

ATTACHMENT 15

Cultural Preservation Agreement



**Big Valley Band of Pomo Indians
And**

Contact Information

Tribe

Big Valley Band of Pomo Indians
2726 Mission Rancheria Road
Lakeport, CA. 95453
Office: (707) 263-3924

Lead Agency

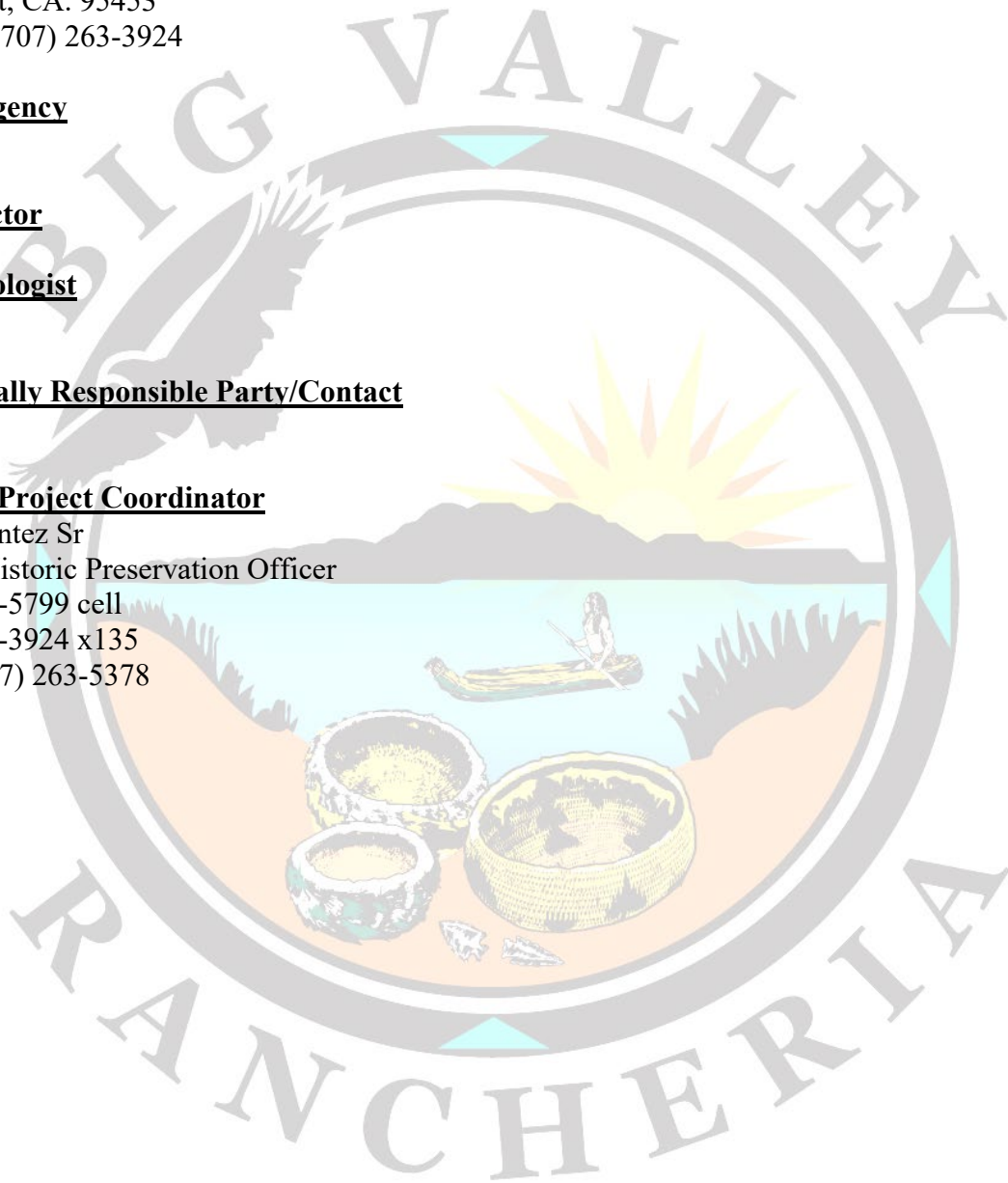
Contractor

Archaeologist

Financially Responsible Party/Contact

BVBPI Project Coordinator

Ron Montez Sr
Tribal Historic Preservation Officer
541-570-5799 cell
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Big Valley Band of Pomo Indians And

I. PARTIES

The PARTIES to this Cultural Preservation Agreement, hereafter referred to as “Agreement” are the Big Valley Band of Pomo Indians, a sovereign government and federally recognized Indian Tribe hereafter referred to as “Tribe” or “BVBPI”; the Financially Responsible Party hereafter referred to as the “FRP”.

II. PROJECT

This Agreement concerns a specific project site within the indigenous and traditional ancestral lands of the Tribe and located at _____ in _____, California. The project is assigned BVBPI Project Number: **2022-xx-xx**, hereafter referred to as “Project”.

III. PURPOSE

The purpose of this Agreement is to formalize protocol and procedures for the protection and treatment of, including but not limited to, Native American human remains, funerary objects, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, for known sites and in the event that any are discovered in conjunction with the Project’s development and use, including archaeological studies, excavations, geotechnical investigations, grading, and all ground-disturbing activity. The Agreement also formalizes procedures for Big Valley Band of Pomo Indians Tribal Cultural Monitoring Services to be conducted by one or more assigned Tribal Cultural Monitors, during archaeological studies, grading and other ground disturbing activities for the Project (See Attachments A and B). This Agreement is effective as of the last date listed in the Authority to Execute Section.

IV. CULTURAL AFFILIATION

The PARTIES agree that the Project area consists of land that has been traced to and traditionally occupied by the Tribe. The Big Valley Band of Pomo Indians Business Committee has designated its Tribal Historic Preservation Officer (“THPO”) to act on the Tribe’s behalf with respect to the provisions of this Agreement. Any human remains that are found as a result of the activities of this Project shall be treated in accordance with Section VII of the Agreement and any other applicable federal or state laws. Any other cultural resources shall be treated in accordance with Section IX of this Agreement and any other applicable federal or state laws.

V. COORDINATION WITH COUNTY CORONER

The site archaeologist and/or Contractor shall immediately contact the Coroner in the event that any human remains are discovered at the Project site. The Coroner shall ensure that notification is provided to the Native American Heritage Commission (“NAHC”) as required by California Health & Safety Code Section 7050.5 and Public Resources Code Section 5097.98(a).

VI. MOST LIKELY DESCENDANT (MLD)

Upon notification to the NAHC of the discovery of human remains at the Project site, the PARTIES understand that the determination of Most Likely Descendant (“MLD”) under California Public Resources Code Section 5097.98 will be made by the NAHC.

VII. TREATMENT OF NATIVE AMERICAN HUMAN REMAINS

In the event that Native American human remains are found on the property at any time following provisions shall apply.

Ground disturbing activities within 75 feet of the discovery shall immediately cease and the remains shall be secured. The Tribal Cultural Monitor shall contact the THPO who as the designated MLD will schedule a site visit. The MLD, pursuant to California Public Resources Code Section 5097.98(a), shall be allowed to: (1) inspect the site of the discovery; and, (2) make determinations as to how the human remains and funerary objects should be treated and re-interred with appropriate dignity. The recommendations will be signed with the THPO. The MLD shall complete inspection and make their written recommendations to the proper agencies within forty-eight (48) hours of being granted access to the site. The PARTIES agree to discuss in good faith what constitutes “appropriate dignity”, as the term is used in the applicable statutes and in the Tribe’s custom and traditions. The Tribe shall have the final determination as to the disposition and treatment of human remains and funerary objects.

The PARTIES acknowledge that the Tribe’s highest priority is to avoid disturbing human remains through consultation and appropriate avoidance and mitigation measures. It is understood by the PARTIES that avoidance of the human remains and funerary objects may require changes to the Project plans and activities.

When there is an inadvertent discovery of human remains, the PARTIES acknowledge the Tribe’s cultural practice and desire for the human remains to be left “in situ” and without further and future disturbance. A good faith effort will be made by the PARTIES to accommodate the Tribe’s cultural practices.

No pictures may be taken of the remains, except by written authorization from the Coroner and the Tribe. The archaeologist may draw the remains for cataloging purposes, however, no photographs or electronic means of recording the human remains shall be permitted.

In the case of inadvertent discoveries of human remains the PARTIES agree the reburial of the remains and their associated funerary objects will be in an area as close as possible to the location of discovery or if associated midden soil has been moved, to the original location. The human remains should not be subject to any future disturbances and the PARTIES will take appropriate measures to record this information with the appropriate authorities and keep it confidential. Reburial of human remains shall be accomplished in compliance with the California Public Resources Code Section 5097.98. The exact reburial location will be determined after consultation with the THPO and the Tribal Project Coordinator. The exact location will be recorded in a manner to protect it and to notify future users of its location, in accordance with Section VIII. The Lead Agency or Financially Responsible Party shall be responsible for reburial costs for each discovery as outlined in the burial agreement (See Attachment C).

The term “human remains” encompasses more than human bones. In ancient times and historic times, Tribal traditions included, but were not limited to, the burial of associated funerary objects with the deceased, and the ceremonial burning of Native American human remains, funerary objects, grave goods and animals. Ashes and other remnants of these burning ceremonies, as well as, funerary objects associated with or buried with the Native American remains are to be treated in the same manner as bones or bone fragments.

The Tribe requests all human remains and associated funerary objects remain at the site until arrangements are made for a location to rebury. The contractor shall provide an appropriate, locked and secure container in a secured location on the site to store the human remains until final reburial plans have been made by the Tribe’s MLD. If this is not possible, the MLD shall determine the appropriate storage location, which may include a designated Tribal representative taking possession of the remains.

VIII. NON-DISCLOSURE OF LOCATION OF REBURIALS

It is understood by the PARTIES that, 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, California Government Code Section 6250 et seq., The Coroner shall withhold public disclosure of information related to such reburial pursuant to the specific exemption set forth in California Government Code Sections 6254(r) and 6254.5(e).

IX. TREATMENT OF CULTURAL RESOURCES

Should any archaeological or paleontological, or cultural materials be discovered during the project, all activity shall be halted in the vicinity of the find(s), and a qualified archaeologist retained to evaluate the find(s) and recommend mitigation procedures, if necessary, subject to the approval of the Lead Agency.

The ceremonial and cultural items left by our ancestors reflect the religious beliefs, rituals, customs, and practices of the Tribe. If items are discovered in a particular

location, this location is part of a sacred, religious or cultural landscape where these items remain today. The items were left in place for a specific reason and purpose.

The Landowner agrees to consult with the Tribe on the curation or disposition of all cultural items, including ceremonial items, which may be found at the property. The Landowner will waive any and all claims to ownership of Tribal Ceremonial and cultural items, including archaeological items which may be found on the site in favor of the Tribe.

If the Landowner curates the materials in an institution meeting Federal and State guidelines, the location must be within the Tribe's indigenous ancestral lands.

If temporary possession of cultural items by an entity or individual other than the Tribe is necessary, said entity or individual shall not possess those items longer than is reasonably necessary for cataloging. Possession shall not exceed 45 calendar days. The Tribe will receive two copies of the archaeological report from the Landowner or Lead Agency and be given an opportunity to provide comments for inclusion. It is especially important that non-human cultural resources and artifacts be left "in situ" to the greatest degree possible.

If the Tribal Project Coordinator determines the resources are in danger of being damaged or stolen if left "in situ", the THPO will work with the Landowner/Lead Agency to determine and appropriate location to rebury them for their preservation. If there is a request for the resources to be studied, their treatment and disposition must be defined in a Research Design and included in an addendum to this Agreement and agreed to by the Tribe. Surface and subsurface artifacts of significance are to be mapped by a licensed archaeologist during such evaluation or study.

Native plants/trees at the Project location that may have been used to make sacred or ceremonial items, such as baskets, and for other religious rituals or healing and therefore they are considered a cultural resource to the Tribe. Many continue to thrive to this day despite outer uses. The PARTIES and the Tribe agree to develop a plan to protect, preserve and restore these plants to the greatest extent possible for the use of current and future cultural practices. The PARTIES agree to discuss gathering, harvesting and, if necessary, disposal of the plant/trees materials for Tribal use today and in the future.

The PARTIES also agree that the treatment procedures for any discovery, planned or inadvertent, and the disposition of any cultural resources shall be determined by the THPO. The THPO shall make these cultural preservation procedures available as guidance in complying with the provisions of this Agreement prior to the implementation of any Project activities. The Lead Agency, Landowner or its authorized representative(s) or agent(s) agree to consult with and immediately advise the THPO of any discovery of cultural resource associated with this Project.

X. UNRECORDED SIGNIFICANT SITES IMPACTED BY PROJECT

The PARTIES agree that sites or discoveries not identified in the original environmental review process may be subject to further archaeological and cultural significance evaluation as determined by the Tribe. Further evaluation shall include a determination of additional mitigation measures to treat sites in a culturally appropriate manner consistent with Tribal tradition and customs, this Agreement and mitigation of impacts to cultural resources consistent with requirements set forth in the California Environmental Quality Act, National Environmental Protection Act and the National Historic Preservation Act.

XI. TRIBAL CULTURAL MONITORS

Attachment B of this Agreement is a Big Valley Band of Pomo Indians Tribal Cultural Monitor Contract (“Monitoring Contract”) that specifies the authority, duties, responsibilities and compensation of Tribal Cultural Monitors. The Monitoring Contract is considered a separate contract from the Cultural Preservation Agreement.

XII. LEGAL COMPLIANCE

Nothing in this Agreement shall excuse the PARTIES from their obligations under any applicable state or federal laws or regulations, including but not limited to the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.; the California Civil Code Section 815.3; the California Government Code Sections 6254, 65040.2, 65092, 65351, 65352, 65560, 65352.3, 65352.4, 65562.5; the National Historic Preservation Act, 16 U.S.C. Sections 470 et seq.; National Environmental Policy Act, 42 U.S.C. Sections 4321 et seq.; California Public Resources Code Sections 5097.91--5097.99, 5097.993-5097.994; California Health and Safety Code Sections 7050.5-7054; Penal Code Section 622.5; Native American Graves Protection and Repatriation Act, 25 U.S.C. Sections 3001 et seq.; the California Native American Graves Protection and Repatriation Act of 2001, California Health and Safety Code Sections 8010 et seq.; Archaeological Resources Protection Act, 16 U.S.C. Section 470aa-mm; American Indian Religious Freedom Act, 42 U.S.C. Section 1996, et seq.; Religious Freedom Restoration Act 42 U.S.C. Section 2000; Bald and Golden Eagle Protection Act, 16 U.S.C. Section 668; and the First Amendment to the United States Constitution. Nothing in this Agreement is intended to make any of the above-referenced laws applicable where such laws would otherwise be inapplicable.

XIII. SEVERABILITY

Should any part of this Agreement be found by any court or agency of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

XIV. LIMITATION ON SCOPE

This Agreement is unique to this Project only and does not set a precedent for other Projects.

AUTHORITY TO EXECUTE

Each of the persons executing the Agreement expressly warrants that he or she is authorized to do so. This completed document must be dated and signed prior to work commencing.

Business Committee:

Print Name

Signature

Date

Financially Responsible Party:

Print Name

Signature

Date

Tribal Historic Preservation Officer:

Ron Montez Sr

Print Name

Signature

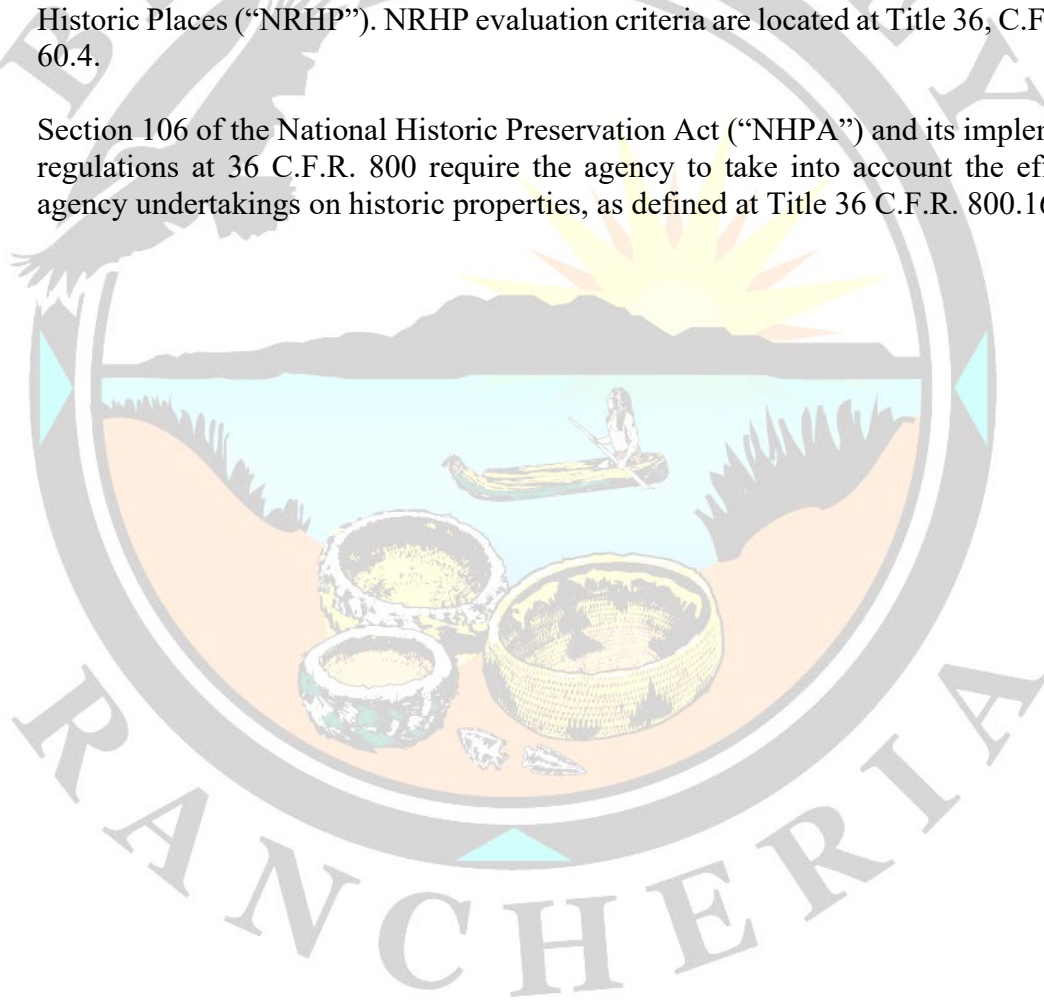
Date

Attachment A

Foundation for Tribal Cultural Monitoring

Tribal Cultural Monitors play an essential role during activities such as archaeological testing, data recovery, excavation and construction in culturally sensitive areas because they enable tribes to have representation and provide input during activities that may have the potential to disturb, damage or destroy sensitive tribal cultural resources. The purpose of this Project is to acquire sufficient knowledge of known cultural resources to determine their depth, boundaries, conditions, nature and significance that will be affected by the Project activities. The site and/or a traditional cultural landscape will be defined, tested and evaluated for eligibility and inclusion in the National Register of Historic Places (“NRHP”). NRHP evaluation criteria are located at Title 36, C.F.R. Part 60.4.

Section 106 of the National Historic Preservation Act (“NHPA”) and its implementing regulations at 36 C.F.R. 800 require the agency to take into account the effects of agency undertakings on historic properties, as defined at Title 36 C.F.R. 800.16(y).



Attachment B

Big Valley Band of Pomo Indians Tribal Cultural Monitoring Contract

BVBPI Project Number: 2022-xx-xx Project Name: xxxxx

1. PARTIES

The PARTIES to the Big Valley Band of Pomo Indians Tribal Cultural Monitoring Contract hereafter referred to as “Monitoring Contract” are the Big Valley Band of Pomo Indians, a sovereign government and federally recognized Indian Tribe hereafter referred to as “Tribe” or “BVBPI”; the Agency, hereafter referred to as the “Lead Agency”; the Financially Responsible Party hereafter referred to as “FRP”; the landowner or Authorized Representative hereafter referred to as the “Landowner”; contractor hereafter referred to as the “Contractor”.

2. SPECIFICATIONS

The PARTIES agree to preserve and protect sensitive and sacred cultural resources. Consultation between the PARTIES will occur well before the Project is commenced. The conditions for Big Valley Band of Pomo Indians Tribal Cultural Monitoring at the site, to be conducted by one or more assigned Tribal Cultural Monitors (hereafter “Monitor” or “Monitors”), and the specific Project activities that will be monitored prior to construction commencing are described below.

The Big Valley Band of Pomo Indians Tribal Historic Preservation Officer (“THPO”) or its designee, is assigned as the Tribe’s “Project Coordinator.” The Project Coordinator shall serve as the Tribe’s contact person, assign one or more Monitors as necessitated by the scope of the Project, and be responsible for execution of the Cultural Preservation Agreement. The Project Coordinator for this Project is listed on the signature page.

Each Monitor will work as a “contract employee” of the Tribe. Compensation for Monitoring services shall be the responsibility of the Financially Responsible Party. Each Monitor shall be present during archaeological testing, cultural resource studies and surveys, geological/geotechnical testing, grading and all other ground-disturbing activities associated with the Project that would potentially affect cultural resources. This includes soils not previously monitored and those soils relocated or disturbed, but that may still contain cultural resources or human remains. Given the nature and sensitivity of the Project area, most soil disturbance and excavation will be monitored by the Tribe.

In the event Native American cultural artifacts are found during these activities, each Monitor shall be empowered to stop and relocate excavation activities pending further investigation by an archaeologist or the Coroner and the Tribe’s MLD. Each Monitor shall be further empowered to recommend stoppage or relocate excavation activities, for short periods of time, to conduct further controlled excavation of inadvertently discovered cultural items for evaluation by an archaeologist.

If Native America human remains are found, coordination of the treatment of Native American remains and funerary objects and any cultural, archaeological and ceremonial items will be conducted in accordance with Section V through X of the Cultural Preservation Agreement.

The Lead Agency/Landowner shall discuss all modification to the Project's activities requiring soil disturbance with the Monitor, or Monitors, prior to the commencement of the work to clarify mitigation measures and monitoring activities. The Project Coordinator and/or the Tribe's designated representatives shall be invited to participate in this discussion. If necessary, a written amendment to the Cultural Preservation Agreement will be prepared and agreed to by the PARTIES.

If necessary, a qualified archaeologist may be required to be present during grading activities to identify and/or ascertain the significance of any subsurface cultural resources or to aid in the avoidance of sensitive areas. The PARTIES agree that the Tribe may select the archaeologist to ensure the archaeologist is familiar with the Tribe's indigenous lands.

The Tribe recognizes that dangerous working conditions can exist at a work site, particularly during grading and excavation operations. The Monitors will review safety procedures with the site supervisor and will be instructed on applicable daily safety procedures as required by the site supervisor and, if necessary, attend a pre-construction safety training.

3. MONITORED PROJECTS

The PARTIES agree the Project site may disturb significant known and unknown cultural resources and possibly a "cultural landscape" of importance to the Tribe. All soil disturbances within the Project's scope of work and the Area of Potential Effect ("APE") as determined through early consultation will, therefore, be monitored to protect and preserve these resources unless otherwise specified in an attached document.

A notice of the work schedule for each Monitor shall be provided by the Lead Agency, Contractor or its agent to the Project Coordinator as early as possible or a minimum of ten (10) working days prior to the specified work commencing.

4. COMPENSATION

Each Monitor, including Senior Monitors, identified by the Project Coordinator will work as a "contract employee" of the Tribe. The Project Coordinator shall have the opportunity to determine the number of Monitors necessary for the Project before the start of the Project and execution of the Agreement. The Financially Responsible Party will reimburse the Tribe for its expenses in providing a Monitor(s) for all soil disturbing or excavation activities of the Project and shall be responsible for ensuring the protection of cultural resources and coordinating the activities necessary to achieve this responsibility.

The Lead Agency or Landowner shall reimburse the Tribe to compensate each Monitor at a rate no less than \$_____ per hour plus mileage at a rate of \$_____ cents per mile or the current per mile rate established by the Federal Government, from the EPA Building at 1490 Soda Bay Road, Lakeport, CA 95453. Senior Monitors will be compensated at a base rate of no less than \$_____ per hour. A day charge (eight hours) will be invoiced to the Financially Responsible Party for unannounced work stoppages for each Monitor.

The hourly base rate will not be applicable to travel time to and from the Project site. If weekend work is required the rate is 150% of the base rate. If work is required between the hours of 7:00 PM to 7:00 AM or on a Federal or State holiday, the hourly rate is 200% of the base rate. These rates are commensurate with industry standards for pay during nonstandard times.

The PARTIES agree that the Tribe will invoice the signatory Financially Responsible Party. Each Monitor must send copies of daily Monitoring logs (See Attachment D) to the THPO with his or her invoice. Copies of these documents will be forwarded to the Financially Responsible Party and the Project Coordinator along with the THPO invoice forms.

The Financially Responsible Party agrees to remit payment on each THPO invoice in full directly to the THPO within thirty (30) days of receipt of the THPO's invoice or be charged an additional late fee of 5% of the total invoice amount. After sixty (60) days the interest rate will be 10% of the unpaid balance. The Financially Responsible Party agrees to pay all costs associated with collection of the fee(s), including, if necessary, attorney fees.

5. INSURANCE

The THPO will provide to the Financially Responsible Party, upon request, a copy of the certificate of insurance provided by the Tribe for each Monitor. The insurance includes workman's compensation, liability, use of private vehicle and errors and omissions. The Monitors are required to have available for review copies of the type and limits of the coverage provided by the Tribe.

Financially Responsible Party:

Name

Signature

Date

Mailing Address

City, State, Zip

Telephone

E-mail

Fax

Tribal Historic Preservation Officer

Ron Montez Sr

Phone: 707-263-3924 x135/cell 541-570-5799

Signature

Date

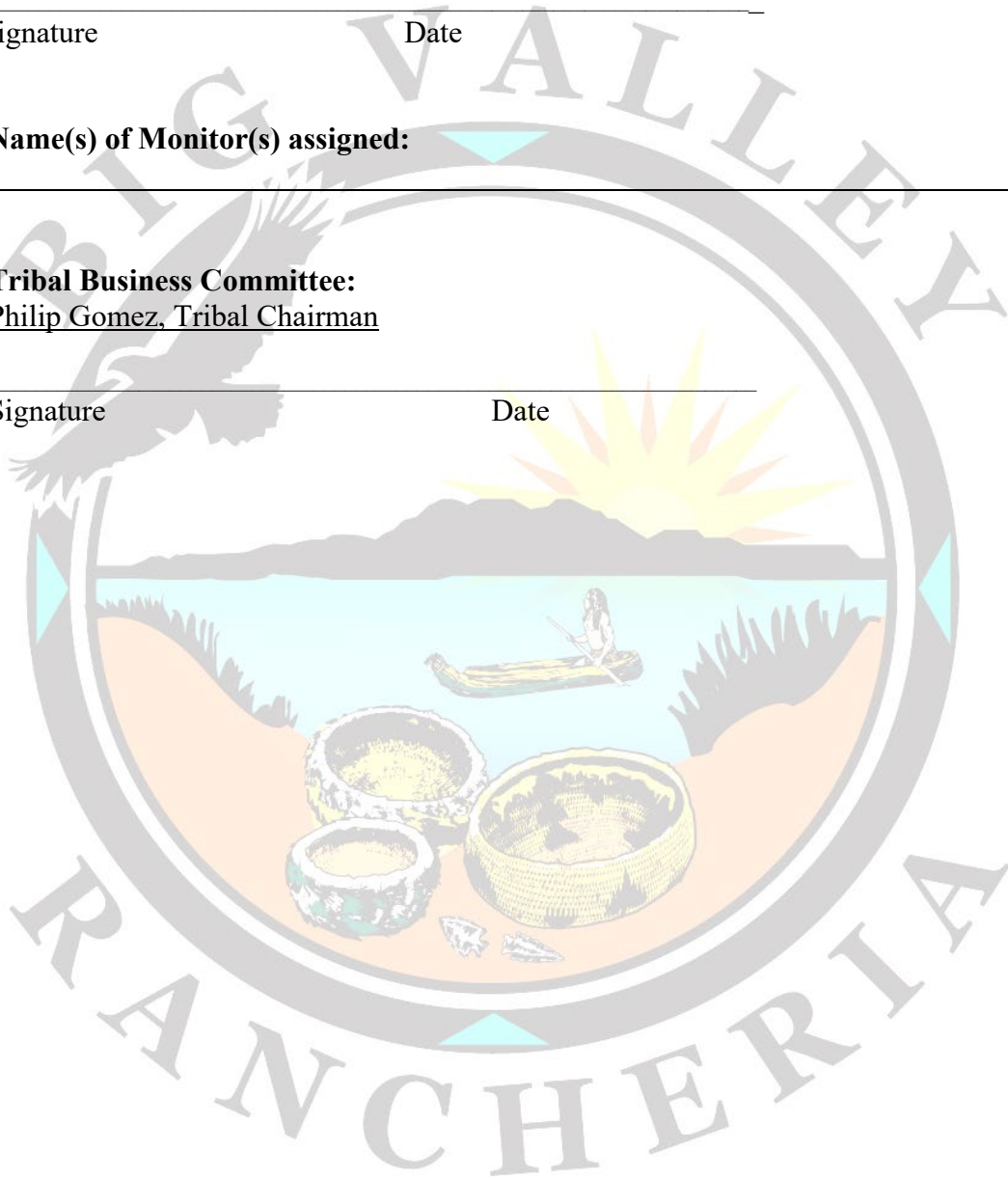
Name(s) of Monitor(s) assigned:

Tribal Business Committee:

Philip Gomez, Tribal Chairman

Signature

Date



Attachment C

Reburial Agreement
BVBPI Project Number: **2022-xx-xx**
Project Name

The Cultural Preservation Agreement specifies the procedures for the dignified handling of Native American human remains and associated funerary objects, if they are unearthed during archaeological studies, geotechnical investigations, excavation, grading, construction, or any other ground disturbing activity. The following procedures and agreements are meant to guide and expedite the reburial of our ancestors.

1. The reburial will take place in the location determined through consultation between the PARTIES as specified in Section VII and VIII of the Cultural Preservation Agreement. (If necessary, the Lead Agency is responsible for securing permission from the Landowner after consultation with the Tribe).
2. The reburial is a private Tribal function, not open to the public.
3. The Lead Agency/Financially Responsible Party will pay the Tribe to dig the grave by hand and cover the grave at a rate of \$_____ per hour or be responsible to have the grave dug by hand and covered according to the MLD's specifications within the timeframe established by the MLD.
4. The Financially Responsible Party will compensate Tribal Elder(s) to be present at the re-internment ceremony. They will be reimbursed for mileage (calculated based on the mileage distance from the Tribal Office to the burial location and return) and a \$_____ per hour reburial fee, (minimum of 4 hours).
5. The MLD will be compensated for their services at the rate of \$_____ per hour, up to a maximum of 8 hours.
6. All PARTIES will keep the location of the reburial confidential, in accordance with public laws.

The Financially Responsible Party initials: _____

Attachment D

**Big Valley Band of Pomo Indians
Tribal Monitor Daily Record Form**

DATE: _____

Monitor Name _____

Name of Project _____

Contractor _____

Location _____

Arrival Time _____ **Departure** _____ **Mileage** _____

Archeologist on site _____

Photos taken? _____ **GPS coordinates** _____

Reason for Monitoring

Evaluation/Testing Presence/Absence Soil Excavation/Disturbance

Type of excavation

Trench Pit Auger

Size of excavation

Depth _____ Width _____ Length _____

Excavation Details

Description and scope of work for that day (attach map if possible)

Soil description/type of area monitored

Description of found cultural resources and disposition

Recommendations and agreements suggested for following day

Monitor Signature

Project Coordinator Signature

USE SITE MAP ON BACK OF PAGE TO IDENTIFY LOCATION OF RESOURCES FOUND