

## RESOLUTION NO. 3707-2014

### A RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A MEMORANDUM OF UNDERSTANDING AND A CONFIDENTIALITY AGREEMENT WITH THE SHERWOOD VALLEY BAND OF POMO INDIANS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME

**WHEREAS**, in 2004, the City began negotiations with Georgia-Pacific for the acquisition of the coastal parkland. In 2005, the State Coastal Conservancy awarded the City a \$4,165,000 grant to acquire the parkland. After the property was remediated, title was transferred to the City in 2010; and

**WHEREAS**, in 2006, the City received a federal appropriation of \$750,000 through Congressman Mike Thompson's office to fund construction of the Coastal Trail project; and

**WHEREAS**, the City has held more than 30 public meetings since 2006 to obtain public input for the planning, design and environmental review of the Coastal Trail Project; and

**WHEREAS**, in late 2011, Caltrans began to meet with Sherwood Valley Band of Pomo Indians (SVBP) to discuss the project design and the need for Section 106 consultation on the Project, which was required as a consequence of the federal funding; and

**WHEREAS**, in 2012, Caltrans and SVBP began formal Government to Government Section 106 consultation on the Project and the City attended monthly "pre-meetings" with SVBP and Caltrans for over two years; and

**WHEREAS**, on July 8, 2013, the City Council decided to de-obligate the \$750,000 federal appropriation for the Coastal Trail project due to the lengthy federal environmental review process that was likely to jeopardize the City's ability to meet construction deadlines for over \$5 million in State grants for the Project and the City Council also directed staff to continue to work with SVBP to identify design solutions to address their concerns; and

**WHEREAS**, on September 9, 2013, the City Council provided conceptual approval for a number of design changes to the Project to address the concerns of SVBP; and

**WHEREAS**, on February 10, 2014, the City Council certified the Subsequent EIR for the Project and approved the Coastal Development Permit Amendment for the revised Project with incorporated design changes; and

**WHEREAS**, from August 2013 through April 2014, the Mayor, City Manager and Community Development Director met with the SVBP Tribal Council on a regular basis to further refine and negotiate a number of agreements which were initially and partially negotiated during the Federal consultation process; and

**WHEREAS**, while the Memorandum of Understanding (MOU) and Confidentiality Agreement are not required due to the return of the federal appropriation, the City nevertheless continued to work with SVBP in good faith to negotiate these agreements to address SVBP's concerns; and

**WHEREAS**, the goal of the MOU and Confidentiality Agreement is to facilitate the relationship between the City and SVBP with regard to: confidential information, communication, and the treatment of cultural resources throughout the city; and

**WHEREAS**, the City has met with SVBP Tribal Council to negotiate a Memorandum of Understanding and Confidentiality Agreement which the SVBP Tribal Council has agreed to sign.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Fort Bragg does hereby approve the Memorandum of Understanding and the Confidentiality Agreement with the Sherwood Valley Band of Pomo Indians as presented in Exhibits A and B and incorporated herein by reference and authorizes the City Manager to execute same.

The above and foregoing Resolution was introduced by Councilmember Kraut, seconded by Councilmember Courtney, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27<sup>th</sup> day of May, 2014, by the following vote:

<b>AYES:</b>	Councilmembers Courtney, Hammerstrom, Kraut, and Mayor Turner.
<b>NOES:</b>	None.
<b>ABSENT:</b>	Councilmember Deitz.
<b>ABSTAIN:</b>	None.



**DAVE TURNER,**  
Mayor

**ATTEST:**

  
Cynthia M. VanWormer, MMC  
City Clerk

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF FORT BRAGG, CALIFORNIA  
AND THE SHERWOOD VALLEY BAND OF POMO INDIANS**

This Memorandum of Understanding ("Agreement") is entered into this \_\_\_ day of \_\_\_ 2014, 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, a federally recognized Indian tribe ("Tribe") (each, a "Party", and collectively referred to as the "Parties").

**WHEREAS**, the Sherwood Valley Band of Pomo Indians has knowledge of village sites, burials, ancestral and ceremonial grounds throughout its aboriginal territory;

**WHEREAS**, the City of Fort Bragg has regulatory authority over discretionary development within its jurisdiction;

**WHEREAS**, Senate Bill 18 (SB 18) adopted in 2004 requires local governments to contact and consult with Native American tribes regarding General Plan, Specific Plans and the designation of open space;

**WHEREAS**, the City recognizes the importance of protecting cultural resources and will incorporate feasible mitigation, including avoidance, as required under CEQA, while conducting City construction projects and other ground disturbing activities that have the potential to impact Native American cultural resources;

**WHEREAS**, the City recognizes the importance of protecting cultural resources and will incorporate feasible mitigation, including avoidance, as required under CEQA, while considering permit applications that allow individuals to undertake private or public construction projects and other ground disturbing activities that have the potential to impact Native American cultural resources;

**WHEREAS**, the Tribe wants to receive and review project information, engage in consultation on projects, and ensure that construction projects and other ground disturbing activities that have the potential to impact Native American cultural resources are monitored by Native American monitors;

**WHEREAS**, the City and the Tribe recognize that each is a governmental entity with responsibility for the health and general welfare of its people;

**WHEREAS**, the City and the Tribe seek to work with each other to develop a cooperative, streamlined process for consultation;

**WHEREAS**, the City supports the Tribe's desire to consult and work cooperatively to protect, mitigate, and manage archaeological sites, traditional cultural properties, and cultural resources, identified on City property and located within the jurisdiction of the City;

**WHEREAS**, Tribal members engage in ongoing collection and use of cultural biological resources (both flora and fauna and their habitats) and have with certain cultural landscapes within the City limits; and

**WHEREAS**, the City is supportive of the Tribe's desire to access and steward their cultural resources and places;

**NOW, THEREFORE, BE IT AGREED BY THE CITY AND THE TRIBE AS FOLLOWS:**

1. **Purpose and Objectives.** The purpose of this Agreement is to establish protocols to: guide consultation between the City and the Tribe; guide the cultural resource review process between the City and the Tribe including but not limited to the California Environmental Quality Act (CEQA) planning and project implementation phases, especially with regard to mitigation measures and monitoring requirements under CEQA; and identify procedures for the treatment of Native American cultural resources.

2. **Definitions.** The following terms have the respective meanings set forth below. Terms listed in singular form may be considered to include the plural form of each word and vice versa except where the context clearly indicates otherwise.

- a. "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of other participants, and, where feasible, reaching agreements as early in the process as possible. Consultation is undertaken to 1) understand and consider the effects of certain planning or discretionary projects, on cultural resources; 2) revise plans or discretionary projects as feasible to avoid or minimize impacts; and 3) mitigate impacts where avoidance is infeasible. Consultation is a process of communication that may include written correspondence, meetings, telephone conferences, site visits, and e-mails.
- b. "Cultural Resource" means any artifacts, features, human remains (including articulated or unarticulated bones and/or bone fragments, and the surrounding soil matrix at any stage of decomposition of any deceased human) or traditional cultural properties with archaeological ceremonial, cultural, sacred or traditional value to the Tribe.
- c. "Project" means a discretionary activity which requires environmental review under CEQA or NEPA; and/or the adoption of any amendment to the general plan, adoption of any specific plan or designation of land as open space pursuant to SB 18.
- d. "Formal Communication" means authorized written communication intended to represent the official position of one Party to the other. Only written communications from the Tribal Chairman, Vice-Chairman or Tribal Administrator of the Sherwood Valley Band of Pomo Indians and the Mayor, City Manager or Community Development Director of the City of Fort Bragg shall be deemed authorized communication of each respectively.

3. **Cultural Affiliation.** The Parties agree that the Tribe has traditionally occupied, and is historically traced to, the City of Fort Bragg, in Mendocino County, California, its sphere of influence, and beyond. Furthermore, the City of Fort Bragg lies within the historic boundaries of SVBP's ancestral lands, and the historic boundaries of the Mendocino Indian Reservation which included tribal members from many different tribes. Thus, cultural resources from pre-contact and post-contact, found within the City of Fort Bragg, from historic times may be related to SVBP or other tribal communities currently located within Mendocino County.

4. **Most Likely Descendant.** In the event that Native American human remains, associated funerary objects, sacred objects, and/or objects of cultural patrimony are found during a project, the Parties understand that a determination of the Most Likely Descendant (MLD), as described in California Public Resources Code section 5097.98, will be made by the NAHC upon notification to the NAHC of discovery of any such remains at a project site.

5. **Points of Contact.** The points of contact (POC) of the Parties with respect to this Agreement shall be as follows:

Sherwood Valley Band of Pomo Indians  
190 Sherwood Hill Drive  
Willits, California 95490

Official Governmental POC: Tribal Chairman  
Michael Fitzgerald  
Phone: (707) 459-9690  
Email: svrchairman@yahoo.com

Technical POC: Tribal Historic Preservation Officer (THPO)  
Hillary Renick  
Phone: (707) 459-9690  
Email: chishkinmen@gmail.com

Alternate POC: Tribal Administrator  
Scarlett Carmona  
Phone: (707) 459-9690  
Email: svradministrator@sbcglobal.net

City of Fort Bragg  
416 N Franklin Street  
Fort Bragg, CA 95437

Official Governmental POC: Mayor  
Dave Turner  
Phone: (707) 964-3356  
Email: dturner@fortbragg.com

Technical POC: City Manager  
Linda Ruffing  
Phone: 707-961-2823  
Email: lruffing@fortbragg.com

Alternate POC: Community Development Director  
Marie Jones  
Phone: 707-961-1807  
Email: mjones@fortbragg.com

- a. All formal communications from the City to the Tribe should be directed to the Chairman by U.S. mail, with an electronic copy of the communication provided to the Chairman, Technical POC, and Alternate POC by email. Only the Chairman shall have authority to enter into, administer, and/or terminate any binding agreements and make related determinations and findings, unless otherwise delegated by a duly executed resolution of the Sherwood Valley Band of Pomo Indians Tribal Council.
- b. All formal communications from the Tribe to the City should be directed to the City Manager by US mail, with an electronic copy of the communication provided to the Technical POC by

email. Only the City Manager shall have authority to enter into, administer, and/or terminate any binding agreements and make related determinations and findings as authorized by City Council through resolution.

- c. The Parties may change their respective POC at any time by providing the other Party with the name of the new POC in writing and email. The Parties shall notify the other of any change in contact information within seventy-two (72) hours of the change in writing and email.
- d. Nothing in this Agreement precludes the Parties from designating other authorized POC to work on varying projects provided the Party notifies the other of such election in a formal written communication, with a courtesy email sent to all above POC for the other Party.

6. **Communication and Consultation Protocols.** In order to successfully avoid, minimize or mitigate against impacts to Native American cultural resources, the Parties agree that consultation shall occur as early in the planning process as possible within reasonable timeframes and in good faith. Consultation shall proceed as follow:

- a. Consultation must proceed in a timely manner so that the City can meet its legal obligations with regard to permit and CEQA review timelines.
- b. Issues that require consultation should be identified as soon as possible in order to involve both Parties early on in the process.
- c. The City shall provide a "Request for Comments" and/or notification to the Tribe's technical POC and the Tribal Chairman, for all projects subject to environmental review under CEQA or NEPA as early as possible to: 1) provide information about the project ; 2) provide an opportunity for the Tribe to identify cultural resources and specific locations of concern; and 3) identify the potential for impacts to cultural resources.
- d. For projects requiring consultation under SB 18 or CEQA, in addition to the information provided pursuant to Paragraph 7(c) above, the City shall provide the Tribe with a Notice of Preparation indicating the type of project and the type of environmental document to be prepared and soliciting initial comments from the Tribe regarding but not limited to the following:
  - i. The choice and content of the environmental documents to be prepared (scoping phase);
  - ii. The proposed area of potential effects within which the project may directly or indirectly cause alteration in the character or use of cultural resources;
  - iii. The data and/or research needs; and
  - iv. Identification of known cultural resources.
- e. Consultation can be initiated by either Party. As a general rule for this Agreement, any City decision or action which would cause significant impacts to an archaeological site, burials, human remains or traditional cultural property should include consultation with the Tribe, as required by CEQA. Early involvement of all Parties will ensure sufficient time for input as decisions are made.

- f. The Tribe should generally be provided a minimum of thirty (30) days within which to respond to a request for comments and complete consultation, unless a longer timeframe is required by law or has been requested by the Tribe and agreed to by the Parties.
- g. The Tribe shall respond to notifications in a timely manner. If the Tribe fails to respond to a Request for Comments within the required timeframe (see 6.f.), the City may proceed with the project without consultation unless otherwise required by law. The Tribe may provide input into the planning process up to the time of the public hearing and that information will be transmitted to the hearing body.
- h. Both Parties shall adhere to the timelines for the dissemination and review of the various notices and reports provided for by law and delineated within CEQA, CEQA Guidelines, and SB 18.
- i. The Parties agree that oral agreements do not produce a contract and is not legally binding on the Parties unless and until such representation is ratified in writing by an authorized government official of each Party pursuant to Paragraph 5.a and 5.b above.

7. **Native American Cultural Resources Treatment Protocols.** In order to successfully avoid, minimize or mitigate against impacts to Native American cultural resources, the Parties agree as follow with regard to private and public sector projects that are seeking Planning Commission or City Council approvals:

- a. The City and the Tribe shall promote avoidance and non-disturbance measures as the preferred treatment of cultural resources where feasible. If avoidance is not feasible, the City shall consult with the Tribe to minimize and mitigate impacts of a potential undertaking to cultural resources. In cases where agreement cannot be reached within the statutorily required timeframe for the preparation of the CEQA document, as Lead Agency, the City shall define the avoidance/mitigation strategy.
- b. Where cultural resources may be reasonably expected to be located within or adjacent to a project area, the City shall require an archaeological assessment, by a qualified archeologist to determine the presence, extent, and significance of cultural resources within the project area. Archaeologists hired to conduct archaeological investigations must meet the Secretary of the Interior's Professional Qualifications Standards.
  - i. The assessment shall include a NAHC, California Historical Resources Information System (CHRIS) and local historical records search, a Phase I archaeological survey, and preparation of an archeological report containing the results of this assessment. A copy of the archaeological report shall be mailed to the Tribal Chairman. The Tribe shall have thirty (30) days to comment on the all resultant Phase I archaeological reports and request further consultation. During Phase I archaeological assessments, the Parties agree that features shall not be excavated and artifacts shall not be collected. If resources are identified in the assessment, a copy of the archaeological report shall also be mailed to the State Historical Preservation Officer (SHPO) and CHRIS at Sonoma State University.
  - ii. Phase II archeological evaluations will be required by the City if recommended in the Phase I assessment. If a Phase II or further archaeological evaluation is recommended, a qualified professional archeologist will prepare a field collection

strategy, artifact processing and analysis guidelines, and a detailed treatment/disposition plan, in consultation with the THPO, prior to the commencement of any fieldwork that will result in the collection of artifacts. The archaeologist shall provide the Tribal Chairman with a proposed testing plan and the Tribal Chairman shall provide comments on the plan within fifteen (15) days of receipt of the proposed testing plan. The THPO and Tribal Chairman shall have thirty (30) days to comment on all resultant Phase II archaeological report and request further consultation. During Phase II archaeological assessments, native soils may be excavated, but artifacts shall not be collected. If excavations are to occur, the City shall uphold the Tribe's right to require the presence of a Tribal monitor during such activity pursuant to a tribal monitor agreement agreed upon by the parties.

- iii. Should at any time, archaeological material be collected with the prior written consent of the Tribe, the City acknowledges the Tribe's preference that all collected archaeological material be studied for the shortest feasible amount of time, with a maximum of one year.
  - iv. The City acknowledges and agrees to uphold to the extent permitted by law, that it is the Tribe's preference to have temporarily collected materials, subsequently reburied in proximity to the materials' original internment location, as feasible, in an area where the materials shall not be subject to future ground disturbance.
- c. Project applicants that conduct ground disturbing activities within a project area prior to obtaining the proper permits and clearances will be ordered to stop work and appropriate action, including but not limited to criminal prosecution, will be taken in accordance with applicable law.

**8. Native American Cultural Resources Treatment Protocols.** In order to successfully avoid, minimize or mitigate against impacts to Native American cultural resources, the Parties agree as follow with regard to City projects, where a CEQA document requires Tribal Monitoring:

- a. The City will allow the Tribe to monitor native ground disturbing activities on projects where cultural resources may be reasonably expected to be located. If a tribal monitor agreement has been agreed upon by the parties, it shall be followed.
- b. The City agrees to transfer ownership of Native American cultural resources that are found on City property through implementation of a Data Collection Plan or through monitoring of a construction project to the appropriate Native American Tribe for proper treatment and disposition, if requested by the Tribe, unless otherwise required by law.

**9.** The City shall send to the Tribal Chairman all public draft, amended, supplemental and final environmental documents prepared for a project that will have impacts to cultural resources, including but not limited to Initial Studies, Negative Declarations, Mitigated Negative Declarations, and Environmental Impact Reports. These should at minimum include the following:

- i. Cultural resource data collection/analysis methodologies and significance;
- ii. Potential effects/impacts upon identified cultural/natural resources; and



- iii. Potential mitigation measures including avoidance.

All environmental documents shall be transmitted directly to the Tribe by Certified U.S. mail. The City shall not rely upon the California State Clearinghouse to provide distribution, but shall provide the information directly to the Tribe in compliance with the statutory review period.

10. Projects that may be considered to have potential impact to archaeological sites and resources related to the Tribe include the following:

- i. Construction or ground disturbing activities in areas where ground disturbance has the potential to adversely affect cultural resources sites related to the Tribe that are eligible for listing in the National Register of Historic Places (NRHP).
- ii. Construction or ground disturbing activities determined by a qualified professional archaeologist to potentially disturb cultural resources related to the Tribe.
- iii. Construction or ground disturbing activities in areas where Tribal villages, gravesites or activity sites are documented and known to have existed or occurred, or where the Tribe can reasonably demonstrate that villages, gravesites or activity sites are likely to occur.

11. **Mitigation.** The Parties agree to consult with one another to identify feasible and appropriate mitigation measures for impacts to cultural resources. For the Tribe avoidance is the preferred mitigation measure to potential impacts to cultural resources. The Parties acknowledge that there are several ways in which impacts to cultural resources can be mitigated and data recovery is but one mitigation measure that may be used. If data recovery is the only prudent and feasible mitigation measure, the City in consultation with the Tribe shall develop and implement a Data Recovery Plan prior to the commencement of ground disturbing activities in areas with cultural resources.

12. **Monitoring.** In the event that monitoring is required, as a mitigation measure, through a CEQA document the following applies to the monitoring requirement:

- i. The Project Contractor shall provide notification of the date/time and location of intended construction activities to the Tribal Historic Preservation Officer (THPO) and Tribal Chairman 14 days (or a shorter period as agreed to by both parties) prior to the start of any construction activities in areas that may impact archaeological sites/resources through disturbance of native soils in known or suspected archaeological areas.
- ii. In the event that the Tribe cannot supply an adequate number of tribal monitors in a timely manner for the project, the Project Contractor may hire other qualified Native American tribal monitors from other Mendocino, Lake or Sonoma County tribes to undertake monitoring activities for the project until such time as the Tribe provides its preferred tribal monitor.
- iii. If a scheduled tribal monitor is not on site when the work day starts, the Project Contractor will promptly contact the THPO and Tribal Chairman. The work shall then proceed without monitoring unless there is a Project Archaeologist present.
- iv. Where monitoring is required as a mitigation measure under CEQA, Native American monitoring shall be paid for by the property owner. When monitoring is requested by the

tribe, but it is not required as a mitigation measure in a CEQA document, the Tribe shall pay for the Native American monitoring.

- v. **Compensation.** The project applicant shall compensate the Sherwood Valley Band of Pomo Indians for tribal monitoring services provided by its tribal monitors. Invoices will be submitted by the Tribe on a bi-weekly basis and shall be paid to the Tribe within fourteen (14) days of submittal. Tribal Monitoring Services- \$ 50.00/hour (per monitor). Overtime (9 or more hours in a day excluding drive time to and from the site), Weekend, and Holiday - \$ 75.00/hour (per monitor). The Sherwood Valley Band of Pomo Indians shall be reimbursed for mileage costs of tribal monitors to and from the project site pursuant to the federal GSA rates. If the tribal monitor arrives after being notified there will be work, and if there is less than 3 hours of work the tribal monitor will receive 3 hours of pay, otherwise the tribal monitor will be paid for the actual number of hours worked. Tribal monitors will not be reimbursed for drive time to and from the site.

13. **Ethnographic Study.** Ethnographic studies may be warranted for some projects, as determined through the CEQA process. Where warranted as mitigation for project impacts to cultural resources, the study should at minimum:

- a. Be developed in consultation with the Tribe with regard to the study's scope of work and contractor selection;
- b. Determine if other cultural attributes associated with known sites, resources, or landscapes within the project area could contribute to the significance of previously identified cultural resources;
- c. Be viewed as complementing, rather than replacing, the larger Native American consultation effort for a project;
- d. Consist of ethnographic and historic research and interviews with Native American informants; and
- e. Be conducted concurrently with any archaeological investigations and integrated or attached to the body of any resulting reports, as they enhance understanding of the significance of the sites and the interpretation of the archaeological data.

14. **Discovery.** If cultural resources are encountered, ground disturbing activities shall cease immediately in the discovery location and a buffer zone of fifty (50) feet radius. If the find is known or suspected human remains and/or associated cultural resources, ground disturbing activities shall cease in the discovery location and a one hundred (100) feet radius buffer area. The size of the buffer may be adjusted once the project archaeologist, in consultation with the tribal monitor, has had the opportunity to examine the site. No construction activities will take place within the buffer until an archaeological investigation has been completed in accordance with the applicable provisions of this Agreement and any tribal monitor agreement agreed upon by the parties.

15. **Post-Review Inadvertent Discoveries.** Post-review discoveries most commonly occur when previously unidentified archaeological sites are uncovered during construction. However, other previously unknown cultural resources could also be discovered, or a project could be found to have unexpected effects on cultural resources.

- a. If during the identification phase, no significant resources are identified through an archaeological assessment, and the area has a moderate-to-high potential for previously unknown archaeological resources (as shown in Attachment 1), the City will require a project-specific, Post Review Discovery Plan (PRDP) to efficiently and effectively address such potential discoveries. A PRDP template is provided in Addendum.
- b. If a PRDP is required on a project in which the Tribe has identified concerns, the draft PRDP shall be provided to the Tribe for comments and input prior to finalization.
- c. When there is no PRDP in place and a project affects a previously unidentified resource, the City shall notify the Tribe within forty-eight (48) hours of the discovery and consult with the Tribe in accordance with the provisions of 17.50.030E of the Land Use and Development Code.

**16. Treatment and Disposition of Native American Human Remains and Associated Cultural Resources.** Whenever Native American human remains and associated cultural resources are discovered during implementation of a project and the Tribe has been designated the MLD, the following provisions shall be implemented:

- a. The City will comply with 17.050.030E of the Fort Bragg Municipal Code if human remains are discovered. In addition to immediately stopping work on the project and notifying an archaeologist and the County coroner (as required by 17.050.030E) the City shall also immediately notify NAHC and SVBP.
- b. The Tribe shall be allowed, under California Public Resources Code sections 5097.98 (a) and 21083.2 and 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 associated cultural resources shall be treated and disposed of with appropriate dignity. The City will ensure that the recommendations are followed, unless otherwise required by law.
- c. The Tribe shall complete its inspection within forty-eight (48) hours of receiving notification from either the City or the NAHC, as required by 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.
- d. Reburial of human remains and associated cultural resources shall be accomplished in compliance with the California Public Resources Code sections 5097.98 (a) and (b) and 21083.2 and CEQA Guidelines section 15064.5 (e).
- e. For projects that occur on City owned land, the City will make good faith efforts to accommodate the Tribe's wish to rebury human remains and associated cultural resources on or near the site of their discovery, in an area that shall not be subject to future subsurface disturbances.
- f. It is understood by the Parties that, unless otherwise required by law, the site of any location of or reburial of Native American human remains or other cultural resources, on City property, shall remain confidential and shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. Upon discovery of such remains or artifacts, the City shall withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code section 6254 (r).

- g. The term "human remains" encompasses more than human bones because the Tribe's traditions periodically necessitated the ceremonial burning of human remains, tribal monitors shall make recommendations for removal of cremations, if such removal is necessary. Associated cultural resources include those artifacts associated with any human remains. These resources 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. Any human remains and associated cultural resources found during a project and not reburied shall be returned to the Tribe and not curated in any facility without prior written consent of the Tribe. This treatment shall also be extended to any cultural resources identified by the Tribe as sacred objects, unassociated funerary objects, and objects of cultural patrimony.
- i. After the recommendations are followed, the City may allow the project work to resume.
- j. The City shall record all burials, reburials, and sacred, religious, or ceremonial sites on the Sacred Lands Inventory Form, which shall be submitted to the NAHC.
- k. The City shall not display Native American skeletal remains and associated cultural resources that the Tribe regards as traditionally sacred that have been disinterred from within City boundaries without the prior written consent of the Tribe. This treatment shall also be extended to any cultural resources identified by the Tribe as sacred objects, unassociated funerary objects, and objects of cultural patrimony.
- l. The City shall receive prior written consent of the Tribe before permitting any photography or drawings of human remains and associated objects of cultural resources that are disinterred from City property.

17. **Treatment of Traditional Cultural Properties on City Land.** Where feasible, City projects should avoid impacts to burial areas, and other sacred, religious or ceremonial sites, including traditional cultural properties known or identified by the Tribe. Where avoidance of impacts due to development of City projects is infeasible, as determined by the City, the City shall consult with the Tribe to minimize and mitigate impacts and seek agreement on the appropriate treatment.

18. **Access to Sacred Sites.** Pursuant to California Public Resources Code sections 5097.9, where feasible and appropriate, the City shall consult with the Tribe to include mitigation measures that provide for Tribal access to places of traditional, spiritual or social importance (such as prayer sites, ceremonial sites and shrines), areas important in folklore and legend, and areas attributed with special or unique powers of sacredness identified and located on City-owned lands.

19. **Access to Biological Collecting Sites.** Within one (1) year of the execution of this Agreement, the City shall establish a program, in consultation with the Tribe, to:

- a. Identify locations within City-owned lands, that are currently utilized by the tribe to gather or collect botanical or other natural cultural resources and develop and implement a policy to manage herbicide use in these areas; and
- b. Allow for the gathering of biological resources for cultural purposes including but not limited to religious or ceremonial practice, traditional arts and crafts, and/or the preservation and maintenance of traditional life and food ways on City-owned or City-maintained lands, as permitted by local, State and Federal law, including City rights-of-way.

20. **Confidentiality.** The City recognizes and agrees to accommodate the Tribe's need to maintain confidentiality to protect archaeological sites, traditional cultural properties, and cultural resources, to the extent allowed for by law, including, but not limited to, exemption from public disclosure as set forth California Government Code section 6254(r). The Non-Disclosure and Confidentiality Agreement is incorporated herein by reference in Addendum 2 to this Agreement.

21. **Compliance.** Each Party to this Agreement shall comply with any and all tribal, federal, state and local laws. Nothing in this Agreement shall excuse the Parties from its obligation under any applicable state or federal environmental statute, including, but not limited to: CEQA and applicable regulations of the CEQA Guidelines; California Public Resources Code, sections 5097.98, 5097.99, and 5097.991; California Health and Safety Code, section 7050.5 (c); California Government Code, section 6254; 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. Nothing in this MOU can alter the Parties' independent governing or regulatory obligations.

22. **Counterparts.** This Agreement may be signed in two or more counterparts and shall be effective when all the Parties and signatories have affixed their signatures to two or more of the counterparts and the counterparts have been delivered to the Parties, at which time the counterparts together will be deemed one original document.

23. **Dispute Resolution.** If either party determines that a section or clause of this MOU is no longer suitable for its operations, then the party can request a 90-day consultation period to discuss and identify an alternative approach to the section or clause. If an alternative approach is agreed to by both parties the MOU may be amended as described below. If the parties cannot come to agreed upon alternative language to the section or clause, that is under dispute, that section or clause shall be struck from the MOU.

24. **Amendments.** This Agreement may be amended if both Parties agree to the amendment in writing.

23 **Term.** The duration of this Agreement is three (3) years from the date of last signature below. This Agreement may be renewed at the discretion of each party by the adoption of a resolution by City Council and the Tribal Council at the conclusion of the three (3) year term..

THEREFORE BE IT RESOLVED, by the signatures of the representatives on the date indicated below that the City and the Tribe formally endorses and accepts this Memorandum of Understanding.

CITY OF FORT BRAGG

By: Linda Ruffing, City Manager

Date

SHERWOOD VALLEY BAND OF POMO  
INDIANS

By: Michael Fitzgerral, Tribal Chairman

Date

APPROVED AS TO FORM:

CITY OF FORT BRAGG

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David Warner, City Attorney

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Date

SHERWOOD VALLEY BAND OF POMO INDIANS

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Kazhe Law Group PC  
By: Christina V. Kazhe

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Date

EXHIBIT B

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into by and between the **Sherwood Valley Band of Pomo Indians** ("Tribe"), a federally recognized Indian tribe and the **City of Fort Bragg**, a municipal corporation located in the County of Mendocino, California ("City"). The Tribe and Recipient are collectively referred to hereinafter as the ("Parties").

**RECITALS**

**WHEREAS**, the City may receive, and/or have access to, certain confidential information in connection with prior, ongoing, and future consultation between the Tribe and the City of Fort Bragg and/or related to projects within the City of Fort Bragg; and

**WHEREAS**, such information is sensitive in nature; and

**WHEREAS**, in order to establish protocols for the relationship between the Tribe and the City and formalize procedures for the protection of historic properties, traditional cultural properties, sacred sites or other cultural resources of religious and cultural significance to the Tribe (including but not limited to Native American human remains, funerary goods, ceremonial and cultural items or artifacts collectively "cultural resources"), the City may have, or need to secure confidential information regarding cultural resources; and

**WHEREAS**, the Tribe requires that its officials, members and employees maintain the confidentiality of such information, and the Tribe further requires that the contents, nature and communications between the Parties, be kept strictly confidential and not be disclosed to third parties unless otherwise required by law; and

**WHEREAS**, the City is a local agency subject to the requirements of the California Public Records Act (Cal. Gov. Code §§6250 et seq.) which requires the City to disclose any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by the City regardless of physical form or characteristics ("Public Records") but is not required to disclose public records of Native American graves, cemeteries, and sacred places or Native American places, features, and objects pursuant to Section 6254(r) of the Public Records Act; and

**WHEREAS**, the Parties, through this Agreement, desire to establish and set forth obligations with respect to the non-disclosure of the confidential information in connection with ongoing consultation and related agreements with the Tribe.

**NOW, THEREFORE**, the Parties agree as follows:

**AGREEMENT**

**I. Definition of Confidential Information.** The term "Confidential Information" shall mean any and all information provided by the Tribe that is clearly marked as confidential, including, but not be limited to: the site of any location of, or reburial of, Native American cultural resources, cultural and historical records, cultural heritage, traditional knowledge, oral traditions, historic or culturally specific photographs, cultural agreements, other cultural resource documentation and information, and any information divulged in a confidential written or verbal conversations disclosed from the Tribe to the City as confidential information and so marked or noted. Examples of information that may be considered Confidential Information include the following:

Still and Moving Images (Photographs and Films)/Graphic Art representing Native American:

- Human remains
- Religious or sacred objects
- Ceremonies of any kind
- Burials, funerals
- Archaeological objects (especially from burials)
- Churches, cemeteries, sacred places

Recordings/Transcripts containing:

- Songs, chants, music
- Religious practice
- Healing, medicine
- Personal or family information
- Oral histories & community histories
- "Myths," folklore

Records and Documents containing information about Native American:

- Archaeological data, including rock art and linear features
- Religious materials and rites
- Ethnographic materials and their uses
- Ethnobotanical materials and their uses
- Genealogical data

Geographical/Location Information and Cartographic Materials pertaining to Native American:

- Sacred sites or areas
- Religious sites or areas
- Village sites, territories, use areas
- Archaeological sites, including rock art and linear features
- Traditional Cultural Properties
- Gathering areas for flora and/or fauna

**II. Exceptions to Confidential Information.** The term "Confidential Information" shall not include what would otherwise be deemed Confidential Information if the City can document that: (a) it was in the public domain at the time it was communicated to the City by the Tribe; (b) it entered the public domain subsequent to the time it was communicated to the City through no fault of the City; (c) it was in the City's possession free of any obligation of confidence at the time it was communicated to the City by the third party; or (d) the City becomes legally compelled to disclose provided that the City (i) uses its best efforts to provide the Tribe with prompt notice of such disclosure prior to making the disclosure or as soon as reasonably practical after such disclosure is made; and/or (ii) only provides that portion of the proprietary technical and commercial information that is legally required.

**III. Handling of Confidential Information.**

A. To ensure that cultural sites located within project areas are not subject to vandalism, all information regarding the site of any burial or reburial of Native American cultural resources shall remain confidential.

B. Pursuant to California Government Code section 6254, subdivision (r), the Parties understand that the California Public Records Act, California Government Code section 6250 et seq.,



does not require the disclosure of records of Native American graves, cemeteries, and sacred places or records of Native American places, features, and objects such as places of worship, religious or ceremonial sites, sacred shrines, historic, cultural or sacred sites eligible for listing in the California Register of Historic Resources, historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site ("Exempt Public Records").

C. The City agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party Confidential Information, except as approved in writing by the Tribe, with the exception of Public Records unless such records are Exempt Public Records..

C. With the exception of Confidential Information that are Public Records, unless such records are Exempt Public Records, the City shall use its best efforts to maintain the Confidential Information pursuant to this Agreement and only permit access to Confidential Information to its employees or authorized representatives having a need to know.

D. In the event that the City receives written approval from the Tribe to disseminate Confidential Information to a third party, the City shall secure a confidentiality agreement containing the material terms hereof signed by said third party prior to the dissemination of any Confidential Information unless the Confidential Information consists of Public Records, unless such records are Exempt Public Records, in which case no written approval or confidentiality agreement shall be required.

#### **IV. Term and Termination.**

A. Upon termination or expiration of this Agreement, or at the request of the Tribe, the City shall promptly return to the Tribe Confidential Information that was provided by the Tribe and that is in a tangible form unless the Confidential Information is part of Planning Records for a project. The return of confidential information to the tribe will include, but not be limited to, documents, electronic information, files, photographs, or other materials containing the Tribe's Confidential Information and all copies thereof.

B. The Parties obligations hereunder shall continue beyond the termination of any relationship between the Parties and beyond the return of the Confidential Information documentation hereunder for a period of three (3) years from the date hereof.

V. **Breach and Remedies.** The Parties agree that either Party can pursue any appropriate remedy available under the law.

VI. **Applicable Law and Severability.** This Agreement is to be construed and enforced under the laws of the State of California. If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall continue in full force and effect. Failure to enforce one part of this Agreement shall not be deemed a waiver of the entire Agreement or of other sections, terms or conditions of this Agreement.

VII. **Warranties.** Each Party represents and warrants that (i) it has the legal and valid right to enter into this Agreement, and (ii) the performance by it of its obligations arising hereunder does not and will not violate the terms of any other agreement or understanding to which it is a party.

**VIII. Merger and Modifications.** This writing is the entire agreement between the Parties with regards to the disclosure of Confidential Information. Modifications to this Agreement must be done in writing and be signed by both Parties.

**IX. Counterparts.** This Agreement may be signed in two or more counterparts and shall be effective when all the Parties and signatories have affixed their signatures to two or more of the counterparts and the counterparts have been delivered to the Parties, at which time the counterparts together will be deemed one original document. A signature delivered by facsimile or by scanned image (e.g. .pdf or .tiff file extension name) as an attachment to electronic mail will be deemed as effective as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the last signature date set forth below.

Executed by:

CITY OF FORT BRAGG

\_\_\_\_\_  
By: Linda Ruffing, City Manager

\_\_\_\_\_  
Date

SHERWOOD VALLEY BAND OF POMO  
INDIANS

\_\_\_\_\_  
By: Michael Fitzgerral, Tribal Chairman

\_\_\_\_\_  
Date