

AGREEMENT BETWEEN
TULE RIVER INDIAN TRIBE
AND
TULARE COUNTY ASSOCIATION OF GOVERNMENTS
AND
THE COUNTY OF TULARE

This agreement ("AGREEMENT") made and entered into on this 320 day of December 2002, is between the Tulare County Association of Governments (TCAG), the County of Tulare ("COUNTY") and the Tule River Indian Tribe ("TRIBE");

RECITALS

The TRIBE is a federal recognized Indian Tribe located on the Tule River Indian Reservation near the City of Porterville, County of Tulare, California hereinafter referred to as the RESERVATION; and

The primary access to the RESERVATION requires the use of County Road M137, also known as "RESERVATION ROAD", which travels from the RESERVATION to State Highway 190; and

TCAG, the COUNTY and TRIBE, pursuant to Government Code Section 14527 desire to enter into this AGREEMENT for certain improvements to RESERVATION ROAD within Tulare County; and

TRIBE contemplates the construction of five (5) turnouts, as defined in that "Regional Transportation Impact Study for the Tule River Indian Reservation Area in the County of Tulare," prepared by OMNI-MEANS, LTD. dated October 2001, referred to herein as the "PROJECT"; and

TCAG identifies this PROJECT as a priority State/Regional Transportation Improvement Program candidate for construction; and

TULARE COUNTY AGREEMENT NO. 21422

The parties hereto intend to define herein the terms and conditions under which the PROJECT is to be constructed, financed and maintained.

NOW THEREFORE IT IS AGREED:

SECTION 1

TRIBE AGREES:

1. To advertise, award and administer the construction contract for the PROJECT. To the extent that construction of any of the said Project is required to be put out to public bid, the laws and regulations applicable to public works projects will apply and Tribe will be responsible for the preparation and issuance of bid documents incorporating the plans and specifications, the review of bids submitted, and the award of contracts. All such bid documents will be reviewed and approved by County before being prepared in final form. County will further have the opportunity to review all bids submitted, and before an award provide the Tribe with appropriate comments or recommendations. Tribe will obtain approval from County of the Project's plans and specifications. Any proposed changes to the plans, specifications and placement will be submitted to County for approval. Any such changes submitted to County must be approved or disapproved within 10 business days or they will be deemed approved. County's approval will not be unreasonably withheld or conditioned.

2. All contracts let for construction of the Project and/or purchase of materials, equipment and supplies for the Project will be prepared by, and issued in the name of, Tribe, provided that County will have the opportunity to review and approve all such contractual documents before to issuance of final versions. The award of all such contracts for construction, the securing of permits and the inspection of all such construction will be the responsibility of the Tribe. The Tribe will pay for all the costs of construction, permits, inspection, planning and designing.

3. The Bureau of Indian Affairs ("BIA"), as trustee of the TRIBE, will apply for necessary

1 encroachment permits, in accordance with COUNTY's standard permit procedures.

2 4. Request payment in the amount of \$419,100 from TCAG not less than 15 days prior to

3 bid advertisement for construction of the PROJECT. The payment represents TCAG's

4 request to the California Department of Transportation for payment for construction costs

5 for the PROJECT.

6 5. To construct PROJECT in accordance with approved plans and specifications.

7 6. Within sixty (60) days following the completion and acceptance of the construction

8 contract for PROJECT, to provide COUNTY a complete set of reproducible "As-Built"

9 plans.

10 7. Upon the completion of PROJECT and all work incidental thereto, to furnish TCAG with

11 a detailed statement of the direct costs to be borne by TCAG in accordance with the

12 State/Regional Transportation Improvement Program and the California Department of

13 Transportation Minor A program. TRIBE thereafter shall refund to TCAG, promptly after

14 completion of TRIBE's final accounting of PROJECT costs, any amount of State Local

15 Program Alternative Construction Progress Payments and CalTrans Minor A funds

16 remaining after actual direct costs to be borne by TCAG have been deducted, or to bill

17 TCAG for any additional amount required to complete TCAG's financial obligations

18 pursuant to this AGREEMENT.

19 8. The estimated cost of TCAG's share of the PROJECT is \$419,100 not to exceed

20 \$419,100, unless TCAG agrees to a greater amount by amendment to this

21 AGREEMENT as provided in Section III (4) herein.

22 9. Tribe will hold harmless, defend and indemnify TCAG and/ or County, its agents,

23 officers, and employees from and against any liability, claims, actions, costs, damages, or

24 losses of any kind, including death or injury to any person and/or damage to property,

25 including Tribe's property, arising from or in connection with, the performance by Tribe or

26 it agents, officers and employees under this Agreement. This indemnification specifically

27 includes any claims that may be made against TCAG and/or COUNTY by any taxing

28 authority asserting that an employer-employee relationship exists by reason of this

1 Agreement, any claims made against TCAG and/or COUNTY alleging civil rights
2 violations by TRIBE under Government code section 12920 et seq. (California Fair
3 Employment and Housing Act), and any fines or penalties imposed on TCAG or COUNTY
4 for TRIBE's failure to provide form DE-542, when applicable. This indemnification
5 obligation shall continue beyond the term or termination of this Agreement as to any acts
6 or omissions occurring under this Agreement or any extension of this Agreement

7 10. Tribe will require its contractor to provide performance and payment bonds and
8 maintain insurance as provided in Exhibits 1 2 and 3. The insurance policy
9 shall contain an additional insured endorsement naming the State of California, County,
10 BIA and TCAG as additional insureds. Coverage shall be evidenced by a Certificate of
11 Insurance in a form satisfactory to the COUNTY before the issuance of an encroachment
12 permit to TRIBE's construction contractor.

13 11. To retain or cause to be retained for audit by TCAG or other government auditors for
14 a period of five (5) years from the date of the final voucher or five (5) years from the date
15 of final payment whichever is longer, all records and accounts relating to construction of
16 the PROJECT.

17 12. TRIBE acknowledges that the PROJECT is subject to such prevailing wage,
18 apprenticeship, and anti-discrimination provisions of the Labor Code or the Davis/Beacon
19 Act as are applicable to public works projects contracted for by the COUNTY. TRIBE will
20 require all contractors and subcontractors used in the PROJECT to maintain and to make
21 available to TCAG or COUNTY, at no cost to TCAG or COUNTY, on a weekly basis, all
22 certified payroll records required to be maintained and furnished pursuant to Labor Code
23 section 1776 or the Davis/Bacon Act which ever is applicable. TRIBE'S construction
24 contract(s) will require that the contractor(s) and subcontractors maintain complete and
25 accurate records with respect to the funds expended in the construction of the PROJECT
26 and will require that the contractor(s) and subcontractors provide access to the TCAG or
27 COUNTY'S Auditor and to the State of California auditors, and to their agents and
28 representatives, for the purpose of auditing and/or copying such records for a period of

1 five (5) years from the date of this Agreement. TRIBE will require that all such records be
2 prepared in accordance with generally accepted accounting procedures, be clearly
3 identified, and be readily accessible within the County of Tulare, upon request.

4 13 The Tribe will follow the requirements of the California Environmental Quality Act
5 (CEQA) or the National Environmental Policy Act (NEPA) as they may apply.
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7 SECTION II

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9 TCAG AGREES:

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11 1. To assist the Tribe in requesting the California Transportation Commission allocate up
12 to \$419,100 in the Regional Transportation Improvement Program to construct the
13 PROJECT.

14 2. Assist Caltrans in providing technical assistance to the TRIBE. Allocate and obtain
15 reimbursement for the PROJECT from the State/Regional Transportation Improvement
16 Program and to comply with State Local Assistance Procedures.
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18 COUNTY AGREES:

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21 1. To oversee and monitor the construction of the PROJECT through the normal
22 Encroachment Permit Process.
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24 Section III

25

26 IT IS MUTUALLY AGREED:

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28 1. All obligations of TCAG under the terms of this AGREEMENT are subject to the

1 appropriation of the resources by the Legislature and the allocation of resources by the
2 California Transportation Commission

3 2. The State/Regional Transportation Improvement Program funds shall be utilized in
4 accordance with all applicable federal, State and other laws and the AGREEMENT; the
5 TRIBE shall be solely responsible for any audit deficiencies that result in financial
6 retribution

7 3. The TRIBE's construction contractor shall be required to obtain the appropriate permits
8 to construct the PROJECT.

9 4. After opening of bids for construction of the PROJECT, TCAG's estimate of cost will be
10 revised based on actual bid prices. If TCAG's share of the PROJECT exceeds \$419,100,
11 TCAG and the TRIBE will meet to discuss PROJECT costs and prepare modifications as
12 necessary.

13 5. Nothing in the provisions of this AGREEMENT is intended to create duties or
14 obligations to or rights in third parties to this AGREEMENT or affect the legal liability of
15 either party to the AGREEMENT by imposing any standard of care different from the
16 standard of care imposed by law.

17 6. Any notice required under the terms of this Agreement will be deemed received on the
18 date actually delivered if by personal delivery, or on the third business day following
19 deposit in the United States mail, postage prepaid, addressed as follows:

20 TRIBE:

21
22 COUNTY: Tulare County Board of Supervisors
County Administration Building County Civic Center
2800 W. Burrel
23 Visalia, CA 93291

24 TCAG:
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28 The parties to which notice is to be given may be changed, from time to time, by action of

either party, provided that it gives the other party to this Agreement written notice of said
change

7. TRIBE will have a process consistent with Federal Highways Administration Claim
process for resolving any contractor claims for PROJECT and PROJECTS and shall
process any and all claims. TCAG's representative will be made available to TRIBE to
provide advice and technical input for any claim process as requested by TRIBE

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in
writing and signed by the parties hereto, and no oral understanding or agreement not
incorporated herein shall be binding on any of the parties hereto.

8. If any unforeseen potential hazardous waste sites are encountered during construction
of PROJECT, STATE, TCAG, COUNTY, BIA and TRIBE shall meet and confer on a
course of action. The responsibilities and costs for any action shall be covered by an
amendment to this AGREEMENT.

9. Tribe acknowledges that TCAG and/ or COUNTY are dependent upon certain federal
and State funding to pay for the PROJECT described in this Agreement. If such funding
is discontinued or reduced, TCAG and/ or COUNTY may at its sole discretion to reduce
the amount of Project funding or terminate the Agreement by giving the TRIBE 30
calendar days written notice of the reduction or termination.

10. Any review or approval by the COUNTY and/or TCAG of the plans, specifications,
construction, environmental and contractual documents is solely for the information of the
COUNTY and/or TCAG. COUNTY and/or TCAG approval shall not constitute
representation as to the technical feasibility, operational capability or the legal sufficiency
of the PROJECT.

This AGREEMENT shall terminate upon completion of construction and final inspection of
PROJECT, or on December 31, 2007, whichever is later in time

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1 COUNTY OF TULARE

2 Tulare County Board of
3 Supervisors

4 By: *[Signature]*
5 Its: Chairman, Board of Supervisors



TULE RIVER INDIAN TRIBE

By: Tule River Tribal Council

By: *[Signature]*
Duane M. Garfield, Sr

11 TULARE COUNTY ASSOCIATION OF GOVERNMENTS

14 By: *[Signature]*

17 Approved as to form:

18 *[Signature]*
11-3-04

19 TCAG and County Counsel

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STATUTORY PAYMENT BOND PURSUANT TO
California Civil Code
Sections 3247 through 3252

KNOW ALL THESE MEN BY THESE PRESENTS:

That, _____ (Hereinafter called the Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the **COUNTY OF TULARE** (hereinafter called the Obligee), in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, to _____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of California Civil Code, Sections 3247 through 3252, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Statutory Provisions to the same extent as if they were copied at length herein.

Witness our hands this _____ day of _____

Principal

By

Surety

By

Agency of Record

Agency Address

Note: Bond surety must be admitted to transact surety insurance in the State of California.

Exhibit 1

STATUTORY PERFORMANCE BOND PURSUANT TO
California Public Contract Code
Section 20129

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (Hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the surety), as Surety, are held and firmly bound unto the **COUNTY OF TULARE**, (hereinafter called the obligee) in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Agreement with the Obligee, dated the _____ day of _____, to _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, and conditions of said Agreement during the original term of the Agreement and any extension thereof, with or without notice to the Surety, and during the life of any guarantee required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized extensions or modifications of said contract that may hereafter be made, notice of said extensions or modifications to the Surety being hereby waived; then the above obligation shall be void. Otherwise, said obligation shall remain in full force and effect.

Witness our hands this _____ day of _____.

Principal

By

Surety

By

Agency of Record

Note: Bond surety must be admitted to transact surety insurance in the State of California

Contractor shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the Contractor, his agents, representatives, employees, contractors or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. Coverage at least as broad as Commercial General Liability Insurance of \$1,000,000 combined single limit per occurrence.
 - a. *Names the COUNTY, their officers, agents, employees and volunteers, individually and collectively, as additional insureds.*
 - b. *States that such insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.*
 - c. *Provides that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice has been given to the County and provide ten (10) days prior written notice be given to the County for cancellation for non-payment of premium.*
2. Comprehensive Automobile Liability Insurance (if applicable) of \$1,000,000 per occurrence, combined single limit.
 - a. *Names the COUNTY, their officers, agents, employees and volunteers, individually and collectively, as additional insureds.*
 - b. *States that such insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.*
 - c. *Provides that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice has been given to the County and provide ten (10) days prior written notice be given to the County for cancellation for non-payment of premium.*
3. Workers' Compensation and Employer's Liability Insurance as required by law. Insurer shall agree to waive all rights of subrogation against the

COUNTY, its officers, officials, employees, agents and volunteers for losses arising out of activities which are the subject of this Agreement.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retention that exceeds \$50,000 must be approved by the COUNTY Risk Manager.

C. ACCEPTABILITY OF INSURANCE

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than "A:V" or as approved by the County's Risk Manager and from a company admitted to do business in California.

D. VERIFICATION OF COVERAGE

Prior to approval of this Agreement by Contractor and the COUNTY, the Contractor shall file with COUNTY a certificate of insurance with additional insured endorsements effecting coverage in a form acceptable to the COUNTY. COUNTY reserves the right to require certified copies of all required insurance policies at any time.