

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



ITEM: 3.22
(ID # 26854)

MEETING DATE:
Tuesday, January 14, 2025

FROM : FACILITIES MANAGEMENT AND FIRE DEPARTMENT

SUBJECT: FACILITIES MANAGEMENT (FM) AND RIVERSIDE COUNTY FIRE DEPARTMENT: Riverside County Fire Department Lake Tamarisk Station 49 Replacement Project - Approval of the Native American Human Remains and Associated Items Treatment, Disposition, and Monitoring Agreement with Agua Caliente Band of Cahuilla Indians; District 4. [\$25,142 – 100% Federal - American Rescue Plan Act (ARPA) Fund 21735 (Previously Approved Budget)]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Native American Human Remains and Associated Items Treatment, Disposition, and Monitoring Agreement, in the amount of \$25,142 for the Riverside County Fire Department Lake Tamarisk Station 49 (Lake Tamarisk Station 49) Replacement Project and authorize the Chairman of the Board (Chairman) to execute the Agreement on behalf of the County; and
2. Authorize the Director of Facilities Management, or designee, to administer the contract in accordance with applicable Board policies.

ACTION:Policy, CIP


Vincent Yzaguirre 12/30/2024

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Medina, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: January 14, 2025
xc: FM, Fire

Kimberly A. Rector
Clerk of the Board

By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 25,142	\$ 0	\$ 25,142	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: 100% Federal Funds – American Rescue Plan Act (ARPA) Fund 21735 (Previously approved budget)			Budget Adjustment: No	
			For Fiscal Year: 24/25	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The new Lake Tamarisk Station 49 will be constructed at 43700 Tamarisk Drive in Desert Center, California, 92239. On November 5, 2024, Item 3.27, the Board of Supervisors (Board) approved an increase to the project budget in the amount not to exceed \$13,856,060 from \$400,607 for a revised project budget of \$14,256,667.

On June 7, 2022, Item 3.17, the Board approved the Native American Remains and Associated Items Treatment, Disposition, and Monitoring Agreement between the County of Riverside and the Agua Caliente Band of Cahuilla Indians (Agua Caliente Band) for a not-to-exceed amount of \$16,157 for tribal monitoring associated with the Lake Tamarisk Station 49 Replacement Project. The performance schedule for the agreement has expired and a revised agreement is needed to account for minor changes, including the incorporation of additional days of tribal monitoring based on the refined construction schedule with an estimated 20 days of monitoring.

Facilities Management recommends the Board approve the Agreement for tribal monitoring in the amount not to exceed \$25,142. Approval of the Agreement ensures that potential impacts from inadvertent discoveries of archeological resources do not occur and remain less than significant. Construction of the project is anticipated to begin in January 2025.

Impact on Residents and Businesses

The tribal monitoring will allow for the construction of the Fire Station while preserving and protecting potential undiscovered archeological resources.

Attachments:

- Native American Human Remains and Associated Items Treatment, Disposition, and Monitoring Agreement

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

Evangelina Gregorio EO
Evangelina Gregorio EO, Principal Mgmt Analyst 1/3/2025

Aaron Gettis
Aaron Gettis, Chief of Deputy County Counsel 12/30/2024

**NATIVE AMERICAN HUMAN REMAINS AND
ASSOCIATED ITEMS TREATMENT, DISPOSITION,
AND MONITORING AGREEMENT**

This NATIVE AMERICAN HUMAN REMAINS AND ASSOCIATED ITEMS TREATMENT, DISPOSITION, AND MONITORING AGREEMENT (“**Agreement**”) is made and entered into as of September 30, 2024 by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe (“**Agua Caliente Band of Cahuilla Indians**” or “**Tribe**”) and the County of Riverside with offices at 3450 14th Street, 2nd Floor, Riverside, CA 92501 (“**Client**”). Tribe and Client are sometimes referred to individually as a “**Party**,” and collectively as the “**Parties**.”

I. GENERAL PROVISIONS

A. Subject Matter. This Agreement concerns the construction of a replacement Fire Station (FS 49) located at 43700 Tamarisk Drive, Desert Center, California 92239, and as more commonly referred to as the Fire Station 49 Lake Tamarisk Replacement Project (the “**Project**”) and as more particularly described in **Exhibit A** to this Agreement, which is attached hereto and incorporated herein by this reference. Client agrees to pay Tribe an estimated \$25,141.99 as consideration for the work provided pursuant to this Agreement, and as described more fully in **Exhibit C**, which is attached hereto and incorporated herein by this reference. Client shall provide a copy of this Agreement upon request to the Riverside County Coroner’s Office (the “**Coroner**”). The County of Riverside is the Project’s lead agency pursuant to the California Environmental Quality Act (“**CEQA**”) (California Public Resources Code, §§ 21000 *et seq.*), and responsible for the environmental compliance of this Project. The County of Riverside shall be referred to herein as the “**Lead Agency**.”

B. Purpose. The purpose of this Agreement is to formalize procedures for the treatment of Native American human remains, as well as associated grave goods and cultural items (“**Associated Items**”), in the event any are discovered in conjunction with the development of the Project. Such Project development may include archaeological studies, excavation, geotechnical investigations, grading, or any other ground disturbing activity. This Agreement also formalizes procedures for cultural monitoring during archaeological studies, excavation, geotechnical studies, grading, and any other ground disturbing activities during Project development. This Agreement is entered into with the acknowledgment by the Parties of the high level of cultural sensitivity of the Project location and its proximity to recorded cultural sites.

C. Scope. This Agreement shall apply to lands owned in fee, lands owned by the United States, and lands owned by the United States for the benefit of an Indian tribe or its members.

II. TREATMENT AND DISPOSITION OF NATIVE AMERICAN HUMAN REMAINS AND ASSOCIATED ITEMS (FEE LANDS)

A. Cultural Affiliation. The Parties agree that the Project area set forth in **Exhibit A** to this Agreement consists of land that has been traced to, and traditionally occupied by, the Agua Caliente Band of Cahuilla Indians. Tribe has designated the Tribal Historic Preservation Office (“THPO”) to act on its behalf with respect to the provisions of this Agreement. Any Native American human remains and Associated Items that are discovered on fee lands in conjunction with the development of this Project shall be treated in accordance with this Section.

B. Coordination with the County Coroner’s Office. Client shall immediately contact both the Coroner and Tribe or cause the Lead Agency to do the same if Client or Lead Agency discover any human remains during implementation of the Project. The Parties acknowledge and agree that if the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that the human remains are those of a Native American, the Coroner will notify the Native American Heritage Commission (“NAHC”) within twenty-four (24) hours of the determination, as required by subdivision (c) of Section 7050.5 of the California Health and Safety Code.

C. Most Likely Descendant. In the event that Native American human remains and/or Associated Items are discovered during the development of the Project, the Parties agree that the determination of Most Likely Descendant (“MLD”), under Section 5097.98 of the California Public Resources Code, shall be made by the NAHC. The Coroner will be called upon to make a determination if the remains are human in nature, and will determine whether there is a forensic requirement. Once the MLD is designated, the MLD will make all decisions regarding the disposition of the Native American human remains.

If Tribe has been designated the MLD, and if the Coroner, in consultation with the THPO, determines that there is no forensic requirement, then the Native American human remains and/or Associated Items shall be subject to Tribal laws and Policies, including the Tribal Historic Preservation Ordinance.

D. Treatment and Disposition of Human Remains. In the event that Native American remains are found during the development of the Project and Tribe has been designated the MLD, the following provisions shall apply to the Parties:

1. Tribe, as MLD, shall be allowed, pursuant to subdivision (a) of Section 5097.98 of the California Public Resources Code, to (i) inspect the site of the discovery; and, notwithstanding subdivision (a) of Section 5097.98 of the California Public Resources Code, to

(ii) make determinations as to how the Native American human remains and Associated Items shall be treated and disposed of with appropriate dignity.

2. Tribe, as MLD, shall complete its inspection within forty-eight (48) hours of being granted access to the site of discovery, as required by subdivision (a) of Section 5097.98 of the California Public Resources Code. The Parties agree to discuss in good faith what constitutes “**appropriate dignity**,” as that term is used in the applicable statutes.

3. Disposition and treatment of Native American human remains and Associated Items shall be accomplished in compliance with subdivisions (a) and (b) of Section 5097.98 of the California Public Resources Code, except as set forth herein. Tribe, as MLD, in consultation with Client, shall make the final discretionary determination regarding the appropriate disposition and treatment of Native American human remains and Associated Items.

4. The Parties are aware that Tribe may wish to rebury the Native American human remains and Associated Items on or near the site of their discovery in an area that shall not be subject to future subsurface disturbances. Client shall accommodate on-site reburial in a location mutually agreed upon by the Parties.

5. The term “**Native American human remains**” encompasses more than human bones because Tribe’s traditions periodically necessitated the ceremonial burning of human remains. Associated Items are those artifacts associated with any Native American human remains. These items and their ashes are to be treated in the same manner as human bone fragments or bones that remain intact.

E. Treatment and Disposition of Associated Items. Native American human remains and Associated Items reflect traditional religious beliefs and practices of Tribe. Native American human remains and Associated Items that are discovered on the Project site are subject to consultation between Client and Tribe regarding appropriate treatment. Tribe’s consent shall be obtained to allow the use of temporary curation facilities, which may temporarily house the collections until the final disposition is agreed upon. Where appropriate and agreed upon in advance, the archaeologist may conduct analyses of certain artifact classes, if required by CEQA, in furtherance of the mitigation measures or conditions of approval for the Project. This may include, but is not limited or restricted to, shell, bone, ceramic, stone, or other artifacts. Client waives any and all claims to ownership of Associated Items that may be found on the Project site.

F. Non-Disclosure of Reburial Location. It is understood by the Parties that unless otherwise required by law, the site of any reburial of Native American human remains and/or Associated Items shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, Parties, and Lead Agency shall

withhold public disclosure of information related to such reburial, pursuant to the specific exemption set forth in subdivision (r) of Section 6254 of the California Government Code.

III. COMPLIANCE WITH THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT AND NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (PUBLIC, INDIAN, FEDERAL, AND TRIBAL LANDS)

A. **ARPA Compliance.** To the extent a portion of Project development is located on “public lands” or “Indian lands,” as those terms are defined in 16 U.S.C. § 470bb, Client shall not excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on said lands unless such activity is pursuant to a permit issued under 43 C.F.R. § 7.8 or exempted by 43 C.F.R. § 7.5(b). As used in this Section, the term “archaeological resource” has the meaning ascribed to it in 16 U.S.C. § 470bb.

B. **NAGPRA Compliance.** To the extent a portion of Project development is located on “federal lands” or “tribal lands” as those terms are defined in 25 U.S.C. § 3001, Client shall comply with the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. §§ 3001 *et seq.*), as implemented by 43 C.F.R. §§ 10.4 to 10.6, which include, but are not limited to: (i) compliance with the requirements for the intentional removal from or excavation of Native American cultural items from federal or tribal lands for the purposes of discovery, study, or removal of such items; and, in the case of inadvertent discovery, (ii) notification in writing of the applicable Secretary of the federal department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to federal lands and the appropriate Indian tribe with respect to tribal lands, if known or ascertainable, if the Client knows or has reason to know that it has discovered Native American cultural items on federal or tribal lands; and (iii) cessation of activities in connection with the discovery in the area of discovery. As used in this Section, the term “cultural items” has the meaning ascribed to it in 25 U.S.C. § 3001.

IV. MISCELLANEOUS PROVISIONS

A. **Description of Work.** The description of the scope of work for Tribe’s Cultural Monitors for the Project is set forth in **Exhibit B** to this Agreement, which is attached hereto and incorporated herein by this reference. Section I of **Exhibit B** specifies the duties and responsibilities of Tribe’s Cultural Monitors and other specified parties. Section II of **Exhibit B** identifies the geographical area that Tribe’s Cultural Monitors shall oversee.

B. **Assignment.** This Agreement shall not be assigned without the prior written consent of Tribe.

C. Compensation. Tribe shall receive compensation, including authorized reimbursements, for all work described in **Exhibit B**. The total estimated compensation for the work shall not exceed TWENTY-FIVE THOUSAND ONE HUNDRED FORTY-ONE DOLLARS AND NINETY-NINE CENTS (\$25,141.99). Compensation for the work shall be in accordance with the Monitor Budget Worksheet attached hereto as **Exhibit C**. Tribe will submit to Client a biweekly itemized statement, which indicates the work completed, any amounts owed, and any credits. The statement will describe the work and supplies provided since the initial commencement date, or since the start of the subsequent billing period, as appropriate, through the date of the statement. Client shall pay the undisputed portions of statements within thirty (30) days of receipt, and will promptly consult with Tribe to resolve any portions that may be in dispute. If any portion of any amount owed is received by Tribe after thirty (30) days of the date of any monthly itemized statement (the "**Late Penalty Date**"), or if any portion of the amount owed is received by Tribe in funds that are not immediately available, then a late payment penalty shall be due to Tribe. The late payment penalty shall be the portion of the amount owed not received by the Late Penalty Date multiplied by a late factor. The late factor shall be the lesser of: (i) The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the Late Penalty Date to and including the date that Client actually makes the payment to Tribe, or (ii) 0.000407 per day, compounded daily for the number of days from the Late Penalty Date to and including the date that the Client actually makes the payment to Tribe.

Tribe will be compensated at a rate of \$125.00 an hour for the work contemplated in the attached **Exhibit B**. In addition, Client shall reimburse mileage costs at the federal mileage rate for travel to and from the Project site location. A 30-minute unpaid lunch period shall be afforded to Tribe. Client agrees to pay a fifteen percent (15%) administrative fee for the work provided pursuant to this Agreement. Tribe will invoice Client for any overtime worked at a rate of \$187.50 per hour for any time worked over forty (40) hours within a given work week. The Client shall announce if there are work stoppages at a minimum twelve (12) hours before the scheduled start time. If there are unannounced work stoppages or cancellation of scheduled work (i.e., cancellation of work due to weather conditions) that are not due to the Cultural Monitor's actions, the Client shall pay the Tribe a minimum half-day charge (four hours).

D. Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, executors, administrators, and assignees of the Parties, including subsequent land owners or Project proponents, and any person or entity obligated to comply with environmental and cultural or archaeological resource protection laws applicable to the Project.

E. Compliance with Laws. Client shall comply with all applicable federal and state laws. Nothing in this Agreement shall excuse Client from any obligation under any applicable federal or state laws, including, but not limited to: CEQA and applicable regulations of the CEQA

Guidelines; California Public Resources Code, §§ 5097.98, 5097.99, and 5097.991; California Health and Safety Code, § 7050.5, subd. (c); California Government Code, § 6254; the National Historic Preservation Act, 54 U.S.C. §§ 3001 *et seq.* and its implementing regulations; the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001 *et seq.* and its implementing regulations; 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.

F. Indemnification. Client hereby agrees to fully defend, indemnify, and hold Tribe, Tribal members, the Tribal Council, each member thereof, and Tribe's officials, directors, officers, employees, designees, representatives, and agents harmless from and against any and all claims, suits, actions, damages, losses, liabilities, expenses, costs (including without limitation, reasonable attorney's fees and court costs), and/or judgments of every nature or description arising from, or in any way attributable to or related to, the negligence or willful misconduct of Client hereunder, including Client's officers, employees, agents, principals, shareholders, directors, and subcontractors.

G. Entirety. This Agreement and Exhibits A, B, and C attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof. No amendment or modification of this Agreement shall be effective unless in writing and executed by both Parties.

H. Damages. Except as set forth in this Agreement, neither Party shall be liable to the other, in any event, for any special or incidental damages arising out of the work performed hereunder, whether arising in contract, tort, or otherwise.

I. Limitation on Scope. This Agreement is unique to the Project only and does not set a precedent for other projects.

J. Term. This Agreement shall commence on September 30, 2024 and will end on September 30, 2025.

This Agreement is entered into on the Agua Caliente Indian Reservation, as of the day and year first above.

AGUA CALIENTE BAND OF CAHUILLA INDIANS

By: _____

Its: _____

COUNTY OF RIVERSIDE

By: V. Manuel Perez

Its: CHAIR, BOARD OF SUPERVISORS
V. MANUEL PEREZ

FORM APPROVED COUNTY COUNSEL

BY: Aaron C. Gettis 12-30-24
AARON C. GETTIS DATE

ATTEST:
KIMBERLY A. RECTOR, Clerk
BY: [Signature]
DEPUTY

JAN 14 2025 3.22

EXHIBIT A

Fire Station 49
43700 Tamarisk Drive
Desert Center, CA 92239

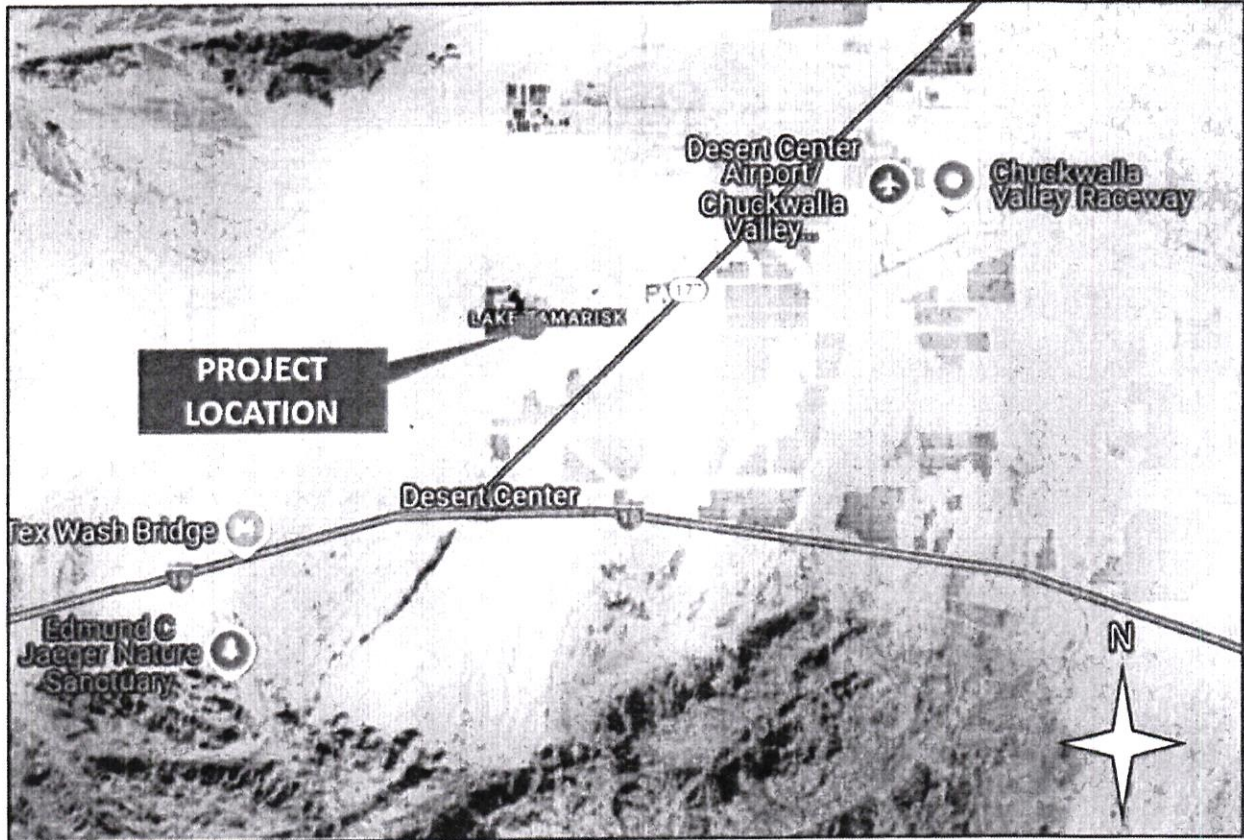


EXHIBIT B
CULTURAL MONITORING OF GRADING AND
GROUND DISTURBING ACTIVITIES

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 Agua Caliente Band of Cahuilla Indians shall provide the cultural monitoring, consultation, and facilitation for this Project during archaeological studies, excavation, geotechnical studies, grading, and any other ground disturbing activities during Project development. Cultural Monitors will work in concert with the archaeologists hired by Client and Project engineers. The Cultural Monitors or Project archaeologists will be empowered to halt all earthmoving equipment in the immediate area of discovery when Native American human remains or Associated Items are identified until further evaluation can be made in determining their significance. 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 Native American human remains or Associated Items discussions between the THPO and Project archaeologist 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. The scope of work for this Project requires monitoring once grading or other earthmoving begins (*i.e.*, from the beginning).

II. Project to be Monitored

Monitoring shall encompass the area known as Fire Station 49 Lake Tamarisk Replacement Project as indicated in **Exhibit A** of this Agreement and shall be known as the Project area. It is agreed that monitoring shall be allowed for all archaeological studies, excavation, geotechnical studies, grading, and any other ground disturbing activities during Project development. Only Cultural Monitors appointed by the Agua Caliente Band of Cahuilla Indians Monitoring Program will be used on the Project.

III. Cultural Monitors

The Parties to this Agreement anticipate the need for a Cultural Monitoring crew consisting of one (1) Cultural Monitor. If the scope of the work changes (*e.g.*, inadvertent discoveries of cultural resources or simultaneous grading to require additional monitors), Client agrees to directly compensate the work of additional

Cultural Monitors to the originally agreed upon crew of one (1) Cultural Monitor. The compensation rate shall be made directly from Client to Tribe. If Native American human remains are found, the coordination of the reburial of those remains and any Associated Items shall be conducted in accordance with this Agreement.

IV. Responsibility

It is the responsibility of Client to ensure Cultural Monitors have been trained in general safety precautions connected with working on a construction site. The THPO shall be notified if other special safety concerns must be observed in advance and Client shall provide special training if required.

EXHIBIT C

MONITOR BUDGET WORKSHEET

Agua Caliente Band Of Cahuilla Indians
Historic Preservation Office-Monitoring Program

Date: September 30, 2024 Project Start Date: December 3, 2024

Project Name:	Fire Station 49 Tamarisk Project
Project Address:	FS 49-43700 Tamarisk Drive Desert Center, CA 92239
Contact name:	Michael Sullivan-Senior Environmental Planner Contract No. 03-006-2022-001
Billing Address:	County of Riverside 3450 14th Street, 2nd Floor Riverside, CA 92501 msullivan@rivco.org
Phone Nos.:	(951) 955-8009

The worksheet below is to estimate costs for Agua Caliente's total number of work days estimated for the Project. An invoice will be sent on a biweekly basis from the Controller's Office and will include a 15% Administrative Fee. An overtime rate of \$187.50 per hour will be applied to any time worked over 40 hours. The Client shall pay the Tribe a minimum half-day (four hours) for last minute cancellations.

			Total # of Days*	Total
1 Cultural Monitoring				
1	Monitor (s) for	20 days		
20	Days @ 8 hr days	160 hours		
160	Hours @ \$125.00/hr			20,000.00
3 Mileage (round trip) FS 49				
1	Monitor (s) for	20 trips		
20	Roundtrips @ 139 miles	2780 miles		
2780	miles @ \$.67/mile			1,862.60
5 Administrative Fee		15%		3,279.39
	Subtotal			25,141.99
			TOTAL	25,141.99

Initial _____

Initial _____