

RESOLUTION NO. 4822-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT WITH SHERWOOD VALLEY BAND OF POMO INDIANS FOR CULTURAL MONITORING SERVICES FOR THE RAW WATER LINE REPLACEMENT PROJECT, CITY PROJECT NO. WTR-00016

WHEREAS, the construction contract for the Raw Water Line Replacement Project was awarded to T&S Construction and the Construction Management Contract was awarded to SHN Consulting Engineers on February 12, 2024; and

WHEREAS, as part of the environmental evaluation the Sherwood Valley Band of Pomo Indians (SVBP) was invited via letter sent in March of 2022 to comment on the project, but did not do so in the allotted 30-day period; and

WHEREAS, the City Council adopted a Mitigated Negative Declaration for this Project on May 23, 2022; and

WHEREAS, the SVBP did send a letter in June of 2022 requesting that a tribal monitor be present during earth movement; and

WHEREAS, the City agreed to the request at that time; and

WHEREAS, due to permitting constraints the project is anticipated to be constructed over two (2) seasons (2024 and 2025); and

WHEREAS the current SVBP rate (Exhibit B) is \$130 per hour and \$195 overtime per hour plus vehicle mileage traveled at the current federal rates, and the estimated cost for the first construction season (2024) is \$47,000; and

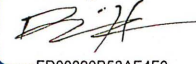
WHEREAS, funds in the amount of \$8,797,500 were awarded by the State Department of Water Resources Urban and Multi-benefit Drought Relief Grant of which sufficient funding remains that should cover the monitoring costs; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby authorize the City Manager to execute the agreement (Exhibit A) for tribal monitoring on the Raw Water Line Replacement Project.

The above and foregoing Resolution was introduced by Councilmember Peters, seconded by Councilmember Rafanan, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of July 2024, by the following vote:

AYES:	Councilmembers Albin-Smith, Peters, Rafanan, Vice Mayor Godeke, and Mayor Norvell.
NOES:	None.
ABSENT:	None.

ABSTAIN: None.
RECUSED: None.

DocuSigned by:

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7/9/2024

BERNIE NORVELL
Mayor

ATTEST:



Diana Sanchez
City Clerk

Monitor Agreement for the Raw Water Line Replacement Project

This Monitor Agreement for the City of Fort Bragg Raw Water Line Replacement Project ("Agreement") is made and entered into by and between the City of Fort Bragg, a municipal corporation located in the County of Mendocino, California ("City"); and the Sherwood Valley Band of Pomo Indians (SVBP), a federally recognized Indian tribe ("Tribe") (each, a "party", and collectively referred to as the "parties").

1. **Plans, Specs & Site Prep.** The Project Plans and Specifications include a plan sheet prepared by the project engineer which graphically depicts all construction activity areas.
2. **Notification.**
 - a. The City or designee (Project Contractor) shall provide notification of the date/time and location of intended construction activities to the SVBP Tribal Historic Preservation Officer (THPO) 7 days (or a shorter period as agreed to by both parties) before the start of any construction activities in areas that may impact archaeological sites/resources through disturbance of native soils. Additional tribal monitors may be required, for example, if the scope of the work changes due to inadvertent discoveries of cultural resources or simultaneous ground-disturbance activities on the project site that require multiple tribal monitors.
 - b. The THPO will notify the City or designee of the name and phone number of the tribal monitor(s) assigned to the project site at least 48 hours before the start of tribal monitoring services.
 - c. The City or designee (Project Contractor) shall notify the THPO and tribal monitor(s), if there will be any changes to the work schedule that impact the need for tribal monitoring with at least 24 hours' notice.
3. **Number and Location of Tribal Monitors.** Tribal monitoring services will be allowed whenever construction activities include ground disturbance of native soils. There may be one tribal monitor for every separate area of native ground disturbing activity that is simultaneously occurring at least thirty (30) meters apart. When determining if a monitor is necessary is that one monitor is allowed for every piece of operational ground disturbing equipment in an area that requires monitoring.
4. **Compensation.** The City will compensate the Sherwood Valley Band of Pomo Indians for tribal monitoring services provided by tribally selected monitors. Compensation shall be made from the City to the Sherwood Valley Band of Pomo Indians on a monthly basis in accordance with the following rates and procedures.
 - a. Invoices will be submitted by the Tribe on a monthly basis and shall be paid to the Tribe within thirty (30) days of submittal.
 - b. The fee schedule (Exhibit B) for the use of Sherwood Valley Band of Pomo Indians tribal monitors and staff is as follows:
 - Tribal Monitoring Services- \$ 130.00/hour (per monitor)

- Overtime (Hours worked in excess of 40 hours per week) - \$ 195.00/hour (per monitor).
- c. The Sherwood Valley Band of Pomo Indians shall be reimbursed for vehicle mileage costs of tribal monitors to and from the project site pursuant to the current federal rates.
- d. Tribal monitors will not be reimbursed for drive time to and from the site.

5. Responsibilities.

- a. The City will ensure that the tribal monitor and other tribal people are treated with respect and that tribal culture and customs are respected.
- b. Tribal monitor work hours will be recorded in the Lead Inspectors Daily Inspection Record (DIR).
- c. If a scheduled tribal monitor is not on site when the workday starts, the City or designee will promptly contact the SVBP THPO. This contact will be documented in the DIR which will contain the time and date the contact took place, what work was described to the THPO to occur that day, and the THPO response. The work shall proceed with monitoring by the Lead Inspector until such time as a replacement tribal monitor arrives.

6. Construction Discoveries. If during construction activities any archaeological cultural resources or features are encountered, both the Lead Inspector and the tribal monitors are empowered to stop construction activities within a 50-foot radius of the find. Work within this buffer shall temporarily cease until the City, in consultation with the tribal monitor, make a determination on (1) whether the find is an archaeological cultural resources; (2) whether the find is located within an intact context (i.e. not within disturbed fill soils), (3) whether the find is part of a site area that has been mitigated through data recovery, (4) whether the find is an isolated item, (5) whether the find is part of a larger previously unknown archaeological site, and (6) the best course of action to avoid or minimize impacts to the resources as applicable. If the City and the tribal monitor disagree about the nature of the find and/or any of items 1 through 6 above, the professional Construction Manager will e-mail a photo to the Principal Archaeologist at William Rich and Associates and THPO for additional input before construction in the buffer area may resume.

- a. If the find is determined to be both in an intact context, and meets the standard for designation as an archaeological site or is a portion of a known archaeological site, then the provisions of the Coastal Land Use and Development Code (CLUDC 17.50.030E), shall be followed.
- b. If the find is determined to be within an area mitigated through data recovery, it shall be expeditiously documented. Materials that are not collected by the archaeologist will be relocated onsite by Cultural Monitor.
- c. If the find is determined to be either from a clearly disturbed context (i.e. disturbed fill soils, back dirt piles) or the find is determined to be an isolated find that is clearly not associated with an archaeological site, the item shall be recorded as such and then reburied onsite in the designated cultural resource relocation area or other area as agreed upon in writing by the parties.

7. **Human Remains.** If human remains and associated items are encountered at any time during this undertaking all applicable state and federal laws including but not limited to, Health and Safety Code §7050.5, PRC 5097.94, and/or PRC 5097.98. Human remains will not be disturbed or removed from their original resting place unless removal is unavoidable and necessary. Procedures for the discovery of human remains and associated items are as follows.
 - a. The City or designee shall first contact the appropriate law enforcement agency (County Coroner) and immediately notify the Tribe. If the remains constitute a crime scene, all applicable laws and procedures apply.
 - b. If the discovery is not a crime scene, all ground disturbing activities shall cease at the discovery location including a buffer of 50 feet or more, in consultation with the Tribal monitor and the THPO. No construction activities will take place within the buffer until an archaeological investigation has been completed.
 - c. Out of respect for the remains, all work related to the remains shall be conducted out of the public eye, unless otherwise required by law.
 - d. If the Coroner determines that the remains are of, or thought to be of Native American origin, they are required to contact the Native American Heritage Commission pursuant to PRC 5097.98.
 - e. The Native American Heritage Commission (NAHC) will then immediately designate a person or persons it believes is the Most Likely Descendent (MLD). The MLD shall within 48 hours of being notified recommend means for treating and disposing with appropriate dignity, the human remains and associated items.
8. **Other.**
 - a. Nothing in this Agreement shall excuse the parties from its obligation under any applicable law or regulation. In the event any portion of this Agreement is deemed contradictory to law or regulation, only that contradictory portion becomes void and the remainder of agreement remains in full force and effect. The parties should consult to resolve that contradictory portion with the intent to reform that portion to make it compliant with the applicable law or regulation.
 - b. The City shall ensure that all contractors and sub-contractors abide by the provisions of this Agreement.
 - c. Any changes to this Agreement must be made in writing and signed by the Tribal Chairman and the City. The Construction Contractor shall be notified of any changes.
 - d. This Agreement may be signed in two or more counterparts and will be effective when all parties and signatories have affixed their signatures to two or more of the counterparts and said counterparts have been delivered to all parties, at which time the counterparts together will be deemed one original document. This Agreement is executed as of the last date shown below.
9. **No Waiver of Sovereign Immunity.** SVBP is a Federally recognized Tribe. Nothing contained herein shall serve as a waiver of SVBP's sovereign immunity. Contractor does not waive its sovereign immunity with respect to this agreement or any rights or privileges granted by tribal, state, or Federal law.

10. **Time is of the Essence.** As time is of the essence in a construction project of this magnitude given the short construction season, the Tribe shall participate in a good faith effort to expeditiously engage in consultation.
11. **Confidentiality.** If archaeologically sensitive sites are discovered during the construction process, the location and content of discovered sites shall be kept strictly confidential. It is understood by the parties that, unless otherwise required by law, the site of any location of or relocation of Native American cultural resources shall remain confidential pursuant to the Non-Disclosure and Confidentiality Agreement.
12. **Authority to Execute.** Each of the persons executing this Agreement expressly warrants that he or she is authorized to do so on behalf of the entity for whom he or she is executing this Agreement. Each party to this Agreement represents and warrants that this Agreement is executed voluntarily, with full knowledge of its significance.

CITY OF FORT BRAGG

By: Isaac Whippy, City Manager

Date

*SHERWOOD VALLEY BAND OF POMO
INDIANS*

By: Hazel Ramirez, Tribal Chairman

Date

Contact Information

Sherwood Valley Band of Pomo Indians of Pomo

- Tribal Chairman, Hazel Ramirez: (707) 459-9690 (office), SVRchairman@yahoo.com
- THPO, Valerie Stanley: 459-9690 (office), svrthpo@sherwoodband.com
- Native American Monitor, Vernon Wilson, (707) 354-0075 (cell)

City of Fort Bragg

- Assistant City Engineer (Project Manager), (707) 961-2823 ext. 134, doconnor@fortbragg.com
- City Manager, Isaac Whippy: (707) 961-2823; iwhippy@fortbragg.com

T & S Construction, Inc., Construction Contractor

- President, Arthur T Spinella, (916) 381-3052 (office); art@916pipe.com

Tribal Monitoring Services

At a dually called Tribal Council meeting held Thursday, August 4, 2022 with a quorum present. The Sherwood Valley Tribal Council approved an increase for Tribal Monitoring services.

Effective from today forward:

Tribal Monitoring Services provided by the Tribe will be:

\$130.00 per hour, per monitor.

Mileage will be applied at current Federal government rate.

Overtime shall be paid at time and a half in excess of 40hours per week.

Weekends, shall be treated as regular time, unless, weekend qualifies as overtime.

Holidays shall be paid at a double rate.