

**CULTURAL RESOURCES TREATMENT AND TRIBAL MONITORING AGREEMENT  
(Pre-Excavation Agreement)**

**Murrieta Creek Multi-Use Trail Project**

**I. PARTIES**

The PARTIES to this Agreement are (1) The Pechanga Band of Indians, a federally recognized Indian tribe ("PECHANGA TRIBE") and (2) City of Lake Elsinore ("DEVELOPER").

All notices to the PARTIES shall be given at the addresses below:

**Pechanga Band of Indians**

Gary DuBois, Director  
Pechanga Cultural Resources  
P.O. Box 2183  
Temecula, CA 92593  
Telephone: (951) 770-6300

**General Counsel for the Pechanga Band**

Pechanga Office of the General Counsel  
P.O. Box 1477  
Temecula, CA 92593  
Telephone: (951) 770-6170

**Developer**

City of Lake Elsinore  
130 S Main Street  
Lake Elsinore, CA 92530

*\*For Tribal Monitor scheduling and Tribal Monitor contact information, please refer to Addendum 2 (Monitoring Services Summary Sheet)\**

**II. SUBJECT MATTER**

This Agreement concerns a project known as Murrieta Creek Multi-Use Trail Project and more specifically defined as APN's 370-120-001, 370-120-063, 371-110-002, 371-110-003, 371-110-004, 371-110-005, 371-110-006, 371-110-009, 371-110-011, 371-110-013, 371-110-014, 371-110-015, 371-110-020, 371-110-023, 371-110-024 ("Project"). The PECHANGA TRIBE will provide a copy of this Agreement to the Riverside County Medical Examiner's Office and the City of Lake Elsinore, Lead Agency for the Project, and agency responsible for environmental compliance of this Project ("Lead Agency").

**III. PURPOSE**

This Agreement formalizes 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. 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 archaeological testing, studies, surveys, and staging activities. This Agreement is entered into pursuant to the mitigation measures required under the California Environmental Quality Act, California Public Resources Code Section 21000 et seq., as amended ("CEQA") and the conditions of approval for this Project.

**IV. CULTURAL AFFILIATION & TREATMENT OF CULTURAL RESOURCES**

The PARTIES agree that the Project area consists of land which has been traced to and traditionally occupied by the PECHANGA TRIBE. Cultural resources, including ceremonial items and archaeological items, which may be found in conjunction with the development of this Project shall be treated as follows:

Treatment of all cultural items will reflect the religious beliefs, customs, and practices of the PECHANGA TRIBE. The DEVELOPER agrees to give all cultural items to the PECHANGA TRIBE for appropriate treatment, unless the DEVELOPER is otherwise ordered by a court or agency of competent jurisdiction. The DEVELOPER waives any and all claims to ownership of all cultural items in favor of the PECHANGA TRIBE. If temporary possession of cultural items by the DEVELOPER or its agents, subcontractors, or representatives is necessary (for example a Project archaeologist), said entity or individual shall not possess those items for longer than is reasonably necessary, except that all PARTIES agree that ceremonial and sacred items shall be immediately relinquished to the PECHANGA TRIBE for appropriate treatment.

## **V. DISCOVERY OF HUMAN REMAINS**

### **A. Most Likely Descendant Determination**

If Native American human remains are found during development of the Project, the PARTIES understand that the Native American Heritage Commission ("NAHC") will be notified and will determine the Most Likely Descendant ("MLD") pursuant to California Public Resources Code Section 5097.98. Neither PARTY guarantees that the PECHANGA TRIBE or one of its members will be named the MLD. However, given the location of the site and the history/prehistory of the area, the PARTIES' good faith belief is that Tribal Chairperson Mark Macarro of the PECHANGA TRIBE will be named the MLD.

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 the provisions of Addendum 1 to this Agreement, which is fully severable, shall continue in full force and effect.

### **B. Coordination with County Medical Examiner's Office**

The DEVELOPER shall immediately contact the Medical Examiner and the PECHANGA TRIBE in the event that any human remains are discovered during the development of the Project. The Medical Examiner shall ensure that notification is provided to the NAHC as required by California Public Resources Code Section 5097.98(a) and California Health & Safety Code Section 7050.5(c).

### **C. Treatment of Native American Human Remains**

In the event that Native American human remains are found during development of the Project and the PECHANGA TRIBE or one of its members is determined to be the MLD by the NAHC, the following provisions shall apply.

The term "Native American human remains" encompasses more than human bones. 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 human remains, with 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 Medical Examiner shall immediately be notified, ground disturbing activities in that location shall cease, and the remains shall be left in the place where they were discovered until the Medical Examiner has had the opportunity to inspect the remains in place and make her determinations as required by State law, and until a final decision as to the treatment and disposition has been made pursuant to this Agreement and the State law.

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 DEVELOPER 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.

The PECHANGA TRIBE shall complete its inspection and make its MLD recommendation within forty-eight (48) hours of being granted access to the site of the discovery by the landowner. The PECHANGA TRIBE shall have the final determination as to the disposition and treatment of human remains and grave goods.

#### **D. Non-Disclosure of Reburial Locations**

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, California Government Code Section 7920.000 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 7927.000.

### **VI. SIGNIFICANT SITES IMPACTED BY PROJECT**

If additional significant sites or sites not identified as significant in the Project environmental review process, but later determined to be significant, are located within the Project impact area, such sites will be subjected to further archaeological and cultural significance evaluation by the Lead Agency and the PECHANGA TRIBE to determine if additional mitigation measures are necessary to treat sites in a culturally appropriate manner consistent with CEQA requirements for mitigation of impacts to cultural resources.

### **VII. 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, provisions for compensation of the Tribal Monitors, and other pertinent provisions.

### **VIII. 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 subcontractors of the Project area, and any person or entity obligated to comply with environmental and cultural/archaeological protection laws applicable to the Project.

#### **IX. STATUTORY COMPLIANCE**

Nothing in this Agreement shall excuse the Lead Agency on this Project or the DEVELOPER from their obligations under any applicable state or federal laws or regulations, including but not limited to the CEQA, California Public Resources Code Section 21000 et seq.; the National Historic Preservation Act, 16 U.S.C. Section 470 et seq.; California Public Resources Code Sections 5097.98, 5097.98(c), and 5097.99; California Health and Safety Code Section 7050.5(c); California Government Code Sections 7290.000 et seq, 65040.2, 65092, 65351, 65352, 65560, 65352.3, 65352.4, 65562.5; California Civil Code Section 815.3; the Native American Graves Protection and Repatriation Act, 25 U.S.C. Section 3001 et seq.; the California Native American Graves Protection and Repatriation Act of 2001, California Health and Safety Code Section 8010 et seq.; the American Indian Religious Freedom Act, 16 U.S.C. Section 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.

#### **X. INDEMNITY**

The PECHANGA TRIBE in no way indemnifies nor guarantees the Lead Agency or the DEVELOPER in any of their legal obligations.

#### **XI. 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.

#### **XII. CONFIDENTIALITY**

This Project is subject to certain confidentiality mandates. AB 52, as codified in California Public Resources Code Section 21082.3(c)(1) requires that the Lead Agency maintain confidential information provided by a tribe during consultation or the environmental review process. That duty to maintain confidentiality also attaches to the DEVELOPER and their agents, and prohibits disclosure of such confidential information regarding tribal cultural resources to third parties. Further, California Government Code Sections 7927.000 and 7927.005 also protect from disclosure under the Public Records Act information concerning cultural resources. The cultural information provided in this Agreement, which is a requirement of the Project's Conditions of Approval, and/or Mitigation Monitoring and Reporting Plan, if required, is being provided as part of the environmental review process and regulatory compliance, and is thus protected from disclosure.

The DEVELOPER agrees to keep confidential and shall not disclose the following, unless required by law or a court of competent jurisdiction: 1) any terms and conditions of this Agreement; and 2) any items discussed in Section V(D). The DEVELOPER shall ensure that all of its officers, directors, agents, employees, and contractors agree to keep confidential the above items and to fully comply with this section as though each of them had signed this Agreement. The PARTIES agree that any remedy at law for a breach of this section would be inadequate and such breach

shall result in irreparable harm to the PECHANGA TRIBE, who shall be entitled to obtain injunctive relief for a breach of this section, in addition to any other remedies available to it at law.

### **XIII. LIMITATION ON SCOPE**

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

### **XIV. 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.

### **XV. COUNTERPARTS AND EFFECTIVE DATE**

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.

### **XVI. SIGNATURES**

Date:	_____	Date:	_____
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Tribe:	PECHANGA BAND OF INDIANS	Developer:	City of Lake Elsinore
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By:	Mark Macarro	By:	Jason Simpson
Its:	Tribal Chairman	Its:	City Manager

## ADDENDUM I TRIBAL MONITORING

### Murrieta Creek Multi-Use Trail Project

#### I. MONITORING SPECIFICATIONS

Murrieta Creek Multi-Use Trail Project, defined in Section II of the Cultural Resources Treatment and Tribal Monitoring Agreement, shall consist of the development of a multi-use trail that connects Skylark Drive with the Lake Elsinore Levee.

Given the nature and sensitivity of the archaeological sites and cultural resources that are or may be in the Project area, it is agreed that the PECHANGA TRIBE shall designate representatives to be retained as Tribal Monitors to monitor all grading, groundbreaking, excavation, and ground-disturbing activities performed in the Project area and in conjunction with the Project development, including archaeological testing, studies, surveys, and staging activities. Tribal Monitors will not monitor paleontological material. If necessary, archaeological observation shall consist of a qualified archaeologist, retained by the DEVELOPER, to be present during grading activities to identify and/or ascertain the significance of any subsurface cultural resources or to aid in the avoidance of sensitive areas.

#### II. DISCOVERY OF HUMAN REMAINS

In the event that human remains, as defined in Section V(C) of the Cultural Resources Treatment and 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 and the PECHANGA TRIBE, pursuant to California Health & Safety Code Section 7050.5. The Tribal Monitors are further empowered to temporarily halt and/or relocate grading or excavation activities, for short periods of time, to conduct further evaluation of the significance of discovered cultural items, including further controlled excavations pursuant to California Public Resources Code Section 21083.2(i). Surface or subsurface artifacts of significance may be collected and mapped during this controlled excavation.

#### III. PRE-GRADING CONFERENCE & PROJECT CREW SIZES

Regarding grading activities, a pre-grading conference shall be held by the DEVELOPER to clarify Tribal Monitoring specifications with the grading contractor and/or Project manager and the grading inspector of the jurisdiction in which the Project site is located. The PECHANGA TRIBE shall be invited to participate in this conference.

To determine Tribal Monitoring crew sizes, a written schedule of excavation, testing, grading, and ground-disturbing activities shall be submitted by the DEVELOPER to the PECHANGA TRIBE one week in advance of the commencement of these activities. If the DEVELOPER changes the written schedule of excavation with less than twenty-four (24) hours' notice, the PECHANGA TRIBE may impose a minimum half-day show-up charge. "Notice" must be given during normal business hours (*i.e.*, Monday-Friday from 8:00 a.m. to 5:00 p.m.). Notice provided outside of normal business hours may result in a minimum half-day charge.

The PARTIES to this Agreement anticipate the need for a Tribal Monitoring crew consisting of two (2) persons. 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 DEVELOPER agrees to come to a reasonable agreement with the PECHANGA TRIBE regarding compensation of more than two (2) monitors.

#### IV. COMPENSATION

The PECHANGA TRIBE shall hire the Tribal Monitoring crew for this Project and shall be responsible for coordinating their activities. The PECHANGA TRIBE recognizes dangerous conditions can exist at the Project work site, particularly during grading operations, and agrees to assume responsibility for the safety of the Tribal Monitors while on the Project site. The PECHANGA TRIBE possesses liability insurance for its Monitors.

The DEVELOPER shall compensate each Tribal Monitor at a rate of \$85.00 per hour, or at the Tribal Monitors' then-current hourly rate for monitoring work taking place more than one (1) year after the execution of this Agreement. The PECHANGA TRIBE shall provide DEVELOPER with an updated fee schedule as necessary. Overtime rates of time and one-half of the quoted hourly rate apply for "after hours work" and "weekend work." "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, or two times the quoted hourly rate, apply for all work taking place on a holiday. The hourly rate will not be applicable to travel time to and from the Project site. The DEVELOPER shall also reimburse the Tribal Monitors for all reasonable and documented mileage expenses at the then-current Federal Travel Regulation mileage rate.

A minimum of four hours ("show-up time") will be charged to the DEVELOPER for unannounced work stoppages of Tribal Monitors which are not due to actions of the PECHANGA TRIBE. A minimum of two hours will be charged to the DEVELOPER for the pre-grading conference and any other meetings conducted outside of regularly scheduled grading or construction hours.

The DEVELOPER agrees that the PECHANGA TRIBE may invoice the DEVELOPER for the Tribal Monitors' compensation on a monthly basis. The DEVELOPER also agrees to remit payment in full to the following address within thirty (30) days of receipt of the PECHANGA TRIBE's invoice:

Accounting Department  
Pechanga Band of Indians  
Attn: Accounts Receivable  
P.O. Box 1477  
Temecula, CA 92593

All unpaid balances are subject to a monthly finance charge of 2% of the balance owed. If the DEVELOPER fails to remit payment, the PECHANGA TRIBE may pursue any necessary legal action, including collections, to recover the money owed.

#### V. MONITOR SERVICES SUMMARY SHEET

Please refer to Addendum 2 for pertinent contact information regarding monitor services.

## ADDENDUM 2 MONITORING SERVICES SUMMARY SHEET

PECHANGA TRIBE INFORMATION			
Account #	Name of Tribe	Address	Phone #
	Pechanga Band of Indians	PO Box 1477 Temecula CA 92593	951-770-6000
Accounts Receivable Contact	Address:	Email:	Phone #
Aide Fierro	PO Box 1477 Temecula CA 92593	afierro@pechanga-nsn.gov	951-770-6111
Monitor Services Contact	Address:	Email:	Phone #
Tina Thompson-Mendoza	PO Box 2183 Temecula CA 92593	tmendoza@pechanga-nsn.gov	951-770-6302
<b><i>*To schedule tribal monitoring, the Developer must contact Pechanga's Monitor Services Contact. If they cannot be reached, please contact Robert Ringleiro 951-770-6303 and/or Ebru Ozdil 951-770-6313. One-week advance notice is required to schedule monitoring.</i></b>			

DEVELOPER INFORMATION					
Project #	Project Owner/Developer	Project Owner Phone #	Estimated Project Start Date:	Estimated Project End Date:	
Project Manager Name:		Address:			
Email:		Phone Number:			
Accounts Payable Contact:		Address:			
Email:		Phone Number:			
Hourly Rate	Overtime Rate	Holiday Rate	Mileage Rate	Show Up Fee	Pre-grading Time
\$85.00	\$127.50	\$170.00	Federal Rate	4 hours	

For Internal Use Only: