

**Cultural Resources Treatment and Monitoring Agreement
Between the Confederated Villages of Lisjan
And the City of Oakland
Regarding the Dr. Kenneth Anderson Senior Housing Project, City of Oakland,
Protocol for Handling Native American Human Remains and Cultural Items**

This Cultural Resources Treatment and Monitoring Agreement (the “**Agreement**”) is made and entered into as of this ___ day of _____, 2021, by and between the Confederated Villages of Lisjan (“**Tribe**”), a federally recognized Indian tribe and (2) the City of Oakland, a municipal corporation (“**City**”) in order to document appropriate methods, measures, and conditions for tribal cultural resource treatment that the City will impose through project conditions of approval for the housing development project herein described, and with reference to the following facts:

RECITALS

- A. Eden Housing, Inc., a non-profit corporation (“**Project Sponsor**”), proposes to construct a 100% affordable housing development with 68 residential units and 73 parking spaces in a five-story building (“**Project**”) on the property located at 1003 East 15th Street, Oakland, California (“**Project Site**”); and
- B. Project Sponsor submitted a pre-application to the Bureau of Planning under the provisions of California Government Code Section 65913.4 to initiate the tribal scoping consultation process described in subsection (b) of that Government Code Section; and
- C. Upon receiving the pre-application, the City sent out notifications to all tribes on the list provided by the Native American Heritage Commission and received one request for tribal consultation; and
- D. In the course of the tribal consultation, the City received the result of an archeological analysis and testing report based on a Tribe- and City- approved scope of work, which concluded that the probability of encountering precontact buried archeological deposits in the course of the construction of the Project was remote; and
- E. After reviewing the report, the Tribe expressed the desire to enter an agreement with the City documenting the methods, measures, and conditions for tribal cultural resources that the City will require as conditions of approval for the Project; and

AGREEMENT

NOW, THEREFORE, the Tribe, the City, and Project Sponsor agree that the methods, measures, and conditions for tribal cultural resources described in the following stipulations shall be implemented through the signing of this agreement and the imposition of a condition of approval on the Project.

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NOTICE

All notices to the parties shall be given at the addresses below:

Tribes

Corrina Gould, Spokesperson
Confederated Villages of Lisjan
10926 Edes Ave.
Oakland, CA 94603
Telephone: (530) 676-8010
Facsimile: (530) 676-8033

Counsel for the Tribes

Michelle LaPena
Rosette, LLP
1415 L Street, Suite 450
Sacramento, CA 95814
Telephone: (916) 353-1084
Facsimile: (916) 353-1085

City

City of Oakland
c/o: Planning and Building Department, Bureau of Planning
250 Frank H. Ogawa Plaza, 2nd Floor
Oakland, CA 94612
Attention: Zoning Manager

Copy to:
City of Oakland
City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94512
Attention: Density bonus attorney

Project Sponsor

Director of Real Estate Development
Eden Housing, Inc.
22645 Grand Street Hayward, CA 94541
Attention: Senior Vice President of Real Estate Development

STIPULATIONS

The City will ensure through the signing of this agreement and the imposition of a condition of approval requiring implementation of this Cultural Resources Treatment and Monitoring Agreement, and enforcement of said condition, that the following measures and the Tribal Monitors Description of Work and Treatment Protocol, attached hereto as Addendum A, are carried out:

I. Subject Matter

This Agreement concerns the Project described in the recitals above. The Project Site is owned by Williams Chapel Baptist Church. The proposed building will be five stories, three stories of which will serve as residential (Type V construction) atop a two-story parking podium (Type I construction). Amenities include a community room, laundry, internet, computer room, and an exterior courtyard. Residents will have easy access to high-quality transit, not only from the existing bus services, but also from the planned bus rapid transit station at 10th Avenue and International Boulevard, less than a half block away. Eden Housing Resident Services, Inc. (EHRSI) will provide service coordination services free-of-charge to all residents. The purpose of this Agreement is to formalize procedures for the treatment of Native American human remains, grave goods, ceremonial items, and cultural items, affiliated with the Confederated Villages of Lisjan, of California that may be found in conjunction with development of the Project, including archaeological studies, excavation, geotechnical investigations, grading, and ground disturbing activity on lands, which may be affected by the Project. This Agreement also formalizes procedures for Tribal monitoring of the Project during the grading and ground-disturbing activities that occur in the future.

II. Cultural Affiliation

The Confederated Villages of Lisjan (“Tribe”) traditionally occupied lands in Alameda, Contra Costa, San Mateo and Santa Clara Counties. The Tribe has designated its’ Spokesperson and will assign a Tribal monitor to act on the Tribe’s behalf with respect to the provisions of this Agreement. All Native American human remains and cultural items or artifacts (“cultural resources”) during the Project shall be treated in accordance with Section VIII of this Agreement.

III. Inadvertent Discovery of Native American Human Remains

Whenever Native American human remains are found during the course of the grading, excavation or other ground disturbing activities associated with the Project, the determination of Most Likely Descendant (“MLD”) under California Public Resources Code Section 5097.98 will be made by the Native American Heritage Commission (“NAHC”) upon notification to the NAHC of the discovery of said remains at the Project site. If the location of the site and the history and prehistory of the area is culturally-affiliated with the Tribe, the NAHC contacts the Tribe, a Tribal member will be designated by the Tribe to consult with the Project Sponsor.

Should the NAHC determine that a member of an Indian tribe other than the Confederated Villages of Lisjan is the MLD, the terms of this Protocol relating to the treatment of such Native American human remains shall not be applicable; however, that situation is very unlikely.

IV. Coordination with County Medical Examiner's Office

State law requires that the Project Sponsor shall immediately contact the Medical Examiner and the culturally-affiliated Tribe in the event that any human remains are discovered during the development of a Project. The Medical Examiner shall ensure that notification is provided to the NAHC as required by California Public Resources Code Section 5097.98(a).

V. Treatment of Native American Remains

In the event that Native American human remains are found during development of the Project and the Tribe or a member of the Tribe is determined to be MLD pursuant to Section IV of this Agreement, the following provisions shall apply. The Medical Examiner shall immediately be notified, ground disturbing activities in that location shall cease, and the Tribe shall be allowed, pursuant to California Public Resources Code Section 5097.98(a), to (i) inspect the site of the discovery; and (ii) make determinations as to how the human remains and grave goods should be treated and disposed of with appropriate dignity.

The Tribe shall complete its inspection and make its MLD recommendation within forty-eight (48) hours of getting access to the site. The Tribe shall be given sufficient access in terms of the physical presence, privacy and time it may need to meaningfully complete its inspection. The Tribe shall have the final determination as to the disposition and treatment of human remains and grave goods. Said determination may include avoidance of the human remains, reburial on-site, or reburial on tribal or other lands that will not be disturbed in the future. The Tribe may make a determination which requires alteration of the plans and specifications of the approved Project that may necessitate material changes, new entitlements, environmental review or permits when no other reasonable alternative exists, in which case, the Parties will work together to achieve a mutually beneficial result.

The Tribe may wish to rebury said human remains and grave goods or ceremonial and cultural items on or near the site of their discovery, in an area which will not be subject to future disturbances over a prolonged period of time. Reburial of human remains shall be accomplished by the Tribe in compliance with the California Public Resources Code Sections 5097.98(a) and (b).

The term "human remains" encompasses more than human bones because the Tribe's traditions call for the burial of associated cultural resources with the deceased (funerary objects), 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 that remain intact.

VI. Non-Disclosure of Location of Reburials

Unless otherwise required by law, the site of any reburial of Native American human remains shall not be disclosed by the City or the Project Sponsor and will be exempted from public disclosure requirements of the California Public Records Act, Cal. Govt. Code § 6250 *et seq.* The Medical Examiner shall withhold public disclosure of information related to such reburial pursuant to the

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specific exemption set forth in California Government Code Section 6254(r). The Tribe will require that the location for reburial is recorded with the California Historic Resources Inventory System (“CHRIS”) and will submit the location on a form that is acceptable to the CHRIS center. The Tribe may also suggest that the Project Sponsor enter into an agreement regarding the confidentiality of site information that will run with title on the property.

VII. Treatment of Cultural Resources

Treatment of all Native American cultural items, including ceremonial items and archeological items will reflect the religious beliefs, customs, and practices of the Tribe. All Native American cultural items, including ceremonial items and archeological items, which may be found at the Project site should be turned over by the Project Sponsor to the Tribe for appropriate treatment, unless otherwise ordered by a court or agency of competent jurisdiction. The Project Sponsor shall waive any and all claims to ownership of Tribal ceremonial and cultural items, including archeological items which may be found on the Project site in favor of the Tribe. If any intermediary, (for example, an archaeologist retained by the Project Sponsor) is necessary, said entity or individual shall not possess those items for longer than is reasonably necessary, as determined by the Tribe. If said intermediary retains possession of these items for longer than is reasonably necessary, the City, upon receiving written notice from the Tribe of the issue, shall work with the Project Sponsor to facilitate the expedient return of the items, or otherwise enforce the terms of this agreement. The Tribe may require that these items be reburied at an appropriate site location by the Project Sponsor, provided, however, that the Tribe’s determination shall not require alteration of the plans and specifications of the approved Project that would necessitate any material changes, new entitlements, environmental review or permits.

VIII. Other Significant Sites Impacted by the Project

If additional significant Native American human remains and cultural resources are located within the Project impact area, such sites will be subjected to further archeological and cultural significance evaluation the City (who may contract with qualified consultants), and the Tribe to determine if additional measures are necessary to treat sites in a culturally appropriate manner.

IX. Work Statement for Tribal Monitors

The description of work for Tribal monitors of the grading and ground disturbing operations at the Project site is attached hereto as Addendum A and incorporated herein by reference.

AUTHORITY

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.

CONFEDERATED VILLAGES OF LISJAN

By: _____

Title: _____

Date: _____

THE CITY OF OAKLAND

By: _____

Title: _____

Date: _____

Approved as to Form:

City Attorney

EDEN HOUSING, INC.

By: _____

Title: _____

Date: _____

ADDENDUM A

Tribal Monitors

Description of Work and Treatment Protocol

(I) Preferred Treatment

The preferred protocol upon the discovery of Native American human remains is to secure the area, cover any exposed human remains or other cultural items, and to avoid further disturbance.

(II) Tribal Monitoring

The Tribe shall assign a Tribal monitor to act on the Tribe's behalf during Project grading and other ground disturbing activities and with respect to the provisions of this Protocol. Should he/she need to be away from the Project Area at any time, he/she may designate a representative to monitor for a period of time to ensure close inspection of the construction activities.

(A) The Project Sponsor shall provide and coordinate the construction schedule on a weekly basis with the Tribal monitor to ensure that the Tribal Monitor is available and has access to the Project site (including surrounding streets and sidewalks) during any ground disturbing activities and until ground disturbance is completed. The Project Sponsor shall notify the Tribal Monitor of any changes or delay to the construction schedule.

(B) The Project Sponsor shall allow the Tribal monitor to have access to a full complement of supplies that include a GPS unit, hand trowel, pin flags, caution tape, shaker screen, shovel, cell phone, digital camera, maps, and all other supplies necessary to effectively complete the construction monitoring task. Hard hats, boots, high visibility reflective vests, earplugs, gloves, and safety glasses will be part of the monitor's attire.

(C) The Tribal monitor shall have the authority to temporarily stop construction to inspect excavation spoils or inspect the excavated areas, including trench sidewalls.

(III) Excavation Methods for found Tribal resources

If, after the Confederated Villages of Lisjan Tribal monitor has been granted access to the Project site, Native American human remains have been uncovered, and it is determined by the Parties that avoidance is not feasible, an examination of the human remains will be conducted to confirm they are human and to determine the position, posture, and orientation of the remains. At this point, the following procedures are recommended:

(A) Tools. All excavation in the vicinity of the human remains will be conducted using fine hand tools and fine brushes to sweep loose dirt free from the exposure.

(B) Extent of Exposure. In order to determine the nature and extent of the grave and its contents, controlled excavation should extend to a full buffer zone around the perimeter of the remains.

(C) Perimeter Balk. To initiate the exposure, a perimeter balk (especially, a shallow trench) should be excavated, representing a reasonable buffer a minimum of 10 cm around the maximum extent of the known skeletal remains, with attention to counter-intuitive discoveries or unanticipated finds relating to this or other remains. The dirt from the perimeter balk should be bucketed, distinctly labeled, and screened for cultural materials.

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(D) Exposure Methods. Excavation should then proceed inward from the walls of the balk as well as downward from the surface of the exposure. Loose dirt should be scooped out and brushed off into a dustpan or other collective device. Considerable care should be given to used to ensure that human remains are not further impacted by the process of excavation.

(E) Provenience. Buckets, collection bags, notes, and tags should be fully labeled per provenience, and a distinction should be made between samples collected from: (1) **Perimeter Balk** (described above), (2) **Exposure** (dirt removed in exposing the exterior/burial plan and associations, and (3) **Matrix** (dirt from the interstices between bones or associations). Thus, each burial may have three bags, “Burial 1 Perimeter Balk,” “Burial 1 Exposure Balk,” “Burial 1 Matrix.”

(F) Records. The following records should be compiled in the field: (1) a detailed scale drawing of the burial, including the provenience of and full for all human remains, associated artifacts, and the configuration of all associated phenomena such as burial pits, evidence for preinterment grave pit burning, soil variability, and intrusive disturbance, (2) complete a formal burial record using the consultants proprietary form or other standard form providing information on site #, unit or other proveniences, level depth, depth and location of the burial from a fixed datum, workers, date(s), artifact list, skeletal inventory, and other pertinent observations, (3) crew chief and worker field notes that may supplement or supercede information contained in the burial recording form, and (4) photographs, including either or standard photography or high-quality (>300 DPI) digital imaging.

Please note the provisions below with respect to handling and conveyance of records and samples.

(G) Association. Association between the remains and other cultural materials should be determined in the field in consultation with a Confederated Villages of Lisjan Tribal representative, and may be amended per laboratory findings. Records of provenience and sample labels should be adequate to determine association or degree of likelihood of association of human remains and other cultural materials.

(H) Samples. For each burial, all **Perimeter Balk** soil is to be 1/8”-screened. All **Exposure** soil is to be 1/8”-screened, and a minimum of one 5-gallon bucket of excavated but unscreened Exposure soil is to be collected, placed in a plastic garbage bag in the bucket. All **Matrix** soil is to be carefully excavated, screened as appropriate, and then collected in plastic bags placed in 5-gallon buckets.

(I) Human remains are not to be cleaned in the field.

(III) Re-internment of MLD without Further Disturbance

No laboratory studies are permitted. The preferred treatment preference for exhumed Native American human remains is reburial in an area not subject to further disturbance.