

FORM APPROVED COUNTY COUNSEL 3/24/16  
 BY: GREGORY P. PRIAMOS DATE

Departmental Concurrence

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

2087



**FROM:** TLMA – Transportation Department

**SUBMITTAL DATE:**  
 March 7, 2016

**SUBJECT:** Approval of a Cultural Resources Treatment and Tribal Monitoring Agreement between the County of Riverside and the Pechanga Band of Luiseño Indians for the Clinton Keith Road Extension Project from Whitewood Road to Trois Valley Road in the Murrieta Area. 3<sup>rd</sup> District; [\$200,000]; Local Funds 100%

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

1. Approve the Cultural Resources Treatment and Tribal Monitoring Agreement (Agreement) between the County of Riverside (County) and the Pechanga Band of Luiseño Indians (Pechanga Tribe) for the Clinton Keith Road Extension Project; and
2. Authorize the Chairman to execute the Agreement on behalf of the County.

*Patricia Romo*

Patricia Romo  
 Assistant Director of Transportation

*Juan C. Perez*

Juan C. Perez  
 Director of Transportation and Land Management

RW:MZ

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
<b>COST</b>	\$ 100,000	\$ 100,000	\$ 200,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** Measure A Regional (35%), CFD- Clinton Keith (65%). No General Funds are used for this project.

**Budget Adjustment:** No  
**For Fiscal Year:** 2015/16 - 2016/17

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

APPROVE

BY: *Tina Grande*  
 Tina Grande

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

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

**Prev. Agn. Ref.:** 6/2/15, Item 3-28  
 11/10/15, Item 3-15

**District:** 3

**Agenda Number:**

3-21

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

**FORM 11:** Approval of a Cultural Resources Treatment and Tribal Monitoring Agreement between the County of Riverside and the Pechanga Band of Luiseño Indians for the Clinton Keith Road Extension Project from Whitewood Road to Trois Valley Road in the Murrieta Area. 3<sup>rd</sup> District; [\$200,000]; Local Funds 100%

**DATE:** March 7, 2016

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary**

The Clinton Keith Road Extension Project was awarded for construction on November 10, 2015 (Agenda Item 3-15), by the Board of Supervisors and construction is expected to begin winter 2016. The project will extend Clinton Keith Road from Whitewood Road to Leon Road and includes the construction of a bridge over Warm Springs Creek.

Environmental documentation for the Clinton Keith Road project has been completed in accordance with the California Environmental Quality Act (CEQA). The documentation includes an Addendum to the Supplemental Environmental Impact Report (SEIR) No. 398 (State Clearinghouse No. 1995062022) and a Mitigation Monitoring & Reporting Program (MMRP) approved by the Board of Supervisors on June 2, 2015, Agenda Item 3-28.

The CEQA Addendum requires the County of Riverside Transportation Department (Transportation Department) to implement a series of mitigation measures to reduce the project's impact on historical resources to less than significant. The mitigation measures are documented in the MMRP, and include measure Cultural Resource-8, which requires archaeological monitoring for construction of the project. A component of archaeological monitoring is the Native American monitoring; the Pechanga Band of Luiseño Indians requested that Native American monitors be present during ground disturbing activities. This request is consistent with the Addendum and the MMRP. In addition to this monitoring agreement with the Pechanga Band of Luiseño Indians, the County has forwarded a separate agreement to the Board of Supervisors for Native American monitoring by the Soboba Band of Luiseño Indians.

The Agreement is an implementing action in furtherance of the MMRP. The Native American monitoring will take place in accordance with the attached Agreement, and will be documented in the MMRP as required by CEQA Section 15097.

County Counsel has approved the Agreement as to legal form and the Pechanga Band of Luiseño Indians has executed the Agreement.

**Impact on Residents and Businesses**

Fulfillment of the mitigation measures required by the Addendum to the SEIR completes an environmental commitment to adequately address historic cultural resources impacted by the project.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

The Agreement provides for reimbursement to the monitors provided by the Pechanga Tribe on an hourly basis. Monitoring will occur during ground disturbing activities, under the direction of the Transportation Department's Resident Engineer overseeing construction of the project and assisted by the Transportation Department's consultant archaeologist.

**ATTACHMENT:**

Figure 1- Project vicinity Agreement

# CLINTON KEITH ROAD

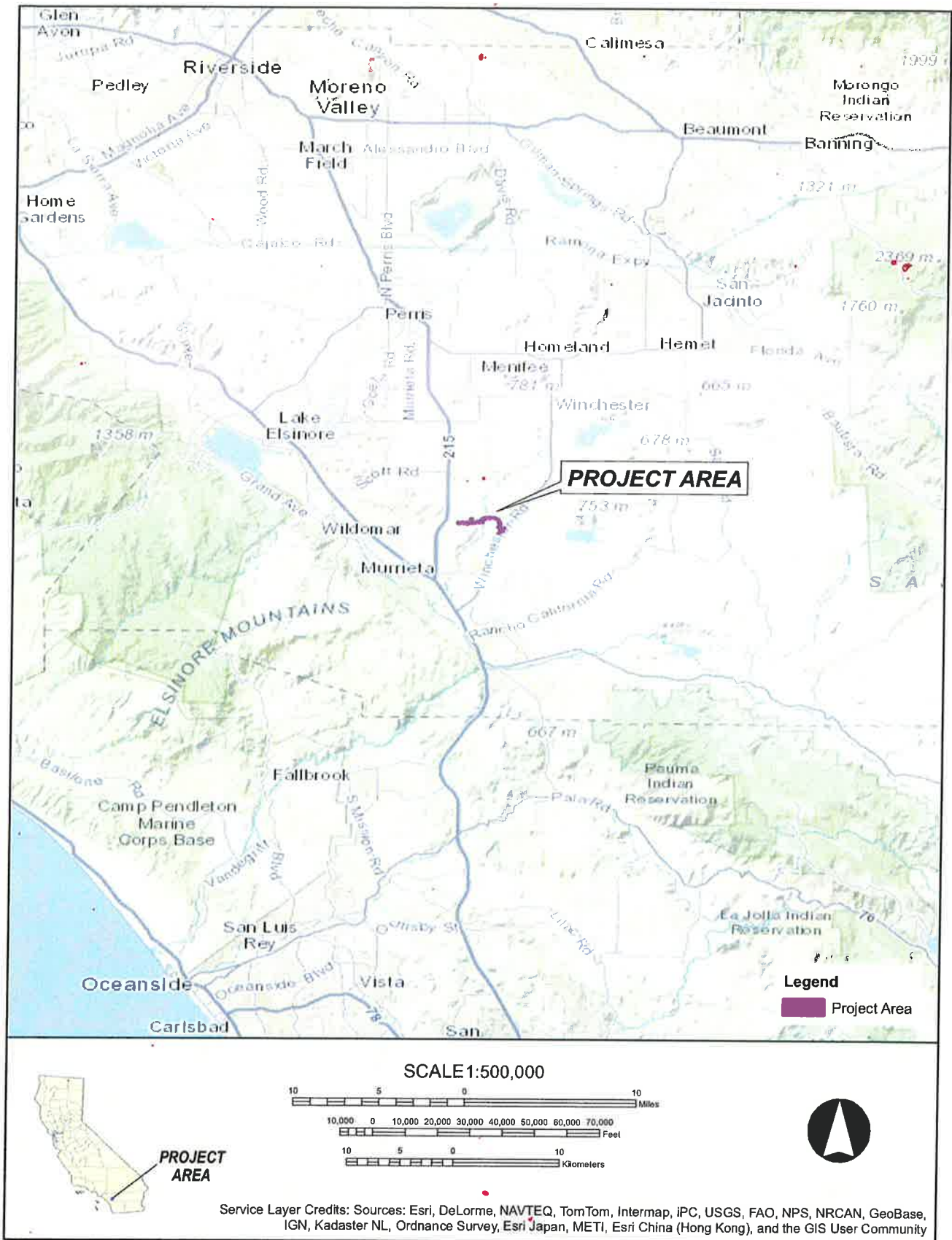


Figure 1 Project vicinity.

# CULTURAL RESOURCES TREATMENT AND TRIBAL MONITORING AGREEMENT

## Clinton Keith Road: Whitewood Road to Trois Valley Road 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 on behalf of the 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 Hannah, Deputy General Counsel  
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  
4080 Lemon St  
Riverside, CA 92501  
Telephone: (951) 955-6742  
Facsimile: (951) 955-3164

### II. SUBJECT MATTER

This Agreement concerns a project known as Clinton Keith Road: Whitewood Road to Trois Valley Road Construction Monitoring ("Project"). The Riverside County Medical Examiner's Office ("Medical Examiner") will be provided a copy of this Agreement by the PECHANGA TRIBE. The COUNTY Transportation Department is the Lead Agency for the Project, and the agency responsible for environmental compliance of this Project ("Lead Agency"), will be provided a copy of this Agreement by the PECHANGA TRIBE.

### 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. Cultural resources and significant sites shall be treated in accordance with the Memorandum of Agreement (MOA) for the Clinton Keith Road Extension Project between the Army Corps of

Engineers and the State Historic Preservation Officer, of which the COUNTY and PECHANGA are considered consulting parties. 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 XX.

#### IV. CULTURAL AFFILIATION

The PARTIES agree that the Project area consists of land which has been identified by the PECHANGA TRIBE as Luiseño Ancestral Territory. 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.

#### 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.

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 Addendum 1 to this Agreement, attached hereto and incorporated herein, which is fully severable, shall continue in full force and effect.

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

In accordance with Health & Safety Code 7050.5, the COUNTY shall immediately contact the Medical Examiner in the event that any human remains are discovered during the development of the Project. If the Coroner recognizes the remains to be those of a Native American, the Medical Examiner shall ensure that notification is provided to the NAHC as required by California Public Resources Code Section 5097.98(a). In the event a PECHANGA TRIBE Native American monitor is not monitoring construction of the Project, the COUNTY shall notify the PECHANGA TRIBE of the discovery of Native American human remains.

#### 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 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 the event that human remains are found on lands owned by an entity other than the COUNTY, the PECHANGA TRIBE shall be responsible for discussing the treatment and disposition of human remains and grave goods with the appropriate entity. The COUNTY agrees to facilitate contact with the appropriate entity if necessary.

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. The 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 to the extent allowed under California Public Resources Code 5097.98.

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

The description of work for Tribal monitors is attached hereto as Addendum 1 and incorporated herein by reference. Addendum 1 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.

#### **X. 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.

#### XI. ENVIRONMENTAL COMPLIANCE

Nothing in this Agreement shall excuse the COUNTY as Lead Agency on this Project from obligations under any applicable state or federal laws or regulations, including but not limited to the California Environmental Quality Act (CEQA); 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.

#### XII. 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 work of the Tribal monitors on the Project except in the case of negligence or willful misconduct of the COUNTY, its employees, agents and contractors.

#### XIII. 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.

#### XIV. LIMITATION ON SCOPE

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

#### XV. 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.

## XVI. 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.

## XVII. 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.

## XVIII. JOINT DRAFTING

Both Parties have participated in the drafting of this Agreement.

## XIX. 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.

## XX. TERM


Monitoring will commence on or soon after March 1, 2016. Upon completion of PROJECT activities subject to monitoring as defined herein, and as determined by the COUNTY, this Agreement shall terminate and monitoring activities shall cease.



APPROVALS

Date: 2/26/16

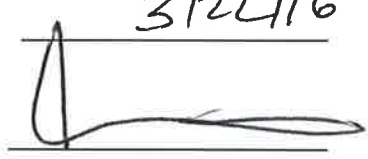
Tribe: PECHANGA BAND OF  
LUISEÑO INDIANS



By: Mark Macarro  
Its: Tribal Chairman

COUNTY APPROVALS

Recommended for Approval:

Date: 3/22/16  


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

APPROVED AS TO FORM:

GREGORY P. PRIAMOS, COUNTY COUNSEL

 Dated: 3/24/16  
By Deputy

APPROVAL BY THE BOARD OF SUPERVISORS

\_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_  
PRINTED NAME

Chairman, Riverside County Board of Supervisors

ATTEST:

\_\_\_\_\_ Dated: \_\_\_\_\_

KECIA HARPER-IHEM  
Clerk of the Board

ADDENDUM I  
TRIBAL MONITORING

Clinton Keith Road: Whitewood Road to Trois Valley Road  
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 to be retained as Tribal monitors 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.

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

The monitors are further empowered to temporarily halt and/or relocate grading or excavation activities, for short periods of time, until a qualified archaeologist can evaluate the significance of discovered cultural items, including further controlled excavations pursuant to California Public Resources Code §21083.2(i). Surface or subsurface artifacts of significance may be collected and mapped by the qualified archaeologist during this controlled excavation.

If human remains are found, coordination of the treatment of those remains, as defined in Section VII of the Tribal Monitoring Agreement, will be conducted in accordance with Sections V through VIII of this Agreement. Cultural resources and significant sites shall be treated in accordance with the MOA.

II. PROJECT TO BE MONITORED

Monitoring shall encompass the area known as Clinton Keith Road: Whitewood Road to Trois Valley Road. Based on the cultural and archaeological sensitivity of the Project site, it is agreed that monitoring will be allowed for 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. Tribal monitors will not monitor paleontological material.

The Tribal Monitor shall closely inspect ongoing excavation activities. 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, construction shall stop and the COUNTY shall

implement treatment measures described in the Discovery and Monitoring Plan (DMP) in place for this Project, in consultation with the PECHANGA TRIBE. The Tribal Monitor's specific responsibilities will further include ensuring that cultural items are treated with dignity and in a culturally appropriate manner.

### 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 anticipate the need for a Tribal monitoring crew consisting of one (1) person. Monitoring will commence on or as soon as practical after March 1, 2016. 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.

The PARTIES understand that monitoring shall be shared with another tribe and that the Pechanga Tribal Monitor will monitor specific segments of the Project. The segments to be monitored by the Pechanga Tribal Monitor will be determined in advance of ground-disturbing activities by the COUNTY, in consultation with the PECHANGA TRIBE or its Tribal 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 to this Attachment I.

The COUNTY shall compensate the Tribal monitors up to the not-to-exceed fee of \$200,000. The COUNTY shall compensate the Tribal monitors at the rate of \$60.00 per hour, plus reimbursement for all reasonable and documented mileage expenses at the current Federal Travel Regulation rate. The hourly rate of compensation paid to the Tribal monitor shall be adjusted for inflation based on 2016 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 the COUNTY as additional insured regarding work performed by the Pechanga Tribe, contain a severability of interest clause, and provide that the COUNTY shall not incur liability to the insurance carrier for payment of premium.