

Native American Monitoring and Consulting Agreement

216th Street Trunk Sewer Replacement Project, Project No. 8501-110

This Native American Monitoring and Consulting Agreement (“Agreement”) is made and entered into between Kizh Nation Resources Management on behalf of the Gabrieleno Band of Mission Indians – Kizh Nation (“KNRM” or “Tribe”) and the County Sanitation District No. 8 of Los Angeles County (“Sanitation Districts” or “Lead Agency”) for the project commonly known and referred to as the 216th Street Trunk Sewer Replacement Project, Phase 2, Project No. 8501-110 (the “Project”) located in the City of Carson (the “Project Site”). KNRM and the Sanitation Districts are sometimes referred to collectively as the “Parties.”

RECITALS

The Sanitation Districts, working with the State Water Resources Control Board, have reviewed, approved and intend to proceed with the Project. In accordance with the requirements of the California Environmental Quality Act (“CEQA”) the Project was reviewed and found to be exempt pursuant to California Public Resources Code Section 21080(b)(4). A copy of the CEQA determination for the project is attached to this Agreement as **Attachment A**. A Notice of Exemption for the Project was filed with the Los Angeles County Clerk on October 28, 2020.

The Project, while not subject to CEQA review, was reviewed pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C Sections 306101 *et. seq.*) (the “NHPA”). In compliance with the NHPA, the California State Water Board initiated consultation with the California State Historic Preservation Officer on September 9, 2020 (the “Consultation”). As a result of the Consultation, the Sanitation Districts agreed to monitoring of the Project during all ground-disturbing phases. ;

KNRM has agreed to monitor the Project in accordance with the terms and provisions of this Agreement and the information included in **Attachment B** to this Agreement.

NOW THEREFORE, the Parties agree as follows:

Section 1.0 Scope of work

- 1.1 This Agreement pertains only to Native American monitoring performed for the Project as described in Attachment A. Any additional locations or monitoring activities outside the scope of the Project as described in Attachment A must be expressly agreed to in writing, signed by the Parties.
- 1.2 The Native American monitor will be physically present on the Project to survey and identify any “Tribal Cultural Resources” (“TCR”), as that term is defined in California Public Resources Code Section 21074, that may be uncovered during the ground-disturbing activities for the Project. The monitor’s duties shall include:

- a) Monitor all ground disturbing activity including, but not limited to, grading, rough grading, precise grading, mass grading, grubbing/clearing, weed abatement, trenching and all excavation, on previously disturbed and undisturbed ground.
 - b) Review, analyze, evaluate, and interpret various reports, drawings, and maps to understand the Project construction activities related to ground disturbance and help identify areas with higher potential to contain Tribal Cultural Resource artifacts or features.
 - c) Recognize TCRs, which may include, but not be limited to, Native American artifacts, human remains, burial/grave goods, midden deposits, as well as places of significance such as village sites, trade routes, ceremonial locations.
 - d) Work with the Project archaeologist to identify appropriate treatment for inadvertently discovered TCRs, particularly human remains and all associated burial/grave goods, to ensure they are treated with culturally appropriate dignity and respect.
 - e) Temporarily redirect construction activity within 25 feet of the location of a discovered TCR.
 - f) Attend and participate in Project-related pre-construction trainings, meetings and conferences.
 - g) Create and maintain a written daily log or report detailing the date and time on site, a description of construction activities observed, and documentation of any TCR findings or potential findings. A copy of the daily log will be shared with the Sanitation Districts' Project Construction Manager and the daily log will be signed by the Monitor/KNRM and the Construction Manager. A copy of the daily log will be submitted, along with monthly invoices as outlined in Section 3.5, below.
 - h) When necessary, contact the Tribal Chairperson and/or the Tribal Archaeologist about concerns and/or for opinions regarding a discovered TCR or potential TCR.
- 1.3 In order to execute the monitoring services contemplated herein the Monitor shall have the right to:
- a) Be onsite during all ground disturbing Project activities;
 - b) Temporarily redirect construction activity within 25 feet of a TCR finding to create a buffer zone for KNRM representatives and the Project Archaeologist to evaluate/analyze/protect/retrieve the discovered TCR and/or to investigate the location for the presence the additional TCRs; and
 - c) Attend daily scheduled safety meetings with the Project's construction manager (i.e., the individual designated to oversee all construction activities for the Project, including but not limited to, coordinating Project consultants) to discuss the day's work process as requested.

- 1.4 KNRM Monitors are authorized and have obtained all necessary certifications and training as required and directed by the Tribe.
- 1.5 The Project construction timeline is approximately 125 days. There will be days during construction where monitoring is not needed (due to a lack of ground disturbing activities) and therefore the Sanitation Districts estimate approximately 125 days of monitoring are required for the Project. If additional monitoring days are necessary due to changed circumstances such as incidental finds, changes in the Project's construction schedule or changes in the scope of work for the Project, the Parties shall meet, assess the remaining Project schedule and mutually agree on the number of additional days needed to complete monitoring activities for the Project. Changes in the number of monitoring days or the construction schedule shall be documented in a written change order signed by authorized representatives of both the Tribe and the Sanitation Districts.
- 1.6 The Native American monitor shall, at their cost, adhere to all Local, State, and Federal safety rules governing their work. If the Project's construction manager determines that there are un-safe practices by the Native American monitor, the Project's construction manager will request the Tribe's conformance with best safety practices. Any failure to comply with the best safety practices as required by the Project's construction manager shall result in exclusion of the Native American monitor from the Project site.
- 1.7 The Native American monitor will make every effort to adhere to the Project construction manager's project schedule, provided the Lead Agency provides KNRM with adequate notice consistent with Section 3 of this Agreement. No variations in the schedule or work hours will be made for any un-timely attendance by the Native American monitor. This paragraph shall not be construed to limit, alter or otherwise inhibit the monitor's rights and duties as set forth in this Agreement.

Section 2.0 Response to Finds

- 2.1 If TCR are discovered or uncovered during Project construction, KNRM will take immediate possession of and retain it/them in the form and/or manner the Tribe deems appropriate, for educational and/or tribal purposes.
- 2.2 If suspected human remains and/or grave goods are discovered or recognized at during construction of the Project, the terms, provisions and requirements of Public Resources Code Section 5097.98, and Health & Safety Code Section 7050.5 will be followed. Additionally, the Native American monitor shall immediately contact the Tribe's Project Coordinator.

Upon designation of the Most Likely Descendent ("MLD") by the California Native American Heritage Commission ("NAHC"), the MLD shall be granted access to examine the remains. Upon examination of the find(s), the MLD shall make a recommendations for the treatment and/or reburial of the find(s) within 48 hours of its examination. If the MLD fails to make a recommendation within 48 hours of being granted access to the remains, the Sanitation Districts may rebury the remains in a Project location that will not besubject to

further excavation or disturbance. If the recommendation from the MLD is to reinter the human remains or associated burial goods, the Tribe will consult with the MLD, the Sanitation Districts, and the landowner to identify a feasible location in which to reinter the remains with appropriate dignity. The location of the re-burial shall be in an area not subject to further excavation or disturbance and the location will not be physically marked.

- 2.3 The Lead Agency expressly acknowledges the obligations required of it under governing State and Federal laws, including but not limited to, the California Public Resources Code, California Health & Safety Code, California Government Code, and California Code of Regulations, for the inadvertent discovery and subsequent treatment of human remains on the Project Site.
- 2.4 In the event of a find of human remains and/or grave goods, the immediate area surrounding the discovery, including an appropriate buffer area of at least 50 feet, shall be protected from further disturbance with the establishment of a staked and signed Environmentally Sensitive Area (ESA). The ESA shall remain undisturbed until recommendations are made by the MLD within the 48-hour period. Grading and excavation activities may continue outside of the ESA. The ESA shall remain in place until all steps outlined above in Section 2.2 have been completed and the Sanitation Districts have authorized removal of the ESA.

Section 3.0 Compensation

- 3.1 The Lead Agency agrees to pay KNRM for the above described monitoring services for the Project at the following rates:
 - a. the standard, day-time rate per monitor is seventy-five dollars (\$75.00) per hour for an eight (8) hour day ("Standard Workday").
 - b. Monitoring exceeding 8 hours per day, or 40 hours per week, will be billed at a rate of \$ 112.50 per hour. Weekend pay will also be billed at a rate of \$112.50 per hour. A night differential rate of \$85.00 per hour will be applied for monitoring performed between the hours of 6 p.m. and 6 a.m.
 - c. The rate for project management services, including consultant communication, monitor coordination, and project documentation, is one hundred and thirty dollars (\$130) per hour;
 - d. The rate for project director services, including consultation, pre-construction meetings, and all compliance issues, is two hundred dollars (\$200) per hour;
 - e. In the event TCRs are discovered (whether prehistoric or historic), an archaeologist from KNRM, who meets the Secretary of the Interior's standards for Professional Archaeology, shall be retained in addition to the Monitor, at a rate of one hundred and fifty dollars (\$150) per hour; and
 - f. For travel and mileage, the Federal Standard Rate to and from the Project Site, to/from KNRM's office located at 910 N. Citrus Avenue, Covina, California, shall be

applied.

- 3.2 In the event a scheduled Standard Workday is canceled entirely or the hours are altered for any reason, the "Project Supervisor" (i.e., the individual designated to oversee all construction activities for the Project, including but not limited to coordinating Project consultants) shall contact KNRM per the "Contact Information" set forth in Section 4 below, no later than 5:00 p.m. PST on the business day prior to the altered day to inform KNRM of the change in scheduled monitoring services. If KNRM has not received any communication regarding cancellation or change to scheduled monitoring, or the monitor reports to the Project Site pursuant to this Agreement, a minimum fee of three hundred dollars (\$300.00) is applied per late cancellation event.
- 3.3 During the grading/excavation process, while onsite, the Tribe is to be paid
- 3.4 If it is unreasonable for one Native American monitor to fulfill the job requirements because Project Activities are occurring concurrently, at more than one location on the Project Site and at a distance impractical for a single monitor to serve simultaneously,, an additional monitor shall be required and compensated on the same terms as described above in Section 3.1.
- 3.5 The Tribe will submit invoices to the Sanitation Districts once or twice a month, at KNRM's election. The Lead Agency shall remit payment for the invoice within thirty (30) days following receipt of the invoice by the Lead Agency.. An advance deposit is required from the Lead Agency, in an amount equal to ten percent (10%) of the estimated cost budgeted for the Project, prior to any work performed by KNRM under this Agreement.
- 3.6 Checks shall be made to "Kizh Nation Resources Management" and mailed to:

Kizh Nation Resources Management
910 N. Citrus Ave
Covina, CA 91722
- 3.7 If at any point either KNRM or the Lead Agency estimates that KNRM's fees for monitoring services required to complete the Project will exceed the estimated budget previously approved by the Lead Agency in connection with this Agreement, the Parties will meet and confer with respect to the additional funding needed to complete monitoring services required for the Project, as defined herein.

4 CONTACT INFORMATION

4.1 The Project Supervisor shall contact KNRM regarding Project cancellations and changes as follows:

Telephone - (626) 926-4131

KNRM Office - (626) 521-5827

Email: admin@knrm-nsn.us

4.2 The Project Supervisor identified below shall be responsible for informing KNRM of Project scheduling, schedule changes, updates, anticipated Project activities, delays, personnel needs, etc.:

Name: _____

Phone: _____

Email: _____

4.1 The Lead Agency point of contact for the subject Project, and his/her contact information is as follows:

Name: _____

Phone: _____

Email: _____

5 LIMITATION OF LIABILITY

5.1 Notwithstanding anything contained in this Agreement to the contrary, the obligations of KNRM under this Agreement (including any actual or alleged breach or default by KNRM) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of KNRM or the Tribe, or the partners or members of

KNRM or the Tribe, and the Project Applicant shall not seek recourse against the individual partners, directors, officers, members or shareholders of KNRM or the Tribe, or any of their personal assets for satisfaction of any liability with respect to this Agreement. In addition, in consideration of the benefits accruing hereunder to the Project Applicant and notwithstanding anything contained in this Agreement to the contrary, the Project Applicant hereby covenants and agrees for itself and all of its successors and assigns that the liability of KNRM and the Tribe for KNRM's obligations under this Agreement (including any liability as a result of any actual or alleged failure, breach or default hereunder by KNRM or any alleged tort committed in connection with KNRM's work), shall be limited solely to KNRM's insurance coverage as provided in Section 6 of this Agreement.

6 INSURANCE

- 6.1 KNRM monitors are hired as independent contractors and are thus exempt to providing Workman's Compensation Insurance pursuant to California State law. The monitor or Tribe can sign a release of liability or waiver form if necessary.
- 6.2 KNRM shall secure and maintain, for the duration of this agreement, such insurance as will protect it and the Sanitation Districts in such a manner and at such amounts as set forth below. KNRM shall pay the premiums for said insurance coverage.
- 6.3 KNRM shall furnish to the Sanitation Districts certificates of insurance and endorsements verifying the insurance coverage as required by this Agreement. These certificates of insurance and endorsements shall be delivered to the Sanitation Districts within seven (7) calendar days after the award of a purchase order. The Sanitation Districts reserves the right to require complete and accurate copies of all insurance policies required under this Agreement.
- 6.4 The insurance policies certified for compliance with this Agreement shall include the following provisions or have them incorporated by endorsements:
- 6.5 Coverage provided by the policies shall be primary coverage without right of contribution of any other insurance carrier or on behalf of the Sanitation Districts. The Sanitation Districts shall receive thirty (30) calendar days prior written notice of a policy cancellation or reduction in coverage.
- 6.6 KNRM shall provide insurance coverage through insurers that meet the following terms: Insurers shall have at least an "A" policyholders rating and an "X" financial rating in accordance with the current Best's Key Rating Guide.
- 6.7 The insurance provided under this Agreement shall include policies providing coverage to include each of the requirements set forth below in amounts that meet or exceed the minimums set forth herein.
- 6.8 *General Liability:* KNRM shall maintain general liability insurance including provisions for contractual liability, independent consultants, and broad form property damage

coverage. This insurance shall have an endorsement naming the County Sanitation District No. 2 of Los Angeles County as an additional insured and a standard cross liability clause or endorsement. The limit of insurance shall not be less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

- 6.9 **Automobile Liability:** Vehicles are only for transportation to and from the project site and will not be on the premises. The Tribe does not hold an automobile liability policy for the monitors. The monitors are required to carry an automobile liability policy pursuant to California State law. Copies of their insurance cards can be provided upon request.

7 Indemnity

- 7.1 KNRM, its consultants and monitors shall full indemnify and hold harmless the Owner, Owner affiliates, Contractor, and Contractor's Subcontractors from any and all lawsuits and legal proceedings as a result of the negligence, recklessness, or willful misconduct of KNRM in performing KNRM's obligations herein.
- 7.2 KNRM shall defend, indemnify, and hold free and harmless the Sanitation Districts, their officers, directors, agents and employees from and against claims against the Sanitation Districts that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of KNRM in performing KNRM's obligations herein. This indemnity shall extend to the payment of all costs of litigation including reasonable attorney's fees with respect to any cause of action referred to above.

8 MISCELLANEOUS

- 8.1 **Governing Law and Venue.** This Agreement is made and will be interpreted under the laws of the State of California. Venue for any action will be the Superior Court of Los Angeles County, California.
- 8.2 **Incorporation of Recitals and Attachments.** All recitals and referenced attachments are incorporated and specifically made a part of this Agreement.
- 8.3 **Headings.** Section headings of this Agreement are for convenience, are merely descriptive, and do not alter the rights of the Parties.
- 8.4 **Time.** Time is of the essence with respect to performance of every provision of this Agreement in which time or performance is a factor. All references in this Agreement to "days" shall mean calendar days unless specifically modified herein to be "business" days.
- 8.5 **Professional Fees.** If either KNRM or Lead Agency should bring suit against the other with respect to this Agreement, then all reasonable costs and expenses incurred by the prevailing Party therein (including, without limitation, its accountants', attorneys', experts' and other professional's fees, expenses and court costs), shall be paid by the other Party.

- 8.6 **Waiver.** The waiver by either Party of any breach by the other Party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any Party to insist upon the performance by the other in strict accordance with said terms.
- 8.7 **Prior Agreements; Amendments.** This Agreement, and the attachments, constitute the entire agreement of the Parties with respect to the Project. This Agreement may not be modified except by a writing signed by both Parties.

The Parties hereto acknowledge and agree that each has participated in the negotiation and drafting of this Agreement; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the Party who caused the uncertainty to exist or against the draftsman. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

- 8.8 **Severability.** If any provision of this Agreement is held illegal, invalid, or unenforceable, in whole or in part, then that provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of the remaining provisions shall not be affected.
- 8.9 **Force Majeure.** In the event that either Party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), orders/closures/restrictions pertaining to COVID-19, injunction or court order, riots, insurrection, war, fire, earthquake, flood, inclement weather in excess of average for the area or other natural disaster or other reason of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement (herein collectively, "Force Majeure Delays"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided the delayed Party has notified the other Party of the Force Majeure Delay within five (5) business days of learning of the same, such notice specifically describes the Force Majeure Delay and its expected duration, and the delayed Party regularly updates the other Party of the status of the same and the delayed Party takes all commercially reasonable efforts to mitigate the effects and minimize the duration of the delay. The provisions of this Section 8.9 shall not apply to nor operate to excuse Lead Agency (or any third-party contractor operating on behalf of Lead Agency) from the payment of any fees owed to or the reimbursement

of costs incurred by KNRM in accordance with the terms of this Agreement, nor extend the date for payment of same to KNRM.

- 8.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Facsimile and electronic signatures are valid and binding.
- 8.11 **Lead Agency's Authority.** The agent/representative of the Lead Agency that executes this Agreement represents and warrants that: (a) the Lead Agency is qualified to do business in the state of California; (b) such persons executing this Agreement are duly authorized to execute and deliver this Agreement on the Lead Agency's behalf, or a duly adopted resolution of the Lead Agency's governing body; and (c) this Agreement is binding upon the Lead Agency in accordance with its terms.

[Signatures on following page]


IN WITNESS WHEREOF, the Parties have executed this Agreement as of 3/30, 2021.

"SANITATION DISTRICTS / LEAD AGENCY"
COUNTY SANITATION DISTRICT NO. 8 OF LOS
ANGELES COUNTY

By: _____
Chair, Board of Directors

Dated: _____

"KNRM
KIZH NATION RESOURCES MANAGEMENT

By:  _____

Printed Name: Andrew Salas

Title: President

Dated: 3/30/2021

ATTEST:

By: _____
Secretary to the Board

APPROVED AS TO FORM:
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
District Counsel

ATTACHMENT A
CEQA Determination

ATTACHMENT B
KNRM Scope of Work

Project Name: 216th Street Trunk Sewer Replacement Project Phase 2

Project Address: Figueroa Street, from approximately 50 feet north of 230th Street to approximately 150 feet south of 215th Street

Contact Information

Kizh Nation

Address: Kizh Nation Resources Management
910 N. Citrus Ave
Covina, CA 91722

Project Manager

Name: Andrew Salas
Phone Number: 626-926-4131

Accounts Receivable

Contact Name: Vivan Martinez
Phone Number: 626-521-5827
Email: admin@knrm-nsn.us
Physical Address: 910 N. Citrus Ave, Covina, CA 91722

Sanitation Districts

Project Manager (Coordinator)

Name: Stephanie Olague
Phone Number: 562-908-4288 x 2742

Site Super Intendent/Foreman

Name: To be determined
Phone Number:

Accounts Payable

Contact Name: Linda Alarcon

Phone Number: 562-908-4288 x1405

Email: larcon@lacs.org

Physical Address: 1955 Workman Mill Road, Whittier, CA 90601