

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

335  
A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
 April 11, 2013

**SUBJECT:** Cultural Resources Monitoring Agreement for State Route 79 (SR-79) Widening Project with the Pechanga Band of Luiseño Indians.

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Cultural Resources Monitoring Agreement with the Pechanga Band of Luiseño Indians, and;
2. Authorize the Chairman to execute the same.

**BACKGROUND:** The County is in the process of widening SR-79 from two to four lanes between Domenigoni Parkway and Thompson Road for approximately eight miles. This project will improve safety and travel through the corridor and ease congestion caused by the significant increase in traffic volume.

*Patricia Romo*

Juan C. Perez  
 Director of Transportation and Land Management

**Patricia Romo**  
 Assistant Director of Transportation

Departmental Concurrence

(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 125,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

**SOURCE OF FUNDS:** Combined Improvement Fund (100%)

There are no General Funds used in this project.

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Tina Grande*  
 Tina Grande

**County Executive Office Signature**

- Dep't Recomm.:  Policy
- Per Exec. Ofc.:  Policy
- Consent
- Consent

APR 11 2013 10:52 AM  
 RECEIVED BOARD OF SUPERVISORS

Prev. Agn. Ref.

District: 3/3

Agenda Number:

The Honorable Board of Supervisors

RE: Cultural Resources Monitoring Agreement for State Route 79 (SR-79) Widening Project with the Pechanga Band of Luiseño Indians.

April 11, 2013

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The project environmental document was approved on December 28, 2010. On November 3, 2011, the Board of Supervisors awarded the construction contract for Phase 1 of the project, Domenigoni Parkway to Scott Road, to SEMA Construction and construction began in March 2012. Construction of Phase 2 of the project, from Scott Road to Thompson Road, was awarded on January 15, 2013, and construction began in February 2013.

During the course of construction, unanticipated cultural resources were discovered within the area of the project. It was determined through Caltrans and the State Historic Preservation Office that full-time cultural monitoring is needed during ground disturbing activities, such as grading and excavation, to identify and protect resources, such as archeological sites, mineral and plant gathering areas, burial sites, and rock art sites that may be encountered. The cultural monitors actively monitor excavation activities and inspect the excavated material for cultural resources of significance that may otherwise be destroyed. Monitors evaluate items discovered and determine final disposition of the resources in cooperation with Caltrans.

This agreement establishes the terms and conditions with the Pechanga Band of Luiseño Indians for reimbursement of cultural monitoring for the project for a total cost not to exceed \$125,000.

The SR-79 widening project is anticipated to be completed in the spring of 2014.

Project No. B405272

## **CULTURAL RESOURCES TRIBAL MONITORING AGREEMENT**

### **State Route 79 Widening Project** **Construction Monitoring**

#### **I. PARTIES**

The PARTIES to this Agreement are (1) The Pechanga Band of Luiseño Indians, a federally recognized Indian Tribe ("PECHANGA TRIBE") and (2) Riverside County Transportation Department ("COUNTY").

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

#### **Pechanga Band of Luiseño Indians**

Mr. Gary DuBois, Director  
Pechanga Cultural Resources  
P.O. Box 2183  
Temecula, CA 92593  
Telephone: (951) 770-8100  
Facsimile: (951) 506-9491

#### **General Counsel for the Pechanga Tribe**

Michele Fahley  
Pechanga Band of Luiseño Indians  
Office of the General Counsel  
P.O. Box 1477  
Temecula, CA 92593  
Telephone: (951) 770-6179  
Facsimile: (951) 694-0734

#### **Riverside County Transportation Department**

Juan C. Perez, Director Riverside County Transportation Department  
3525 14<sup>th</sup> Street  
Riverside, CA 92501  
Telephone: (951) 961-6366  
Facsimile: (951) 955-3198

#### **II. SUBJECT MATTER**

This Agreement concerns a project known as State Route 79, from Thompson Road to Domenigoni Parkway, Widening Project Construction Monitoring ("PROJECT") as shown in Attachment I. The Riverside County Medical Examiner's Office will be provided a copy of this Agreement by the PECHANGA TRIBE. The Riverside County Transportation Department ("COUNTY"), is the Lead Agency administering the "PROJECT", and the State of California Department of Transportation ("Caltrans") is the agency responsible for environmental compliance of this Project under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

#### **III. PURPOSE**

The purpose of this agreement is to formalize procedures for the treatment of Native American human remains, grave goods, funerary objects, ceremonial items, and cultural items, in the event that any are found in conjunction with development of the PROJECT. This agreement also formalizes procedures for tribal monitoring during all grading, groundbreaking, excavation, and ground-disturbing activities performed in conjunction with the Project development,

including, but not limited to archaeological testing, studies, surveys, and staging activities. This Agreement is effective as of the date provided for in Section XXII.

#### **IV. CULTURAL AFFILIATION**

The PARTIES agree that the Project area consists of land which has been traced to and traditionally occupied by the PECHANGA TRIBE. Any human remains as defined in Section VII which are found in conjunction with the development of this Project shall be treated in accordance with Sections V through VIII of this Agreement. Cultural resources shall be treated in accordance with Section IX of this Agreement. Significant sites shall be treated in accordance with Section X of this Agreement.

#### **V. MOST LIKELY DESCENDANT**

In the event that Native American human remains are found during development of this Project, the PARTIES understand that 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 NAHC of the discovery of said remains at the Project site. Until such time, neither the PECHANGA TRIBE nor the COUNTY guarantees that the PECHANGA TRIBE or one of its members will be so named. However, given the location of the site and the history and prehistory of the area, the PARTIES agree that their good faith belief is that, when and if such Native American human remains are discovered at the Project site, Tribal Chairperson Mark Macarro of the PECHANGA TRIBE will be named the MLD.

Should the NAHC determine that a member of an Indian tribe other than the PECHANGA TRIBE is the MLD, the provisions of this Agreement relating to the treatment of such Native American human remains shall be null and void in their entirety, except that, in such an event, the provisions of Attachment II to this Agreement, attached hereto and incorporated by this reference.

#### **VI. COORDINATION WITH COUNTY MEDICAL EXAMINER'S OFFICE**

The COUNTY shall immediately contact the medical Examiner and the PECHANGA TRIBE in the event that any human remains are discovered during the development of the Project. The Medical Examiner shall ensure that notification is provided to the NAHC as required by California Public Resources Code Section 5097.09(a).

#### **VII. TREATMENT OF NATIVE AMERICAN REMAINS**

In the event that Native American human remains are found during development of the Project and the PECHANGA TRIBE or a member of the PECHANGA TRIBE is determined to be MLD pursuant to Section V of this Agreement, the following provisions shall apply.

The term "Native American human remains" encompasses more than human bones because the PECHANGA TRIBE'S traditions call for the burial of associated cultural resources with the deceased (grave goods and 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 grave goods and funerary objects, associated with or buried with the Native American remains, are to be treated in the same manner as bones, bone fragments and cremations.

The Medical Examiner shall immediately be notified, ground disturbing activities in that location shall cease, and the remains shall be left in the place where they were discovered until the Medical Examiner has had the opportunity to inspect the remains in place and make his/her determinations as required by State law, and until a final decision as to the treatment and disposition has been made pursuant to this Agreement and the State law.

The PECHANGA TRIBE shall be allowed, pursuant to California Public Resources Code Section 5097.98(a), to (1) inspect the site of the discovery and (2) make recommendations as to how the human remains and grave goods should be treated with appropriate dignity. The COUNTY shall discuss and confer with the PECHANGA TRIBE all reasonable options with regard to its preferences and recommendations for treatment. The PARTIES agree to discuss in good faith what constitutes "appropriate dignity," as that term is used in the applicable statutes and in the PECHANGA TRIBE'S customs and traditions.

In addition, pursuant to California Public Resources Code §5097.98(f), upon discovery of multiple human remains, the COUNTY agrees to consult with the PECHANGA TRIBE to consider appropriate treatment of multiple human remains.

The PECHANGA TRIBE shall complete its inspection and make its MLD recommendation within forty-eight (48) hours of receiving notification of the MLD determination from the NAHC. Parties acknowledge that the PECHANGA TRIBE'S general preference is that all human remains not be disturbed and the COUNTY agrees in good faith to accommodate that preference when feasible.

#### **VIII. NON-DISCLOSURE OF LOCATION OF REBURIALS**

It is understood by the PARTIES that, unless otherwise required by law, the site of any reburial of Native American human remains shall not be disclosed and will not be governed by 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 specific exemption set forth in California Government Code Section 6254(r).

#### **IX. TREATMENT OF CULTURAL RESOURCES**

All cultural and archaeological artifacts that are not considered sacred or ceremonial by the PECHANGA TRIBE are to be collected and handled in accordance with State law and pursuant to applicable CALTRANS regulations and guidelines, if applicable. Should it be determined that the PECHANGA TRIBE be designated as the MLD, treatment of all ceremonial and sacred items will reflect the religious beliefs, customs and practices of the PECHANGA TRIBE. COUNTY shall consult with the PECHANGA TRIBE, regarding any analysis that is proposed to be conducted on the artifacts to determine the most appropriate non-destructive and

non-invasive methods. The COUNTY, through consultation with the Project Archaeologist may determine that additional or special studies be warranted for selected artifacts. If testing is deemed necessary, the COUNTY and Project Archaeologist will consult with the PECHANGA TRIBE before engaging in any testing of such artifacts to determine the appropriateness and necessity of the testing at least two weeks prior to the transfer of the artifacts for any agreed upon testing.

Final disposition of all cultural and archaeological resources collected will be determined by CALTRANS from the start of fieldwork following consultation and agreement with the PECHANGA TRIBE. While CALTRANS is not a party to this Agreement, monitoring and treatment of cultural resources will necessarily require their involvement as the Project is being constructed in a CALTRANS right of way.

#### **X. SIGNIFICANT SITES IMPACTED BY PROJECT**

All PARTIES agree that if additional significant sites or sites not identified as significant in the Project environmental review process, but later determined to be significant, are located within the Project impact area, such sites will be subjected to further archaeological and cultural significance evaluation by Caltrans, as Lead Agency, and the PECHANGA TRIBE to determine if additional mitigation measures are necessary to treat sites in a culturally appropriate manner consistent with CEQA and NEPA requirements for mitigation of impacts to cultural resources.

#### **XI. WORK STATEMENT FOR TRIBAL MONITORS**

The description of work for Tribal monitors is attached hereto as Attachment II. Attachment II specifies the development activities that Tribal monitors will monitor, the geographical area over which this monitoring shall be conducted, the size of the monitoring crew, the powers of the monitoring crew, and provisions for compensation of the Tribal monitors, and other pertinent provisions.

#### **XII. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, executors, administrators, and assigns of the parties, including subsequent land owners, developers, and sub-contractors of the Project area, and any person or entity obligated to comply with environmental and cultural/archaeological protection laws applicable to this Project.

#### **XIII. ENVIRONMENTAL COMPLIANCE**

Nothing in this Agreement shall excuse the COUNTY from their obligations under any applicable state or federal laws or regulations, including but not limited to the California Environmental Quality Act (CEQA); National Environmental Policy Act (NEPA); Public Resources Code § 21000 et seq., the National Historic Preservation Act ("NHPA") 16 U.S.C. § 470 et seq.; California Public Resources Code Sections 5097.98, 5097.98(c), and 5097.99; California Health and Safety Code Sections 7050.5(c); California Government Code Section 6254, 65040.2, 65092, 65351, 65352, 65560, 65352.3, 65352.4, 65352.5; California Civil Code 815.3; the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq.;

the California Native American Graves Protection and Repatriation Act of 2001, California Health and Safety Code §§8010 et seq.; the American Indian Religious Freedom Act, 16 U.S.C. § 1996, et seq., 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.

#### **XIV. INDEMNITY**

The PECHANGA TRIBE in no way indemnifies nor guarantees the COUNTY in any of their legal obligations. The Pechanga Tribe assumes all risk of injury to its employees, agents and contractors, including loss, arising out of or in connection with, property damage or bodily injury resulting from the presence or work of the Tribal monitors on the Project except in the case of negligence or willful misconduct of COUNTY, its employees, agents and contractors.

#### **XV. SEVERABILITY**

Should any part of this Agreement be found by any court or agency of competent jurisdiction to be to any extent invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

#### **XVI. LIMITATION ON SCOPE**

This Agreement is unique to this Project only and does not set a precedent for other projects.

#### **XVII. AUTHORITY TO EXECUTE**

Each of the persons executing this Agreement expressly warrants that he or she is authorized to do so on behalf of the entity for which he or she is executing this Agreement. Each party to this Agreement represents and warrants that this Agreement is executed voluntarily, with full knowledge of its significance.

#### **XVIII. WAIVER**

No delay or failure by either Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision in this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

#### **XIX. ENTIRE AGREEMENT**

This writing contains the entire agreement of the Parties relating to the subject matter hereof; and the Parties have made no agreements, representations, or warranties either written or oral relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without formal amendment thereto.

**XX. JOINT DRAFTING**

Both Parties have participated in the drafting of this Agreement.

**XXI. COUNTERPARTS**

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

**XXII. TERM**

Upon completion of PROJECT activities subject to monitoring as defined herein, as determined by the COUNTY, this agreement shall terminate and monitoring activities shall cease.

**APPROVALS**

Date: 3-28-13

Tribe: PECHANGA BAND OF  
LUISEÑO INDIANS

Mark Macarro

By: Mark Macarro

Its: Chairman



County Approvals

Recommended for Approval:

\_\_\_\_\_  
By: Juan C. Perez  
Its: Director of Transportation and Land Management

Date: \_\_\_\_\_

Approved as to Form:  
Pamela J. Walls, County Counsel

*N. J. Walls* 4/18/13  
\_\_\_\_\_  
By: Deputy  
*SR 79 Construction Monitoring*

Approval by the Board of Supervisors:

\_\_\_\_\_  
By: Chairman

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
By: Kecia Haper-Ihem  
Its: Clerk of the Board

**ATTACHMENT I**



**Location Map**

## ATTACHMENT II TRIBAL MONITORING

### State Route 79 Widening Project Construction Monitoring

#### I. SPECIFICATIONS

Given the nature and sensitivity of the archaeological sites and cultural resources that are or may be in the Project area, the PECHANGA TRIBE may designate monitor representatives during all grading, groundbreaking, excavation, and ground-disturbing activities performed in conjunction with the Project development, including, but not limited to archaeological testing, studies, surveys, and staging activities. Monitor representatives shall be knowledgeable about Luiseño culture and traditions as well as federal and state laws and regulations regarding Native American cultural resources. Monitor representatives shall cooperate with COUNTY'S archaeological monitors and with COUNTY'S construction Engineer.

In the event human remains, as defined in Section VII of the Cultural Resources Treatment and Tribal Monitoring Agreement are found during development of the Project, tribal monitors are authorized to temporarily halt and/or relocate grading or excavation activities pending further investigation by the Medical Examiner and the PECHANGA TRIBE, pursuant to California Health & Safety Code § 7050.5.

The monitors are further empowered to halt and/or request relocation of grading or excavation activities, for short periods of time, to conduct further evaluation of the significance of discovered cultural items, including further controlled excavations pursuant to California Public Resources Code §21083.2(i). Following any such request for the temporary cessation or relocation of grading or excavation activities, the monitor shall as soon as practical consult with the Resident Engineer and Project Archaeologist to assess the significance of the find and to discuss appropriate avoidance or mitigation measures for the newly discovered cultural resources. Surface or subsurface artifacts of significance may be collected and mapped during this controlled excavation.

If human remains are found, coordination of the treatment of those remains, as defined in Section VII of the Cultural Resources Treatment and Tribal Monitoring Agreement, will be conducted in accordance with Sections V through VIII of this Agreement. Cultural resources shall be treated in accordance with Section IX of this Agreement. Significant sites shall be treated in accordance with Section X of this Agreement and applicable Project conditions.

#### II. PROJECT TO BE MONITORED

Monitoring shall encompass the area known as **State Route 79 Widening Project Construction Monitoring**. The COUNTY, in cooperation with Caltrans, is widening State Route 79 between Thompson Road and Domenigoni Parkway (kilometer post [KP] R13.5/R25.6 [post mile (PM) R8.4/R15.8]). The Project is located north of the City of Murrieta, in an unincorporated portion of southwestern Riverside County. The northern end of the

proposed Project is approximately 7.1 km (4.4 mi) east of Interstate 215 (I-215); the southern end is about 4.5 km (2.8 mi) east of I-215. SR 79 is also known locally as Winchester Road.

Due to the cultural and archaeological sensitivity of the Project site, excavation activities that include removal of unsuitable material and rock excavation in native soils will be monitored as appropriate and as determined in consultation with the PECHANGA TRIBE. Excavation activities that do not disturb native soils include rock excavations that require blasting, and compaction for the establishment of the roadbed will not require monitoring. All work will be performed in conjunction with the Project development, including, but not limited to archaeological testing, studies, surveys, and staging activities. Tribal monitors will not monitor for paleontological material.

The Tribal Monitor shall closely inspect ongoing excavation activities performed by the archaeological field crew. The Monitor shall be able to identify cultural resources such as archaeological sites (village sites, food processing areas, lithic reduction areas, ceramic scatters, etc.), mineral and plant gathering areas, burial sites including cremation burials, rock art sites, and traditional cultural places. Once such sites or artifacts are identified, grading or excavation activities may be temporarily halted and the COUNTY shall consult with Caltrans and the PECHANGA TRIBE on appropriate treatment under Sections IX and X. The Tribal Monitor's specific responsibilities will further include ensuring that cultural items are treated with dignity and in a culturally appropriate manner. Upon discovery of Native American human remains, the parties to this Agreement shall assure that such remains are treated with dignity and in a culturally appropriate manner until the MLD process has been initiated. Once the MLD process has begun, the MLD shall have the responsibility to assure that such remains are treated with dignity and in a culturally appropriate manner in accordance with applicable state law.

### **III. PROJECT CREW SIZES**

For purposes of determining Tribal monitoring crew sizes, a written schedule of excavation, testing, grading, and ground-disturbing activities will be submitted by the COUNTY to the PECHANGA TRIBE or its designated representatives one week in advance of the commencement of these activities.

The PARTIES to this Agreement acknowledge the need for a Tribal monitoring crew consisting of one (1) person. Monitoring commenced on or after April 23, 2012. The Tribal Monitor shall accompany one archaeological field crew as directed and be present throughout the crew's normal work day. This day will consist of 8 working hours per day with one half hour unpaid lunch break, five days per week, for the duration of all ground disturbing activities associated with the Project. The Monitor shall also participate in any on-site project meetings, including safety meetings that occur during the normal work day. If the scope of work changes to require additional monitors (for example, if inadvertent discoveries of cultural resources are made or simultaneous grading in two or more geographic areas), the COUNTY agrees to come to a reasonable agreement with the PECHANGA TRIBE regarding compensation of more than one (1) monitor.

#### **IV. COMPENSATION**

The PECHANGA TRIBE shall hire the Tribal monitoring crew for this Project and shall be responsible for coordinating their activities on this Project. The PECHANGA TRIBE recognizes that dangerous conditions can exist at the Project work site, particularly during grading operations, and agrees to assume responsibility for the safety of the Tribal monitoring crew while on the Project site. The PECHANGA TRIBE possesses liability insurance for its monitors. See Exhibit A attached hereto and incorporated by this reference.

The COUNTY shall compensate the Tribal monitors for a not-to-exceed fee of \$125,000 at the rate of \$60.00 per hour, plus reimbursement for all reasonable and documented mileage expenses at the current IRS mileage rate. The hourly rate of compensation paid to the Tribal monitor shall be adjusted for inflation based on 2013 dollars. The adjustment, if any, shall be calculated in accordance with the United States Department of Labor, Bureau of Labor Statistics, Revised Consumer Price Index. Hourly rate compensation adjustments shall be made only once a year. For purposes of rate compensation adjustment, a year commences on January 1<sup>st</sup>. A minimum half-day charge ("show up time") will be charged to the COUNTY for unannounced work stoppages of Tribal monitors that are not due to actions of the PECHANGA TRIBE. The hourly rate will not be applicable to travel time to and from the Project site.

Overtime rates of time and a half (\$90 per hour) of the quoted rate apply for "after hours" and "weekend" work. For purposes of this Agreement, "after hours work" is defined as services performed beyond an eight hour day from start of construction. "Weekend work" is defined as services performed between close of the eight-hour construction day on Friday and start of construction work Monday morning. Holiday rates of double time (\$120 per hour) of the quoted rate apply for all holiday work. The hourly rate will not be applicable to travel time to and from the Project site.

The COUNTY agrees that the PECHANGA TRIBE may invoice the COUNTY for the Tribal monitor's compensation on a monthly basis. The COUNTY also agrees to remit payment in full to the following address within (45) days of receipt of the PECHANGA TRIBE's invoice:

Accounting Department  
Pechanga Band of Luiseño Indians  
Attn: Accounts Receivable  
P.O. Box 1477  
Temecula, CA 92593

## **EXHIBIT A**

### **INSURANCE REQUIREMENTS**

**A. Workers Compensation (if applicable)**

The Pechanga Tribe shall furnish COUNTY with a certificate of workers compensation insurance indicating compliance with a worker's compensation program and employer's liability insurance with a minimum of \$1,000,000.00 for injury, death, or disease to any employee.

**B. General Liability and Automobile Liability Coverages**

The Pechanga Tribe shall, at its own expense, maintain during the performance of this contract professional liability, general liability, and auto liability insurance of the coverage and amount provided below:

1. Automobile Liability Insurance shall include coverage for bodily injury and property damage for owned (if any), hired, and nonowned vehicles and shall be not less than \$1,000,000.00 combined limit for any one occurrence.
2. Comprehensive or Commercial General Liability Insurance shall include coverage for bodily injury, property damage, and personal injury for premises operations, products/completed operation, and contractual liability. The amount of the insurance shall not be less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 in the aggregate.

**C. Additional Insurance Provisions**

Comprehensive or Commercial General Liability Insurance shall include an endorsement adding COUNTY as additional insured regarding work performed by the Pechanga Tribe, contain a severability of interest clause, and provide that COUNTY shall not incur liability to the insurance carrier for payment of premium.