

Appendix D

Cultural Agreement

**SOBOBA BAND OF LUISEÑO INDIANS
P.O. BOX 487, SAN JACINTO, CA 92581**

**CULTURAL RESOURCE TREATMENT
AND DISPOSITION AGREEMENT**

This CULTURAL RESOURCE TREATMENT AND DISPOSITION AGREEMENT (“Agreement”) is made and entered into as of March 16, 2021, by and between SOBOBA BAND OF LUISEÑO INDIANS, a federally recognized Indian tribe (“Soboba Band”) and Innovative Cultivation Group (“Developer”) (Soboba Band and Developer are sometimes referred to individually as a “Party,” and collectively as the “Parties”).

RECITALS

A. Subject Matter: This Agreement concerns a project located within the City of San Jacinto owned by Developer, commonly referred to as the Innovative Cultivation Group SJ Farm (hereinafter referred to as the “Project”) and as more particularly described in Attachment I to this Agreement. The City of San Jacinto, which is the Project’s lead agency and responsible for the environmental compliance of this Project, shall be provided with a copy of this Agreement. The City of San Jacinto shall be referred to herein as the “Lead Agency.”

B. Purpose: The purpose of this Agreement is to formalize procedures for the treatment and disposition of all Tribal Cultural Resources, ceremonial items, items of cultural patrimony, artifacts and Native American human remains and associated grave goods, in the event that any are found in conjunction with development of the Project, including archaeological studies, excavation, geotechnical investigations, grading and any ground disturbing activities.

This Agreement also formalizes procedures for Native American monitoring during the course of project related archaeological studies, grading, and ground disturbing activities. Ground disturbance is defined as any activity that compacts or disturbs the ground within a project area. The project area is defined as all areas where project activities will occur, including: the actual construction activities, permanent easements, temporary construction easements, staging areas for supplies and equipment, and borrow pits. Ground disturbance can also be caused by the use of hand tools (shovels, pick axe, posthole digger, etc.), heavy equipment (excavators, backhoes, bulldozers, trenching and earthmoving equipment, etc.), and heavy trucks (large four wheel drive trucks, dump trucks and tractor trailers, etc.). Trenching, bulldozing, excavating, scraping, and plowing are typical examples of ground disturbance activities.

This Agreement is entered into pursuant to the required mitigation measures/conditions of approval for this Project.

C. Cultural Affiliation: All parties agree that the Project area (see Attachment I of this Agreement) consists of land that has been traced to and traditionally occupied by The Soboba Band. The Soboba Band has designated its Cultural Resource Program to act on its behalf with respect to the provisions of this Agreement. All Tribal Cultural Resources, ceremonial items, items of cultural patrimony, artifacts and Native American human remains

and associated grave goods that are found in conjunction with the development of this Project, shall be treated in accordance with Section VII of this Agreement.

D. Most Likely Descendant: Human remains have been recovered in the past from several sites around the Project area. Soboba Band has already been designated the Most Likely Descendant (“MLD”) by the Native American Heritage Commission (“NAHC”) under California Public Resources Code § 5097.98.

AGREEMENT

I. Incorporation of Recitals. All of the foregoing Recitals are accurate and are incorporated in this Agreement by reference.

II. Coordination with County Coroner’s Office. The Lead Agencies and the Developer shall immediately contact both the Coroner and the Soboba Band in the event that any human remains are discovered during implementation of the Project. If the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, the Coroner shall ensure that notification is provided to the NAHC within twenty-four (24) hours of the determination, as required by California Health and Safety Code § 7050.5 (c).

III. Treatment and Disposition of Remains. In the event that Native American human remains are found during development of the Project and the Soboba Band has been designated the MLD, the following provisions shall apply to the Parties:

A. The Soboba Band shall be allowed, under California Public Resources Code § 5097.98 (a), to (1) inspect the site of the discovery and (2) make determinations as to how the human remains and grave goods shall be treated and disposed of with appropriate dignity.

B. The Soboba Band, as MLD, shall complete its inspection within twenty-four (24) hours of receiving notification from either the Developer or the NAHC, as required by California Public Resources Code § 5097.98 (a). The Parties agree to discuss in good faith what constitutes “appropriate dignity” as that term is used in the applicable statutes.

C. Reburial of human remains shall be accomplished in compliance with the California Public Resources Code § 5097.98 (a) and (b). The Soboba Band, as the MLD in consultation with the Developer, shall make the final discretionary determination regarding the appropriate disposition and treatment of human remains.

D. All parties are aware that the Soboba Band may wish to rebury the human remains and associated ceremonial and cultural items (artifacts) on or near, the site of their discovery, in an area that shall not be subject to future subsurface disturbances. The Developer shall accommodate on-site reburial in a location mutually agreed upon by the Parties.

E. The term “human remains” encompasses more than human bones because the Soboba Band’s traditions periodically necessitated the ceremonial

burning of human remains. Grave goods are those artifacts associated with any human remains. These items, and other funerary remnants and their ashes are to be treated in the same manner as human bone fragments or bones that remain intact

IV. Treatment and Disposition of Cultural Items (Artifacts). Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The Developer agrees to return all Native American ceremonial items, artifacts, and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. Where appropriate and agreed upon in advance, Developer's archeologist may conduct limited non-destructive analyses of certain artifact classes if required by applicable law, i.e. CEQA, Section 106 of NHPA, the mitigation measures or conditions of approval for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

The Developer waives any and all claims to ownership of Native American ceremonial and cultural artifacts that may be found on the Project site. Upon completion of authorized and mandatory archeological analysis, the Developer shall return said artifacts to the Soboba Band within a reasonable time period agreed to by the Parties and not to exceed (30) days from the initial recovery of the items.

All parties are aware that the Soboba Band may wish to rebury the cultural items (artifacts) on or near, the site of their discovery, in an area that shall not be subject to future subsurface disturbances. The Developer shall accommodate on-site reburial in a location mutually agreed upon by the Parties.

V. Non-Disclosure of Location Reburials. It is understood by all parties to this Agreement that unless otherwise required by law, the site of any reburial of Native American human remains or cultural artifacts shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, parties, and Lead Agencies, shall be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code § 6254 (r).

VI. The description of work. Description of work for monitors for the grading and ground disturbing operations at the Project site is provided in Attachment II to this Agreement and incorporated herein by this reference. Section I of Attachment II specifies the duties and responsibilities of the identified tribal monitoring crew and other specified parties. Section II of Attachment II identifies the geographical area over which the tribal monitoring crew shall oversee and Sections III and IV of Attachment II mandate direct compensation of the tribal monitoring crew by the Developer.

VII. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, executors, administrators, and assignees of the Parties, including subsequent land owners and developers of the Project area and any person or entity obligated to comply with the lead agency's conditions of approval/mitigation

measures, of other environmental and cultural or archaeological resource protection laws applicable to the Project.

VIII. Environmental Compliance. Nothing in this Agreement shall excuse the Lead Agencies or the Developer of the Project from its obligation under any applicable state or federal environmental statute, including, but not limited to: CEQA and applicable regulations of the CEQA Guidelines; California Public Resources Code § 5097.98, § 5097.99, and § 5097.991; California Health and Safety Code § 7050.5 (c); California Government Code § 6254. Nothing in this Agreement is intended to make any of the above-referenced laws applicable where such laws would otherwise be inapplicable.

IX. Indemnity. The Soboba Band in no way indemnifies or guarantees the Lead Agencies or the Developer in any of its legal obligations.

X. Severability. Should any court or agency of competent jurisdiction find any part of this Agreement to be to any extent invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law and shall not be affected thereby.

XI. Controversies and Claims Subject to Mediation. Any controversy or claim or other matter in question arising out of or related to the Agreement, or the breach thereof, shall be resolved by mediation. Any demand for mediation shall be made within a reasonable time after the controversy or claim or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based upon such controversy or claim or other matter in question would be barred by the applicable statute of limitations. The Parties shall continue to perform under this Agreement pending the outcome of the mediation. Any controversy or claim or other matter in question not resolved by mediation shall be decided by litigation in a court of competent jurisdiction located in the first instance in the United States District Court for the Central District of California, and if and only if such federal court does not accept jurisdiction, then in any court of competent jurisdiction in the County of Riverside, State of California. Notwithstanding the foregoing, the Soboba Band does not waive any defenses or rights by entering into this Agreement, including, but not limited to, the defense of sovereign immunity. In the event any mediation, litigation, or other dispute resolution mechanism is commenced by a Party to the Agreement, each Party shall bear its own costs, including attorneys' fees.

XII. Limitation on Scope. This Agreement is unique to the Project only and does not set a precedent for other projects.

XIII. Counterparts. This Agreement may be signed in two or more counterparts and shall be effective when all the Parties and signatories have affixed their signatures to two or more of the counterparts and the counterparts have been delivered to all Parties, at which time the counterparts together will be deemed one original document.

Date: (March 16, 2021)

SOBOBA BAND OF LUISEÑO INDIANS



**By: Isaiah Vivanco, Tribal Chairman
Soboba Band of Luiseño Indians**

Date: (March 16, 2021)

Innovative Cultivation Group, LLC



Clinton Wesselink

Billing Contact & Associated Information:

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ATTACHMENT I

[Insert Tract Map for Innovative Cultivation Group SJ Farm]

Attachment II

NATIVE AMERICAN MONITORING OF GRADING AND GROUND DISTURBING ACTIVITIES

I. Specifications

Given the nature and sensitivity of the archaeological sites and cultural resources that are in or may be within the Project area, the Soboba Band of Luiseño Indians shall provide the tribal monitoring, consultation and facilitation for this project during any archeological investigations, and all ground disturbing activities for the Project. Tribal monitors will work in coordination with the project archaeologists and the developers designated onsite representative. Daily monitoring logs prepared by Tribal Monitors will be submitted to the Developer's designated onsite representative for their records. Developer's designated onsite representative will be responsible for signing the Native American Monitors' logs on a daily basis.

The Developer agrees to provide the Soboba Band of Luiseño Indians a minimum forty-eight (48) hour advance notice prior to the commencement of ground disturbing activities. The Developer will be subject to a \$1000 fee per day, for ground disturbing activities completed without the oversight of a Soboba Tribal Monitor, and without prior notification to the Soboba Band of Luiseno Indians, as detailed in Section IV of Attachment II under Compensation.

The Native American monitors will be empowered to halt all earthmoving equipment in the immediate area of discovery when cultural items or features are identified until further evaluation can be made in determining their significance. It is understood that all surface and subsurface artifacts of significance shall be collected and mapped during this operation following standard archaeological practices.

After discovery of cultural items or features discussions between the Tribal monitors and project archaeologist will take place to determine the significance of the situation and best course of action for avoidance, protection of resources or data recovery as applicable.

II. Project to be Monitored

Monitoring shall encompass the area know as Innovative Cultivation Group SJ Farm as indicated in Recital A and Attachment I of this Agreement, and shall be known as the Project area. It is agreed that monitoring shall be allowed for all archaeological studies, excavations, and ground disturbing activity occurring in conjunction with the development of the Project.

III. Project Crew Size

The parties to this Agreement project the need for a tribal monitoring crew consisting of one (1) person. If the scope of the work changes due to inadvertent discoveries of cultural resources or simultaneous ground disturbing activity in different locations that would require additional monitors, the Developer agrees to directly compensate the work of additional tribal monitors to the originally agreed upon crew (1) tribal monitors. The compensation rate shall be made directly from the Developer to the Soboba Band of Luiseño Indians. If human remains are found, the coordination of the reburial of those remains and any associated cultural and ceremonial items shall be conducted in accordance with Sections VII and VIII of this Pre-Excavation Agreement.

IV. Compensation

The Soboba Band shall provide the tribal monitoring crew for this project be responsible for coordinating the tribal monitors' activities on this Project. The Soboba Band recognizes that dangerous conditions may exist on the work site, particularly during grading operations, and agrees to assume responsibility for the safety of the tribal monitoring crew while the crew remains on the Project site. The Soboba Band possess full coverage insurance for the tribal monitors. (Provided upon request)

The Developer shall directly compensate the Soboba Band of Luiseño Indians in accordance with the following compensation rates and procedures. Invoice will be submitted on a monthly basis and be paid within 30 days to insure monitor compensation.

The Developer agrees to a \$1000 fee per day, for days where ground disturbing activities were completed without the oversight of a Soboba Tribal Monitor, and without prior notification to the Soboba Band of Luiseño Indians.

A minimum 4 hour half-day charge ("show up" time) shall be charged to the Developer for unannounced work stoppages of the tribal monitors that are not due to actions by the Soboba Band.

Tribal Liaison Consultation	\$ 85.00 hourly rate
Native American Monitoring	\$ 90.00 hourly rate
Overtime	\$ 135.00
Double Time	\$ 180.00
Administrative Fee	15% of Invoice