

## **Exhibit 4 : Proposed Construction Pre-Excavation Agreement**

### **Torres Martinez Desert Cahuilla Indians Tribal Cultural Resource Program Pre-Excavation Agreement**

This Pre-Excavation Agreement (“Agreement”) is made and entered by and between the below named parties (individually, “Party” together “Parties”) The effective date of this agreement is \_\_\_\_\_ The Parties hereby agrees as follows.

#### **Section 1. PARTIES & NOTICES**

The parties are the Torres Martinez Desert Cahuilla Indians (hereinafter “Tribe”), Native Grounds Monitoring Research and Consulting, LLC hereinafter Contractor \_\_\_\_\_ (hereinafter) “Owner

All notices to be given by either party shall be given by mailing the same, either by registered mail or certified mail, return receipt requested, addressed to the other Party at the following respective address as may from time to time be designated by the respective party:

##### **TO TRIBE:**

Torres Martinez Desert Cahuilla Indians  
Attn: Cultural Coordinator/Designated Staff  
P.O Box 1160  
Thermal, California 92274

Native Grounds Monitoring Research and Consulting, LLC  
Attn: Bennae Calac  
P.O. Box 671  
Pauma Valley, Ca 92061

##### **TO OWNER:**

#### **Section 2. SUBJECT MATTER AND PROJECT NAME AND LOCATION**

1. Description of Project - Coachella Valley Water District (District) is proposing the construction of Avenue 66 Transmission Water Main Phase 1B, Phase 2, and Lincoln Street Water Main Project (proposed Project). The Project consists of installing approximately 26,723, linear feet of 30-inch, 24-inch, 18-inch, 12-inch, 8-inch and 6-inch diameter water main pipes with restrained joints, including valves, fittings, polyethylene encasement, backfill and compaction of backfill, surface restoration and all necessary

appurtenances. The pipeline work also includes: excavation of jacking and receiving pits, shoring of trenches and pits as required, pipe jacking operations, and all related backfill and compaction. Portions of the pipeline will cross above ground the Coachella Valley Stormwater Channel, Buchanan Street Channel and Lincoln Street Channel within a steel casing with pipe bridge supports, rip rap removal and replacement, and concrete slope protection as indicated in the Contract Documents.

In the event the Owner's real property covers only a portion of the Project site, then the Owner's portion is specifically identified in Exhibit 1. The terms and conditions of this Agreement apply to all of the Owner's real property at the Project site except to the extent otherwise expressly provided in Exhibit 1. Also set forth in Exhibit 1 is the application, if any, of this Agreement for activities conducted in Project areas for which the underlying real property is not owned by the Owner, and the contractual or other legal basis for the terms and conditions of this Agreement extending to such real property.

The County Coroner's Office for the location of the Project site will be provided a copy of this agreement.

### **Section 3. PURPOSE**

The purpose of this Agreement is to finalize procedures for the treatment of Native American human remains, associated grave goods, and Native American archeological, historical, and cultural resources ("Cultural Resources") in the event that any are found in conjunction with the Project's development. This Agreement applies to all phases of the Project, including, but not limited to, archeological studies, investigations and data recovery; geological studies and investigations, excavations, grading, soil testing, trenching, grubbing, topsoil clearing and ANY other ground-disturbing activities at the Project site.

This agreement is entered into in furtherance of Owner's interest in the development of the Project and the Parties respective interest in the protection of Native American cultural resources and Native American human remains and associated grave goods, consistent with all applicable, including but not limited to, the California Environmental Quality Act, California Public Resources Code 21000 *et seq.* ("CEQA") the Native American Historical Cultural, and Sacred Sites Act, California Public Resource Code 5097.9 *et seq.* and the Native American Historic Protection Resources Act, California Public Resources Code 5097.993 *et seq.* This Agreement may be a condition or requirement of the Project and is essential for Project development.

### **Section 4. CULTURAL AFFILIATION**

The Parties agree that the Project are consist of land which has been traced to and traditionally occupies by the Tribe. Any Native American human remains and associated grave goods found in conjunction with any ground disturbance activities relating to this project will be treated in accordance with Section VIII of this Agreement. Nothing herein, however, will be the basis for the claim of

ownership of the real property, as distinguished from Native American human remains, associated grave goods, and cultural resources.

## **Section 5. PROTECTION OF SITES AND PROJECT AREA**

THE Owner agrees that grading, excavation, soil testing (STP-Soil Test Pits), screening, trenching, grubbing, topsoil clearing, and any other ground disturbing activities (together, “Ground-disturbing activities”) relating to Project construction, pre-construction, site-testing and other Project activities will be planned to avoid all known Native American grave and cultural resource sites (and such sites will be protected). Owner also agrees that no construction equipment will be stored or operated within the boundaries of any known Native American grave or cultural resource site. If mitigation other than avoidance and protection is to be utilized for any grave or cultural resource site, such site and mitigations set forth in Exhibit 1.

## **Section 6. MOST LIKELY DESCENDANT**

In the event that Native American human remains are found during development of this project, it is understood by the Parties that the determination of the Most Likely Descendent (“MLD”), under California Public Resources Code 5097.98 will be made by the Native American Heritage Commission (“NAHC”) upon notification to NAHC of the discovery of human remains of Native American origin at the Project site. Until that time the Tribe does not guarantee, and cannot known with certainty, that the Tribe, or one of its members, will be so named.

The Tribe believes that when and if such human remains are discovered at the Project site, given the location of the site and history and pre-history of the area, a member of the Tribe will be named MLD. If the MLD is a member of the Tribe, that person will be designated by the Tribe (and concurred with by the NAHC designation) or otherwise designated by the NAHC.

Should it be determined by the NAHC that a member of the Indian Tribe other than the Tribe is the MLD, that provisions of this Agreement will not apply in relation to the treatment of the discovered Native American human remains for which a member of an Indian other than the Tribe’s designated MLD. In such an event and unless otherwise agreed to in writing by the Parties, this Agreement, including the provisions of Exhibit 1, will continue in full force and effect a NAHC MLD designation to another Indian Tribe

## **Section 7. COORDINATION WITH THE COUNTY CORONER OFFICE**

The Owner shall immediately contact the County Coroner, the Lead Agency, the developer, any Contractor, Project coordinator, the Torres Martinez Desert Cahuilla Indians Tribal Resources Coordinator/ Planning Director, the Tribal contact separately designated to receive notices under this Agreement, and the local city and county government in the event that any human remains are

discovered during any stage of the implementation of the Project. The Owner shall request that the County Coroner provide notification to the NAHC of Native American human remains as required by California Health and Safety Code 7050.5 and as referenced by California Public Resources Code 5097.98 (a).

## **Section 8. TREATMENT AND DISPOSITION OF REMAINS**

IN THE EVENT Native American human remains are found during employment, and the Tribe, or a member of the Tribe, is determined to be the MLD, the following provisions will apply:

1. The MLD shall be allowed, consistent with California Public Resources Code 5097.98, to:
  2. Inspect the site of discovery, and
  3. Make recommendations as to the appropriate treatment and disposition of the Native American human resources and associated grave goods. The MLD shall complete the inspection and make recommendations within forty-eight (48) hours of being granted access to the site
1. Upon the discovery of Native American human remains, the Owner shall ensure that the area where the human remains are located and the immediate vicinity, based on generally accepted cultural or archeological standards or practices, are not damaged or in any way disturbed by further development activity until a decision in accordance with this agreement, California Public Resource Code 5097.98, and other applicable law and applicable Projects permitting conditions is made and carried out with respect to the treatment of the Native American human remains and any associated grave goods. In the event that a Native American monitor reasonably believes that a site with Native American human remains is discovered, the Cultural Monitor may call a work stoppage in the immediate area until a determination can be made and the requirements of this agreement, applicable laws, and relevant conditions relating to the permitting and approval of the Project being carried out.
2. The Owner shall make its best efforts to comply with and carry out the MLD recommendations consistent with applicable laws. In the event that the Owner determines not to comply and carry out one or more of the MLD recommendations, the Owner will offer to immediately meet and confer with the MLD, the Tribe, and the Owner will also provide the Tribe with written document setting forth the Owner's position as to how the Owner's planned action relating to the discovered Native American human remains is consistent with this Agreement, the Native American Historical, Cultural, and Sacred Sites Act, the Native American Historic Resource Protection Act, the California Environmental Quality Act (as applicable), and any relevant conditions relating to the permitting and approval of the Project the Tribe may seek recourse and applicable law.

3. In the event of discovery of multiple Native American human remains, the Owner agrees to consult with the Tribe regarding appropriate treatment of the remains. Culturally appropriate treatment of such remains may be ascertained, in part, from a review of the site using cultural and archeological standards.
4. The Parties agree to discuss in good faith what constitutes “appropriate dignity” as that term is used in the applicable statutes and in the customs and traditions of the Tribe. Reburial of the remains will comply with California Public Resource Code 5097.98 (a) and (b) and any other law, rule or ordinance of any governing agency with jurisdiction over the Project site. The Parties agree that the Tribe will have the final determination as to the disposition and treatment of human remains and associated grave goods; however, such determination will not include preservation in place or the designation of additional open space unless agreed to by the Owner.
5. The Parties are aware that the Tribal may wish to rebury the Native American human remains, associated grave goods, or cultural resources, if any are discovered, on or near the site of their discovery, in an area which will not be subject to future disturbances or development over a prolong period of time. The Owner agrees to allow on-site reburial, subject to compliance with all applicable laws, rules, or ordinances of any governmental agency with jurisdictions over the Project site. Prior to any reburial, the Owner and the Tribe will identify a mutually acceptable area of the Project for reburial. Any and all permits authorization or approvals for reburials will be at the Owner’s expense.
6. The term “human remains” encompasses more than human bones, because the Desert Cahuilla traditions call for the ceremonial burning of human remains and animals, ashes, and human remains and associated grave goods, including but not limited to animal bones and other remnants from burning ceremonies found with human remnants are to be treated in the same manner as human bones and human bone fragments that remain intact. Owner agrees to include in any contracts or agreements for archeological and related services the obligations to cooperate and comply with the terms and conditions of this Agreement, and as may be necessary the Owner shall cooperate in enforcing the terms and provisions of such contract or agreement that bind the archeologist or other professionals to comply with this agreement. Should any person or entity other than the Tribe possess the remains even temporarily such per or entity shall request permission from the Tribe to conduct any testing beyond taking measurements documenting the find and cataloging.
7. Nothing in this section or in this Agreement is intended to or is to be construed to limit application of or preclude compliance with any provisions of the Native American Historical Cultural, and Sacred Sites Act or other applicable law. In addressing the discovery of Native American Human Remains the Owner must comply with applicable law included but limited to, Public Resources Code 5097.98.

## **Section 9. TREATMENT AND CULTURAL RSOURCES**

In the event that the Tribe or a member of the Tribe is identified as MLD, or in the absence of an MLD designation and in the event that Native American cultural resources relating to the Tribe (as determined by the Tribe) are discovered in the development of the Project, the Treatment of the Cultural Resources will reflect the traditional religious belief and practices cultural practices, and Customs of the Tribe and the following provisions will apply:

Except as expressly prohibited by applicable laws, rules, regulations or ordinances of any governmental agency with jurisdiction over the Project or unless otherwise mandated by a court or agency of competent jurisdiction. Owner agrees to return all Native American cultural resources discovered at the Project Site to the Tribe for appropriate Treatment subject to limits archaeological cataloging as described below. The cultural resources shall be returned to the Tribe for its care and disposition at the Tribe's total discretion. The Owner's waives any and all claims to ownership of Native American cultural resources in favor of the Tribe. If temporary possession of cultural resources by any entity or individual other than the Tribe (for example an archeologist retained by the Owner) is necessary for environmental review mitigation purpose and mandated by applicable law that entity or individual shall not possess those cultural resources for longer than is reasonably necessary. Owner's archeologist shall maintain contact with the Tribe designated representative regarding the status and progress of the cataloging of any cultural resources found. Owner shall request its archeologist to catalog all found resources in a prompt manner. The Cultural resources shall be returned under provisions of this paragraph within 20 days of the completion of cataloging. The Tribe shall be provided with a copy of the Archeological Reports and list of artifacts prepared for the project and shall be afforded the opportunity to comment on such report it is finalized.

Upon the discovery of Native American cultural resources, the Owner shall ensure that the area where the cultural resources are located and the immediate vicinity based on generally accepted cultural or archeological standards or practices are not damaged or in any way disturbed by further development activity until a decision in accordance with this Agreement applicable law and Project permitting conditions is made and carried out with respect to the treatment of the Native American cultural resources. In the event that a Native American monitor reasonably believes that a site with Native American cultural resources is discovered the monitor may call a work stoppage in the immediate area until a determination can be made and the requirements of this agreement applicable law and relevant conditions relating to the permitting and approval of the Project are carried out.

Owner agrees to include in any contracts or agreements for archeological services developer services, construction services, and other services performed in connection with the development of the Project provisions that bind the

contracting Parties to comply with the terms and conditions of this Agreement relating to Native American human remains, associated grave goods and the Native American cultural resources and compliance with all applicable law including but not limited to, returning cultural resources to the Tribe and observing the Treatment and disposition of Native American human remains and associated grave goods as set forth in this Agreement.

**Section 10. NON-DISCLOSURE OF LOCATION OF REBURIALS**

It is understood by the Parties that unless that otherwise required by law, the site of any reburial of Native American human remains, any associated grave goods, and any Native American cultural resources shall not be disclosed by Owner, or by any third Party including, but not limited to, those contracted by Owner, except as may be necessary for the future protection and maintenance of the area by successors-in-interest to the real property. The Parties agree that any Native American sites located on the projected site are exempted from the public disclosure requirements of the California Public Records Act, and for this reason Owner will ask the County Coroner to withhold public disclosure of information related to such reburial pursuant to the specific exemption set forth in California Government Code 6254(r).

The Parties agree that the Tribe may disclose the location of Native American site, including, but not limited to, the location of reburials, to Tribal members, officers, employees, and agents as deemed necessary by the Tribe.

**Section 11. WORK STATEMENT FOR NATIVE AMERICAN MONITORS**

The description of work for Native American monitors in relation to archeological or geological investigation and ground-disturbing activities at the Project site is attached hereto as Exhibit 1, which is unincorporated herein. Among other things, exhibit 1 specifies the area over which monitoring will be conducted, the size of the monitoring crew, the powers of the monitoring crew, and the provisions for compensation of the Native American monitors. As specified in Exhibit 1 one or more Native American monitors must be present at the Project site during all archeological and geological investigations and ground-disturbing activities, and such work may not commence or be conducted without a Native American monitor present.

As provided for in this Agreement, Native American monitors have the Power to Halt the Project work at the location of a Native American grave or cultural resource site as necessary to carry out the terms of this Agreement.

**IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.**

**Tribe:**

**Date** \_\_\_\_\_

**Torres Martinez Desert Cahuilla Indians**

\_\_\_\_\_  
**Signature**

**Contractor**

**Date** \_\_\_\_\_

\_\_\_\_\_  
**Bennae Calac**

**Native Grounds Monitoring Research and Consulting, LLC**

\_\_\_\_\_  
**Signature**

**Owner:**

**Date** \_\_\_\_\_

\_\_\_\_\_  
**Signature**

**Project Name:** \_\_\_\_\_

**NATIVE AMERICAN MONITORING FOR GRADING AND ALL  
GROUND DISTURBING ACTIVITIES**

**I. SPECIFICATIONS**

Given the sensitivity of the archeological sites, Native American human remains Associated grave goods, and Native American cultural resources located at, or that may be located at, the Project site, the Project conditions of approval and/or this Pre-Evacuation Agreement require Native American monitoring during the projects



ground disturbing activities within the boundaries of the Project area. A Native Monitor (or more than one monitor if otherwise provided) must be present at the Project site during all archeological and geological investigations and ground disturbing activities, and such work may not commence or be conducted without a Native American monitor present.

While exercise of this power is unlikely, Native American monitors are empowered to temporarily stop or, in consultation with Owner or Owner's developer or other designee and with any project archeologist or similar professionalism, if any relocate ground disturbing activities from the immediate area of a cultural resource find, allowing the project activities to continue within the remainder of the Project. Any stops or relocation of the Project activities by the Native American monitor shall be (1) coordinated with the on-site Project Superintendent and (ii) shall be only as long as reasonably necessary. After concurrence is obtained from the Torres Martinez Desert Cahuilla Indian Tribal Resources Program Representative, Project work in the stoppage area may not resume until the Native American monitor has had the opportunity to review the find and discuss it with the Tribal Cultural Resource Representative. The Parties acknowledge that nothing in this Agreement lessens their obligations under the Public Resources Code and other applicable law and Project permitting conditions and requirement.

Owner acknowledges the Native American monitors are not necessarily professional archeologists or anthropologists, and owner further acknowledges that Owner may separately be required to provide archeological or other professional observation and other services by qualified roses signals as part of the Project development. Unless otherwise consistent with applicable law, rules, and regulations, and with permit conditions and requirements, a qualified Project archeologist or other professional will conduct controlled excavation for evaluation of discovered cultural items and will be responsible for recovery of artifacts and excavation, and related collection and mapping. Native American monitors will coordinate with any designated Project archeologist and other similar professionals with respect to discovered Native American human remains, associated grave goods, and cultural resources.

Regarding grading activities, a pre-grading conference shall be held with the Tribal Cultural Resources Coordinator/Planning Director, \_\_\_\_\_, County of \_\_\_\_\_ and the owner to clarify Native American monitoring specifications with the grading contractor and/or Project Manager, and with the grading Inspector of the jurisdiction in which the Project site is located. The Tribe or its designated representatives shall be invited to participate in this conference with advance written notice. In a similar way the Tribe will be invited to attend other meetings relating to Project activities that relate to archeological studies, investigations and date recovery; geological studies and investigations; and ground disturbing activities.

In addition to the Native American monitors, the owner shall provide any archeological and related observation and other services, as specified in the EIR or

other CEQA documentation, if applicable. The Native American monitor shall assist and be consulted in connection with identifying and/or ascertaining the significance of any subsurface Native American human remains, associated grave goods, and cultural resources (in consultation with the Tribal Cultural Resource Coordinator/Planning Director).

## **II. PROJECT TO BE MONITORED**

Monitoring shall occur within:

\_\_\_\_\_  
Section

\_\_\_\_\_  
Legal description:

\_\_\_\_\_  
Name of the owner of real property on which monitoring will occur:

\_\_\_\_\_  
If monitoring will not cover the entirety of the Project site, please check and provide a detailed explanation:

\_\_\_\_\_  
If any Native American grave or cultural resources site on the project site will involve mitigation other than avoidance and protection of the site, please check and provide a detailed description:

\_\_\_\_\_  
It is agreed that the monitoring will be allowed for all archeological or geological investigations, excavations, grading, soil testing, trenching, grubbing, topsoil clearing, and ground-disturbing activities occurring in the development, within the site area noted above. Such activities may not be undertaken without the on-site presence of the Native American monitor(s).

