

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS
 DATE: 11/19/14

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

510B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
 December 9, 2014

SUBJECT: Approve Cultural Resources Treatment and Disposition Agreement for Hemet MDP Line C, Stage 4, Project No. 4-0-00212-04, 3rd District/3rd District [\$120,000] District Funds 100%

- RECOMMENDED MOTION:** That the Board of Supervisors:
1. Approve Agreement for Cultural Resources Treatment and Disposition between Soboba Band of Luiseño Indians and the District for the Hemet MDP Line C, Stage 4 Project (Agreement);
 2. Authorize the Chairman to execute the Agreement on behalf of the District;
 3. Authorize the General Manager-Chief Engineer to sign amendment(s) that does not increase the cost to the District and does not materially change the scope of the agreement.

BACKGROUND:
Summary
 See Page 2.

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Steve Thomas
 For **WARREN D. WILLIAMS**
 General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ 120,000	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ N/A	\$ N/A	\$ 120,000	\$ N/A	
SOURCE OF FUNDS: 525440 25140 947460 Zone 4 Construction/Maintenance Professional Services				Budget Adjustment: No	
				For Fiscal Year: See Page 2	

C.E.O. RECOMMENDATION:
 APPROVE
 BY: *Steven C. Horn*
 Steven C. Horn
 County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

Ayes: Jeffries, Tavaglione, Benoit and Ashley
 Nays: None
 Absent: None
 Date: December 9, 2014
 xc: Flood

Kecia Harper-Ihem
 Clerk of the Board
 BY: *Kecia Harper-Ihem*
 Deputy

Prev. Agn. Ref.: | District: 3rd/3rd | Agenda Number: **11-4**

FISCAL PROCEDURES APPROVED
 JEANINE J. REY, FINANCE DIRECTOR
 BY: *Jeanine J. Rey* 11/24/14
 JEANINE J. REY

Departmental Concurrence

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

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

FORM 11: Approve Cultural Resources Treatment and Disposition Agreement for Hemet MDP Line C,
Stage 4, Project No. 4-0-00212-04, 3rd District/3rd District [\$120,000] District Funds 100%

DATE: December 9, 2014

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The 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 the construction of Hemet MDP Line C, Stage 4 (Project). Project estimates for the cost of tribal monitoring associated with Project construction is not expected to exceed a total sum of \$120,000.

The Agreement also sets forth the terms and conditions by which a Soboba Tribe monitor will be onsite during grading and ground disturbing activities associated with the construction of the Project.

State planning law requires Cities and Counties to consult with California Native American Indian Tribes during the local planning process for the purposes 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 recommends that contact be made with local tribes in order to get their input on potential project impacts. The NAHC maintains a List of Native American Indian Tribes with whom local governments should consult in order to get their input on potential project impacts. The Soboba Band of Luiseño Indians is one of the appropriate culturally affiliated tribes typically identified by the NAHC for many of these District projects.

The Soboba Tribe has documented information and the expertise to identify whether a project is located within a culturally sensitive area given its location in proximity to sacred villages and ceremonial sites. Therefore, the District and the Soboba Tribe have developed the Agreement to facilitate review and tribal monitoring within culturally sensitive areas of the Project.

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

Impact on Residents and Businesses

Not Applicable.

SUPPLEMENTAL:

Additional Fiscal Information

Sufficient funding is available in the District's Zone 4 Budget for Fiscal Year 2014-2015 and will be included in the proposed budgets for future fiscal years, as appropriate. This Agreement shall remain in effect until the District's Board of Supervisors adopts a Notice of Completion for the Project.

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3 **CULTURAL RESOURCES TREATMENT**
4 **AND DISPOSITION AGREEMENT**

5 **Hemet MDP Line C, Stage 4 (Project)**

6 This CULTURAL RESOURCES TREATMENT AND DISPOSITION AGREEMENT
7 ("Agreement") is made and entered into, by and between SOBOBA BAND OF LUISEÑO
8 INDIANS, a federally recognized Indian tribe ("Soboba Band") and RIVERSIDE COUNTY
9 FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("District"); (Soboba Band
and District are sometimes referred to individually as a "Party", and collectively as the
"Parties").

10 RECITALS

11 **A. Subject Matter:** This Agreement concerns a project known as Hemet MDP Line C,
12 Stage 4 ("Project") located within the city of Hemet, and as more particularly described in
13 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.

14 **B. Purpose:** The purpose of this Agreement is to formalize procedures for the treatment of
15 Native American human remains, grave goods, ceremonial items and any cultural artifacts, in
16 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.

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

22 **D. Most Likely Descendant:** In the event that Native American human remains are found
23 during construction of this Project, the Parties understand that the determination of Most Likely
24 Descendant ("MLD") under California Public Resources Code Section 5097.98 will be made by
25 the Native American Heritage Commission ("NAHC") upon notification to NAHC of the
26 discovery of said remains at the Project site. Until such time, neither the Soboba Band nor the
27 District guarantees that the Soboba Band or one of its members will be so named. However,
28 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.

1 **AGREEMENT**

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

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

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

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

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

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

25 D. All Parties are aware that the Soboba Band may wish to rebury the human
26 remains and associated ceremonial and cultural items (artifacts) on or near, the site of
27 their discovery, in an area that shall not be subject to future subsurface disturbances.
28 The District shall endeavor to 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.

1 In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are
2 recovered during the course of archaeological investigations. Where appropriate and agreed
3 upon in advance, District's archaeologist may conduct analyses of certain artifact classes if
4 required by CEQA, Section 106 of National Historic Preservation Act, or the mitigation
5 measures for the Project. This may include but is not limited or restricted to include shell, bone,
6 ceramic, stone or other artifacts.

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

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

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

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

27 **VIII. Environmental Compliance.** Nothing in this Agreement shall excuse the District from
28 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

1 resolved by mediation. Any demand for mediation shall be made within a reasonable time after
2 the controversy or claim or other matter in question has arisen. In no event shall the demand for
3 mediation be made after the date when institution of legal or equitable proceedings based upon
4 such controversy or claim or other matter in question would be barred by the applicable statute
5 of limitations. The Parties shall continue to perform under this Agreement pending the outcome
6 of the mediation. Any controversy or claim or other matter in question not resolved by
7 mediation shall be decided by litigation in a court of competent jurisdiction located in the first
8 instance in the United States District Court for the Central District of California, and if and only
9 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.

10 **XII. Limitation on Scope.** This Agreement is unique to the Project only and does not set a
11 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.

12 **XIII. Term.** This Agreement shall remain in effect until the District's Board of Supervisors
13 adopts a Notice of Completion for the Project.

14 **XIV. Counterparts.** This Agreement may be signed in two or more counterparts and shall be
15 effective when all the Parties and signatories have affixed their signatures to two or more of the
16 counterparts and the counterparts have been delivered to all Parties, at which time the
17 counterparts together will be deemed one original document.
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

DEC 09 2014

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By *Steve Thomas*
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By *Neal Kipnis*
NEAL KIPNIS
Deputy County Counsel

By *Kecia Harper-Ihem*
Deputy

(SEAL)

Cultural Resource Treatment and
Disposition Agreement
Hemet MDP Line C, Stage 4
11/04/2014
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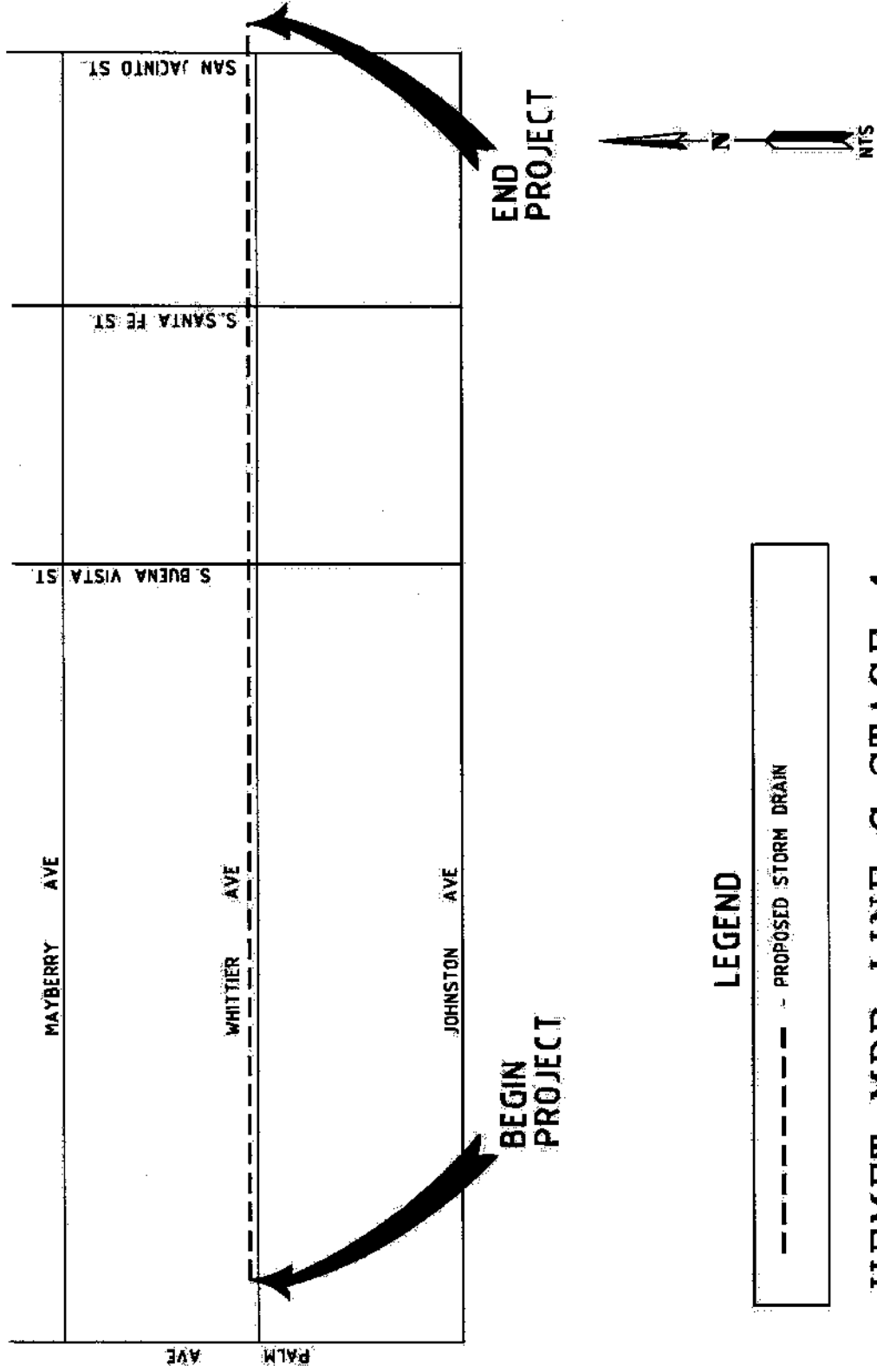
1 Date: Nov. 12, 2014

SOBOBA BAND OF LUISEÑO INDIANS

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3 By Rosemary Morillo
4 ROSEMARY MORILLO, Tribal Chairwoman
5 Soboba Band of Luiseño Indians
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25 Cultural Resource Treatment and
26 Disposition Agreement
27 Hemet MDP Line C, Stage 4
28 11/04/2014
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ATTACHMENT I



HEMET MDP LINE C, STAGE 4

Attachment II

NATIVE AMERICAN MONITORING OF GRADING AND GROUND DISTURBING ACTIVITIES

Hemet MDP Line C, Stage 4 Project

I. Specifications

Given that potential cultural resources may be located 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 up to a depth of 3 feet 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 monitor(s), or Project archaeologist(s), 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 monitor(s), the Project archaeologist(s), 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 Hemet MDP Line C, Stage 4, Project as indicated in Attachment I of this Agreement. It is agreed that monitoring shall be allowed for all excavations and groundbreaking activities, up to a depth of three feet below existing ground, 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. Prior to tribal monitoring, a copy of said liability insurance shall be provided to the District.

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 monitor(s) 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