

Approvals
City Attorney
Director of Finance
City Manager



**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council
FROM: Peter Thorson, City Attorney
DATE: March 9, 2010
SUBJECT: Approval of Intergovernmental Agreements with the Pechanga Band of Luiseño Indians for the Mitigation of Off-Reservation Impacts from the Pechanga Gaming Center Pursuant to the Tribal State Compact Between the Pechanga Band of Luiseño Indians and the State of California

PREPARED BY: Peter Thorson, City Attorney

RECOMMENDATION: That the City Council:

1. Adopt a resolution entitled:

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA APPROVING THE "INTERGOVERNMENTAL AGREEMENT" BETWEEN THE PECHANGA BAND OF LUISEÑO INDIANS AND THE CITY AND APPROVING THE "MEMORANDUM OF UNDERSTANDING CONCERNING LAW ENFORCEMENT SERVICES AT PECHANGA CASINO" BETWEEN THE PECHANGA BAND OF LUISEÑO INDIANS, CITY, COUNTY OF RIVERSIDE AND THE SHERIFF OF THE COUNTY OF RIVERSIDE

BACKGROUND: The Pechanga Band of Luiseño Indians ("Tribe") is a federally-recognized Indian Tribe located on federal Trust Lands just south of the City boundaries. The Tribe has inhabited the Temecula Valley for more than 10,000 years (or according to Tribal history and culture, since time immemorial). The Pechanga Indian Reservation was established by Executive Order of the President of the United States on June 27, 1882, affirming the Tribe's sovereignty and land-base.

Under the federal Indian Gaming Regulatory Act ("IGRA"), the Tribe may engage in gaming as a means of promoting Tribal economic development, self-sufficiency and strong Tribal government. IGRA generally requires that Class III gaming (Las Vegas style) be conducted pursuant to a Tribal-State Class III gaming compact.

On September 10, 1999, and effective in May, 2000, the Tribe entered into a gaming compact with the State of California, as contemplated under IGRA ("1999 Compact").

In August 2006, the Legislature amended the 1999 Compact. This amendment was approved by the voters in the State of California at a referendum election in February 2008 and effective in March 2008 (the Amended Compact").

The original 1999 Compact authorized the Tribe to have 2,000 of the Class III (Las Vegas style) gaming devices in the Casino plus additional 1,600 Class II (bingo style) gaming devices. Under the 1999 Compact and the 2003 Tribal environmental study, the Tribe successfully developed a gaming center that includes: (1) an approximately 200,000 square foot casino; (2) seven restaurants and related amenities; (3) a thirteen story 522-room hotel; (4) three parking structures plus surface parking that in total can accommodate at least 8,567 cars, recreation vehicles (RVs), buses; (5) administrative, regulatory, maintenance and service structures; and (6) common areas related to these facilities.

The Tribe has assisted the City in obtaining approximately \$6 million for the much needed bridge improvements on Pechanga Parkway over Temecula Creek and has provided \$8 million of its own money toward off-reservation road improvements on Pechanga Parkway and Temecula Parkway. The City used these road funds along with its developer impact fees and other funding sources to widen Pechanga Parkway from Temecula Parkway to the Casino.

The casino, hotel and restaurants has provided over 5,000 jobs to the Tribe and the community as a whole. In addition to the casino, hotel and restaurants, which have become a major tourist attraction and bring millions of dollars into the local community, the Tribe has successfully developed on its lands other economic development or governmental projects that service the Tribe and the community, including a convenience store, golf course, cultural center, museum, gas station, car wash and RV park.

The Amended Compact authorizes the Tribe to provide up to 7,500 of the Class III gaming devices. Recognizing the potential off-reservation impacts of an expansion of the gaming, Section 10.8.8 of the Amended Compact requires that the Tribe enter into "intergovernmental agreements" with cities and counties affected by the gaming operations of the tribe. The Tribe now has approximately 4,200 gaming machines in the casino. Staff has been working with Tribal representatives to develop the mitigation measures described in the Intergovernmental Agreement and the Law Enforcement MOU in order to fulfill the mandates of the Amended Compact.

SUMMARY OF TERMS OF THE INTERGOVERNMENTAL AGREEMENT:

1. **Term.** The term of the agreement would be 21 years, ending December 31, 2030 (§ 13.8).

2. **Number of Slot Machines.** The Tribe is authorized under the 2008 Amendment to the Compact to have 7,500 gaming devices (slot machines) at the Casino. Under the Intergovernmental Agreement, the Tribe agrees that the total number of gaming devices would not be more than 5,000. If the Tribe wants to add more gaming devices, the Tribe would be required to follow the Expansion/Tribal EIR procedures provided in the Agreement and explained in section 6 of this Summary. (§§ 2.10; 2.12; and 3.4.b.).

3. **Mitigation Fee.** The Tribe agrees to pay \$2 million per fiscal year to the City for 5 years to mitigate traffic, public safety or any other impacts as determined by the City (§ 3.4.a.). Beginning in year 6, the Tribe will pay \$2 million per fiscal year plus a CPI annual adjustment for the remainder of the 21 year term (§ 3.4.a.i.B.).

A. Any SDF Payment to the City would be credited against this amount. “SDF Payment” means monies received by the City from the State Distribution Fund that was created under State law pursuant to the Original Compact and into which the Tribe made contributions prior to the Compact’s amendment in 2008 or other tribal gaming funds distributed to the cities by the Legislature.

B. As part of this Mitigation Fee, the City will agree to cover the County’s public safety responsibilities at the casino and hotel. The County will still respond to calls on the Reservation. The City agrees to fund the Sheriff’s response to calls for law enforcement service at the Gaming Center and the patrol of the zones of the City closest to the Gaming Center. The public safety responsibilities will be documented in Section 3.6 of the Intergovernmental Agreement and in Section 3.5 of the Law Enforcement MOU between the City, Tribe, County and the Sheriff.

C. Payment of the Mitigation Fee and the I-15/SR-79 South Interchange fee will be the full amount of mitigation the City is entitled to for the impacts of the existing casino and hotel and up to 5,000 slot machines.

4. **Special Fee for Interchange.** Further, the Tribe will commit to pay \$10 million to the City within the next five years for the ultimate I-15/SR-79 South Interchange. If the Tribe is instrumental in obtaining federal or state grant funds to pay for this project, it will receive a credit equal to the amount they are able to obtain. If the Tribe is unsuccessful in obtaining grant funds by the end of the 5th year, they will pay City \$10 million for this project. If the Tribe is successful in obtaining only a portion of the \$10 million through grant funding, they will pay the City the difference between whatever grants are received and the \$10 million. (§ 3.4.a.iv.)

5. **Baseline Traffic Study.** A Baseline Traffic Study will be conducted at the beginning of the contract period to determine the current traffic impacts of the casino and hotel (§ 4.1). No other traffic studies will be made until either the Tribe proposes an Expansion or five years, whichever is earlier, but only if the City or the Tribe can demonstrate a 10% change from the Baseline Traffic Study. (§ 4.1.d.).

6. **Expansion and Future Tribal EIR/Mitigation Measures.** In the event the Tribe desires to undertake an Expansion of the casino or hotel or both (as specifically defined), the Tribe will be required to: (1) prepare a Tribal EIR; (2) provide notice to the City of the preparation of the Tribal EIR; (3) provide an opportunity for the City to comment on the Tribal EIR and the proposed mitigation measures; and (4) negotiate appropriate mitigation measures with the City (§ 4.2).

A. The City and the Tribe are specifically required to negotiate in good faith as to: (1) whether the Mitigation Fees are adequate to mitigate the impacts of the proposed Expansion; (2) determine whether additional mitigation measures are needed to mitigate the impacts of the proposed Expansion; and (3) reasonably adjust the future Mitigation Fees remaining during the Term to or add additional measures to mitigate the proposed Expansion (§ 3.4.b).

B. Any additional mitigation fees would be consistent with mitigation requirements imposed on developers to the extent they are based on the actual generation of comparable increases in traffic over that described in the Baseline Traffic Study (§ 4.1.g).

C. Any failure to reach agreement following such good faith negotiations shall be subject to the arbitration provisions of the Agreement (§§ 3.4.b., 4.6 and 4.5).

D. The term “**Expansion**” is defined in Section 2.10 to mean: “. . . any increase in the number of Gaming Devices within the existing footprint of the Gaming Center beyond five thousand (5,000), or any increase exceeding ten percent (10 %) or more of the existing footprint or height of the buildings or structures within the Gaming Center, provided that alterations, renovations, maintenance, refurbishments, improvements, changes in configurations or uses, construction, or reconstruction, within the footprint or height of the Gaming Center, or improvements to the spa, porte cochere, surface parking, walkways, pool and common areas that serve or are within the Gaming Center, shall not be deemed to be an Expansion.”

E. The term “**Gaming Center**” is defined in Section 2.12 to mean: “. . . the present gaming facility and hotel located on the Reservation and consisting of approximately two hundred thousand (200,000+) square feet of gaming space plus back of the house and administrative offices and facilities that can accommodate various gaming and casino activities, including up to five thousand (5,000) Gaming Devices, employee rooms, offices and related space; a thirteen story hotel with five hundred twenty-two (522) guest rooms and supporting kitchens, offices, retail, housekeeping, telecommunications and other utility facilities; maintenance and storage spaces; convention, ballroom, classroom and meeting spaces; restaurants, bars, food courts, night clubs, retail spaces, lounges, regulatory, public safety, surveillance and guest services amenities and facilities; a one thousand two hundred (1200) seat theater; swimming and Jacuzzi pools, porte cocheres, and spa facilities and related areas located outside the hotel; surface parking and three parking structures for buses, trucks, SUVs and similar vehicles and automobiles, that can accommodate approximately eight thousand six hundred (8600) vehicles; and related common areas, roadways, sidewalks, storage and administrative facilities; all of which primarily serve the Gaming Center.”

7. **Government to Government Cooperation.** The City and Tribe agree to promote a strong government-to-government agreement that commits each government to maintain open lines of communication (§ 3.7).

8. **Dispute Resolution.** The City and Tribe agree to resolve any disputes that arise under the Agreement through a two step process: 1) meet and confer in good faith in an effort to resolve the dispute, using a mediator if agreed to by the parties; and 2) if the dispute is not resolved through the meet and confer process, then it would be resolved by binding arbitration before a retired federal or state court judge. If the dispute concerns a Tribal EIR the arbitrator shall be a retired judge with experience in California Environmental Quality Act matters. The arbitrator would have authority to impose such mitigation measures as are described in the TEIR, the comments of the City or other persons concerning the TEIR, and such other mitigation measures as are reasonably necessary and feasible to mitigate the significant effects on the environment, but in accordance with the limitations in the Agreement. An award or order could be appealed to an appellate panel of arbitrators (§§ 7 and 8).

9. **Sovereign Immunity.** The City and the Tribe agree to waive governmental immunities, including the Tribe's sovereign immunity, in connection with any claims arising from the Agreement (§ 11).

SUMMARY OF TERMS OF THE MEMORANDUM OF UNDERSTANDING CONCERNING LAW ENFORCEMENT SERVICES AT PECHANGA CASINO:

1. **Parties.** The Memorandum of Understanding Concerning Law Enforcement Services at Pechanga Casino ("Law Enforcement MOU") is an agreement between the Tribe, City, County of Riverside ("County" and the Sheriff of Riverside County ("Sheriff").

2. **Duties of Law Enforcement Parties.** The Law Enforcement MOU recognizes the respective law enforcement duties of the Sheriff and the Tribe's public safety officers and their respective duties and authority under federal and state law. The MOU continues the cooperation of the respective law enforcement organizations and provide the framework for on-going cooperative law enforcement efforts (§ 1.A.).

3. **Mitigation Fees to Fund Law Enforcement.** In consideration of the Mitigation Fee described in the Intergovernmental Agreement, the City agrees to fund the Sheriff's response to calls for law enforcement service at the Gaming Center and the patrol of the zones of the City closest to the Gaming Center (§ 1.B.).

4. **Assignment of Deputy.** The Sheriff will assign one Sheriff's deputy on each shift to patrol in the patrol zone of the City closest to the Gaming Center and to be the deputy assigned to respond to calls for law enforcement services at the Gaming Center and to patrol the zones closest to the Gaming Center (§ 1.C.).

A. The assigned deputy and other deputies shall not engage in random self-initiated patrols at the Gaming Center or on the Reservation but will only respond to calls for service at the Gaming Center as well as such further law enforcement actions as are required for these calls for service, such as active investigation and follow-up investigation of crimes reported to the Sheriff or other law enforcement agencies, searches for suspects and similar actions necessary for carrying out its law enforcement responsibilities with respect to such calls for service (§ 1.C.1)).

B. The assigned deputy shall wear a "Riverside County Sheriff's" patch and drive a marked police vehicle with the "Riverside County Sheriff's" seal, provided that if an emergency response is required, any other deputies or Sheriff's vehicles may provide service (§ 1.C.3)).

C. The Sheriff shall not be expected to provide gaming security or enforce tribal laws (§ 1.G.).

5. **Dispute Resolution and Sovereign Immunity.** The Law Enforcement MOU contains the same dispute resolution and sovereign immunity provisions as are in the Intergovernmental Agreement (§§ 2 and 4).

6. **Indemnification.** The parties each agree to defend, indemnify and hold the others harmless from liabilities arising from their activities under the Law Enforcement MOU (§ 5).

DISCUSSION

The Intergovernmental Agreement is an important and mutually beneficial means for furthering the government-to-government relationship between the Parties and in building trust, mutual respect, good will and cooperation for the benefit of the entire community.

The mitigation funding described in the Intergovernmental Agreement will enable the City to provide additional traffic improvements for the southwestern portion of the City to accommodate traffic from the Gaming Center and to provide necessary law enforcement services in this area.

The Intergovernmental Agreement also provides the final funding link for the I-15/SR-79 South Interchange. This interchange will substantially improve the flow of vehicles on and off of the I-15 to the Gaming Center.

Further, the Intergovernmental Agreement is intended to provide the Tribe and City with

greater certainty concerning future planning and development activities. The Intergovernmental Agreement clearly spells out the processes for the review any Expansion of the casino, restaurants and hotel and the framework for development of appropriate mitigation measures that would be needed for an Expansion.

FISCAL IMPACT: The proposed Mitigation Fee will generate a minimum of \$42 million over the term of the Intergovernmental Agreement, less any SDF money received by the City from the state, but with CPI increases each year beginning in the sixth year. Additionally, the City will receive \$10 million towards the I-15/SR79 South Interchange either from grants secured by the Tribe or from Tribal funds. The total funds available to the City over the term of the Intergovernmental Agreement would be \$52 million with a rough estimate of an additional \$13 million in CPI increases for years six to 21.

- ATTACHMENTS:**
1. Resolution No. 10-____
 2. Intergovernmental Agreement
 3. Law Enforcement MOU