FOR CONTRACT NO.: 11-2M650**4**

INFORMATION HANDOUT

AGREEMENTS

Torres Martinez Desert Cahuilla Indians MOU: February 17, 2015

Tribal Employment Rights Ordinance (TERO) of the Torres-Martinez Desert Cahuilla Indians
Ordinance No. TMORD-001-97: January 14, 2015

ROUTE: 11-IMP-86-43.1/67.8
Project ID 1113000100

MEMORANDUM OF UNDERSTANDING
Between
CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 8 & 11
And
The TORRES MARTINEZ DESERT CAHUILLA INDIANS

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 Districts 8 and 11 and the Torres Martinez Desert Cahuilla Indians 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 Torres Martinez Desert Cahuilla Indians, 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 Torres Martinez Desert Cahuilla Indians 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 5% 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 Torres Martinez Desert Cahuilla Indians 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.

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 in accordance with the Torres Martinez Desert Cahuilla Indians TERO, 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 Torres Martinez Desert Cahuilla Indians:

Thomas Tortez, TERO Chairman

Date: 1/14/2015

For the California Department of Transportation:

_____ Date: _____
Basem Muallem
District Director, District 8

For the California Department of Transportation:

_____ Date: 2/17/15
Laurie Berman
District Director, District 11

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)
OF THE
TORRES-MARTINEZ DESERT CAHUILLA INDIANS
ORDINANCE NO. TMORD-001-97
As Amended January 14, 2015

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TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)
OF THE
TORRES-MARTINEZ DESERT CAHUILLA INDIANS
ORDINANCE NO. TMORD-001-97
As Amended January 14, 2015

WHEREAS, the Torres-Martinez Desert Cahuilla Indian Tribe ("Tribe") is a federally-recognized self-governing sovereign Indian Nation with a Reservation established by Executive Order on May 15, 1876;

WHEREAS, it is in the best interests of the Tribe and its people that Tribal members living within or near the boundaries of the Torres Martinez Reservation should be given preference in employment with all enterprises, businesses and projects operated or undertaken on or near the Reservation;

WHEREAS, the Torres-Martinez Desert Cahuilla Indians, by its inherent sovereign authority and in order to increase employment of Tribal members and other Indians and eradicate discrimination against them, may promote and implement the unique employment rights of Indians on or near the boundaries of the Torres-Martinez Desert Cahuilla Indian Reservation;

WHEREAS, the Torres-Martinez Desert Cahuilla Indians, by its inherent sovereign powers, has the authority to regulate the employment practices of employers operating within the Torres-Martinez Desert Cahuilla Indian Reservation; and

WHEREAS, full realization of preferential treatment of Tribal members and other Indians will require that Tribal members and other Indians overcome existing barriers to employment, be competitive and competent to enter the workforce through adequate training, education and experience, and be protected in their employment so that they may retain the jobs for which they are qualified.

NOW THEREFORE BE IT RESOLVED, that the General Council of the Torres-Martinez Desert Cahuilla Indian Reservation does hereby amend and enact the Torres-Martinez Tribal Employment Rights Ordinance for the purpose of regulating employers operating on or near the Torres-Martinez Indian Reservation.

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)
OF THE
TORRES-MARTINEZ DESERT CAHUILLA INDIANS
ORDINANCE NO. TMORD-001-97
As Amended January 14, 2015

Section 1 Purposes

1.1 By means of this Ordinance, the Tribe intends to achieve the following purposes:

1.2 To provide employment opportunities for the Tribal workforce;

1.3 To provide employment training for Tribal people;

1.4 To promote the economic development of the Tribe;

1.5 To lessen the dependence of Torres Martinez people on off-Reservation sources of employment, income, goods and services;

1.6 To foster the economic self-sufficiency of Tribal families;

1.7 To protect the health, safety, jobs and welfare of Tribal workers;

1.8 To foster cooperative efforts with employers to assure expanded employment opportunities for the Tribal work force.

Section 2 Definitions

2.1 "Tribe" shall mean the Torres-Martinez Desert Cahuilla Indians.

2.2 "Business" means any regular or temporary activity conducted by persons engaged in a trade, profession or commercial activity involving the sale of goods or services. An isolated instance of such activity is not a "business."

2.3 "Employer" means any person, governmental entity, company, contractor, subcontractor or other entity located or engaged in work on or near the Reservation employing two or more persons. An "employer" subject to this Ordinance is one doing business on or near the Reservation, or with the Tribe. "Employer" does not include the Tribe itself, Tribal government departments or agencies or programs because the Tribe maintains an Indian preference policy and reports to the TERO Commission.

2.4 "General Council" means the General Council of the Torres-Martinez Desert Cahuilla Indians, comprised of an eligible voting members of the Tribe, and which is the recognized governmental authority of the Tribe,

2.5 "Indian" shall mean an American Indian and Native Alaskan persons as defined by Federal regulation or statute.

2.6 "Indian Preference" means the policy requiring a preference in hiring and in all other terms and conditions of employment in favor of Tribal members and other American Indians and Native Alaskans in accordance with applicable law.

2.7 "On or near the Reservation" means within the boundaries, or within reasonable commuting distance of the Reservation.

2.8 "Qualified Indians" means those persons of Indian descent who meet the bona fide qualifications for a position of employment.

2.9 "Qualified Indian-owned firm" means a business entity of any type which meets the bona fide qualifications set forth in a request for proposals or bids.

2.10 "Reservation" shall mean Tribal and allotted lands of the Torres-Martinez Desert Cahuilla Indian Reservation.

2.11 "TERO Commission" shall mean the Tribal Employment Rights Ordinance commission, appointed by the General Council, whose purpose is to enforce the provisions of this Ordinance and all related rules, regulations and guidelines of the Tribe so to achieve the purposes of this Ordinance.

2.12 "TERO Commission Bylaws" shall mean the approved bylaws of the TERO commission.

2.13 "TERO Commission Compliance Officer" ("TERO Officer") shall mean the staff person hired by the TERO commission whose duties and responsibilities are enumerated in this Ordinance.

2.14 "Tribal Administration" shall mean the Tribe's administrative office and its personnel.

2.15 "Tribal Council" shall mean the elected Council officers and Council members of the Tribe.

2.16 "Tribal Employee" shall mean an employee of the Tribe, employed either by Tribal Administration or by one (or more) of the Tribal Enterprises.

2.17 "Tribal Enterprises" shall mean the Red Earth Casino, Travel Center, Selnek-is Tem Al Corporation and its various entities, and other entities that are now or may be established and operated directly or indirectly by the Tribe.

2.18 "Tribal member" shall mean an enrolled member of the Torres-Martinez Desert Cahuilla Indians.

2.19 "Tribal member preference" shall mean preference in hiring enrolled members of Torres-Martinez Desert Cahuilla Indian Tribe.

2.20 "Tribal Permit" means written authorization issued under the auspices of the TERO Commission conferring upon an entity the power to do business on the Reservation.

Section 3 Establishment and Powers of TERO Commission

3.1 Pursuant to authority granted by the Tribal Constitution, Article VII (Powers of the General Council), paragraph F, the General Council affirms that by this Ordinance it has created the TERO Commission with the full authority to achieve the purposes, and carry out the duties set forth in this Ordinance.

3.2 The TERO Commission consists of six commissioners and one proxy appointed every two years (biannually) by the General Council.

3.3 At the first TERO Commission meeting following appointment of its members, the Commission shall elect a Chairperson, Vice Chairperson and Secretary to serve for a two-year term.

3.4 The TERO Commission will report to the General Council as needed, as requested by the General Council, or otherwise at least once each year, on the conduct of its affairs under this Ordinance.

Section 4 Indian and Tribal Preference Requirements in Employment

4.1 All employers operating within the Torres-Martinez Desert Cahuilla Indian Reservations shall give preference to qualified Indians in hiring, promotion, training, and all other

terms and conditions of employment and to qualified Indian-owned firms in compliance with this Ordinance and any regulations of the TERO Commission, as directed by the TERO Officer. All employers operating near the Reservation are encouraged to extend similar Indian preference employment opportunities and will be encouraged by the TERO Officer to do so.

4.2 Consistent with applicable law, all employers on or near the Reservation shall extend preference to qualified Indians in hiring and all terms and conditions of employment in the following order:

1st priority: Torres-Martinez Tribal members

2nd priority: non-member Indians residing in the household of Tribal member

3rd priority: non-member Indians irrespective of residence

If no qualified Indians are available, employers may then look to non-Indians to fill available positions. Where consistent with applicable law, employers shall prefer non-Indian spouses and non-Indians residing in the household of an Indian over others.

4.3 The Tribe will promote the principles of Indian preference expressed in this Ordinance as follows:

4.3.1 The Tribe will coordinate with the TERO Officer with respect to its recruitment and hiring of qualified Indian candidates in Tribal operations.

4.3.2 The Tribe will enforce Indian preference in employment through Tribal personnel policies and procedures, and any remedies provided by such policies and procedures.

4.3.3 The Tribe will report to the TERO Commission no less than twice annually on the Tribe's Indian preference in employment practices. The reports will include, but not be limited to a description of open positions, efforts to recruit qualified Indian candidates, whether an Indian was hired for a position, and if not, a statement of the reasons for not hiring an Indian. The reports will identify areas in which additional training, education or experience would improve the ability of Indians

to be hired and retained by the Tribe. The reports will address whether grievances concerning Indian preference were filed under the Tribe's policies and procedures, and if so, the outcome of such grievances. The reports will respect and preserve the confidentiality of the Tribe's personnel and candidates for Tribal employment.

4.3.4 The Tribe and its departments, programs, and commercial enterprises will coordinate with the TERO Officer and TERO Commission with respect to preferences for Indian-owned businesses in planning, procurement, and all other aspects of purchases of goods and services.

Section 5 Employers' Obligations to Extend Preference to Indians When Engaged in Business on or near the Reservation

5.1 The Indian preference requirements contained in this Ordinance are binding on all employers doing business with the Tribe or conducting business within the Reservation.

5.2 Each such employer must include in its job specifications or requests for proposals or other bids, an Indian Preference Plan.

5.3 The Indian Preference Plan must include the employer's identifying information, whether it is an Indian-owned firm, and its overall plan for compliance with this Ordinance.

5.4 Each such employer is required to recruit and employ Indians pursuant to this Ordinance, engage Indian-owned subcontractors where feasible, and establish an Indian Preference Plan which addresses the manner in which the employer will comply with this Ordinance.

5.5 Among other obligations, an entity may not refuse to employ an Indian-owned subcontractor if the Indian-owned firm's price is within five percent (5%) of the lowest bid received on a project.

5.6 Failure to submit an Indian Preference Plan which complies with this Ordinance disqualifies an entity from doing business with the Tribe or on or near the Reservation.

5.7 Entities who are awarded the contracts to do business with the Tribe or a permit to conduct business on or near the Reservation, may engage in business conditioned upon full compliance with their Indian Preference Plan and this Ordinance.

5.8 This Ordinance is not intended to, and will not be enforced in such a manner that a business entity is required to release or replace its regular, permanent employees. Because of their importance to the contractor, such employees may be employed on the project whether or not they are Indian. A regular permanent employee is defined as:

> One who is, and has been for at least one year, on the entity's payroll. 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 key personnel may be granted by the TERO Commission on a case-by-case basis.

5.9 Any employer which fills a vacant position within its organization immediately prior to undertaking work for the Tribe shall provide evidence acceptable to the TERO Commission that such action was not intended to circumvent Indian Preference requirements.

5.10 In the event of reductions in the employer's workforce, non-Indian employees must be laid off before qualified Indians. No Indian employee shall be laid off as long as a non-Indian worker in the same craft is still employed. If the employer lays off by crews, qualified Indians shall be transferred to a crew that will be retained.

5.11 The employer must consult and reach agreement 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 or near the reservation. Numerical goals shall be set for each position on the project including administrative, supervisory and professional categories. Numeric hiring obligations must take into account the available numbers of qualified Tribal member and other Indians.

Section 6 TERO Commission's Authority in Implementation of Indian and Tribal Preference Requirements

In addition to enforcement of the obligations imposed upon employers set forth in this Ordinance, and in order to insure full implementation of the requirements of this Ordinance, the TERO Commission is authorized to:

6.1 Issue permits to those employers who comply with the Ordinance, authorizing them to conduct business on or near the Reservation, and deny permits to those who fail to comply with the Ordinance, denying them the opportunity to conduct business with the Tribe or on or near the Reservation.

6.2 Establish and conduct training programs, and identify training programs suitable for Tribal members and other Indians to assist them in acquiring the skills necessary to become qualified for employment. Require employers to establish or participate in such training programs as the Commission deems necessary in order to increase the pool of qualified Indians on the reservation

6.3 Establish a Tribal Employment Office (i.e., a 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 Tribal member or other Indian is available to fill the vacancy.

6.4 Direct the TERO Officer to establish a pool of qualified Tribal members and other Indians seeking employment, and require employers to utilize that resource prior to hiring non-Indians for projects subject to this Ordinance.

6.5 Prohibit an employer from creating or continuing to utilize criteria which operate as barriers to Indian employment, including but not limited to establishing unnecessary and unrealistic qualification criteria or other personnel requirements that disqualify otherwise qualified Indians.

6.6 Require employers to give preference in the award to contracts and subcontracts to Indian-owned (or, where applicable, Tribal member-owned) firms.

6.7 Establish programs to provide counseling and support to Indian and tribal member workers to assist them in retaining employment and insure that employers participate in and/or cooperate with such programs.

6.8 Coordinate with federal employment rights agencies to eliminate unlawful discrimination against Indians on or near the Torres-Martinez Indian Reservation.

6.9 Take such other action as is necessary to achieve the purposes and objectives of this Ordinance.

Section 7 Reserved

Section 8 Coordination with Tribe, Tribal Council and other Tribal entities to Insure TERO Compliance

8.1 A designated member of the Tribal Council may attend TERO Commission meetings as an observer to insure full and open communication between the Commission and the Tribal Council. The Tribal Council member is not a voting member of the Commission.

8.2 At the invitation of the TERO Commission, representatives of other Tribal departments, programs and entities may attend Commission meetings to insure a coordinated and vigorous effort to bring Tribal members and other Indians into the workforce.

Section 9 Fees

9.1 A TERO fee is assessed for projects within the exterior boundaries of the Reservation. Proceeds from the fee are used to pay for implementation of the TERO program, including the provision of TERO-sponsored job training and education programs for Tribal members and other Indians.

9.2 **One-time projects.** For every contract, sub-contract, or project with a total value or total projected revenues of ten thousand dollars ($10,000.00) or more, the employer shall pay a one-time TERO Fee of Five percent (5%) of total project costs, an amount which

includes the value of equipment, labor, materials, and revenues. In the discretion of the TERO Commission, the fee may be paid in increments. Fees for projects which are extended and which become year-to-year may be adjusted, in the discretion of the Commission, in accordance with the following paragraph.

9.3 **Recurring or ongoing business, services or projects**. Every business operating within the exterior boundaries of the Reservation, other than construction contractors, businesses owned by the Tribe, and businesses owned by tribal members, shall pay a fee equal to 2% of the annual gross revenue of the business for the privilege of doing business on the Reservation for each year that the annual gross revenue of the business equal or exceed ten thousand dollars ($10,000). All businesses possibly subject to the fee shall certify under penalty of perjury each year the annual gross revenue of that business. The TERO Commission may audit the books and accounts of any business the TERO Commission reasonably believes to have misstated its annual gross revenue

9.4 Such fees shall be paid to the Torres Martinez Desert Cahuilla Indian Tribe and shall be placed in the Tribe's TERO account. Accrual of interest and principal in the TERO accounts shall be utilized solely for the cost of enforcing and monitoring compliance with this Ordinance.

9.5 The TERO Commission shall be responsible for the determination of the amount and the procedures to be employed in collection of said fees. The Commission may waive or reduce the amount of fees due when, in its discretion, such adjustments are in the best interests of the Tribe.

Section 10 Enforcement by the TERO Commission

In implementing this Ordinance, the TERO Commission has the following powers:

10.1 To investigate, monitor compliance, and require production of information from employers to insure compliance with TERO permits and Indian preference plans.

10.2 To receive and investigate complaints and respond to inquiries concerning compliance.

10.3 To issue notices of non-compliance, subpoenas to employers and others, and to compel production of information concerning compliance.

10.4 To hold hearings as necessary in the Commission's discretion to hear and resolve disputes and enforce this Ordinance.

10.5 To bring actions in the appropriate Tribal Court to enforce this Ordinance.

10.6 Non-compliance with the laws, rules, regulations and guidelines of the Tribe or of this Ordinance may result in one or more of the following sanctions being imposed by the TERO Commission:

10.6.1 Denial or withdrawal of a TERO permit with the consequent denial of the opportunity to do business with the Tribe or on the Reservation.

10.6.2 Rejection or loss of any business license issued by the Tribe such that the employer is denied the opportunity to conduct business on the Reservation.

10.6.3 Civil fines up to 3 times (3x) the amount owed to tribal TERO.

10.6.4 Other remedies as appropriate within the discretion of the TERO Commission and consistent with applicable law.

10.7 Any employee, employer, union, person or other entity subject to this Ordinance which retaliates against any worker, employer, union, person or other entity because of the exercise of the person's or entity's rights under this Ordinance shall be subject to sanctions.

10.8 If disputes arise under this Ordinance and those disputes cannot be resolved by direct discussion, the TERO Officer, TERO Commission, employer, union or individual may request a hearing before the TERO Commission. In response to such a request, the TERO Commission will:

10.8.1 Issue notice of the hearing to all affected parties at least thirty (30) days prior to the hearing;

10.8.2 Convene a hearing to hear testimony, receive other evidence, and hear from each party; and,

10.8.3 At the conclusion of the hearing or within ten (10) working days thereafter, render its decision.

10.9 Hearings will be conducted according to the procedures set out in Article VIII of the TERO Commission Bylaws.

Section 11 Appeals

11.1 A party who disagrees with a decision of the TERO Commission may seek review in the appropriate Tribal Court with jurisdiction. Notice of appeal must be filed with the Tribal Court within thirty (30) days of the decision of the TERO Commission.

11.2 The appeal will proceed pursuant to applicable rules of the Tribal Court.

11.3 The decision of the Tribal Court is final.

Section 12 The TERO Officer

12.1 The TERO Commission shall employ a TERO Compliance Officer to carry out the day to day functions of the Commission under the Commission's direction. The TERO Officer, among other things, will work directly with employers to provide information regarding the TERO Ordinance, assist employers in complying with the Ordinance, assist Tribal members and other Indians in securing employment pursuant to the Ordinance, and coordinating with the Tribe and other Tribal entities in promoting Indian preference in employment and the use of Indian-owned employers in Tribal enterprises.

12.2 The TERO Officer will recommend to the Commission that employer applications for TERO permits be approved or denied. The signature of one Commissioner (to be designated by the TERO Commission Chair) along with that of the TERO Officer suffices to approve or deny a TERO permit.

12.3 The TERO Officer may be terminated for cause by the Commission only.

12.4 In the event the TERO Officer position is vacant, the Commission shall designate one or more of its members to carry out the day to day functions of the Commission as set forth here.

Section 13 Amendments

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

APPENDIX A, ATTACHMENT A

Project-Specific Special Provisions for Torres Martinez Desert Cahuilla Indians Tribe TERO MOU

SPECIAL NOTICE:

- This project includes Tribal Employment Rights Ordinance (TERO) requirements. See section 5-1.20E 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 *Information Handout*	Torres Martinez Desert Cahuilla Indians TERO Memorandum of Understanding (MOU) with TERO Highway Construction Permit (THCP) Application

INFORMATION HANDOUT:
Torres Martinez Desert Cahuilla Indians Tribe TERO Requirements Information Handout contains:

1. Signed MOU between the Torres Martinez Desert Cahuilla Indians Tribe and the Department.
2. Attachment A project-specific TERO special provisions.
3. Attachment B TERO Highway Construction Permit Application (THCP).

SSP 5-1.20E Tribal Employment Rights Ordinance Requirements:

Complete the Torres Martinez Desert Cahuilla 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 Torres Martinez Desert Cahuilla 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 Torres Martinez Desert Cahuilla Indians TERO Highway Construction Permit (THCP) Application submitted to the Tribe.

Torrez Martinez Desert Cahuilla Indians Tribe
Tribal Highway Construction Permit
66-725 Martinez Street Thermal, CA 92274

Name of Project: Pavement Rehabilitation

Caltrans Project Expenditure Authorization (EA) Number: 2M6504

The Torres Martinez Desert Cahuilla Indians Tribe, issues this permit in accordance with its Tribal Employment Rights Ordinance, enacted by the federally recognized governing body of the tribe, the Torres Martinez Desert Cahuilla Indians 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 preformed 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.

_____ _____

Thomas Tortez, TERO Chairman Date
Torres Martinez Desert Cahuilla Indians

_____ _____

Contractor 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): 2M6504

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 Date

_____ _____

Thomas Tortez, TERO Chairman Date

Torres Martinez Desert Cahuilla Indians

Appendix A
Scope of Memorandum
Caltrans and Torres Martinez Desert Cahuilla Indians MOU executed on February 17, 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 Torres Martinez Desert Cahuilla Indians and Caltrans on February 17, 2015:

Contract No. Project ID	Project County-Route-Postmile	Work Description	Campo Tribal Lands	Campo IRR Inventory
11-2M6504	Imperial-Route 86- PM 43.1-67.8	Pavement Rehabilitation	Reservation	43.6-68.8

Appendix B
Project Fact Sheet
Caltrans and Torres Martinez Desert Cahuilla Indians MOU executed on February 17, 2015.

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 Torres Martinez Desert Cahuilla Indians Tribe and Caltrans on February 17, 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
11-2M6504 1113000100	IMP-86-43.1/67.8	Pavement Rehabilitation	N/A	43.6-67.8	61.80-62.13, 63.10-63.44, 63.94- 64.30, and 66.79-67.00

Contacts:

Caltrans:	Phone Numbers:
District Director: Laurie Berman	(619) 688-6668
DNAL: Jesus Vargas	(619) 208-1104
Project Manager: Alberto Gayon	(619) 688-3368
RE :	
Const. Inspector :	

Tribal Contacts:	Phone Numbers:
TERO Officer/Director: Thomas Tortez	(903) 388-7186
Tribal Administrator:	