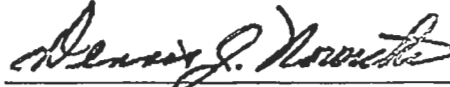


**NOTICE AND CALL OF SPECIAL JOINT MEETING**

**HESPERIA CITY COUNCIL  
HESPERIA COMMUNITY REDEVELOPMENT AGENCY  
HESPERIA FIRE PROTECTION DISTRICT  
HESPERIA WATER DISTRICT**

NOTICE IS HEREBY GIVEN that a special joint meeting of the Hesperia City Council, Hesperia Community Redevelopment Agency, Hesperia Fire Protection District, and Hesperia Water District is hereby called to be held on Monday, August 25 2003, at 6:00 p.m. at Sultana High School Multi-Purpose Room, 17311 Sultana Street, Hesperia, California.



Dennis J. Nowicki, Mayor

**August 25, 2003  
SPECIAL JOINT MEETING AGENDA**

*Prior to action of the Council/Agency/Board, any member of the audience will have the opportunity to address the legislative body on any item listed on the agenda. PLEASE SUBMIT A GOLD COMMENT CARD TO THE CITY CLERK WITH THE AGENDA ITEM NUMBER NOTED.*

**CALL TO ORDER**

**6:00 p.m.**

Roll Call:

Mayor/Chair Dennis J. Nowicki  
Mayor Pro Tem/Vice Chair Tad Honeycutt  
Council/Agency/Board Member Jim Lindley  
Council/Agency/Board Member Ed Pack  
Council/Agency/Board Member Rita K. Vogler

**ITEM FOR DISCUSSION AND REVIEW**

1. Public input and Council action regarding a proposed Municipal Services Agreement for a gaming facility in the City of Hesperia.

Recommended Action

Council adopt Resolution 2003-67 approving a Municipal Services Agreement with the Timbisha Shoshone Tribe.

**PUBLIC COMMENTS**

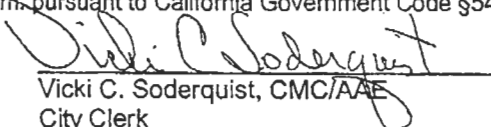
*Please complete a "Gold Comment Card" and give it to the City Clerk. Comments are limited to three (3) minutes per individual. State your name and address for the record before making your presentation. This request is optional, but very helpful for the follow-up process.*

*Under the provisions of the Brown Act, the Council is prohibited from taking action on oral requests. However, Council Members may respond briefly or refer the communication to staff. The City Council may also request the City Clerk to calendar an item related to your communication at a future City Council meeting.*

**ADJOURNMENT**

The Mayor/Chair will adjourn the special joint meeting of the Hesperia City Council, Hesperia Community Redevelopment Agency, Hesperia Fire Protection District, and Hesperia Water District to the next regular meeting on Wednesday, September 3, 2003, at 6:30 p.m.

I, Vicki C. Soderquist, City Clerk of the City of Hesperia, California do hereby certify that I caused to be posted the foregoing agenda on Thursday, August 21, 2003, at 5:30 p.m. pursuant to California Government Code §54954.2.



Vicki C. Soderquist, CMC/AAC  
City Clerk

CITY OF HESPERIA  
STAFF REPORT



**DATE:** August 25, 2003  
**TO:** Mayor and City Council Members  
**FROM:** Robb Quincey, City Manager *R. Quincey*  
**BY:** *MB* Mike Podegracz, Director of Development Services/City Engineer  
*THA* Tom Harp, Deputy Director of Development Services/Community Development  
**SUBJECT:** Municipal Services Agreement with the Timbisha Shoshone Tribe

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**RECOMMENDED ACTION**

It is recommended that the City Council adopt Resolution No. 2003-67, approving a Municipal Services Agreement with the Timbisha Shoshone Tribe.

**GOALS STATEMENT**

Approval of this Resolution is consistent with the City Council goal of improving long term financial stability, including sustainable and diversified revenue sources.

**BACKGROUND**

Staff was contacted by members of the Timbisha Shoshone Tribe regarding placing a casino on land currently within the City of Hesperia. The Timbisha Shoshone is a Tribe generally concentrated in the areas around Death Valley and Bishop, California. The Tribe's historical range is much larger, encompassing lands throughout the Great Basin, that is, from Idaho and Oregon in the north to Southern California in the south.

In 2000, the United States government granted the Timbisha Shoshone Tribe, rights to several parcels of land in order to restore historical, cultural, and sacred sites as well as lands to promote economic development. The Tribe has selected a 57 acre parcel described as assessors parcel number 3064-601-03, west of the I-15 Freeway in order to develop a casino and hotel. The Tribe has selected a developer to develop the land.

In order for the Tribe to develop a casino/hotel, there is a four-step process that must be completed. The first step, for which this staff report is prepared, is the preparation and approval of a Municipal Services Agreement (MSA) between the Tribe and the City. The MSA describes the operating relationship between the Tribe and the City, compensation for services provided and lost tax revenue, and for dispute resolution.

The subsequent steps involve the Tribe's submittal of an application for a compact with the State. Similar in nature to the MSA, the State compact describes the contractual relationship between the Tribe and the State. After the State compact, the Tribe will have precise plans and specifications drawn up for development of the site. When the site development plans, funding

sources, and all other agreements are in place, the Tribe will apply to the United States Department of the Interior to have the lands taken into trust. When approved by the Department of the Interior, the 57-acre parcel would no longer be under jurisdiction of the State, County, and City. It would, however, be subject to prior contractual agreements with the City and State.

## **ISSUES/ANALYSIS**

The Municipal Services Agreement addresses a number of issues beginning with the Tribe's intent to ask the United States government to place the land in trust such that the Tribe can operate a Class II and Class III gaming facility, and other related uses, such as restaurants, a hotel, and event center. Class II gaming includes bingo and bingo related games while Class III includes slot machines, blackjack, and Las Vegas style gaming.

The Tribe agrees, in the MSA, to comply with the development regulations adopted by the City and to contract for services with City departments. The only exception is that the Tribe does not agree to allow the City discretionary authority for the site plan. The Tribe does agree to substantially comply with City ordinances.

City staff recommended that law enforcement be provided by an expansion of the City's existing contract with the San Bernardino County Sheriff. The Sheriff's Department has had experience providing services to the San Manuel Casino and recommended a minimum of 4.6 deputies and a maximum of 11.6 deputies to mitigate the proposed casino in Hesperia. In addition to their own paid security staff, the Tribe agrees to pay for 11.6 additional deputies, 0.5 additional sergeants, and to purchase two new vehicles per year through a payment of nearly \$1.46 million per year.

Fire protection and emergency medical services were also addressed. With the existing staffing of Hesperia's Fire Protection District at maximum workload, reliance of existing facilities and staffing was not considered. The Tribe has agreed to pay \$2,000,000 for a new fire station and \$800,000 for a new fire apparatus designed to fight fires in multi-story buildings. The Tribe has also agreed to pay \$1.53 million each year to fully staff the station. This amount includes twelve full-time employees and overtime.

Since the land use review occurs later in the process, the actual impact that the casino and other facilities may have on roads and traffic circulation will be addressed with a traffic study to be prepared during the development planning stage. The Tribe has agreed to prepare the study in conformance with SANBAG standards, and most importantly to pay for any necessary mitigation. For other infrastructure needs, the Tribe has agreed to pay the standard City fees and impact fees for water, sewer, and through our franchise with Advance Disposal, for solid waste.

Based upon similar projects in California, the casino may employ 1,000 or more persons in a variety of occupations. The Tribe has agreed to give a hiring preference for Hesperia residents and to provide training to assist residents in securing a position.

The Tribe has also agreed to pay \$500,000 within 30 days of the casino's opening and \$100,000 each year thereafter, for City facilities. Said facilities could include buildings such as a library or City Hall, or other facilities such as streets or storm drains.

In addition to the infrastructure impacts, fiscal impacts to the City will occur when the land is removed from the City. To compensate the City, a payment in lieu of taxes, or PILT, was calculated by the City. The PILT includes property tax, sales tax, and transient occupancy tax (bed tax) and was based upon a 20-year growth projection. Since the Tribe requested a single number, a mid-point or 10 year number was chosen. Understanding also that additional development could occur during the 20-year period, rates were calculated for property tax, sales tax and transient occupancy tax for future development.

A multi-level dispute resolution process is included in the agreement. The remedies begin with a meet and confer process to explain any concerns. The process then includes a written notice process and progresses to binding arbitration. A separate procedure is established for threats to public safety whereby immediate relief can be sought.

One of the most important provisions of the Municipal Services Agreement is the Tribe's limited waiver of sovereign immunity. The Tribe waives its immunity for any dispute arising out of this agreement or the activities of the Tribe on the trust lands. A resolution authorizing the waiver, to be executed by the Tribe, is attached to the agreement.

The City and the Tribe will also establish a committee to address issues and concerns pertaining to this agreement, both parties agree that amendments will be necessary if additional lands are to be taken into trust, and finally, the agreement has a term of 20 years with provision for limited extensions until a new agreement is executed.

#### **FISCAL IMPACT**

The direct benefits to the City are noted in the table below. Amounts for permits and fees are estimates as no plans have been submitted.

<b>One time/Annual Fees</b>	<b>Amount</b>	<b>Annual</b>	<b>Total for 20 Years</b>
Fire Station	\$2,000,000		\$ 2,000,000
Fire Apparatus	\$ 800,000		\$ 800,000
Public Facilities	\$ 500,000	\$ 100,000	\$ 2,500,000
Permits and Fees	\$2,173,696		\$ 2,173,696
<b>Quarterly Fees</b>			
Law Enforcement	\$ 364,861	\$1,459,444	\$ 29,188,880
Fire/EMS	\$ 393,489	\$1,573,956	\$ 31,479,120
PILT	\$ 859,892	\$3,439,568	\$ 68,791,360
<b>Total</b>		<b>\$6,572,968</b>	<b>\$136,933,056</b>

**ALTERNATIVE(S)**

1. Provide alternative direction to staff.

**ATTACHMENT(S)**

1. Resolution No. 2003-67

**RESOLUTION NO. 2003-67**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA,  
CALIFORNIA, APPROVING THE MUNICIPAL SERVICES AGREEMENT WITH  
THE TIMBISHA SHOSHONE TRIBE**

**WHEREAS**, the Timbisha Shoshone Tribe (Tribe) has documented its historical occupation of the area in and surrounding the City of Hesperia; and

**WHEREAS**, the United States congress enacted the Indian Self-Determination Act and has authorized the Secretary of the Interior to acquire land in trust for the Tribe; and

**WHEREAS**, the Tribe has requested that the City provide al full range of municipal services to the tribal lands in Hesperia, and has agreed to compensate the City for providing those services; and

**WHEREAS**, the City Council conducted duly noticed public meetings on August 4, 2003 and August 18, 2003 pertaining to the Municipal Services Agreement; and

**WHEREAS**, on August 25, 2003 the City Council of the City of Hesperia conducted a duly noticed public meeting pertaining to the Municipal Services Agreement, and concluded said meeting on that date.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA CITY COUNCIL AS FOLLOWS:**

Section 1. All of the facts set fourth in the Resolution, are true and correct.

Section 2. Based upon substantial evidence presented to the City Council, including public testimony, written, and oral staff reports, the City Council specifically adopts the proposed Municipal Services Agreement, as shown in Attachment 1.

Section 3. The City Clerk shall certify to the passage and adoption of this resolution, shall enter it into the book of original resolutions.

**ADOPTED AND APPROVED** this 25<sup>th</sup> day of August, 2003.

\_\_\_\_\_  
Dennis J. Nowicki, Mayor

ATTEST:

\_\_\_\_\_  
Vicki C. Soderquist, CMC/AE  
City Clerk

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## ATTACHMENT 1

### MUNICIPAL SERVICES AGREEMENT

This Municipal Services Agreement (hereinafter "Agreement") is made this 25<sup>th</sup> day of August, 2003, by and between the City of Hesperia (hereinafter "the City," which term shall include the City of Hesperia, the Hesperia Community Redevelopment Agency, the Hesperia Water District, and the Hesperia Fire Protection District) and the Timbisha Shoshone Tribe (hereinafter "the Tribe"), hereinafter also referred to as a "Party" or, jointly, "Parties."

#### RECITALS

WHEREAS, the historical occupation of the Timbisha Shoshone Tribe of the area in and surrounding the City has been documented; and

WHEREAS, the United States Congress has authorized the Secretary of the Interior to acquire land in trust for the Tribe in order for the Tribe to achieve economic self-sufficiency; and

WHEREAS, in 1978, Congress enacted the Indian Self-Determination Act, 25 U.S.C. §450, *et seq.*; and

WHEREAS, following consultations with federal, state and City officials for the purpose of identifying potential new reservation locations that would meet the community, economic development and residential needs of the Tribe, while being compatible with surrounding land uses and minimizing adverse impacts on City services and residents, the Tribe has selected and will acquire a parcel of land in the City; and

WHEREAS, the Tribe intends to ask the Bureau of Indian Affairs to initiate the federal environmental review process necessary to comply with the National Environmental Policy Act ("NEPA"), as a first step to taking said parcels into trust; and

WHEREAS, the Tribe has now requested that the City support the Tribe's request to the Bureau of Indian Affairs to take a parcel into trust, and in consideration for such support, the



Tribe has offered to enter into an agreement with the City before any land goes into trust, which agreement would provide for cooperation between the Tribe and the City on matters of public services and land use on the Tribe's trust lands, as well as compensation to the City for the impact of the Tribe's use of a parcel on City services; and

WHEREAS, the proposed action of the Tribe is not a City project and is not a project subject to the discretionary approval of the City and, therefore, is not subject to otherwise applicable California laws; and

WHEREAS, the City would not otherwise have any authority or input with regard to the Tribe's trust lands nor receive any compensation for the impacts that the Tribe's use of the land would cause; and

WHEREAS, the City is capable of, and willing to, provide a full range of municipal services for uses of the Tribe's trust lands; and

WHEREAS, the City is prepared to support the Tribe's trust acquisition request to the United States if the Tribe enters into an enforceable agreement to comprehensively mitigate all impacts of this acquisition by taking several steps, including, but not limited to: (a) conforming to certain specific land use restrictions identified in City ordinances; (b) mitigating any environmental impacts of its planned use of the trust land that are identified in the environmental assessment to be conducted pursuant to NEPA; (c) compensating the City for public services and utilities to be provided on the Tribe's lands; (d) paying development and processing fees; and (e) conforming to certain building and design standards set out in City ordinances.

NOW, THEREFORE, the Parties agree as follows:

1. Land to be Taken into Trust. The Tribe will request that the United States take into trust for its benefit the parcel identified in Exhibit A appended hereto. The Tribe agrees to

request the United States to take into trust within the limits of the City only the parcel detailed in Exhibit A appended hereto (hereinafter "Trust Lands"), unless and until this Agreement is amended as provided herein to authorize any other trust acquisition. The Tribe further agrees to use said parcel exclusively (a) for the operation of a facility for Class II and Class III Gaming in conformity with the requirements of the federal Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.*, with the requirements of this Agreement and with the requirements of all other applicable State or federal laws; and (b) for other gaming related uses, as described in Exhibit B appended hereto, so long as such related uses are intended primarily to facilitate the operation of the gaming facility, unless and until this Agreement is amended as provided herein.

2. Compliance with City Ordinances. The Tribe shall enact laws applicable to the Trust Lands and shall require that the Trust Lands be used and developed in a manner that complies with all applicable City general, specific and community plans, zoning ordinances, and design guidelines in effect at the time of the execution of this Agreement, to the extent that compliance with such laws does not impermissibly infringe upon the internal self-government of the Tribe. The Tribe shall adopt the building standards set out in the City's adopted building codes, and prior to the use of any structure constructed on the Trust Lands, provide the City, at the Tribe's expense, with written certification from the project architect that said structures have been constructed in accordance with said standards. To ensure that tribal laws are adequately enforced, the Tribe agrees to contract with the City to provide, planning, building and safety, fire prevention, and public works personnel to review construction plans and inspect construction of improvements on the Trust Lands, to insure compliance with adopted codes, provided that such personnel shall perform their reviews and inspections in a timely and reasonable manner, and

provided further that the Tribe may additionally retain qualified independent inspectors to conduct such reviews and inspections to ensure compliance with Tribal laws.

3. Environmental Review. The Tribe's application to have land taken into trust is not governed by State laws, and the Tribe does not agree to submit its projects to the City for discretionary approvals. The Tribe does agree, however, to submit its development plan for development review and comment by the City staff and to substantially comply with City ordinances.

4. Payments to City. The parties agree that the Tribe will treat all fees in this agreement as "operating expenses." The parties further agree that a standard method of payment to the City will be beneficial for all. The following method shall be used to make payments to the City. This section shall not apply to attorney's fees in Section 19.

A. The Tribe agrees to pay the City all service fees and impact fees established by City resolution prior to the service being provided or the impact realized.

B. The Tribe will pay the City, on a monthly basis, within thirty (30) days of billing for the actual cost of City staff in performing its obligations and exercising its rights under Section 2 and 3 of this agreement.

C. Where payments are to be made quarterly, the Tribe will pay the City on the City's first business day after the first day of January, April, July, and October following any quarterly period, or part thereof, during which the gaming facility is in operation. The first payment will be paid for the pro-rated number of days the casino was occupied during its first quarter, divided by the actual number of days in that quarter, multiplied by the quarterly amounts stated in this agreement.

D. Where payments are to be made annually, the Tribe will pay the City on the City's first business day after July first following any quarterly period, or part thereof, during which the gaming facility is in operation. The first payment will be paid for the pro-rated number of days the casino was occupied during its first year, divided by 365 days, multiplied by the annual amounts stated in this agreement.

E. One-time fees will be paid as described elsewhere in this agreement.

F. All payments, by the Tribe shall be made payable to the City of Hesperia and delivered to the City's Director of Management Services, or designee. All such payments required to be made pursuant to this agreement shall be expenses of the operation paid to the City prior to any distribution to the Tribe.

5. Payment for Law Enforcement Services. The Parties recognize that the gaming facility to be developed and operated by the Tribe will necessitate an increased presence by the City Police Department in the area surrounding the Trust Lands. The Parties have agreed that, based on the size of the Tribe's proposed gaming facility and the projected number of patrons and employees, the addition of two and one-half (2 ½) new police officers, a half-time (1/2) police sergeant, and two (2) vehicles on a twenty-four hour/seven-day per week basis will reasonably address this need.

A. The Tribe shall pay the City for Police services, on a quarterly basis, the sum of three hundred sixty-four thousand, eight hundred and sixty-two dollars (\$364,862). The Parties agree that this sum will enable the Police Department to add two and one-half new police officers, a half-time police sergeant, and two vehicles on a twenty-four hour/seven-day per week basis and represents reasonable compensation for the additional burdens to be undertaken by the Police Department as a result of the Tribe's use of the Trust Lands. This sum shall be subject to

annual review and appropriate adjustments based on the experience of the Parties with the Tribe's gaming facility and consistent with then current costs to the City of providing these services. This figure shall not be reduced unless such reduction is agreed to by the City.

B. The City Police Department shall have authority to enforce State and local criminal laws on Trust Lands to the extent authorized by Public Law 280. When practical, the City Police Department will attempt to notify the Tribe's public safety or security director, if any, and shall coordinate and cooperate with appropriate Tribal officers, if any, except when, in the good faith and reasonable judgment of the law enforcement officers involved, their safety, or the integrity of an investigation or enforcement action, would be materially compromised by doing so.

6. Payment for Fire Protection and Emergency Medical Services. The Tribe recognizes that significant fire protection and emergency response services will be required by the Tribe's proposed development of the Trust Lands. The scope of said services will be detailed in the environmental assessment done to comply with NEPA. The Parties, however, have agreed to the general parameters of this mitigation as follows:

A. The Tribe shall pay two million dollars (\$2,000,000) to the City to construct a fire station to reasonably address fire and emergency response needs on the Trust Lands. The station shall be located at a site that will permit fire and emergency response to the Trust Lands within six minutes of a request. Progress payments shall be paid to the City within 15 days of the City's presentation to the Tribe of an invoice from the contractor, constructing the facility. Construction of the fire station shall be commenced at a time that permits it be fully operational on the scheduled opening date of the gaming facility to be located on the Trust Lands.

B. The Tribe shall pay eight hundred thousand dollars (\$800,000) to the City for the purchase of a fully equipped aerial fire apparatus to be housed at the above fire station. Funds shall be paid to the City prior to any construction on the site. The City agrees to have the apparatus available on the scheduled opening date of the gaming facility to be located on Trust Lands.

C. The Tribe shall pay the City, on a quarterly basis, the sum of three hundred ninety three thousand, four hundred eighty-nine dollars (\$393,489) for all of the personnel, fire apparatus, and equipment necessary to operate and respond from the new station. This sum shall be subject to annual review and appropriate adjustments based on the experience of the Parties with the Tribe's gaming facility and consistent with then current costs to the City of providing these services. This figure shall not be reduced unless such reduction is agreed to by the City.

7. Roads and Traffic Circulation. The Tribe will cause to be conducted a traffic study to determine the traffic impacts of its proposed uses of the Trust Lands. The Tribe will mitigate traffic and circulation issues in conformity to City requirements and the San Bernardino Association of Governments ("SANBAG") Congestion Management Plan requirements. The Tribe agrees to pay all required traffic mitigation fees consistent with City fee programs and ordinances. The Tribe further agrees that, if Mesa Linda Road must be expanded to handle the increase in traffic caused by the Tribe's use of the Trust Lands, the Tribe will grant a right-of-way to the City to the extent required to accommodate the expansion.

8. Sewer and Water Service.

A. The Tribe shall provide for sewage disposal for the Trust Lands by connection to the City's existing sewer collection system. The Tribe will pay fees, obtain

required easements for sewer infrastructure, construct to City sewer infrastructure standards, and dedicate to the City such sewer infrastructure. No use shall occur on the Trust Lands until sewer service is completed and inspected pursuant to this Section and Sections 2 and 3 of this Agreement. Any approvals by the City required to implement this Section shall not unreasonably be withheld, and the standards referred to in this Section shall be substantially identical to those applied to similarly situated users. The Tribe will pay fees, obtain required easements for sewer infrastructure, construct to City sewer standards, and dedicate to the City such sewer infrastructure.

B. The Tribe shall obtain its water supply for the Trust Lands from the City municipal water system and shall conform to all standard requirements imposed by the City. No use shall occur on the Trust Lands until water service is completed and inspected pursuant to this Section and Sections 2 and 3 of this Agreement. Any approvals by the City required to implement this Section shall not unreasonably be withheld, and the standards referred to in this Section shall be substantially identical to those applied to similarly situated users. The Tribe will pay fees, obtain required easements for water infrastructure, construct to City water standards, and dedicate to the City such water infrastructure.

C. The Tribe shall acquire the Trust Lands subject to all existing City rights-of-way and easements for the provision of sewer and water.

9. Solid Waste Disposal. The Tribe shall contract for solid waste disposal with the City's franchised waste hauler.

10. Employment of City Residents. The Tribe shall work in good faith with the City, to employ qualified residents at the Tribe's gaming facility to the extent permitted by applicable law. The Tribe shall offer training programs to assist City residents to become qualified for

positions at the Tribe's gaming facility to the extent permitted by applicable law. Nothing in this Section 10 shall be interpreted to limit or modify in any way the Tribe's policy of Indian preference in employment.

11. Allowed Gambling Age in Casino. The City has requested, and the Tribe agrees, that the Tribe will restrict the age for gambling, in the casino, to 21 years of age, or older. No one under the age of 21 years will be allowed to gamble.

12. Problem Gambling. The Tribe shall make annual contributions of ten thousand dollars (\$10,000) to an organization or organizations mutually agreed upon by the Tribe and the City to address problem gambling issues.

13. Support for Public Facilities. The City has requested, and the Tribe agrees, that the Tribe will make a contribution to the City in the amount of five hundred thousand dollars (\$500,000) to support the expansion of public facilities in the City. The initial payment shall be made to the City 30 days after the casino receives its occupancy certificate. In addition, beginning on the first anniversary of the date that public occupancy is certified, the Tribe will make annual contributions of one hundred thousand dollars (\$100,000) to support the ongoing operation of public facilities in the City.

14. Impact on City Revenues. The Tribe and the City agree that, because of the status of the Trust Lands, the City will lose potential tax revenues from the land and the improvements thereon and from certain commercial activities that the Tribe may conduct on the Trust Lands.

A. The Tribe shall pay to the City on an annual basis a payment in lieu of taxes (PILT) that would be due on the land and the improvements thereon including the value of all improvements, real and personal property consistent with customary State and County



assessment procedures used by the City as if the Trust Lands were not taken into trust by the United States.

B. Therefore, the Tribe agrees to pay the City on a quarterly basis the sum of eight hundred fifty-nine thousand, three hundred and seventy-five dollars (\$859,375) each quarter for said lost revenue to the City.

15. Payment for Future Development. The Tribe and the City recognize that additional development may occur on Tribal land. As such, the Tribe agrees to compensate the City for lost revenues in the form of a payment in lieu of taxes (PILT). This fee will be calculated for property tax, transient occupancy tax, and sales tax based upon future buildings gross square footage as follows:

A. Property Tax. The Tribe will compensate the City at the rate of two dollars and ten cents (\$2.10) per square foot per year, paid on a quarterly basis of fifty-two and one-half cents (\$0.525) per square foot per quarter.

B. Transient Occupancy Tax. The Tribe will compensate the City at the rate of three thousand, two hundred and fifty-six dollars (\$3,256) per hotel, motel, or lodging room per year, paid on a quarterly basis of eight hundred and fourteen dollars (\$814) per room per quarter.

C. Sales Tax. The Tribe will compensate the City at the rate of four dollars and twenty-five cents (\$4.25) per square foot of retail space per year, paid on a quarterly basis of one dollar, six and one-quarter cents (\$1.0625) per square foot per quarter.

16. Dispute Resolution.

A. Meet and Confer Process. In the event the City or the Tribe believes that the other has committed a possible violation of this Agreement, it may request in writing that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually

satisfactory resolution of the problem within fifteen (15) days of the date of service of said request, provided that if the complaining Party believes that the problem identified creates a threat to public health or safety, the complaining Party may proceed directly to arbitration as provided in Subsection E below.

B. Notice of Disagreement. If either Party is not satisfied with the result of the meet and confer process, such Party may provide written notice to the other, identifying and describing any alleged violation of this Agreement (“Notice of Disagreement”), with particularity, if available, and setting forth the action required to remedy the alleged violation.

C. Response to Notice of Disagreement. Within fifteen (15) business days of service of a Notice of Disagreement, the recipient Party shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. The failure of the recipient Party to serve a timely response shall entitle the complaining Party to proceed directly to arbitration, as provided in Subsection E below.

D. Expedited Procedure for Threats to Public Safety. If the City or the Tribe reasonably believes that the other’s violation of this Agreement has caused or will cause a significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this Section 16, the complaining Party may proceed directly to the arbitration Procedures set out in Subsection E below, without reference to the processes set out in Subsections A, B, and C above, and seek immediate equitable relief. At least twenty-four (24) hours before proceeding in this manner, the complaining Party shall provide to the other a written request for correction and notice of intent to exercise its rights under this Subsection D,

setting out the legal and/or factual basis for its reasonable belief that there is a present or an imminent threat to public health or safety.

E. Binding Arbitration Procedures. Subject to prior compliance with the meet and confer process set out above in Subsection A, and the Notice and Response process in Subsections B and C, and except as provided in Subsection D, either Party may initiate binding arbitration to resolve any dispute arising under this Agreement. The arbitration shall be conducted in accordance with the following procedures:

(1) The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

(2) The arbitration shall be held in Rancho Cucamonga, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable, and declaratory relief.

(3) If either Party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

(4) The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in the United States District Court for the Eastern District of California. The costs and expenses of the American Arbitration Association and the arbitrator shall be shared equally by and between the Parties unless the arbitrator rules otherwise.

17. Judicial Review. The Parties consent to judicial enforcement of any award in arbitration, which enforcement shall be in the United States District Court for the Eastern District of California. Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail –Return Receipt Requested to the following:

**FOR THE TRIBE:**

Tribal Chairperson  
Timbisha Shoshone Tribe  
P.O. Box 786  
110 Edwards St.  
Bishop, CA 93514  
Telephone: (760) 873-9003  
Facsimile: (760) 873-9004

**FOR THE CITY:**

Mayor  
City of Hesperia  
15776 Main Street  
Hesperia, CA 92345  
Telephone: (760) 947-1025  
Facsimile: (760) 947-2881

18. Limited Waiver of Tribal Sovereign Immunity. The Tribe agrees to waive its sovereign immunity in favor of the City as to any dispute that arises out of this Municipal Services Agreement or the activities undertaken by the Tribe on the Trust Lands, pursuant to the terms set forth herein for enforcement. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to attached Exhibit C.

19. Attorneys Fees. In the event either party commences an Action (as defined herein) against the other party which arises out of a Default of, breach of, failure to perform this Agreement or otherwise related to this Agreement, then the Prevailing Party in the Action shall be entitled to recover its Litigation Expenses (as defined herein) from the other party in addition to whatever relief to which the Prevailing Party may be entitled. For the purposes of this section, the term "Action" means any lawsuit, court or administrative proceeding (whether of a legal or equitable nature), arbitration or mediation (whether binding or non-binding), or any other alternative dispute resolution procedure, and the filing, recording, or service of any process,

notice, claim, lien, or other instrument which is a prerequisite to commencement of the Action. For the purposes of this section, the term "Litigation Expenses" means all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other cost or expense reasonably and necessarily incurred by the prevailing party in good faith and directly related to the Action. For the purposes of this Section, the term "Prevailing Party," shall have the meaning ascribed in Code of Civil Procedure §1032(a)(4).

20. Indemnification. Except as to the sole negligence, active negligence, or willful misconduct of the City, the Tribe expressly agrees to and shall indemnify, defend, release, and hold the City, their officials, agents, servants, employees, attorneys and contractors harmless from and against, any claim, liability, loss, damage, entry, cost, or expense (including, but not limited to, attorneys' fees expert fees, and court costs) which arises out of or is in any way connected with the Tribe's performance under this Agreement and/or possession and use of the Site. This indemnification provision shall apply to any act or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the employees, agents, servants, or subcontractors of the Tribe or its tenants. The Parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs on City business or makes to or on behalf of an injured employee under City's self administered worker's compensation is included as a loss, expense or cost for the purpose of this provision. The City shall not be responsible for any acts, errors or omissions of any person or entity except the City and their respective officers, agents,

servants, employees or contractors. The Parties expressly agree that the obligations of the Tribe under this Section shall survive the expiration or early termination of the Agreement.

21. Support for Trust Application. In consideration for the obligations undertaken by the Tribe herein, the City shall provide the correspondence attached as Exhibit D to the United States Department of Interior, Bureau of Indian Affairs, in support of the application of the Tribe to the United States, and shall request the United States to take the lands identified in Exhibit A into trust for the benefit of the Tribe, and respond to inquiries about the Tribe's trust application from the Bureau of Indian Affairs in a manner that is consistent with Exhibit D.

22. Tribal-City Advisory Committee. The City and the Tribe agree to establish a permanent committee, to be known as the Tribal-City Advisory Committee. The jurisdiction of the Committee shall include questions related to implementation of this Agreement, proposals for the amendment of this Agreement, and concerns over any matter within the scope of this Agreement.

A. Composition of Committee. The Committee shall be composed of two members of the City of Hesperia City Council or designees, the City Manager or his or her designee, one representative of a community organization established to address the local impacts of gambling as designated by the City Council, and five representatives of the Tribe.

B. Open Meetings. Committee meetings shall be open to the public, and Committee members may invite staff and associates as they deem appropriate to participate.

C. Meeting Times. The Committee shall meet on a quarterly basis, or more frequently, according to procedures established by the Committee.

D. Authority of Committee. The Committee may make recommendations to the Tribe and the City, including recommended amendments to this Agreement, which both

Parties shall consider before implementing any actions concerning the subject matter of this Agreement.

23. Other Development Projects. The Parties understand and agree that the Tribe may in the future undertake other development projects on the Trust Lands. In order to preserve their good relations and in the best interests of the surrounding community, the Tribe and the City agree that the Tribe shall undertake no new development that would be inconsistent with the moral climate of the community, including but not limited to adult entertainment and sexually oriented businesses as defined in the City's Development Code. If the Tribe should undertake new development projects, it will notify the City at least three months prior to the commencement of construction of the new project and will negotiate in good faith with the City concerning an agreement for the protection of the Parties' interests and the well-being of the surrounding community.

24. Amendments. This Agreement may be amended by mutual agreement of the Parties and must be amended prior to the acquisition of any land in trust by the Tribe not identified in Exhibit A. The parties will meet annually to review this Agreement and the Parties' performance of their obligations under it. To the extent that either of the Parties believes that the Agreement should be amended, the Parties agree to negotiate on such amendments in good faith in order to further the objectives of this Agreement.

25. No Third Party Beneficiaries. With the sole exception of Section 19 above, this Agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

26. Term. This Agreement shall become effective upon its execution by the parties hereto and shall continue in effect for a period of twenty (20) years from the date of first occupancy of the casino, provided that, if the Tribe is informed by the Secretary of the Interior that the United States will not take the land into trust or that the Tribe may not conduct gaming activities thereon, then this Agreement shall terminate thirty (30) days after the Tribe is so informed. No sooner than eighteen (18) months prior to the aforementioned termination date, either party may request the other party to enter into negotiations to extend this Agreement or enter into a new Agreement. If the parties have not agreed to extend the date of this agreement nor entered into a new Agreement by the termination date, this Agreement will automatically be extended for not more than five (5) years, unless the parties have agreed to an earlier termination date.

27. Approval by the Department of the Interior. The parties will submit this Agreement to the Department of the Interior for either (a) approval pursuant to 25 U.S.C. Section 81, or (b) a written response from the Department of the Interior that this Agreement does not require approval under 25 U.S.C. Section 81 to be enforceable.

WHEREFORE, IN WITNESS THEREOF, the Parties hereby execute and enter into this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

TIMBISHA SHOSHONE TRIBE

\_\_\_\_\_  
By: Tribal Chairperson

\_\_\_\_\_  
Date

CITY OF HESPERIA

\_\_\_\_\_  
By: Dennis Nowicki  
Mayor

\_\_\_\_\_  
Date



## EXHIBIT "A"

PARCEL NO. 5:

APN# 3064-601-03

THAT PORTION OF THE WEST  $\frac{1}{2}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 22, TOWNSHIP 4 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND, LYING NORTHERLY AND WESTERLY OF THE NORTHWESTERLY LINE OF U.S. HIGHWAY 66.

EXCEPTING THEREFROM THE NORTH  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 22.

## **EXHIBIT "B"**

The following uses may be developed in conjunction with the gaming facility specifically authorized under this agreement. All uses shall be supportive uses to the gaming facility and shall include but are not limited to:

- Hotel/Motel
- Recreational Vehicle Park
- Shopping Mall
- Theater (motion picture or live performances)
- Theme or Amusement Park
- Water Park
- Small-scale Amusement Park, including video arcades and miniature golf
- Bowling Center
- Restaurants/Coffee Shops/Snack Bars
- Night Clubs or Bars (includes live entertainment)
- Entertainment Venues (stadiums or arenas)

If a use not listed above is proposed, and the City and Tribe cannot agree that the use is gaming related as discussed in Section 1 of the Agreement, or is similar to the uses listed above, then the parties shall resolve the issue under the dispute resolution provisions in Section 16 of the Agreement.

# EXHIBIT "C"

## TIMBISHA SHOSHONE TRIBE

### RESOLUTION NO. \_\_\_\_\_

WHEREAS, The Tribal Council of the Timbisha Shoshone Tribe ("Tribal Council") has reviewed that certain Municipal Services Agreement between the Timbisha Shoshone Tribe, a federally recognized Indian Tribe ("Tribe") and the City of Hesperia ("City");

WHEREAS, The Tribal Council, having considered the matter in accordance with all rules and procedures binding upon the Tribal Council and its members, has received from the General Council, the Voting Lineal Members of the Tribe, approval to enter into a Municipal Services Agreement ("MSA") with the City; and

WHEREAS, The MSA requires the Tribe to grant a limited waiver of sovereign immunity in regard to disputes arising under or in connection with the MSA, to consent to jurisdiction of Approved Courts and Arbitration, as specifically provided for in the Agreement.

NOW, THEREFORE, The Tribal Council in meeting assembled this \_\_\_\_ day of \_\_\_\_\_ 2003, resolve as follows:

- (1) that the MSA is approved;
- (2) that the Chairperson or \_\_\_\_\_ of the Tribe, acting alone, is authorized to execute and deliver the MSA;
- (3) that the sovereign immunity of the Tribe is hereby waived with respect to any and all disputes arising under or in connection with the MSA and that the Tribe consents to the jurisdiction of the Approved Courts and Arbitration, as more specifically set forth in the MSA, and as quoted below;

#### Section 17. Submission to Jurisdiction.

(a) Approved Courts. "Approved Courts" means, collectively, the courts and other forums described below: (1) the Federal Courts of the United States sitting in the Eastern District of the State of California ("Federal Court"), and (2) if jurisdiction does not lie in the Federal Court, the Superior Court of the State of California for the County of San Bernardino ("Superior Court"), and (3) all appellate courts of the Federal Court and the Superior Court, as applicable ("Appellate Courts"), and (4) only as to claims, causes, actions, proceedings and any other matter other than enforcement of the rights and remedies of City under the MSA, arbitration proceedings administered by the American Arbitration Association ("AAA"), unless the parties mutually agree upon another administrator in accordance with the AAA Commercial Arbitration Rules ("Arbitration"). The parties agree that, except for actions, claims, proceedings and other litigation to enforce the rights and remedies of City under the MSA, the parties will first proceed to resolve disputes through an Arbitration proceeding. "Approved Court" does not include any Tribal Court or similar or related body of the Tribe. The Tribe expressly waives the right to initiate, prosecute, defend, or exhaust or require the exhaustion of any claims, causes, actions, proceedings or rights in any Tribal Court or other Tribunal of the

Tribe ("Tribal Court"), and will not assert or otherwise claim any such right in any action, proceeding, claim, counterclaim or other litigation arising out of or relating to any of the MSA or any of the transactions or events referenced in the MSA or contemplated by the MSA, whether with respect to contract claims, tort claims or any other claim for the enforcement of any rights of City under the MSA or otherwise, and whether initiated by City or Tribe. If, notwithstanding the above express, informed, authorized waiver, an Approved Court finds that City must first exhaust remedies in a Tribal Court, then Borrower expressly agrees that any issue or dispute which is determined adversely to City in a Tribal Court may be litigated de novo in an Approved Court. This requirement of de novo review is expressly intended to also waive any defense of res judicata or collateral estoppel in subsequent proceedings in Approved Courts or Arbitration, as applicable.

(b) CONSENT TO JURISDICTION. EACH OF THE TRIBE AND CITY HEREBY: (1) EXPRESSLY CONSENTS AND SUBMITS TO THE JURISDICTION OF THE APPROVED COURTS FOR THE PURPOSE OF ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THE MSA OR ANY OF THE TRANSACTIONS OR EVENTS REFERENCED IN THE MSA OR CONTEMPLATED BY THE MSA, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, FOR THE ENFORCEMENT OF ANY RIGHTS OF CITY UNDER THE MSA OR OTHERWISE, AND WHETHER INITIATED BY CITY OR TRIBE; (2) EXPRESSLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, PROCEEDING, CLAIM, COUNTERCLAIM OR OTHER LITIGATION MAY BE HEARD AND DETERMINED IN THE APPROVED COURTS; (3) IRREVOCABLY AND EXPRESSLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY OBJECTION OR DEFENSE WHICH IT PREVIOUSLY, NOW OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY OF THE APPROVED COURTS (EXCEPT PURSUANT TO THE CONDITIONS SET FORTH IN THE DEFINITION OF "APPROVED COURTS"), AND ANY OBJECTION OR DEFENSE ON THE GROUND THAT ANY SUCH ACTION OR PROCEEDING IN ANY APPROVED COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; AND (D) AGREES THAT ANY ORDER, RULING AND/OR FINAL JUDGMENT OR DECREE IN ANY SUCH ACTION OR PROCEEDING SHALL BE ENFORCEABLE AND CONCLUSIVE, AND MAY BE ENFORCED IN STATE COURT, FEDERAL COURT AND/OR APPELLATE COURTS, AS APPLICABLE, BY SUIT ON THE JUDGMENT OR DECREE OR IN ANY OTHER MANNER PERMITTED BY LAW.

Section 18. WAIVER OF JURY TRIAL. EACH OF THE TRIBE AND CITY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THE MSA OR ANY OF THE TRANSACTIONS OR EVENTS REFERENCED IN THE MSA OR CONTEMPLATED BY THE MSA, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR ANY OTHER CLAIM FOR THE ENFORCEMENT OF ANY RIGHTS

OF CITY OR TRIBE UNDER THE MSA OR OTHERWISE, AND WHETHER INITIATED BY CITY OR TRIBE. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THE MSA. A COPY OF THIS SECTION MAY BE FILED WITH ANY APPROVED COURT AS WRITTEN EVIDENCE OF THE WAIVER OF THE RIGHT TO TRIAL BY JURY AND THE CONSENT TO TRIAL BY THE APPROVED COURT, AND IT IS AGREED THAT SUCH EVIDENCE IS ADMISSIBLE AND DISPOSITIVE OF THE ISSUE OF THE RIGHT TO TRIAL BY JURY.

Section 19. LIMITED WAIVER OF SOVEREIGN IMMUNITY. THE TRIBE HEREBY KNOWINGLY, EXPRESSLY AND UNCONDITIONALLY WAIVES SOVEREIGN IMMUNITY IN ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THE MSA OR ANY OF THE TRANSACTIONS OR EVENTS REFERENCED IN THE MSA OR CONTEMPLATED BY THE MSA, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR ANY OTHER CLAIM FOR THE ENFORCEMENT OF ANY RIGHTS OF CITY UNDER THE MSA OR OTHERWISE, AND WHETHER INITIATED BY CITY OR TRIBE. THIS LIMITED WAIVER OF SOVEREIGN IMMUNITY EXPRESSLY AND SPECIFICALLY APPLIES TO ALL CLAIMS, COUNTERCLAIMS, ACTIONS OR PROCEEDINGS IN EVERY AND ALL APPROVED COURTS AND TO THE WAIVER OF JURY TRIAL AND CONSENT TO JURISDICTION SET FORTH ELSEWHERE HEREIN. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THE MSA. THIS LIMITED WAIVER OF SOVEREIGN IMMUNITY AND CONSENT TO JURISDICTION TO THE APPROVED COURTS HAS BEEN GRANTED AND AUTHORIZED PURSUANT TO A DULY AUTHORIZED AND ENACTED ORDINANCE OR RESOLUTION BY THE TRIBAL COUNCIL OF THE TRIBE.

#### CERTIFICATION

The foregoing resolution was adopted this \_\_\_\_ day of \_\_\_\_\_, 2003, at a duly called meeting held by the Tribal Council of the Timbisha Shoshone Tribe, by a vote of \_\_\_\_\_ in favor, \_\_\_\_\_ opposed and \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Secretary of the Tribal Council

## EXHIBIT "D"

August 25, 2003

Gale Norton, Director  
Department of the Interior

Director Norton:

It is with great pleasure that I, on behalf of the City Council of the City of Hesperia, California, submit this letter supporting the Timbisha Shoshone Tribe's request to take land into trust. The City and the Tribe have worked together on a Municipal Services Agreement that we believe will benefit both parties.

Prior to our support, the City requested an independent survey of our community to assess public support. In finding strong community support, the City Council conducted public meetings on August 4 and August 18, 2003, and a special City Council meeting on August 25, 2003. During this process, both opposition and supporters were given the opportunity to express their opinions, and all opinions were considered.

After reviewing all of the verbal and written testimony, the City Council has determined that the Municipal Services Agreement mitigates the potential adverse impacts that could be caused by proposed development and provides considerable economic incentives that will benefit residents throughout the City. As Mayor of the City of Hesperia, California, I respectfully request your favorable consideration of the Timbisha Tribe's application.

If you have any questions regarding this letter, please contact me at (760) 947-1030.

Sincerely,

Dennis J. Nowicki  
Mayor