



SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

104 B

FROM: General Manager-Chief Engineer

SUBMITTAL DATE: December 18, 2012

SUBJECT: Little Lake Master Drainage Plan Line B, Stage 1 Project No. 4-0-00265-01 Cultural Resources Treatment and Disposition Agreement District Three/District Three

RECOMMENDED MOTION:

- 1. Approve the Cultural Resources Treatment and Disposition Agreement (Agreement) between the District and the Soboba Band of Luiseño Indians (Soboba Band); and 2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

This Agreement formalizes procedures for the treatment of Native American human remains, grave goods, ceremonial items and any cultural artifacts, in the event that any are discovered during construction of Little Lake Master Drainage Plan (MDP) Line B, Stage 1 project.

Continued on page 2.

Handwritten signature of Warren D. Williams

TT:bjp

WARREN D. WILLIAMS General Manager-Chief Engineer

Table with 2 columns: FINANCIAL DATA and Financial Metrics. Rows include Current F.Y. District Cost (\$25,000), Current F.Y. County Cost (N/A), Annual Net District Cost (\$25,000), In Current Year Budget (YES), Budget Adjustment (N/A), and For Fiscal Year (12-13,13-14).

Table with 2 columns: SOURCE OF FUNDS and Voting Information. Rows include funding codes (525440, 25140, 947460), description (Zone 4 Construction/Maint Professional Services), Positions To Be Deleted Per A-30 (checkbox), and Requires 4/5 Vote (checkbox).

C.E.O. RECOMMENDATION:

APPROVE

BY: Alex Gann Alex Gann

County Executive Office Signature

- Consent (checkbox) Policy (checkbox) Dept Recomm. (checkbox) Per Exec. Ofc. (checkbox)

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley Nays: None Absent: None Date: January 8, 2013 xc: Flood

Kecia Harper-Ihem Clerk of the Board By: [Signature] Deputy

Prev. Agn. Ref.:

District: 3rd/3rd

Agenda Number:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

11-3

FISCAL PROCEDURES APPROVED JEANINE J. REY, FINANCE DIRECTOR BY: [Signature] 12/01/2012 JEANINE J. REY

FORM APPROVED COUNTY COUNSEL BY: [Signature] DATE: 12/15/12 NEAL R. KIPNIS Departmental Concurrence

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**SUBJECT:** Little Lake MDP Line B, Stage 1  
Project No. 4-0-00265-01  
Cultural Resources Treatment and Disposition Agreement  
District Three/District Three

**SUBMITTAL DATE:** December 18, 2012  
Page 2

**BACKGROUND (continued):**

This Agreement also sets forth the terms and conditions by which a Soboba Band monitor will be onsite during grading and ground disturbing activities associated with the project. The cost for tribal monitoring associated with project construction is not expected to exceed a total sum of \$50,000.

State planning law requires cities and counties to consult with California Native American Indian Tribes during the local planning process for the purpose of protecting Traditional Tribal Cultural Resources. The Native American Heritage Commission (NAHC) is the State Trustee Agency, as defined in the California Public Resources Code §21070, designated to protect California's Native American Cultural Resources. The NAHC provides the District with a List of Native American Indian Tribes and recommends that the District contact the tribes listed in order to get their input on potential impacts to cultural resources associated with the construction of project.

As a result of consultation with the Soboba Band of Luiseño Indians (Soboba Band), one of the appropriate culturally affiliated tribes identified by the NAHC, Soboba Band requested that a Native American monitoring component be included as a mitigation measure required under California Environmental Quality Act for this project. To honor the Soboba Band's request, the District desires to enter into a Cultural Resources Treatment and Disposition Agreement.

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

**FINANCIAL:**

Sufficient funding is available in the District's Zone 4 budget(s) for Fiscal Year 2012-2013 and will be included in the proposed budget for Fiscal Years 2013-2014 as appropriate.

**SOBOBA BAND OF LUISEÑO INDIANS**  
**P.O. BOX 487, SAN JACINTO, CA 92581**

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SOBOBA CASINO

TRIBAL HALL

NOLI SCHOOL

**CULTURAL RESOURCES TREATMENT  
AND DISPOSITION AGREEMENT**

**Little Lake Line B, Stage 1 (Project)**

This CULTURAL RESOURCES TREATMENT AND DISPOSITION AGREEMENT ("Agreement") is made and entered into, by and between SOBOBA BAND OF LUISEÑO INDIANS, a federally recognized Indian tribe ("Soboba Band") and Riverside County Flood Control and Water Conservation District ("District"); (Soboba Band and District are sometimes referred to individually as a "Party," and collectively as the "Parties").

RECITALS

**A. Subject Matter:** This Agreement concerns a project known as Little Lake Line B, Stage 1 ("Project") located within the Cities of San Jacinto and Hemet and an unincorporated area of Riverside County, and as more particularly described in Attachment I to this Agreement. The Riverside County Coroner's Office (hereinafter referred to as the "Coroner") shall be provided with a copy of this Agreement by the Soboba Band.

**B. Purpose:** The purpose of this Agreement is to formalize procedures for the treatment of Native American human remains, grave goods, ceremonial items and any cultural artifacts, in the event that any are found in conjunction with construction of the Project. This Agreement also formalizes procedures for Native American monitoring during grading, and ground disturbing activities performed within the Project limits as shown on Attachment I. This Agreement is entered into pursuant to the mitigation measures required under the California Environmental Quality Act, Cal. Public Resource Code 21000 et seq (CEQA) for this Project.

**C. Cultural Affiliation:** All Parties agree that the Project area (see Attachment I of this Agreement) consists of land that has been traced to and traditionally occupied by the Soboba Band. The Soboba Band has designated its Cultural Resource Department to act on its behalf with respect to the provisions of this Agreement. Any Native American human remains, grave goods, ceremonial items, and cultural items (artifacts) that are found in conjunction with the construction of this Project shall be treated in accordance with Section III of this Agreement.

**D. Most Likely Descendant:** In the event that Native American human remains are found during construction 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 Soboba Band nor the District guarantees that the Soboba Band 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, the Soboba Band will be named the MLD.

## AGREEMENT

**I. Incorporation of Recitals.** All of the foregoing Recitals are accurate and are incorporated in this Agreement by reference.

**II. Coordination with County Coroner's Office.** Pursuant to the California Health and Safety Code Section 7050.5, the District shall immediately contact both the Coroner and the Soboba Band in the event that any human remains are discovered during construction of the Project. The Coroner shall ensure that notification is provided to the NAHC as required by California Public Resource Code Section 5097.98(a).

**III. Treatment and Disposition of Remains.** In the event that Native American human remains are found during construction of the Project and the Soboba Band has been designated the MLD pursuant to Section D of this Agreement, the following provisions shall apply to the Parties:

A. The Soboba Band shall be allowed, under California Public Resources Code § 5097.98 (a), to (1) inspect the site of the discovery and (2) make determinations as to how the human remains and grave goods shall be treated and disposed of with appropriate dignity.

B. The Soboba Band, as MLD, shall complete its inspection and make its MLD recommendation within twenty-four (24) hours of receiving notification of the MLD determination from the NAHC. The Parties agree to discuss in good faith what constitutes "appropriate dignity" as that term is used in the applicable statutes.

C. Reburial of human remains shall be accomplished in compliance with the California Public Resources Code § 5097.98 (a) and (b). The Soboba Band, as the MLD in consultation with the District, shall make the final discretionary determination regarding the appropriate disposition and treatment of human remains.

D. All Parties are aware that the Soboba Band may wish to rebury the human remains and associated ceremonial and cultural items (artifacts) on or near, the site of their discovery, in an area that shall not be subject to future subsurface disturbances. The District shall accommodate onsite reburial in a location mutually agreed upon by the Parties.

E. The term "human remains" encompasses more than human bones because the Soboba Band's traditions periodically necessitated the ceremonial burning of human remains. Grave goods are those artifacts associated with any human remains. These items and other funerary remnants and their ashes are to be treated in the same manner as human bone fragments or bones that remain intact.

**IV. Treatment and Disposition of Cultural Items (Artifacts).** Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The District agrees to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. Where appropriate and agreed upon in advance, District's

archaeologist may conduct analyses of certain artifact classes if required by CEQA, Section 106 of National Historic Preservation Act, or the mitigation measures for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

The District waives any and all claims to ownership of Native American ceremonial and cultural artifacts that may be found on the Project site. Upon completion of authorized and mandatory archeological analysis, the District shall return said artifacts to the Soboba Band within a reasonable time period agreed to by the Parties and not to exceed thirty (30) days from the initial recovery of the items.

V. **Non-Disclosure of Location Reburials**. It is understood by all Parties to this Agreement that unless otherwise required by law, the site of any reburial of Native American human remains or cultural artifacts shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, Parties and District shall be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code § 6254 (r).

VI. **The Description of Work**. Description of work for Soboba Band monitors for the grading and ground disturbing operations at the Project site is provided in Attachment II to this Agreement and incorporated herein by this reference. Section I of Attachment II specifies the duties and responsibilities of the identified tribal monitoring crew and other specified parties. Section II of Attachment II identifies the geographical area over which the tribal monitoring crew shall oversee and Sections III and IV of Attachment II mandate direct compensation of the tribal monitoring crew by the District.

VII. **Successors and Assigns**. Neither Party may assign this Agreement without the express, written consent of both Parties.

VIII. **Environmental Compliance**. Nothing in this Agreement shall excuse the District from its obligations under any applicable state or federal environmental statute, including, but not limited to CEQA and applicable regulations of the CEQA Guidelines; California Public Resources Code § 5097.98, § 5097.99; California Health and Safety Code § 7050.5 (c); and California Government Code § 6254. Nothing in this Agreement is intended to make any of the above-referenced laws applicable where such laws would otherwise be inapplicable.

IX. **Indemnity**. District and the Soboba Band in no way indemnify the other with respect to performance of any of their legal obligations under this Agreement.

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

XI. **Controversies and Claims Subject to Mediation**. Any controversy or claim or other matter in question arising out of or related to the Agreement, or the breach thereof, shall be resolved by mediation. Any demand for mediation shall be made within a reasonable time after the controversy or claim or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based upon such controversy or claim or other matter in question would be barred by the applicable statute of limitations. The Parties shall continue to perform under this Agreement pending the outcome of the mediation. Any controversy

or claim or other matter in question not resolved by mediation shall be decided by litigation in a court of competent jurisdiction located in the first instance in the United States District Court for the Central District of California, and if and only if such federal court does not accept jurisdiction, then in any court of competent jurisdiction in the County of Riverside, State of California. Notwithstanding the foregoing, the Soboba Band does not waive any defenses or rights by entering into this Agreement, including, but not limited to, the defense of sovereign immunity. In the event any mediation, litigation or other dispute resolution mechanism is commenced by a Party to the Agreement, each Party shall bear its own costs, including attorneys' fees.

**XII. Limitation on Scope.** This Agreement is unique to the Project only and does not set a precedent for other projects. This Agreement shall remain in effect until the District's Board of Supervisors adopts a Notice of Completion for the Project.

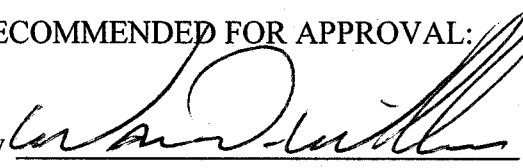
**XIII. Counterparts.** This Agreement may be signed in two or more counterparts and shall be effective when all the Parties and signatories have affixed their signatures to two or more of the counterparts and the counterparts have been delivered to all Parties, at which time the counterparts together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

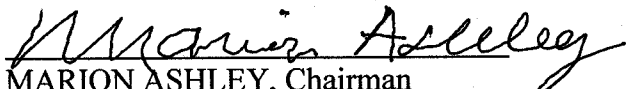
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

JAN 08 2013

(to be filled in by Clerk of the Board)

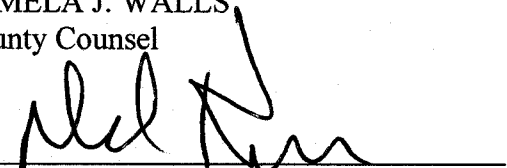
RECOMMENDED FOR APPROVAL: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

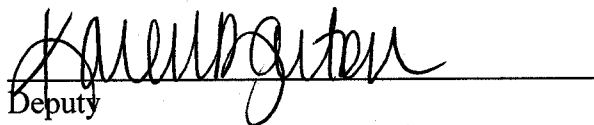
By   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

By   
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS  
County Counsel  
By   
NEAL KIPNIS  
Deputy County Counsel

KECIA HARPER-IHEM  
Clerk of the Board  
By   
Deputy

(SEAL)

Cultural Resource Treatment and Disposition Agreement  
Little Lake Line B, Stage 1  
11/13/2012  
P8/149898

Date: Dec. 18, 2012

**SOBOBA BAND OF LUISEÑO INDIANS**

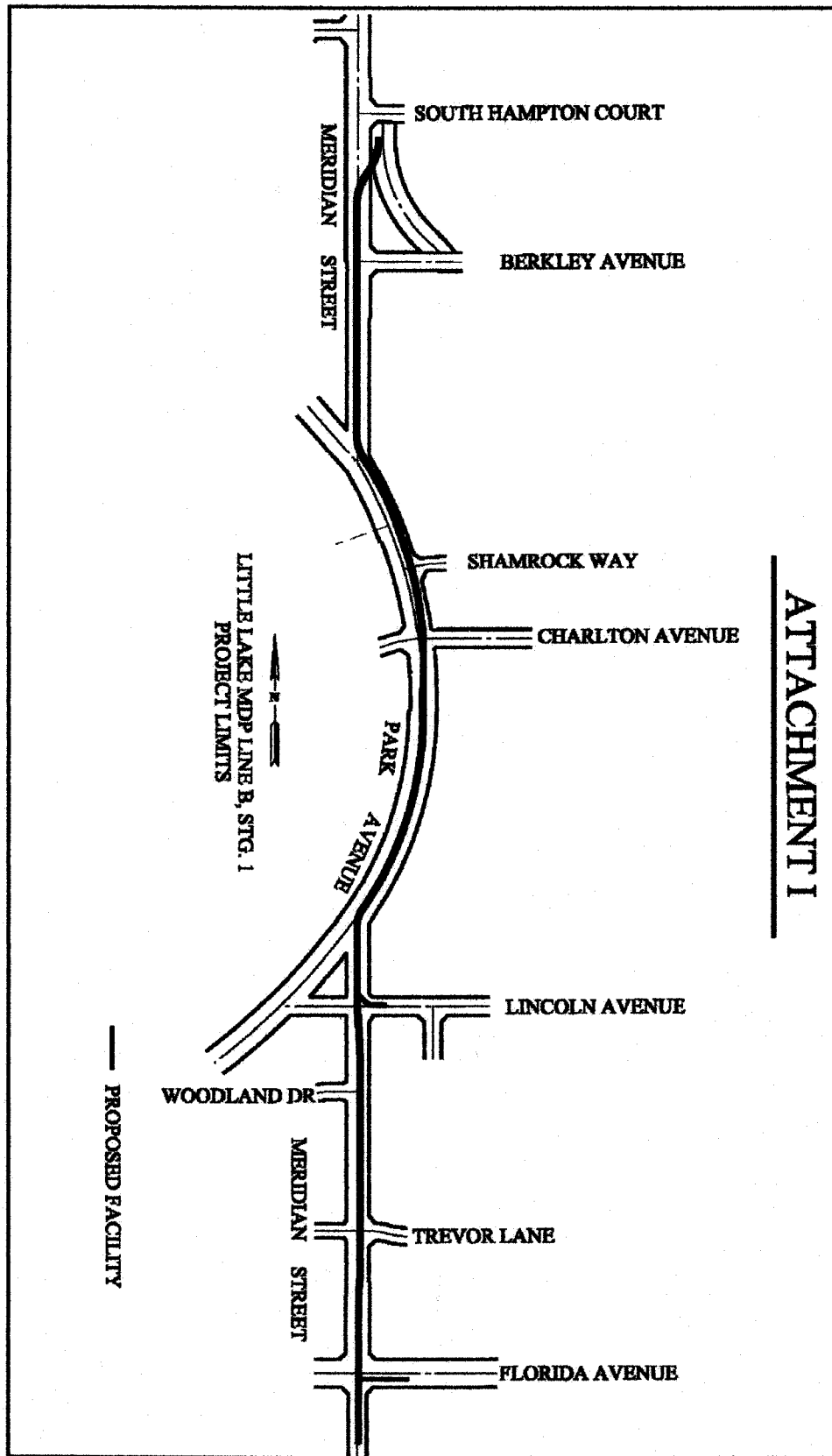
*Rosemary Murillo*

By: ROSEMARY MURILLO, Tribal Chairwoman  
Soboba Band of Luiseño Indians

Cultural Resource Treatment and  
Disposition Agreement  
Little Lake Line B, Stage 1  
11/13/2012  
P8/149898



# ATTACHMENT I



## **Attachment II**

### **NATIVE AMERICAN MONITORING OF GRADING AND GROUND DISTURBING ACTIVITIES**

Little Lake MDP Line B, Stage 1 Project

#### **I. Specifications**

Given the nature and sensitivity of the archaeological sites and cultural resources that are in or may be within the Project area, the Soboba Band of Luiseño Indians shall provide the tribal monitoring, consultation and facilitation for this project during all ground disturbing activities for the Project limits as shown on Attachment I. Tribal monitors will work in concert with the archaeologists hired by the District and project engineers. The Native American monitors or project archaeologists will be empowered to temporarily halt all earthmoving equipment in the immediate area of discovery when cultural items or features are identified until further evaluation can be made in determining their significance. If tribal monitor(s) temporarily halt excavation activities, they shall immediately notify the District's archaeologist and inspector/construction manager. It is understood that all surface and subsurface artifacts of significance shall be collected and mapped during this operation following standard archaeological practices.

After discovery of cultural items or features, discussions between the Tribal monitors, the project archaeologist and the District will take place to determine the significance of the situation and best course of action for avoidance, protection of resources or data recovery as applicable.

#### **II. Project to be Monitored**

Tribal monitoring shall encompass the area known as Little Lake MDP Line B, Stage 1, Project as indicated in Attachment I of this Agreement. It is agreed that monitoring shall be allowed for all excavations and groundbreaking activities occurring in conjunction with the construction of the Project. Tribal monitor will not monitor Paleontological material. Tribal monitoring will not be funded by the District for areas outside the Project limits.

#### **III. Project Crew Size**

The Parties to this Agreement project the need for a District funded tribal monitoring crew consisting of one (1) person. If the scope of the work changes (e.g., inadvertent discoveries of cultural resources or simultaneous grading) to require additional monitors, the District agrees to come to a reasonable agreement with the Soboba Band regarding compensation for more than one (1) tribal monitor.

#### IV. Compensation

The Soboba Band shall provide the tribal monitoring crew for this Project and shall be responsible for coordinating the tribal monitors' activities on this Project. The Soboba Band recognizes that dangerous conditions may exist on the work site, particularly during grading operations, and agrees to assume responsibility for the safety of the tribal monitoring crew while the crew remains on the Project site. The Soboba Band possesses liability insurance for its monitors and agrees to name the District, Contractor, etc., as additional insured. (Provided upon request.)

The District shall directly compensate the Soboba Band of Luiseño Indians in accordance with the following compensation rates and procedures. Invoice will be submitted on a monthly basis and be paid within thirty (30) days to ensure monitor compensation.

A minimum half-day charge ("show up" time) shall be charged to the District for unannounced work stoppages of the tribal monitors that are not due to actions by the Soboba Band. The hourly rate will not be applicable to travel time to and from the Project site.

Overtime rates of time and a half (\$112.50 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 (8) 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 on Monday morning. Holiday rates of double time (\$150 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.

Tribal Liaison Consultation	\$85.00 hourly rate
Native American Monitoring	\$75.00 hourly rate
Overtime Rate	\$112.50 per hour
Double Time Rate	\$150.00 per hour
Administrative Fee	15% of Invoice