

**AGREEMENT BETWEEN THE INDIAN CANYON MUTSUN BAND OF COSTANOAN
OHLONE
AND THE CITY OF SANTA CRUZ REGARDING
PROJECT AT 831 WATER STREET (PLN CP 20-0121)**

This Agreement is made by and between the OHLONE-COSTANOAN TRIBE, (“Tribe”) and the CITY OF SANTA CRUZ (“City”) (referred to individually as a “Party” and collectively, as the “Parties”) on this 1st day of July, 2021.

RECITALS

WHEREAS, the City received a complete Notice of Intent to file a development application for streamlined, ministerial approval pursuant to Government Code section 65913.4 from Novin Development Corporation (“Applicant”) on June 15, 2021 in connection with the development of a mixed-use project located at 831 Water Street in the City (“Project”).

WHEREAS, Government Code section 65913.4 (b) requires that, prior to submitting an application for a development project subject to the streamlined, ministerial approval process, the City provide notice to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development and engage in a scoping consultation regarding the proposed development with California Native American tribes which request a consultation.

WHEREAS, representative(s) of the Tribe contacted the City requesting a scoping consultation regarding the Project and authorized the participation of the Applicant in the scoping consultation meeting which was held on June 25, 2021.

WHEREAS, the City, Tribal representative and the Applicant engaged in good faith negotiations regarding the methods, measures and conditions for treatment of a potential tribal cultural resource that could be affected by the proposed Project and now wish to document such negotiations in this enforceable agreement (“Agreement”).

NOW, THEREFORE, the Parties agree as follows:

Section 1. Monitoring

(a) The Applicant shall be required by the City to provide for a qualified archaeologist and Native American monitor acceptable to the Parties (“Monitor”) to be present during ground-disturbance activities at the Project site which the City determines has the potential to detect tribal cultural resources to ensure that such resources are protected from potential damage or destruction. The Applicant shall be required to enter into contract(s) with a qualified archaeologist and Native American monitor which details the scope of work to be undertaken in connection with the monitoring and shall submit a copy of the signed contract(s) to the City Planning Department for review and approval prior to building permit issuance.

(b) The Tribe and the City agree that the Applicant shall be required to adhere to all of the protective measures set forth in Santa Cruz Municipal Code section 24.12.430 in the protection and preservation of tribal cultural resources.

Section 2. Training

(a) The Tribe and the City agree to require the Applicant's construction contractor, sub-contractors and construction-related crews and workers to participate in, and complete, at least 1 (one) hour of Native American tribal cultural resources sensitivity training prior to commencement of ground-disturbance activities. The Native American tribal cultural resources sensitivity training will be conducted by a Native American monitor acceptable to the Parties.

(b) Such sensitivity training shall focus, in particular, on California Native American tribal cultural resources, shall include descriptions and photographic examples of Native American tribal cultural resources, and what to do when a potential cultural or archaeological resource is identified by site personnel.

(c) The Applicant shall be required to submit a certification attesting to the completion of such sensitivity training to the City That includes the names and work affiliations of all those who received training to ensure compliance with the requirements of this Section 2 prior to building permit issuance.

Section 3. Signs/Messaging

(a) The Tribe and the City agree to require the Applicant to create a commemorative plaque or mural to be placed on the Project Site prior to issuance of Certificate of Occupancy which acknowledges and expresses respect for the lands upon which the Project is constructed and which acknowledges and expresses respect for the tribal cultural heritage and history of the indigenous peoples who populated the lands of Santa Cruz. The Applicant shall meet with the Tribal representative or representatives who are signatories to this Agreement in the design, construction and implementation of the commemorative plaque or mural.

(b) The Applicant shall consult with the Tribal representative(s) who are signatories to this Agreement relative to developing and presenting statements on the Project website about the tribal cultural heritage and history of the land developed as the Project and the territorial lands in the proximity of the Project site. Such messaging will advocate support for indigenous peoples' movements and efforts to inform the public about the local and present-day indigenous community.

Section 4. Project Open Space

The Project includes open space features which the Applicant shall be required to make available to Native American peoples, on a reservation-based system, for gathering at a discounted rate no less than two (2) times per year.

Section 5. Notices

To the extent notice regarding any of the provisions of this Agreement need to be provided to the parties to this Agreement, notices shall be directed as follows:

To the City:

To the Tribe:

Planning & Community Development
Department

Kanyon Sayers-Roods

Section 6. Governing Law

This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of California.

Section 7. Counterparts and Additional Future Signatories.

This Agreement may be signed in counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument. The City and the Tribe also acknowledge that tribal representatives of other tribes which traditionally and culturally affiliate or associate with the geographic area of the Project may also agree to the terms and provisions of this Agreement by signing a counterpart and indicating their tribal affiliation in the signature field at the end of this Agreement.

Section 8. Dispute Resolution and Attorneys' Fees.

The Parties agree to attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested. Promptly upon such notification, the Parties shall meet at a mutually agreeable time and place in order to exchange relevant information and perspective, and to attempt to resolve the dispute. In the event that no resolution is achieved, and if, but only if, the parties mutually agree, then prior to pursuing formal legal action, the parties shall make a good faith effort to resolve the dispute by non-binding mediation or negotiations between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute. In the event any party shall institute any action or proceeding, including any arbitration proceeding, against the other party relating to the provisions of this Agreement, or any default hereunder, then and in that event, the unsuccessful party in such action or proceeding shall reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements incurred therein by the successful party as determined by the court, including fees incurred at trial and any appeal therefrom.

Section 9. Time of the Essence.

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

Section 10. Contract Interpretation.

Each party acknowledges that it has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Section 11. Integration.

This Agreement sets forth the entire agreement between the parties with respect to the subject matter of this Agreement and that this Agreement supersedes any previous written or oral agreements between the Parties with respect to the matters addressed herein. Unless otherwise stated, to the extent there is any conflict between this Agreement and any other agreement (written or oral), the terms of this Agreement shall control.

Section 12. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal

Section 13. Authority to Bind.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF SANTA CRUZ

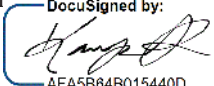
By: Samantha Haschert

Digitally signed by Samantha Haschert
DN: cn=Samantha Haschert, o=City of Santa Cruz,
ou=Planning Department,
email=SHaschert@cityofsantacruz.com, c=US
Date: 2021.07.01 18:33:58 -0700

Date: 7/1/2021

Printed: Samantha Haschert Title: Principal Planner

NATIVE AMERICAN TRIBAL REPRESENTATIVE

By: 

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Date: 7/1/2021

Printed: Kanyon Sayers-Roods Title: CEO Kanyon konsulting LLC {Indian Canyon Mutsun B

NATIVE AMERICAN TRIBAL REPRESENTATIVE

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Approved As To Form:

By: _____ Date: _____

Office of the City Attorney