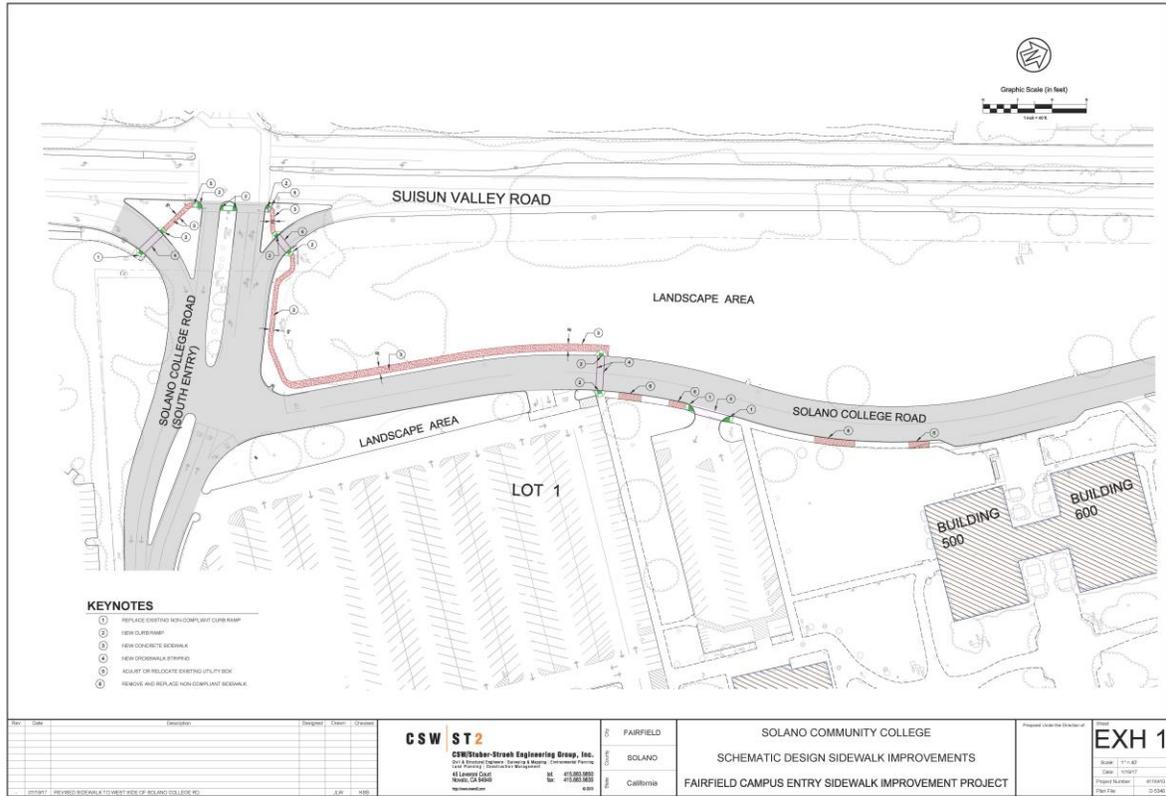
Leland Kinter
Chairman

Date: _____, 2018 Solano Community College District

Lucky Lofton
Executive Bonds Manager

ATTACHMENT I

Project Site Map Provided by Solano Community College District



Attachment II

YOCHA DEHE MONITORING OF GRADING AND GROUND DISTURBING ACTIVITIES

- I. **Project to be Monitored:** Monitoring shall encompass the area known as Fairfield Campus Entry Sidewalk Improvements 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.

- II. **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 and as reasonably approved by District. 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. District agrees to directly compensate Yocha Dehe for all of the actual work performed by the tribal monitors in accordance with this Agreement. The compensation rate shall be made directly from District to the Tribe in accordance with Section III, below. 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 G. and H. of this Agreement.

- III. **Compensation:** After NAHC determines the Tribe is the MLD, 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 shall provide evidence of the insurance required under this Agreement to District prior to commencing any work under this Agreement.

District 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 business days of submittal to assure timely tribal monitor compensation and to further assure that tribal monitoring will not be terminated for the Project.

Fee Schedule:

Native American Monitoring \$75.00 hourly rate (per monitor)

Tribal Historic Preservation Officer/
Cultural Resources Director \$200.00 (per hour)

(4 hour minimum)

Tribal Executives \$200.00 (per hour)
(4 hour minimum)

Cultural Resources Managers \$175.00 (per hour)
(4 hour minimum)

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

Administrative Fee 15% of Invoice

Yocha Dehe's monitors will bill for time spent for the reasonable travel to and from any Project site.

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.

- IV. **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.

After discovery of potentially significant cultural resources, the process set forth in the Agreement shall commence and discussions between the tribal monitors and Archaeologist will occur. 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 with the consent of the Archaeologist.

Where circumstances warrant, the District may be required 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 and the Parties will discuss the 50-50 sharing of such costs associated with the security. 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.