

**FOR CONTRACT NO.: 11-2M8301
PID 1115000107
11-SD-94-PM 39.0/65.4**

INFORMATION HANDOUT

TERO

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11
AND
CAMPO BAND OF MISSIONS INDIANS**

RAILROAD RELATIONS

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM (MTS)
AND
SAN DIEGO ARIZONA & EASTERN RAILROAD (SDAE)**

ROUTE: 11-SD-94-PM 39.0, 65.4

MEMORANDUM OF UNDERSTANDING
Between
CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11
and
CAMPO BAND OF MISSIONS 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 in accordance with state law. To this end, on December 15, 2010, Caltrans adopted Deputy Directive DD-74-R2 in accordance 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 Campo Band of Mission 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 Campo Band of Mission 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 TERO Highway Construction Permit (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 designate 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 Campo Band of Mission 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, 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 (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 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.

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.

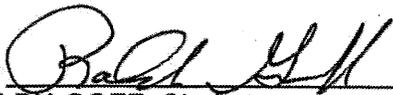
9. DURATION AND AMENDMENTS

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.

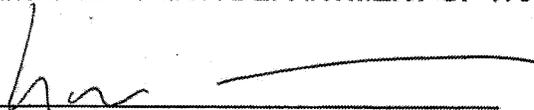
The parties hereto have agreed to the provisions cited in this document and have further approved this MOU for signature by their duly authorized representatives.

For Campo Band of Mission Indians

By: 
RALPH GOFF, Chairman

Date: 9-12-14

For the CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: 
LAURIE BERMAN District Director, District 11

Date: 9-19-14

**AMENDMENT ONE
TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN
CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11
AND
CAMPO BAND OF MISSION INDIANS**

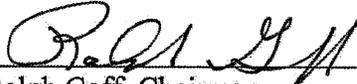
The Memorandum of Understanding (TERO MOU) between California Department of Transportation District 11 (Caltrans) and Campo Band of Mission Indians (Tribe), as executed on September 19, 2014, is hereby amended as follows:

The third paragraph of Item 1, **PURPOSE AND RECITALS**, is amended to read:

This TERO MOU covers all applicable projects Tribal Land. For each applicable new project, Caltrans and the Tribe will update the four Appendix items with project-specific information: the Scope of Memorandum (Appendix A), Special Provisions (Appendix A, Attachment A), THCP Application (Appendix A, Attachment B), and a Project Fact Sheet (Appendix B). These Appendix items will be developed for each project without need for further amendment to this TERO MOU.

The parties hereto have agreed to and have further approved this Amendment One to the TERO MOU for signature by their duly authorized representatives as set forth below.

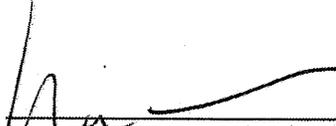
For the Tribe:



Ralph Goff, Chairman

Date: 9-10-15

For Caltrans:



District Director, District 11

Date: 8-27-2015

Appendix A

Scope of Memorandum

Caltrans and Campo Tribe MOU executed on September 19, 2014 and Amendment One September 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 Campo Tribe Caltrans on September 19, 2014 and Amendment One signed on September 10, 2015:

Contract No. Project ID	Project County- Route-Postmile	Work Description	Campo Tribal Lands	Campo IRR Inventory
11-2M8304 1115000107	SD- 94 39.0/65.4	Pavement Rehabilitation	Reservation	38.97-65.38

APPENDIX A, ATTACHMENT A

Project-Specific Special Provisions For Campo 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>	Campo Band of Mission Indians TERO Memorandum of Understanding (MOU) with TERO Highway Construction Permit (THCP) Application

INFORMATION HANDOUT:

Campo Tribe TERO Requirements Information Handout contains:

1. Signed MOU between the Campo Band of Mission Indians Tribe and the Department.
2. Attachment A project-specific TERO special provisions.
3. Attachment B TERO Highway Construction Permit Application (THCP).

SSP 5-1.20G Tribal Employment Rights Ordinance Requirements:

Complete the Campo Band of mission 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 Campo band of Mission 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 Campo Band of Mission Indians TERO Highway Construction Permit (THCP) Application submitted to the Tribe.



Campo Band of Mission Indians
Tribal Highway Construction Permit
36190 Church Road, Suite 1
Campo, CA 91906

Name of Project: I-8 Rehabilitation Project (1115000107)

Caltrans Project Expenditure Authorization (EA) Number: 11-2M8304

The Campo Band of Mission Indians, issues this permit in accordance with its Tribal Employment Rights Ordinance, enacted by the federally recognized governing body of the tribe, the Campo Tribal 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.

Dominique Connolly
TERO Officer, Campo Tribe

Date

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): 11-2M8304

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.	
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7.	
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10.	
11.	
12.	
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15.	
16.	

Contractor

Date

Dominique Connolly
TERO Officer, Campo 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 Campo Band of Missions Indians Tribe and Caltrans on September 19, 2014 and Amendment One September 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
11-2M8304 1115000107	SD-94 39.0/65.4	Pavement Rehabilitation	N/A	SD-94 38.97/65.4	Sd-94 57.8/59.7 & 60.2/60.7

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: Dominique Connolly	(619) 478-9046 Ext. 226
Tribal Administrator:	

Memorandum

*Serious drought!
Help save water!*

To: MR. LEON EDMONDS
District 11 Office Engineer
Office of Engineering

Attn: Dante Buenviaje
Arlene Gerstner



Date: November 12, 2015
File: 11-SD- 94
PM: 39.0 – 65.37
PID: 11 11500 0107

Ref: 11196-2M830

Fr: GWENDOLYN DENNY
District 11 Railroad Coordinator
Right of Way Division – MS 310

Subject: Railroad Clearance – Polymer Asphaltic Emulsion (Seal Coat)

I have reviewed the plans for the above-referenced project and determined that the work does require coordination with the railroad identified within the project limits. This project is now cleared for advertising.

For Railroad protection, please find attached standard clauses required for insertion in the contract special provisions.

Should the scope of this project, as it is currently proposed, change before Ready to List Date, this Clearance Letter is revoked, and a new review and new Clearance Letter will be required.

Attachment

cc: Alberto Gayon, Project Manager
Pejhan Tayebati, Project Engineer
Greg Gutierrez, R/W Railroad & Utility Relocation
Christine Senteno, R/W Project Coordination
Denny Fong, Headquarters R/W Railroad

RAILROAD RELATIONS

5-1.01 GENERAL

The term "Railroad" shall mean the San Diego Metropolitan Transit System (MTS) and San Diego Arizona & Eastern Railroad (SDAE).

The Contractor must understand the Contractor's right to enter Railroad's right of way is subject to the absolute right of Railroad to cause the Contractor's work on Railroad's right of way to cease if, in the opinion of Railroad, Contractor's activities create a hazard to Railroad's right of way, employees, and operations.

5-1.02 RAILROAD RIGHT OF ENTRY REQUIREMENTS

The Contractor shall obtain a Right of Entry Permit from the Railroad prior to entering or constructing on property owned by the Railroad. The Contractor shall abide by the terms of the Right of Entry Permit. The terms of the Right of Entry Permit will govern if there are any conflicts with these special provisions. Information on obtaining a Right of Entry Permit can be obtained at <http://www.sdmts.com/business/permits/asp> or contacting MTS Right of Way Tel (619) 557-4501.