

**NEW COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF SAN
DIEGO AND THE BARONA BAND OF MISSION INDIANS FOR WILDCAT
CANYON ROAD PASSING LANE PROJECT**

This Cooperative Agreement (hereinafter "Agreement") is made this 22nd day of June 2005, by and between the County of San Diego, a political subdivision of the State of California (the "County") and the Barona Band of Mission Indians, a federally recognized Indian tribal entity (the "Barona Band") and hereby replaces the Cooperative Agreement between the County and Barona Band dated November 13, 2002.

WHEREAS, the Barona Band has tribal lands, the Barona Indian Reservation, which are located within the unincorporated area of San Diego County;

WHEREAS, the Barona Band has developed a Class III casino on its tribal lands;

WHEREAS, the Class III casino project consists of a permanent casino with 293,000 square feet including total gaming area of 96,575 square feet, and a 390 room hotel;

WHEREAS, access to the tribal lands and Indian gaming project is via County-maintained roads and California Department of Transportation (Caltrans) maintained roads located within the unincorporated area of San Diego County;

WHEREAS, on May 18, 1999, the Board of Supervisors approved a Cooperative Agreement between County and the Bureau of Indian Affairs for partial funding of Wildcat Canyon Road improvement whereby the Bureau of Indian Affairs, at the request of Barona Band, agreed to contribute \$3,000,000 in funding toward the improvement of Wildcat Canyon Road Passing Lane project (Project No. 2C1000, the "Project");

WHEREAS, Barona Band and County entered into a Cooperative Agreement on November 13, 2002 wherein Barona Band committed up to \$1,400,000 for the Project;

WHEREAS, County has now completed the Project design, certified the Environmental Impact Report (EIR) for the Project, initiated acquisition of necessary right-of-way and mitigation land, and the Project is soon ready to proceed to construction bidding;

WHEREAS, the final Project cost estimate is \$7,878,548 compared to the 1999 preliminary cost estimate of \$5,000,000;

WHEREAS, the County has expended \$953,548 for design and environmental consultant contracts and extensive staff resources to develop the Project;

WHEREAS, the County has no other existing program or means by which to obtain full funding for the said Project, it is therefore in Barona Band's and the County's interests to enter into this Cooperative Agreement so that the Project may proceed without delay;

NOW THEREFORE, the parties agree as follows:

I. WILDCAT CANYON ROAD PASSING LANE PROJECT

1. Project Scope and Cost. The Wildcat Canyon Road Passing Lane Project (Project) consists of widening and realigning approximately 0.9 mile segment of Wildcat Canyon Road from 1,800 feet north of Muth Valley Road to approximately 100 feet south of Blue Sky Ranch Road to add a northbound (uphill) passing lane. Turning lanes at Muth Valley Road and three turnouts will be constructed. Total estimated project cost is \$7.879 million. This cost includes studies, design, environmental review and mitigation, right-of-way acquisition and construction.
2. Barona Band Funding Commitment. In addition to the \$3,000,000 committed by the Bureau of Indian Affairs (BIA) by agreement with County in 1999, on June 5, 2000, Barona Band paid County \$250,000 towards this project and recently provided the support necessary to assure allocation of \$1,765,000 towards this project from the Fiscal Year 2004/2005 Indian Gaming Distribution Fund (Barona Tribal Casino Account). To assure County that funding will be available to complete the proposed Project, Barona Band hereby agrees to pay an additional \$1,710,000 to County for the Project, subject to adjustment per Section I.4 of this Agreement.
3. Barona Band Payment. Barona Band plans to satisfy their funding commitment by assuring that \$1,710,000 from the Fiscal Year 2005/2006 Indian Gaming Distribution Fund (Barona Tribal Casino Account) shall be allocated toward the Project. County and Barona Band agree to utilize their best efforts to obtain payment from the Indian Gaming Distribution Fund (Barona Tribal Casino Account) to satisfy Project costs identified in this Agreement. If Barona Band is unsuccessful in obtaining the full funding amount of \$1,710,000 for the Project from this fund, Barona Band agrees to pay the balance of the unfunded Project costs directly to the County.
4. Adjustments to Payment. After County has obtained right-of-way parcels and environmental permits, County will bid the construction contract and finalize procurement of environmental mitigation parcels. Cost Estimates for these components are:
 - 1) Construction contract plus 10% contingency: \$5,260,000
 - 2) Right of Way parcels: \$ 61,000
 - 3) Environmental Mitigation parcels: \$ 600,000

Total of Construction Contract and Parcels: \$5,921,000

- a. If actual costs of the low responsible, responsive bid plus 10% contingency (bid/contingency), right of way parcels and environmental mitigation parcels are less than \$5,921,000, Barona Band's additional funding commitment of \$1,710,000 will be reduced by the amount that is less than \$5,921,000. Any such reduction will be applied to the July 2006 payment from the Indian Gaming Distribution Fund described in paragraph I.3 above if such sum is paid through the Indian Gaming Distribution Fund, or the reduction will be applied to the payment from Barona Band if the July 2006 payment is paid directly by Barona Band.
 - b. If the low responsible, responsive bid plus 10% contingency (bid/contingency), right of way parcels and environmental mitigation parcels are greater than \$5,921,000, Barona Band's additional funding commitment of \$1,710,000 will be increased by the amount that is greater than \$5,921,000. Any such increase will be applied to the July 2006 payment from the Indian Gaming Distribution Fund described in I.3 above if such sum is paid through the Indian Gaming Distribution Fund, or the reduction will be applied to the payment from Barona Band if the July 2006 payment is paid directly by Barona Band.
 - c. Upon identifying the costs of bid/contingency, right of way parcels and environmental mitigation parcels, County will promptly notify Barona Band.
 - d. Barona Band and County equally share responsibility for any construction contract costs that exceed the estimated contingency amount of \$478,300, with Barona Band's portion to be paid from the next available payment from the Indian Gaming Distribution Fund (Barona Tribal Casino Account). Upon construction completion, should final construction contract contingency costs be less than the estimated \$478,300 contingency amount, Barona Band's funding commitment will be commensurately reduced and if already paid, refunded by County to Barona Band.
 - e. If for any reason the BIA funding commitment is withdrawn, Barona Band is not obligated to provide funding to replace the BIA funding.
5. The County is responsible for accomplishing studies, design, environmental review and mitigation, right-of-way acquisition and construction for the proposed Project. County plans to complete right-of-way acquisition by June 2005.

To avoid risk of losing Bureau of Indian Affairs funding commitment for this Project, County's schedule for the construction contract is as follows:

Advertise	July 2005
Award	August 2005
Pre-Construction Conference	September 2005
Construction Start	October 2005
Construction Complete	October 2006

The above schedule would be extended by approximately two months should right-of-way acquisition negotiations with property owners be unsuccessful and eminent domain procedures become necessary. County will utilize its best efforts to avoid delays and accomplish construction per the above schedule.

6. The Barona Band will be provided the opportunity to review, comment and concur on the studies, design plans and environmental assessment for the proposed Project.

II. ADDITIONAL IMPROVEMENTS TO COUNTY MAINTAINED ROADS AND STATE HIGHWAYS

7. The Barona Band and the County acknowledge that this Agreement is limited to the above described additional contribution by the Barona Band toward the Project and is not meant to address road impacts from the Barona Band's Casino project on other portions of Wildcat Canyon Road, other County maintained roads or SR67.

III. GENERAL PROVISIONS

8. Notices

All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested to the principal offices of the County and Barona Band. Notice shall be effective on the date delivered in person, or on the date when the postal authorities indicated that the mailing was delivered to the address of the receiving party indicated below:

Notice to Barona Band:

Chairperson
Barona Band of Mission Indians
1095 Barona Road
Lakeside, CA 92040

Notice to County:

County of San Diego
Director, Department of Public Works
5555 Overland Avenue Ave, Suite 2156
San Diego, CA 92123-1295

Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either party may from time to time designate by mail as provided in this section. A party may change its

address by giving notice in writing to other Party and thereafter notices shall be delivered or sent to such new address.

9. Applicable Laws

This Agreement shall be construed and enforced in accordance with the laws of the United States and the State of California.

10. Consent To Jurisdiction: Limited Waiver of Sovereign Immunity and Exhaustion Of Tribal Remedies.

- a) The Barona Band grants a limited waiver of sovereign immunity from suit exclusively to the County, and to no other entity or person, for the sole purpose of enforcing this Agreement. For this limited purpose, the Barona Band agrees that any suit, action or other legal proceeding arising out of or relating directly to the performance by Barona Band of the duties and obligations which it expressly assumes under this Agreement may be brought in the federal courts of the United States, or in the event the federal courts refuse to hear such case for lack of jurisdiction, the State courts of the State of California (including any courts to which appeals therefrom are available). For this same limited purpose, the Barona Band waives its sovereign immunity in any such suit, action or legal proceeding by the County for money damages, specific performance, injunctive relief and/or declaratory relief for Barona Band's breach of this Agreement with such relief not exceeding requiring the Barona Band to perform its express obligations as set forth in this Agreement. The Barona Band does hereby unconditionally waive any claim or defense of exhaustion of tribal administrative or judicial remedies regarding any such suit. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of Barona Band other than the limited assets of the revenue stream of the Barona Casino and physical assets of the Barona Casino. Recourse against such assets and revenue stream is subordinate to the perfected first lien previously granted to the lenders for the planned Class III casino expansion project described above. Specifically, this waiver shall not extend to any other accounts of the Barona Band, the source of which includes distributions from accounts directly related to the Barona Casino, so long as such distributions are in the ordinary course of business when the Agreement is not in default and are not done for the purpose of frustrating the County's remedies hereunder. The Barona Band does not waive the defense of sovereign immunity with respect to any action by third parties, or extend its waiver to reach any assets of the Barona Band other than those specifically set forth herein or for any other purpose.
- b) The County acknowledges that the Barona Band may bring an action in the State Courts of California to enforce the terms of this Agreement as against San Diego County for money damages, specific performance, injunctive relief and/or declaratory relief for the County's breach of this Agreement. The

County acknowledges that State Courts with proper venue have jurisdiction to hear such disputes. For purposes of the Agreement, County waives any immunity it may have from suits to enforce the provisions of the Agreement.

11. Entire Agreement, Waivers

This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the County or of the Barona Band.

12. Amendments

This Agreement may be amended by mutual written agreement of the parties duly executed by the lawfully authorized officers or officials of each party.

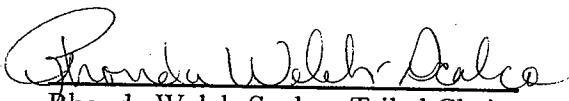
13. Termination for Convenience

The Barona Band or the County may terminate the Agreement in whole, or in part when both parties agree that the continuation of the project would not produce beneficial results. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portions to be terminated. Should the County terminate the Agreement prior to incurring cost for right of way, environmental mitigation or construction, the Barona Band will not be responsible to reimburse the County for cost incurred to that date except the \$250,000 paid on June 5, 2000 shall not be reimbursed to Barona Band.

IN WITNESS WHEREOF, the Agreement has been executed by the parties as of the day and year first set forth above,

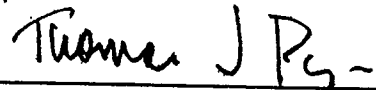
TRIBE:

BARONA BAND OF MISSION INDIANS,
a federally recognized Indian tribe
By:

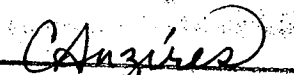

Rhonda Welch-Scalco, Tribal Chairwoman

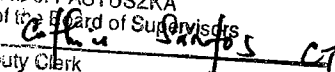
COUNTY:

COUNTY OF SAN DIEGO,
a political subdivision of the State of
California
By:


Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY 
DEPUTY

Approved and/or authorized by the Board
of Supervisors of the County of San Diego
Date 6/22/05 Minute Order No. _____
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By 
Deputy Clerk