

FOR CONTRACT NO.: 11-2M8504

INFORMATION HANDOUT

AGREEMENTS

La Jolla Band of Luiseno Indians (Tribe) MOU: December 10, 2015

Tribal Employment Rights Ordinance (TERO) of the La Jolla Band of Luiseno Indians

ROUTE: 11-SD-76-34.9/40.8 (PM)
Project ID: 1115000127

MEMORANDUM OF UNDERSTANDING
Between
CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11
and
LA JOLLA BAND OF LUISENO INDIANS (TRIBE)

1. PURPOSE AND RECITALS

The California Department of Transportation (Caltrans) desires to implement Tribal Employment Rights Ordinances on transportation projects and work cooperatively with federally recognized California Native American Tribes (Tribal Governments) to increase Native American employment opportunities. Caltrans pays Tribal Employment Rights Ordinance (TERO) fees for the portions of the projects on tribal lands. Caltrans honors tribal ordinances pursuant to the law and follows TERO provisions on Hiring Preferences for Contracted State Highway Work conducted on tribal lands or on any State highway included in a TERO tribe's Indian Reservation Road (IRR) inventory when a portion of the project is on tribal lands. To this end, on December 15, 2010, Caltrans adopted Deputy Directive DD-74-R2 in accord with 23 USC § 140(d) and California Attorney General Opinion No. 07-304.

Pursuant to Deputy Directive DD-74-R2, Caltrans District 11 and the La Jolla Band of Luiseno Indians (Tribe) are engaging in this Memorandum of Understanding (TERO MOU) to facilitate the application of the Tribe's TERO for Caltrans projects on Tribal Land and to delineate the roles and responsibilities of the Tribe and Caltrans in this process.

This TERO MOU covers all applicable projects that are located on Tribal Land as denoted in the Scope of Memorandum (Appendix A). A Project Fact Sheet with project specific information will be developed for each individual project (Appendix B).

This TERO MOU represents the present intention of the parties, but it is not intended to be used as a sole basis for authorizing funding and it is not a legally binding contract between the parties unless a TERO fee is paid by Caltrans to the Tribe.

Caltrans and the Tribe

2. MEETINGS

Caltrans

- (A) The District Director, with appropriate Caltrans staff, including the District Native American Liaison (DNAL), will seek to hold at least two meetings a year with Tribes in the District to discuss upcoming projects and priorities, including those with TERO requirements. All tribes, including the La Jolla Tribe, will be invited to participate and Caltrans may discuss information on employment opportunities; eligibility requirements for Native American-owned firms to become

Disadvantaged Business Enterprises; and other information important to working in conjunction with the Tribe's TERO.

- (B) The Residential Engineer (RE), DNAL, and/or other appropriate Caltrans staff will invite the Tribe's TERO Officer to project pre-construction meetings in order to give the tribe and the contractor an opportunity to coordinate and discuss communication protocols, work schedules, safety meetings, and the THCP. Five days notice will be given to the Tribe prior to the meeting.

Tribe

- (C) The TERO Officer and/or other officials the Tribe deems appropriate will attend project preconstruction meetings to receive project information, schedules and coordinate with the contractor. Discussions may include communication protocols, work schedules, safety meetings, and the THCP. If the TERO Officer is unable to attend the preconstruction meetings, the Officer will find an alternate to attend or arrange another meeting.
- (D) If the TERO Officer and/or other officials cannot attend meetings described in (A) above, they will make arrangements with the DNAL or other appropriate Caltrans staff to obtain the information imparted at the meetings.

3. INFORMATION SHARING BETWEEN CALTRANS AND TRIBE

Caltrans

- (A) The DNAL will be the first point of contact for information regarding Caltrans TERO policies and procedures within the District unless the Tribe is otherwise notified by the District.
- (B) The DNAL will maintain a list of Tribes with TEROs in the District and include the La Jolla Tribe on it. Location information with postmiles for Tribal Land on which State Highway is located will be included and provided to the District Director and other Caltrans staff as appropriate. This information will be included in the Scope of Memorandum (Appendix A).
- (C) The DNAL will work with the Tribe to obtain copies of the Tribe's TERO, IRR inventory list, TERO Highway Construction Permit (THCP), and other documents and/or information necessary for implementing projects with TERO requirements.
- (D) The DNAL will be included in Project Development Team (PDT) meetings for projects with TERO requirements.

Tribe

- (E) The TERO Officer or other tribal members (as deemed appropriate by the TERO Officer or other designee) will ensure the DNAL has a copy of the Tribe's TERO; information on Tribal Lands and boundaries, including relevant portions of the Tribe's IRR inventory list; and other documents and/or information necessary for implementing projects with TERO requirements. If any of this information

changes after this MOU is executed, the Tribe will notify Caltrans so that the MOU can be updated.

- (F) The TERO Officer or other tribal members (as deemed appropriate by the TERO Officer or other designee) will contact the RE prior to visiting construction sites.

4. TRIBAL HIGHWAY CONSTRUCTION PERMIT (THCP)

Caltrans

- (A) Caltrans will include Special Provisions in the Scope of Memorandum in this MOU (Appendix A, Attachment A) directing contractors to:
- a. Submit a THCP to the Tribe within 5 days of contract approval and submit a copy to the Caltrans Residential Engineer (RE) at the same time.
 - b. Submit a signed THCP to the RE within 10 days after receipt from the Tribe.
 - c. Not begin work until the RE receives a signed THCP from contractor.
- (B) A THCP will be attached to the Scope of Memorandum in this MOU (Appendix A, Attachment B) and included in a Supplemental Information Handout accompanying the special provisions for projects with TERO requirements.

Tribe

- (C) The Tribe will maintain a database of personnel trained to industry standards appropriate for each labor category and refer a list of qualified personnel to contractors and subcontractors after receiving a THCP Labor Force Projection Form/Application.
- (D) The Tribe will return a completed THCP to the contractor within 30 days of receiving a THCP Labor Force Project Form/Application.
- (E) The Tribe will notify the RE if it suspends a THCP.

5. TERO FEE

Caltrans will pay a TERO fee of **four percent (4.0%)** on the total bid amount for portions of projects on Tribal Lands. If a TERO Fee is paid, this MOU shall become a binding agreement and the covenants whereby the parties will seek to perform certain actions or may elect to perform certain actions shall become binding obligations of the respective parties, and the parties agree to perform such actions.

If a TERO fee is paid:

Caltrans

- (A) The RE, DNAL, or other appropriate Caltrans staff will notify the TERO Officer when a contract with TERO requirements is approved.

- (B) Upon receipt of a signed THCP, the RE will provide all documentation necessary so that the Tribe can properly invoice Caltrans for the amount of a contract subject to the TERO Fee.
- (C) Caltrans will send payment to the Tribe within 45 days upon receipt of the invoice by the RE, pursuant to the Prompt Payment Act (Government Code 927, et seq.).
- (D) The RE will forward the TERO invoice to Caltrans Accounting within 7 days of receiving a TERO invoice in accordance with established Construction payment procedures.

Tribe

- (E) The Tribe will properly invoice Caltrans for the TERO fee within 15 days after the RE provides documentation of the amount of the contract subject to the fee.
- (F) The invoice will be given to a project's RE.
- (G) The Tribe will use the fee to support the Tribe's economic development and employment programs, as described in the Tribe's TERO.

6. TERO INFORMATION IN CONTRACT AND BID DOCUMENTS

- (A) Caltrans will inform prospective bidders of projects with TERO requirements by including a Special Notice in construction contracts.
- (B) Caltrans will notify the contractor of a minimum 55-day delayed start to allow for processing of the THCP as indicated in provision 4.
- (C) Caltrans will direct the contractor to the TERO Requirements Information Handout under Supplemental Project Information. The following will be included in the Information Handout:
 - a. This MOU
 - b. Appropriate TERO provisions pertaining to the Contracted State Highway Work done within that TERO tribe's jurisdiction, included in the MOU.
 - c. Scope of Memorandum (MOU Appendix A) with
 - Project-Specific TERO Special Provisions (Appendix A, Attachment A)
 - THCP with Labor Force Project Form/Application or equivalent (Appendix A, Attachment B)
 - d. Project Fact Sheet (MOU Appendix B)

7. HIRING PROCESS

Caltrans

- (A) To the extent permitted by Federal and State law, contractors will be directed to follow hiring preference provisions of Tribal Law as defined by the Tribe's TERO, in regard to Hiring Preferences when undertaking Contracted State Highway Work on Tribal Lands.

(B) To the extent that the terms of this MOU are applicable, the DNAL will work with the Tribe in order to incorporate the Tribe's TERO (as set forth in this MOU) within Contracted State Highway Work.

Caltrans allows Indian preferences for federally recognized tribes on tribal lands. The following terms related to hiring preferences may appear in a Tribal TERO and do not apply to the MOU.

"Tribal Preferences"

"Tribal Membership/Affiliations Preferences"

"Contractor or Subcontractor preferences"

Preferred Employee preferences"

TRIBE

(C) The Tribe will work with the Caltrans in order to incorporate the applicable provisions of the Tribe's TERO (as set forth in this MOU) within Contracted State Highway Work, including the provisions set forth above.

8. DEFINITIONS

Caltrans and the Tribe

(A) The following definitions, taken from or adapted in accordance with DD-74-R2, are incorporated herein:

- a. Contracted State Highway Work means non-emergency Caltrans projects, construction and contracted maintenance, conducted on tribal lands or on any State highway included in the Tribe's IRR inventory when a portion of the project is on its tribal lands.
- b. Federally Recognized Tribe – A tribal government and members of any tribe, band, pueblo, nation or other organized group that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the U.S. and eligible for programs, services, and other relationships established by the U.S. for Indians because of their status as Indians (U.S. Department of Transportation Order DOT 5301.1 dated November 16, 1999), or community including any Alaska Native village or region pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).
- c. Hiring Preference – Congress has expressly authorized states to implement Indian hiring preferences for highway work conducted on tribal lands. Implementation of Indian hiring preferences is in recognition of, and with reference to, Congress' fiduciary responsibility to advance tribal economic development and self sufficiency.
Hiring preferences are predicated upon membership in a Federally Recognized Tribe, so the term "federally recognized Indian" is a political

classification for the purposes of this Memorandum. TERO Hiring Preferences are only available to enrolled members of Federally Recognized Tribes, and the Department cannot favor one tribe over another in implementing a Hiring Preference. Qualified job applicants will be provided to Caltrans contractors by the Tribe's designated TERO representative.

- d. Indian Reservation Road (IRR) – A public road that is located within or provides access to an Indian reservation, Indian trust land, or restricted Indian land (23 U.S.C. §101(a)(12)). These roads are important to the overall public transportation needs to the reservation, and are recommended to the Bureau of Indian Affairs (BIA) for inclusion in the IRR inventory by the Tribe. Approval for inclusion of these routes must be given by BIA. Revised route sheets and updated documents are submitted to the Federal Lands Highway Program Administrator so the IRR inventory can be updated.
- e. Tribal Employment Rights Ordinance (TERO) – A legislative act adopted by the governing body of a Federally Recognized Tribe.
- f. Tribal Lands – Lands within a reservation, lands held in trust by BIA, or lands otherwise under the direct ownership of the Tribe. Most tribal lands are in trust status and within a reservation.

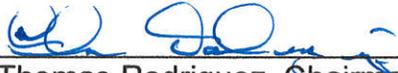
9. DURATION AND AMENDMENTS

Caltrans and the Tribe

- (A) This MOU may only be amended by a written agreement between the parties, and it may be terminated by either party upon at least thirty (30) days prior written notice to the other party. In the event of termination, unless otherwise mutually agreed by the parties, the provisions of this MOU will remain in force with respect to contracts for Contracted State Highway Work that were executed before the MOU was terminated.
- (B) No waiver of any term, covenant or condition of this MOU shall be effective unless the waiver is made in writing and executed by all the parties. No failure to enforce a term, covenant or condition of this MOU shall be deemed to be a waiver of the term, covenant or condition. No waiver of any term, covenant or condition shall imply or constitute a waiver of any other term, covenant or condition. Unless otherwise stated in the waiver, no waiver of a provision of this MOU shall constitute a continuing waiver.

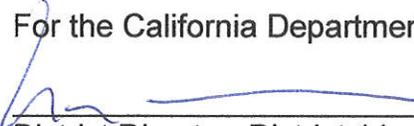
The parties hereto have agreed to the provisions cited in this document and have further approved this MOU for signature by their duly authorized representatives.

For the La Jolla Band of Luiseno Indians Tribe:



Thomas Rodriguez, Chairman
Date: 11/18/2015

For the California Department of Transportation:



District Director, District 11
Date: 12-10-15

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

OF THE LA JOLLA BAND OF LUISENO INDIANS

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)
OF THE LA JOLLA BAND OF LUISENO INDIANS

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TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

OF THE LA JOLLA BAND OF LUISENO INDIANS

WHEREAS, the La Jolla Reservation is a federally recognized Indian Reservation established by Executive Order on December 27, 1875 and

WHEREAS, Indians have unique and special employment rights and are entitled to the protection of laws established by the federal government to combat employment discrimination on or near Indian Reservations, including:

1. Public Law 93-638 (Indian Self – Determination Act), Section 7(b)
2. Title VII of the Civil Rights Act of 1964 (as amended by the Equal Opportunity Act of 1972 and the Civil Rights Act of 1991) including Section 703 (i)
3. Executive Order 11246, including its Indian Preference provisions, and

WHEREAS, the La Jolla Band of Indians, by its inherent sovereign powers, and in order to increase employment of Indians and eradicate discrimination against them, has the authority to guarantee and implement the unique employment rights of Indians within the exterior boundaries of La Jolla Indian Reservation; and

WHEREAS, the La Jolla Band of Indians, by its inherent sovereign powers, has the authority to regulate the employment practices of employers operating within the exterior boundaries of the La Jolla Indian Reservation; and

NOW THEREFORE BE IT RESOLVED, that the General Council of the La Jolla Band of Indians does hereby enact the La Jolla does hereby enact the La Jolla Tribal Employment Rights Ordinance for the purpose of establishing and enforcing rules, regulations and guidelines for all employers operating within the exterior boundaries of the La Jolla Indian Reservation.

SECTION 1. DEFINITIONS:

- 1.1 shall mean the La Jolla Band of Indians
- 1.2 “EEOC” shall mean the Equal Employment Opportunities Commission of the United States.
- 1.3 “General Council” shall mean the General Council of the La Jolla Band of Indians, comprised of all eligible voting members of the Band, and which is the recognized governmental authority of the Band.
- 1.4 “Indian” shall mean an American Indian (Native American) as defined by federal regulation or statute.
- 1.5 “Indian Preference” shall mean preference in hiring Native Americans, as applied by federal regulation and law.

Section 1. Definitions Cont.

- 1.6 "OFCCP" shall mean the Office of federal Contract Compliance Programs of the United States.
- 1.7 "Preferred employee" shall mean person entitled to a preference in employment under this Ordinance.
- 1.8 "Reservation" shall mean the La Jolla Indian Reservation
- 1.9 "TERO Commission" shall mean the commission, appointed by the General Council, whose purpose is to enforce the rules, regulations and guidelines of the La Jolla Tribal Employment Rights Ordinance, as well as Federal Indian Preference laws and regulations.
- 1.10 "TERO Commission Bylaws" shall mean the approved bylaws of the TERO Commission.
- 1.11 "TERO Commission Bylaws" shall mean the staff person hired by the TERO Commission whose duties and responsibilities are enumerated in this ordinance.
- 1.12 "Tribal Administration" shall mean the Band's administration office and its personnel.
- 1.13 "Tribal Council" shall mean the elected officers of the Band.
- 1.14 "Tribal Employee" shall mean an employee of the Band, employed either by Tribal Administration or by one (or more) of the Tribal Enterprises.
- 1.15 "Tribal Enterprises" shall mean the Band's campground, waterpark, and trading post.
- 1.16 "Tribal member" shall mean an enrolled member of the La Jolla Band of Indians.
- 1.17 "Tribal member preference" shall mean preference in hiring enrolled members of the La Jolla Band of Indians.
- 1.18 "Tribe" shall mean the La Jolla Band of Indians.

SECTION 2. INDIAN AND TRIBAL PREFERENCE REQUIREMENTS IN EMPLOYMENT

- 2.1 All employers operating within the exterior boundaries of the La Jolla Indian Reservation shall give preference to Indians in hiring, promotion, training, and all other aspects of employment, contracting and subcontracting and must comply with this Ordinance and the rules, regulations and orders of the TERO Commission and TERO_ Officer.
- 2.2 All employers operating within the boundaries of La Jolla Indian Reservation under contracts where federal Indian Preference regulations do not apply shall give preference to tribal members in hiring.
- 2.3 The Band has established a priority ranking for employment of Indians (i.e. , those who fall under the provisions of federal Indian Preference guidelines) as follows:
 - 1st priority: Indians residing on or near the reservation
 - 2nd priority: Indians irrespective of residence

2.4 The Band has established a priority ranking for employment of Individuals under contracts Where federal Indian Preference guidelines do not apply:

- 1st priority: Tribal members residing on or near the reservation.
- 2nd priority: Tribal members irrespective of residence
- 3rd priority: Non-members married to or living with tribal members.
- 4th priority: Indian non-members residing on or near the reservation.
- 5th priority: Indian non-members irrespective of residence.
- 6th Priority: Non-Indians residing on the reservation.
- 7th priority: Non-Indians married to Indian non-members
- 8th priority: Non-Indians

Section 3. Contractors and Subcontractors

- 3.1 The Indian contracting and subcontracting requirements contained in this Ordinance shall be binding on all contractors and subcontractors, and shall be deemed a part of the resulting contract specifications.
- 3.2 Each contractor shall include in its bid an Indian preference plan.
- 3.3 For each subcontract the contractor proposes to enter into if awarded the contract, the Indian Preference plan shall indicate the name of the proposed subcontractor and whether or not it is an Indian-owned firm. If the subcontracting firm named by the contractor is not an Indian-owned firm, the contractor must provide evidence of good faith steps taken to identify qualified Indian firms for the subcontractor
- 3.4 A contractor shall not refuse to employ an Indian subcontractor for the reason of price so long as the Indian firm's price is within five percent (5%) of the lowest bid, calculated by multiplying the lowest bid, by 105%, in relationship to the cost of materials and labor.
- 3.5 A Contractor shall not refuse to subcontract with an Indian firm for the reason that a non-Indian firm is more qualified, so long as the Indian firm satisfies the threshold requirements for Qualifications for the job.

Section 3. Cont.

- 3.6 A contractor who fails to submit an Indian Preference plan shall be considered a non-responsive Bidder.
- 3.7 If awarded the contract, a contractor may not deviate from the Indian Preference plan or add Subcontractors without the written consent of the TERO Commission.
- 3.8 A contractor is prohibited from engaging in bid shopping as a means of avoiding its Indian Preference subcontract obligations. "Bid shopping" is defined as any practice in which a bidder Or contractor informs a prospective subcontractor that it will receive a subcontract only if it Offers a price lower that proposed by another.
- 3.9 Prior to or with the submission of a bid, a prospective contractor and all subcontractors shall Identify regular, permanent employees. Because of their importance to the contractor, such Employees may be employed on the project whether or not Indian. A regular, permanent Employee is defined as one who is, and has been for at least one year, on the contractor's Annual payroll, or is an owner of the firm. The fact that an individual has worked for the Contractor on previous projects does not qualify that individual as a regular, permanent Employee. Exceptions for superintendents and other key personnel may be granted by the TERO Commission on a case-by-case basis.
- 3.10 Any contractor or subcontractor which fills a vacant position within the organization immediately prior to undertaking work for the Band, shall provide evidence acceptable to the TERO Commission that such action was not intended to circumvent Indian Preference requirements.
- 3.11 No Indian employee shall be laid off as long as a non-Indian worker in the same craft is still employed. The non-Indian shall be laid off first as long as the Indian employee meets the threshold qualifications for the job. If the contractor lay off by crews, qualified Indians shall be transferred to a crew that will be retained, as long as there remain non-Indians in the same craft employed elsewhere on the reservation under the same contract.
- 3.12 The Contractor shall work with the TERO Commission and the TERO Officer to establish the Minimum number of Indians (or, where applicable, tribal members) that must be employed On his/her project work force during the time he/she is engaged in work on the reservation. Numerical goals shall be set for each craft, skill area and job classification -

Section 3. Cont.

- 3.12 needed for the project, and shall include but not be limited to, administrative, supervisor and professional categories. These goals shall be expressed in terms of work hours of Indian employment as a percentage of tribal work hours (per job classification) worked by the contractor's work force on the reservation.
- 3.13 Numerical goals shall be based upon the available Indian (or where applicable tribal member) manpower pool.

Section 4. Implementation of Indian and Tribal Preference Requirements

In order to implement the requirements of the Ordinance, the TERO Commission is authorized to:

- 4.1 Impose numerical hiring goals and timetables that specify the minimum number of Indians (or, where applicable, tribal members) an employer must hire.
- 4.2 Require employers to establish or participate in such training programs as the Band deems necessary in order to increase the pool of qualified Indians on the reservation.
- 4.3 Establish a Tribal Employment Office (i.e., hiring hall) and require that no employer subject to this Ordinance may hire a non-Indian until the Tribal Employment Office has certified that no qualified Indian (or, where applicable, tribal member) is available to fill the vacancy.
- 4.4 Prohibit an employer from establishing excessive qualification criteria or other personnel requirements that serve as barriers to Indian (or, where applicable, tribal member) employment. In implementing this prohibition, the TERO commission may adopt the EEOC guidelines to the extent that the appropriate. The Commission shall have the right to impose its own requirements in addition or in lieu of EEOC guidelines.
- 4.5 Require employers to give preference in the award of contracts and subcontracts to Indian-Owned (or where applicable, tribal member-owned) firms, utilizing the priority system specified in Sections 2.3 and 2.4 of this Ordinance.
- 4.6 Establish programs to provide counseling and support to Indian and tribal member workers to Assist them in retaining employment. Employers shall be required to participate in and/ or Cooperate with such programs.
- 4.7 Coordinate with federal employment rights agencies to eliminate unlawful discrimination Against Indians on or near the La Jolla Indian Reservation.
- 4.8 Take such other action as is necessary to achieve the purposes and objectives of this Ordinance.

Section 5. Compliance by Unions

- 5.1 Every employer who has a collective bargaining agreement with one or more unions shall be required to obtain a written agreement from such union(s) stating that the union shall comply with this Ordinance .Until such agreement is filed with TERO Officer, the employer may not commence work on the reservation,
- 5.2 Every such union agreement filed with the TERO Officer stating that the union will comply with This Ordinance, shall also include the following:
- a. **Preferred Employee Preference:** The union will give absolute preference to preferred employees in job referrals regardless of which union referral list they are on.
 - b. **Cooperation with TERO Officer:** The union will cooperate with TERO Officer in all respects
 - c. **Resignation:** The union will establish a mechanism allowing preferred employees to register for job referral lists by telephone or mail.
 - d. **Apprentices / Helpers / Trainees:** The Union will fill any openings for apprentices, helpers or trainees with preferred employees. If they use referrals of the La Jolla Tribal Employment Office.
 - e. **“Blanketing-In” Preferred Employees:** The union will “blanket-in” all preferred employees who do not wish to join the union
 - f. **Temporary Work Permits:** The union will grant temporary work permits to preferred employees who do not wish to join the union.
- 5.3 The TERO Officer will provide a model union agreement for use by all unions who have collective bargaining agreement with any employer.
- 5.4 Nothing herein, nor any activity by the TERO Ordinance authorized hereby shall constitute Recognition or endorsement of any union or union activities.

Section 6. Coordination with Tribal Council to Insure TERO Compliance

- 6.1 A designated member of the Tribal Council may attend as an observer any interviews conducted by the TERO Commission related to enforcement of this Ordinance. The Tribal Council member will be limited to observation for compliance, and will not serve as an interviewer or voting member.

Section 7. Fees

- 7.1 To generate revenue for enforcement of, and monitoring compliance an employment rights fee shall be assessed.

Section 7 Cont.

- 7.2 Every primary construction contractor subject to this Ordinance, with a contract or contracts totaling fifty thousand dollars (\$50,000) or more, shall pay the following fees:
- a. A Tribal Employment Rights Ordinance fee of four percent (4%) of the gross contract (s) amount. The fee shall be paid in full within thirty (30) days of signing the contract(s) by both parties. In the case of a contract(s) in excess of one million dollars (\$1,000,000) the contractor(s) may, with TERO Commission's approval, pay the fee in installments, so long as the total amount is paid within ninety (90) days of the signing of the contract by both parties.
 - b. A Business Activity permit fee of one percent (1%) of the amount of each draw. Full payment must be made before the final draw.
 - c. A Construction Permit fee of one percent (1%) of the gross contract(s) account and paid prior to actual construction / start date.
- 7.3 Every business, other than construction contractors, with gross sales of ten thousand dollars (\$10,000) or more shall pay an annual amount fee of one percent (1%) of the firm's annual gross sales.
- 7.4 Such fees shall be paid to the La Jolla Band of Indians and shall be placed in the Band's TERO account. Accrual of interest and principal in the TERO account shall be utilized solely for the cost of enforcing and monitoring compliance with this Ordinance.
- 7.5 The TERO Commission shall be responsible for the collection of said fees.

Section 8. Sanctions

- 8.2 Any employer who willfully fails to comply with the laws, rules, regulations and guidelines of the La Jolla Band of Indians or of this Ordinance shall be subject to denial of the right to commence operations on the reservation.
- 8.3 Non-compliance with the laws, rules, regulations, and guidelines of the Band or of this Ordinance may result in one or more of the following sanctions being imposed by the TERO Commission:
- a. Civil fines.
 - b. Suspension or termination of the employer's operations.
 - c. Denial of the right to conduct any further operation on the reservation.
 - d. Payment of back pay or other funds to correct any harm done on the reservation.
 - e. Termination of employees hired in violation of this Ordinance.

Section 8 cont.

- 8.4 Any employee, employer, union, person or other entity subject to this Ordinance which retaliates against any worker, employer, union, person or any other entity because of the exercise of the person's or entity's rights under this Ordinance.
- 8.5 Prior to sanctions being imposed, an employer will be given the opportunity to present evidence in a Hearing supporting a contention of non-violation of the laws, rules, regulations or guidelines of the Band or of this Ordinance.
- 8.6 Hearings will be conducted according to the procedures set out in Article VIII of the TERO Commission Bylaws.

Section 9. Appeals

- 9.1 An employer shall have the right to appeal any sanction imposed by the TERO Board of Appeals. The employer shall be instructed in the appellate review process by the TERO Officer.
- 9.2 The TERO Board of Appeals shall be composed of seven members, as follows: three members of the Tribal Council, three members of the TERO Commission and the Tribal Chairperson.
- 9.3 The three Tribal Council members who serve on the TERO Board of Appeals will be chosen by majority vote of the Tribal Council members of the TERO Commission and the Tribal Chairperson.
- 9.4 The TERO Board of Appeals will not be a standing board. Members for it will be chosen at the time an appeal of a sanction is made by an employer. TERO Board of Appeals members will not be permanent. Members will be chosen anew each time it becomes necessary for the board to convene, through both the Tribal Council and the TERO Commission may name the same members to serve on the board each time if they so wish.
- 9.5 The Tribal Chairperson will chair meetings and hearings of the TERO Board of Appeals. The Tribal Chairperson will not vote except to break a tie.
- 9.6 The TERO Board of Appeals cannot change the TERO Ordinance, and must abide by its regulations.

Section 9 Cont.

- 9.7 The TERO Board of Appeals is the final appellate body for employers appealing the imposition of sanctions, The decision of the TERO Board of Appeals is final.

Section 10.

- 10.1 The TERO Commission shall employ a TERO Officer, in accordance with Article IX of the TERO Commission Bylaws.
- 10.2 The TERO Commission shall have such administrative ability, education and experience as the Commission determines is needed to adequately perform the duties of TERO Officer.
- 10.3 The TERO Officer may be terminated for cause by the Commission only.
- 10.4 The TERO Officer, upon the specific approval of the Commission, shall hire and supervise staff, expend funds appropriated by the General Council for TERO enforcement and monitoring purposes, and obtain and expend funds from federal and state or other sources to carry out the purposes of the TERO Commission.
- 10.5 The TERO Officer shall impose, in accordance with the purposes of this Ordinance, numerical hiring goals and timetables specifying the minimum number of Indians, and where applicable, Tribal members and employer must hire for each craft and skill level.
- 10.6 The TERO Officer shall negotiate and secure, with the approval of the TERO Commission, Indian Preference agreements (and where applicable, Tribal Member Preference agreements) from employers who come under the provisions of this Ordinance.
- 10.7 The TERO Officer shall conduct on-site inspection of the employers to assure that the goals and timetables agreed to are being met.
- 10.8 If an employer elects to appeal a decision of the TERO Commission to impose sanctions against said employer, the TERO Commission to impose sanctions against said employer, the TERO Officer shall instruct the employer in the appellate review process.
- 10.9 The TERO Officer shall undertake such other duties as he/she deems necessary, or as assigned by the TERO Commission, to insure compliance with the provisions of this Ordinance.

Section 11. Amendments

11.1 This Ordinance may be amended by a majority vote of the General Council.

FEDERAL STATUTES AND REGULATIONS APPLICABLE TO THE ENFORCEMENT OF INDIAN PREFERENCE AND TRIBAL EMPLOYMENT RIGHTS

A. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- A1. TITLE VII, as amended by the Equal Opportunity Act of 1972 and Civil Rights Act of 1991, prohibits discrimination on the basis of race, color, religion, sex or national origin. TITLE VII covers private employers, state and local governments, and educational institutions that have 15 or more employees, labor organizations and joint labor-programs are also covered by the law.
- A2. In 1978, TITLE VII was amended to include Pregnancy Discrimination Act (Public Law 95-555), which requires employers to treat pregnancy and childbirth – related medical conditions the same as other medical disabilities in the administration of employment practices and health benefits
- A3. The Civil Right Act of 1991 provides new remedies to victims of unlawful employment discrimination, including the right to a jury trial. This Act also expanded the scope of TITLE VII monetary awards by permitting both compensation and punitive damages.
- A4. **Sexual Harassment** is a form of sex discrimination that violates TITLE VII of the Civil Rights Act of 1964, and is therefore a violation of this Ordinance. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature constitute sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct. Unlawful sexual harassment may occur without economic injury to or discharge of the victim. The harasser's conduct must be unwelcome.
- A5. **Indian Preference under TITLE VII** is explained in Section 703 (i) which states that "Nothing contained in this TITLE shall apply to any business or enterprise on or near an Indian Reservation with respect to any publicly announced employment practice of such business enterprise under which preferential treatment is given to any individual because he/she is an Indian." This means that the enforcement of federal Indian Preference regulations is not a violation of TITLE VII.

B. EXECUTIVE ORDER 11246 (September 1955)

(Enforcement Agency OFCCP)

- B1 Executive Order 11246 bans federal contractors and subcontractors from discriminating against employees and applicants for employees and applicants for employment because of their race, color, religion, sex or national origin. Federal contractors are required to practice Affirmative Action- that is, to go beyond refraining from such discriminatory practices/ policies by taking positive, results –oriented steps toward the elimination of employment barriers to minorities and women.
- B2 In 1967 Executive Order 11246 to add sex prohibited factor. Executive Order 11246 applies to all federal contracts of \$10,000 or more. These contractors are required to develop and post their Equal Employment Opportunities Policy. Covered employers must have Affirmative Action Plan and must satisfy the 16 Affirmative Action steps required under the Standard Federal Equal Employment Opportunity Construction Contracts Specifications.
- B3 INDIAN PREFERENCE in EXECUTIVE ORDER 11246 is explained in the statement “It shall not be a violation of equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation. The use of the word “near” would include all that area where a person seeking employment could reasonably be expected to commute to and from the course of a work day. Contractors or subcontractors extending such preference shall not, however, discriminate among Indians on the basis of religion, sex or tribal affiliation, and the use such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.”

C. PUBLIC LAW 93-638 (INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT)
Section 7 (b)

(ENFORCEMENT AUTHORITY: contracting officers for the federal agency that let the contract, i.e. ,
BIA, HIS, HUD / IHA)

C1. PL 93-638 states: "Any contract, subcontract, grant or sub grant pursuant to this Act, the Act of April 16, 1934 (Statute 596) as amended (the Johnson-O'Malley Act) or any other Act authorizing federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible:

A. Preference and opportunities for training and employment in connection with the Administration of such contracts or grants shall be given to Indians; and

B. Preference in the award of subcontracts in connection with the administration of such contracts in connection with the Administration of such contracts or grants shall be given to Indian organizations and to Indian owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974(88 Statute 77)."

C2. Section 7(b) of PL 93-638 means that all companies receiving contracts and grants (construction and non-construction) let by the BIA, HIS, and HUD must give preference in employment, subcontracting and training to Indian people.

D. **BUY INDIAN ACT (25 USC)-1910**

D1. The buy Indian Act of 1910 states "So far as may be practicable, Indian labor shall be employed and purchases of the products of the industry may be made in the open market in the discretion of the Secretary of the Interior."

D2. The Buy Indian Act applies only to the BIA and HIS. The Act applies to direct prime contracts let by these two agencies, the only Indian Preference law which is applicable to direct Federal prime contracts. Both BIA and IHS have interpreted the preference to mean that, while competition will be sought, the competition is to be limited solely to Indian contractors and business enterprises.

E. **DEPARTMENT OF EDUCATION**

- E1. **Public Law 81-815 (The 815 Impact Aid School Construction Program)** was established by Congress to provide financial assistance on school construction projects to those public school districts which have minimal tax base because much of the land in the district is owned by federal government.
- E2. **The 874 Impact Aid Program** provides funding to supplement the day-to-day operations of a public school district that is heavily impacted by the large amount of tax exempt land owned by the federal government in the district. Public schools on or near the reservations receive substantial amounts of 874 Impact Aid money due to the large number of Native Americans attending the schools, and the exemptions of Indian land from state and local taxes. Impact Aid money provided as a result of the presence of Native American students is covered by section 7 (b) of the PL 93-638. Thus many jobs in districts which receive Impact Aid money come under the Indian Preference requirements of 7 (b), as do many of the contracts let by school districts, and employment under such contracts and subcontracts.

F. **OTHER ACTS**

- F1. **Age Discrimination in Employment Act Of 1967 (ADEA)** as amended prohibits discrimination and project applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, and terms, conditions, or privileges of employment. The law applies to private employers that employ 20 or more workers; federal, state and local governments; employment agencies; and labor organizations with 25 or more members.
- F2. **AMERICANS WITH DISABILITIES ACT of 1990 (ADA)** prohibits discrimination on the basis of disability and protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits and other aspects of employment.

The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship. The law covers private employers and state and local governments with 25 or more employees (15 or more after July 26, 1984), employment agencies and labor unions.

A qualified employees / applicant with a disability is defined as an individual who satisfies skill, experience, education, and other job related requirements of the position held or desired, and who with or without reasonable accommodation, can perform the essential functions of the position.

- F3. **Equal Pay Act** (EPA) prohibits employers from discriminating between men and women on the basis of sex in the payment of wages where they perform substantially equal work under similar working conditions in the same establishment. The law protects virtually all private employees, including executive, administrative, professional and outside people who are exempt from wage and overtime laws. Most federal, state, and local government workers are also covered. The law does not apply to pay differences based on factors other than sex, such as seniority, merit or systems that determine wages based upon the quantity or quality of items produced or processed.
- F4. **Rehabilitation Act of 1973, Section 503**, as amended, prohibits discrimination by covered employers and requires affirmative action in all personnel practices for people with disabilities. It applies to firms with contracts of \$2,500 or more annually.
- F5. **The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC 2012)** prohibits discrimination and requires affirmative action in all personnel practices for disabled veterans and Vietnam era veterans. It applies to firms with federal contracts of \$10,000 or more annually.

Appendix A
 Scope of Memorandum
 Caltrans and La Jolla Tribe MOU executed on December 10, 2015.

Scope of Memorandum

Projects within the following areas have TERO requirements that must be followed pursuant to the provisions in the MOU signed by the La Jolla Tribe Caltrans on December 10, 2015:

Contract No. Project ID	Project County- Route-Postmile	Work Description	La Jolla Tribal Lands	La Jolla IRR Inventory
11-2M8504 1115000127	SD- 76- 34.9/40.8	Pavement Rehabilitation	Reservation	**See Below

** Begin Latitude 33.1998 Longitude 116.7104 / End Latitude 33.3034 Longitude 116.9318

APPENDIX A, ATTACHMENT A

Project-Specific Special Provisions For La Jolla Tribe TERO MOU

SPECIAL NOTICE:

- This project includes Tribal Employment Rights Ordinance (TERO) requirements. See section 5-1.20G and 8-1.04C for TERO submittal requirements.

SSP 2-1.06B SUPPLEMENTAL PROJECT INFORMATION

The Department makes the following supplemental project information available:

Supplemental Project Information

Means	Description
Included in <i>Information Handout</i>	La Jolla Band of Luiseno Indians TERO Memorandum of Understanding (MOU) with TERO Highway Construction Permit (THCP) Application

INFORMATION HANDOUT:

La Jolla Tribe TERO Requirements Information Handout contains:

1. Signed MOU between the La Jolla Tribe and the Department.
2. Attachment A project-specific TERO special provisions.
3. Attachment B TERO Highway Construction Permit Application (THCP).

SSP 5-1.20G Tribal Employment Rights Ordinance Requirements:

Complete the La Jolla Band of Luiseno Indians TERO Highway Construction Permit (THCP) Application included in the *Information Handout*. Within 5 days after Contract approval, submit the completed application to the Tribe and a copy of the submitted application to the Engineer.

Submit the executed THCP to the Engineer within 10 days after you receive it from the Tribe.

SSP 8-1.04C:

Use a minimum 45-day delayed start after contract approval.

Do not start job site activities until the Department authorizes or accepts your submittal for:

Executed La Jolla Band of Luiseno Indians TERO Highway Construction Permit (THCP)

Do not start other job site activities until all the submittals from the above list are authorized or accepted and the following information is received by the Engineer:

Copy of the La Jolla Band of Luiseno Indians TERO Highway Construction Permit (THCP) Application submitted to the Tribe.



La Jolla Band of Luiseno Indians
Tribal Highway Construction Permit
22000 Highway 76 Pauma Valley, CA 92061

Name of Project: Pavement Rehabilitation

Caltrans Project Expenditure Authorization (EA) Number: 11-2M8504 (PI# 1115000127)

The [Tribal name] Tribe, issues this permit in accordance with its Tribal Employment Rights Ordinance, enacted by the federally recognized governing body of the tribe, the [name of Tribe] Council. This permit sets forth the terms and conditions under which a Contractor [and Subcontractors] are authorized to conduct work on California Department of Transportation (Caltrans) projects that occur on Tribal Land.

Terms and Conditions:

- 1. Contractor/Employer:** Within 5 days of contract approval, Contractor will file a Labor Force Projection Form (attached) with the Tribe's TERO Officer. Contractor will describe the types of work to be performed and skills needed to undertake such work. [Work to be performed by subcontractors will be included on [a/the] Labor Force Projection Form.]
- 2. Core Crew:** Contractor [and Subcontractors] will identify key employees, generally supervisory in nature that have worked continuously for many seasons and are not recently hired for this specific project on the Labor Force Project form.
- 3. Indian Preference:** If available, qualified Indians must be hired in preference to non-Indians. Employer shall neither recruit nor hire any non-Indians for any covered position until the tribal TERO Officer has provided notice that no qualified Indians are available to fill such covered position. The TERO Officer maintains an Indian Skills-Bank to assist Employers to meet the Indian preference requirements of the Tribal Employment Rights Ordinance. Covered positions are defined in the Ordinance. Each waiver issued is only for that particular position/task and the employee cannot be transferred to another position once that job is done.
- 4. Labor Force Changes and Curtailment:** Contractor will inform the TERO Officer of any potential changes to a project that could impact the labor force while construction is ongoing. Potential changes could be the result of additional work being needed to complete a project, among other things. Where a reduction in force is necessary,

excepting Core Crew members, Indians hired pursuant to Indian preference will have the priority in retention.

5. **Compliance Inspections:** The TERO Officer or other designated staff will make periodic visits to project sites to ensure employment and safety rules are adhered to. [The Officer will contact the Contractor and RE prior to site visits.] To facilitate the inspections, the Contractor will share work schedules, contact information, and information on safety or other meetings with the TERO Officer at the preconstruction meeting or other venues as arranged.
6. **[Maintaining Employment Records:** Contractors will maintain accurate employment records on all employees and all applicants for employment; regardless of length and category or employment, hired, fired, or laid-off. The files shall reflect: name, address and employment category for which applicant performed or applied to perform. If applicant was contacted but not hired, hired and fired, all data should reflect action taken by that firm. Such informational records shall be made available to the TERO Officer, upon reasonable notice.]
7. **Assistance:** If a Contractor deems that an Indian employee's performance is such that he or she is jeopardizing and endangering job loss, suspension, or termination, the Contractor may contact the TERO Officer to provide assistance toward resolving of that issue.
8. **[Tribal Holidays and Ceremonial Customs:** It is further understood that the Contractor recognizes operations are taking place within a unique cultural setting. To the extent possible the Contractor, in consultation with the TERO Officer, should consider Tribal Holidays and ceremonial customs and accommodate Indian employees requesting certain leave of absences for religious purposes.]
9. **Duration and Scope of Permit:** This permit will terminate upon project completion but may be revoked by the TERO Officer in the case that the aforementioned conditions are not met.

TERO Officer
[Name of Tribe]

Date

Contractor
[Name of Company]

Date

Labor Force Projection Form

This form must be completed and filed with the Campo TERO Officer. Attach additional sheets if necessary.

Contractor/Subcontractor Name: _____
 Mailing Address: _____
 City, State, and Zip Code: _____
 Phone Number _____
 Cell # _____
 Contact: _____
 Contracting With: Caltrans
 Expenditure Authorization (EA): 2M8504

Briefly describe the project and basic tasks and types of work to be performed:

Please list types of skills and categories which will be required towards performing said contract:

1.	2.
3.	4.
5.	6.
7.	8.
9.	10.
11.	12.
13.	14.
15.	16.
17.	18.
19.	20.
21.	22.
23.	24.
25.	26.

Indian Preference shall be accorded at every Tier Level. Please list the names and positions of your Core Crew (Core Crew members are typically supervisory and members you depend on every day). All other persons needed on this job will go through the TERO Skills Bank.

Please use as many sheets as necessary for explaining your on-site employment related projection.

NAME	JOB TITLE
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	

Contractor
[Name of Company]

Date

TERO Officer
[Name of Tribe]

Date

Project Fact Sheet

The following State highway construction project(s) have TERO requirements that must be followed pursuant to the Stipulations in the MOU signed by the La Jolla Tribe and Caltrans on December 10, 2015:

Project EA and Project ID No.	County-Route-Postmile(s) of project	Project Description	Bridge Number [if bridge work included]	IRR Inventory Postmiles for IHP	TERO fee Postmiles
11-2M8504 1115000127	SD-76-34.9/40.8	Pavement Rehabilitation	N/A	*See Below	36.92-37.02, 37.25-37.56, and 39.8-40.8

*Begin Latitude 33.1998, Longitude 116.7104 / End Latitude 33.3034 Longitude 116.9318

Contacts:

Caltrans:

Phone Numbers:

District Director: Laurie Berman	(619) 688-6668
DNAL: Jesus (Chi) Vargas	(619) 688-6807
Project Manager: Alberto Gayon	(619) 688-3368
RE :	
Const. Inspector :	

Tribal Contacts:

Phone Numbers:

TERO Officer/Director:	
Tribal Administrator:	