

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



FROM: TLMA – Transportation Department

SUBMITTAL DATE:
June 5, 2014

SUBJECT: Agreement between the County of Riverside and the Morongo Band of Mission Indians. 5th/5th District; [\$60,000]; Morongo Band of Mission Indians 100%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Agreement between the County of Riverside and the Morongo Band of Mission Indians; and
2. Authorize the Chairman of the Board to execute the Agreement documents on behalf of the County of Riverside.

BACKGROUND:

Summary

In 2008, the Morongo Band of Mission Indians (Tribe) completed the construction of two (2) roundabouts on Morongo Trail at the Interstate 10 (I-10) interchange adjacent to the I-10 freeway interchange on/off ramps. The Tribe desires to continue developing the two (2) roundabouts at the Morongo Trail/I-10 interchange with formal landscaping and related improvements. These improvements will be known as the Morongo Trail Roundabout Improvements.

Mojahed Salama
Deputy Director

Patricia Romo
Assistant Director of Transportation

Juan C. Perez, Director of Transportation and Land Management

Departmental Concurrence

FORM APPROVED COUNTY COUNSEL
BY: *YB* *6/6/14*
DATE

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 60,000	\$ 0	\$ 60,000	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Morongo Band of Mission Indians (100%) There are no General Funds used for this agreement.	Budget Adjustment: N/A
	For Fiscal Year: 14/15

C.E.O. RECOMMENDATION:

APPROVE

BY: Tina Gracie

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District: 5/5

Agenda Number:

3-65

DATE: June 5, 2014

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

The roundabouts are located within the jurisdictional boundaries of the Tribe, and the Tribe desires to contract with the County of Riverside (County) to provide environmental clearance through an environmental document (ED) and develop plans, specifications, and estimate (PS&E) for the roundabout improvements. The County has extensive experience in the development of interchange projects involving federal and state agencies. The County will, therefore, provide the administrative and technical support services necessary to develop the Morongo Trail Roundabout Landscape Improvements PS&E and ED.

The attached Agreement defines the terms and conditions under which said services for the Morongo Trail Roundabout improvements are to be administered, engineered, coordinated, managed, constructed, maintained, and financed.

The Morongo Tribal Council executed this agreement on April 16, 2014.

The approval of this agreement will allow for the preparation of construction documents for the potential future landscape improvements to the Morongo Trail Roundabouts.

Impact on Residents and Businesses

The County will complete the landscape plans and the Tribe will administer the construction of the improvements. The landscaping of the roundabout is the final phase of the project, which has shown an improvement to the operation and safety of the ramp intersections of I-10 and Morongo Trail.

SUPPLEMENTAL:

Additional Fiscal Information

The Agreement outlines that the Morongo Band of Mission Indians will deposit with the County an amount of \$60,000 within 30 days of the execution of the Agreement. Costs associated with the project will be drawn down from the deposit.

The County is not funding any portion of this project. The ongoing maintenance of this project shall be the responsibility entirely of and by the Tribe.

AGREEMENT BY AND BETWEEN
RIVERSIDE COUNTY
AND
MORONGO BAND OF MISSION INDIANS
FOR
MORONGO TRAIL ROUNDABOUT IMPROVEMENTS

This Agreement is entered into this _____ day of _____, 2014, by and between the County of Riverside, (hereinafter "COUNTY"), and the Morongo Band of Mission Indians (hereinafter "TRIBE"), for the provision of certain services related to Morongo Trail Roundabout Improvements (hereinafter "PROJECT") located at the intersection of Morongo Trail and Interstate 10 currently located within the jurisdictional boundaries of the TRIBE.

RECITALS

- A. In 2008 TRIBE completed the construction of two roundabouts on Morongo Trail at the Interstate 10 ramps, as shown on Exhibit "A", attached hereto and incorporated by this reference.
- B. TRIBE desires to continue developing the PROJECT by proceeding with landscape plans for the two roundabouts at the Morongo Trail/I-10 Interchange to complete the roundabout improvements.
- C. Although the PROJECT is located within the jurisdictional boundaries of the TRIBE, the TRIBE desires to contract with COUNTY to provide environmental clearance (ED) and develop plans specifications and estimate (PS&E) for the PROJECT. COUNTY has extensive experience in the development of interchange projects involving Federal and State agencies. COUNTY will therefore provide the administrative and technical support services necessary to develop the PROJECT PS&E and ED.
- D. TRIBE and COUNTY desire to define herein the terms and conditions under which said services for Project are to be administered, engineered, coordinated, managed, constructed, maintained, and financed.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

Morongo Trail Roundabout

SECTION 1 • COUNTY AGREES:

1. The foregoing Recitals are incorporated herein and made a part of this Agreement by this reference.
2. To complete, or cause to be completed, PS&E documents for the PROJECT. PROJECT includes landscape features in the 2 roundabouts and splitter islands at the Morongo Trail and interstate 10 ramps.
3. To prepare an environmental document and to obtain necessary environmental clearances in accordance with the California Environmental Quality ACT (CEQA). The Project is within Caltrans right of way and therefore Caltrans is Lead Agency for directing what ED shall be performed.
4. Nothing in this Agreement is intended to commit COUNTY to funding any portion of PROJECT, or shall be construed as obligating COUNTY to provide any funding or to continue with the COUNTY services for PROJECT, if funds are no longer available. Should unforeseen circumstances arise which result in an increase of any costs over those shown in Exhibit "B", COUNTY will promptly inform TRIBE and request TRIBE consider an amendment to this AGREEMENT to include any such increased costs. If funds are not available for an amendment to this AGREEMENT, COUNTY shall be entitled to discontinue services for PROJECT and this AGREEMENT shall be terminated.
5. To furnish TRIBE a final reconciliation of the PROJECT expenses within ninety (90) days following the completion of the PROJECT contract documents. If final costs associated with the services for TRIBE's improvements are in excess of the deposit amount provided for in Section 2 herein, COUNTY shall include a final bill with the financial reconciliation. If final costs associated with the services for TRIBE's improvements are less than the deposit amount provided for in Section 2 herein, COUNTY shall include a reimbursement for the difference with the financial reconciliation.
6. To provide a representative to coordinate and assist the TRIBE's Resident Engineer during the construction of the PROJECT and to verify facilities are constructed as required by the Plans and Specifications.

SECTION 2 • TRIBE AGREES:

1. The foregoing Recitals are incorporated herein and made a part of this Agreement by this reference.
2. To fund one hundred (100) percent of the cost of the PROJECT plans, specifications and estimate (PS&E), and preparation of the environmental document (ED), necessary to construct the PROJECT improvements.

Morongo Trail Roundabout

The estimated costs for TRIBE's improvements are provided in Exhibit "B" attached hereto and incorporated herein. Should unforeseen circumstances arise which result in an increase of any costs over those shown in Exhibit "B", TRIBE will in good faith consider an amendment to this AGREEMENT to include any such costs under this AGREEMENT. If funds are not available for an amendment to this AGREEMENT, COUNTY shall be entitled to discontinue services for PROJECT.

3. To provide at no cost to the PROJECT, oversight of the PROJECT, to provide prompt reviews and approvals, as appropriate, of submittals by COUNTY, and to cooperate in timely processing of PROJECT.
4. To issue, at no cost to COUNTY or its consultants and contractors, upon proper application by COUNTY or COUNTY's consultants or contractors, an encroachment permit authorizing entry onto TRIBE's right-of-way to perform survey and other investigative activities required for preparation of the PS&E of the PROJECT.
5. To perform the construction and construction management of the PROJECT.
6. To be responsible for 100% of all maintenance of the improvements upon construction and completion of PROJECT.
7. To deposit with COUNTY, within 30 days of execution of this AGREEMENT, the amount of \$60,000, which represents the TRIBE's estimated PROJECT cost (with contingencies) for COUNTY services as shown in Exhibit "B".
8. To pay within 45 days of receipt, the invoices for final reconciled costs as shown in Exhibit "B" (including contingencies if applicable), submitted by COUNTY for services rendered in accordance with this AGREEMENT.

SECTION 3 • IT IS MUTUALLY AGREED AS FOLLOWS:

1. The total cost to complete the PROJECT is estimated to be \$60,000 as detailed in Exhibit "B".
2. TRIBE and COUNTY acknowledge and agree that funding for the completion of the PROJECT is the responsibility of the TRIBE.
3. In the event that COUNTY defaults in the performance of any of its obligations under this AGREEMENT or materially breaches any of the provisions of this AGREEMENT, TRIBE shall have the option to terminate this AGREEMENT upon 90 days written notice to COUNTY.

Morongo Trail Roundabout

4. In the event that TRIBE defaults in the performance of any of its obligations under this AGREEMENT or materially breaches any of the provisions of this AGREEMENT, COUNTY shall have the option to terminate this AGREEMENT upon 90 days written notice to TRIBE.
5. TRIBE shall indemnify and hold COUNTY, its officers, agents, employees and independent contractors harmless from and against all claims, costs, losses, and damages or liability whatsoever, based or asserted upon any act or omission of TRIBE, its officers, agents, employees, volunteers, or contractors, for property damage, bodily injury or death, or any other element of damage of any kind or nature arising out of the performance of this AGREEMENT to the extent that such liability is imposed on COUNTY, and TRIBE shall defend at its expense, including attorneys fees, COUNTY, its officers, agents, employees and independent contractors in any legal action or claim of any kind based upon such alleged acts or omissions.
6. COUNTY shall indemnify and hold TRIBE, its officers, directors, employees and agents harmless from and against all claims, costs, losses, and damages or liability whatsoever, based or asserted upon any act or omission of COUNTY, its officers, agents, employees, or independent contractors, for property damage, bodily injury or death, or any other element of damage of any kind or nature arising out of the performance of this AGREEMENT to the extent that such liability is imposed on TRIBE, and COUNTY shall defend at its expense, including attorneys fees, TRIBE, its officers, employees and agents in any legal action or claim of any kind based upon such alleged acts or omissions.
7. Any disputes between the parties shall be resolved pursuant to the dispute resolution process provided for in Attachment A, entitled Limited Waiver of Sovereign Immunity and Dispute Resolution, attached hereto and incorporated by this reference.
8. Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this AGREEMENT or affects the legal liability of either party to the AGREEMENT by imposing any standard of care with respect to the maintenance of roads different from the standard of care imposed by law.
9. This AGREEMENT and the exhibits herein contain the entire agreement between the parties, and are intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto, not expressly set forth in this

Morongo Trail Roundabout

AGREEMENT, is null and void.

10. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by both parties and no oral understanding or agreement not incorporated herein shall be binding on either party hereto.
11. Each provision, term, condition, covenant and/or restriction in this AGREEMENT shall be considered severable. In the event that any provision, term, condition, covenant and/or restriction, or part thereof is declared invalid, unconstitutional or void for any reason, such provision or part thereof shall be severed from this AGREEMENT and shall not affect the remainder of the AGREEMENT, which shall continue in full force and effect.
12. This AGREEMENT may be executed in duplicate originals, each of which is deemed to be an original.
13. COUNTY and TRIBE shall retain or cause to be retained for audit for a period of three (3) years from the date of final payment, all records and accounts relating to PROJECT.
14. All notices permitted or required under this AGREEMENT shall be deemed made when delivered to the applicable party's representative as provided in this AGREEMENT. Such notices shall be mailed or otherwise delivered to the addresses set forth below, or at such other address as the respective parties may provide in writing for this purpose:

COUNTY

Director of Transportation

County of Riverside • Transportation Department

4080 Lemon Street, 8th Floor

Riverside, CA 92502

TRIBE

Tribal Chairman

Morongo Band of Mission Indians

12700 Pumarra Road

BANNING, CA 92220

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address.

APPROVALS

COUNTY Approvals

APPROVED BY TRANSPORTATION DEPARTMENT



Juan C. Perez

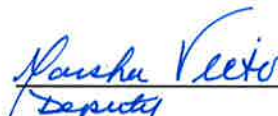
Dated: 6/25/14

Director of Transportation and Land Management

APPROVAL BY THE BOARD OF SUPERVISORS

Dated: _____
Jeff Stone
Chairman, Riverside County Board of
Supervisors

APPROVED AS TO FORM:



Deputy
Pamela J. Walls
County Counsel


Dated: 4/16/14

ATTEST:

Dated: _____
Kecia Harper-Ihem
Clerk of the Board (SEAL)

TRIBE Approvals

APPROVAL BY THE TRIBE COUNCIL



Chairman
Dated: 4/16/14

EXHIBIT A • LOCATION MAP



Roundabout locations - Interstate 10 at Morongo Trail

EXHIBIT B
ESTIMATED PROJECT COSTS

TASK	Total
Environmental/Design	\$ 50,000
Contingency (10%)	\$ 10,000
Total	\$60,000

FUNDING - SUMMARY

SOURCE	AMOUNT
TRIBE	\$ 60,000

ATTACHMENT A
DISPUTE RESOLUTION AND
LIMITED WAIVER OF SOVEREIGN IMMUNITY

- A. Limited Waiver of Sovereign Immunity. The Morongo Band of Missions Indians ("TRIBE"), a federally-recognized Indian tribe, hereby expressly grants a limited waiver of its sovereign immunity (hereinafter "Limited Waiver"), as described herein, solely for actions (including non-binding arbitration required herein) brought by County of Riverside ("COUNTY"), but by no other entity or individual, requesting enforcement of the specific covenants and obligations of the TRIBE under the Agreement to which this Limited Waiver is attached as an exhibit (the "AGREEMENT") or actual damages against the TRIBE. Except as expressly set forth herein or in the AGREEMENT, the TRIBE does not waive, limit or modify its sovereign immunity.
- B. Conditions Precedent to Limited Waiver. Notwithstanding anything to the contrary contained herein or in the AGREEMENT, the TRIBE grants this Limited Waiver of its sovereign immunity as to any claim if and only if each and every one of the following conditions is met:
1. The claim is brought by COUNTY and not by any third party.
 2. The claim alleges a breach by the TRIBE of one or more of the specific obligations or duties of the TRIBE under the terms of the AGREEMENT.
 3. The claim seeks:
 - a. Some specific action, or discontinuance of some action, by the TRIBE to bring the TRIBE into full compliance with the duties and obligations expressly assumed by it under the AGREEMENT; or
 - b. Money damages for noncompliance with the terms and provisions of the AGREEMENT.
 4. COUNTY has complied with the Meet and Confer and Non-Binding Arbitration provisions set forth below.
- C. Meet and Confer. Prior to instituting an action to which this Limited Waiver is applicable, COUNTY must first raise the matter in dispute for which it is seeking relief with the Morongo Tribal Council by written notice requesting a Meet and Confer to be held.
1. The written notice must state the specific issue(s) in dispute, the provision(s) of the AGREEMENT

Morong Trail Roundabout

claimed to be at issue or involved in the dispute, and the relief requested by COUNTY.

2. The Parties shall jointly arrange a mutually agreeable time and place to Meet and Confer, which time shall be no less than five (5) and no more than twenty (20) business days after receipt of the request, unless the Parties agree that there is a good cause to extend this time limit. Attendees at the Meet and Confer shall have sufficient authority to resolve the matters at issue, unless the dispute is of a nature that requires approval by the Tribe's General Membership or by the County's Board of Supervisors.

3. Any Meet and Confer session shall be private, and shall be deemed to be a settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. Neither Party may rely on, or seek to introduce as evidence in any judicial or other proceeding, any admission, any proposal, or any discussion or stated view of any proposal or the merits of either Party's position made in connection with any Meet and Confer session. Notwithstanding the foregoing, any document or factual information otherwise subject to discovery or otherwise admissible shall not be excluded from discovery or admission in evidence simply as a result of it having been used in connection with the Meet and Confer.

4. In the event the Tribal Council is unwilling to Meet and Confer within twenty (20) business days after receipt of a Meet and Confer request, the requirement to Meet and Confer shall be deemed to have been satisfied.

D. Non-Binding Arbitration. In the event a dispute is not resolved as a result of the Meet and Confer process, County may demand that the matter be submitted to non-binding arbitration.

1. The demand for submission of the matter to non-binding arbitration must be made no later than twenty-eight (28) days after the completion of the Meet and Confer process or the Tribal Council's failure to meet within the time period set forth in Section C. above.

2. The non-binding arbitration shall be limited to the specific issue(s) identified in the Meet and Confer request,

3. Within twenty (20) business days after delivery of a demand for non-binding arbitration, each Party must notify the other Party of the name of an arbitrator who is a practicing lawyer or retired judge with experience in disputes involving construction in the State of California, but who has (and whose law firm has) at no time represented or acted on behalf of either of the Parties. In the event that either Party fails

Morongo Trail Roundabout

to designate an arbitrator within that time period, the American Arbitration Association shall be requested to select an arbitrator who meets the same qualifications in lieu of designation of an arbitrator by the Party that failed to make such designation within the required time period.

4. Within ten (10) days after completion of the designation of the first two arbitrators, the two arbitrators so designated shall meet in person or by telephone and agree upon the appointment of a third arbitrator with the same qualifications and background (the "Arbitration Panel"). In the event the two arbitrators cannot agree on the selection of a third arbitrator within the ten (10) day time period, the third arbitrator shall be selected by the American Arbitration Association. In the event any arbitrator becomes incapacitated or otherwise is unable to act as an arbitrator hereunder, that arbitrator shall be replaced in accordance with the provision of this Article as if such replacement was an initial appointment to be made hereunder.
 5. Each Party shall have the right to conduct some discovery in connection with the arbitration proceedings, but the discovery shall be limited to the pre-hearing production of relevant documents and to such deposition discovery, limited both in number of depositions and duration, as the Arbitration Panel may approve by majority vote.
 6. The Arbitration Panel shall hear any and all issues of law and of fact relevant to resolution of the specific issues(s) in dispute, with the hearing to take place at a mutually agreeable location within Riverside County on such date(s) and time(s) as may be agreed upon by the Parties and the members of the Arbitration Panel.
 7. The Arbitration Panel shall make its non-binding determination in writing within thirty (30) days after the close of evidence and briefing in the arbitration. In the event the determination is not unanimous, the arbitrator who disagree with the determination shall set forth his/her reasons for disagreeing with the majority's determination,
 8. The Arbitration Panel shall have no power to vary or modify any terms of this Agreement.
 9. Each Party to the Arbitration shall pay its own attorney and expert witness fees and any other costs associated with the arbitration. The fees and expenses of the Arbitration Panel shall be paid by the parties in equal proportion.
- E. Suit, Jurisdiction. Any action brought under the AGREEMENT shall be brought only in the California

Morong Trail Roundabout

Superior Court for Riverside County or in the Division of the United States District Court for the Central District of California in which Riverside is located. The appropriate court shall be determined in accordance with the jurisdictional rules as set forth by the above referenced courts. Both Parties agree that such courts are the proper venue for such an action. Provided that County has complied with the Conditions Precedent to Limited Waiver set forth above, the Tribe shall be deemed to have waived its sovereign immunity as to any claim identified in the original request to Meet and Confer.

- F. No Waiver as to any Individual. This Limited Waiver does not apply to any claim brought against, or seeking to recover any relief from, any member, employee, agent or attorney of or for the Tribe.
- G. Attorney Fees. Each Party shall bear its own attorney fees in connection with any legal proceedings brought pursuant to this Limited Waiver.
- H. Choice of Law. The Parties agree any dispute arising under the AGREEMENT shall be resolved in accordance with applicable federal law, if any; provided however, that if there is no applicable federal law, then California law shall be applied.