

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

137



**FROM:** Stanley L. Sniff Jr., Sheriff-Coroner-PA

**SUBMITTAL DATE:**  
10/06/11

**SUBJECT:** Approval of a Memorandum of Understanding for the Provision of Law Enforcement Services with the Soboba Band of Luiseno Indians

**RECOMMENDED MOTION:** Move that the Board of Supervisor approve the Memorandum of Understanding (MOU) for law enforcement services with the Soboba Band of Luiseno Indians, and authorize the Chairperson of the Board to execute all copies of the MOU on behalf of the County.

**BACKGROUND:** The Soboba Band of Luiseno Indians (the Tribe) proposes to relocate its existing casino to a 55 acre site, bordered by Lake Park Drive and Soboba Road in San Jacinto, and to develop a 300-room hotel, restaurants, retail establishments, a convention center, an events arena and a spa and fitness center within a 729,500± square-foot complex, as well as a fire station, and a 12-pump gas station with a 6,000 square-foot convenience store (collectively known as the Horseshoe Grande Development).  
(Continued on Page 2)

*Will Taylor*  
Stanley L. Sniff Jr., Sheriff-Coroner-PA  
Will Taylor, Director Of Administration

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	FY 2011-12

<b>SOURCE OF FUNDS:</b> Contract City Law Enforcement Revenue BR 12-038	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Robert Tremaine*  
Robert Tremaine

**County Executive Office Signature**

- Policy
- Policy
- Consent
- Consent

FORM APPROVED COUNTY COUNSEL  
 BY: NEAL R. KIPNIS  
 DATE: 10/2/11  
 ATTACHMENTS FILED WITH THE CLERK OF THE BOARD  
 Departmental Concurrence

Dept's Recomm.:  
Per Exec. Ofc.:

3.32

The Tribe, through its Attorney, approached the Sheriff's Department to request that the Department propose a level of law enforcement service that would mitigate the impacts of the Horseshoe Grande Development to surrounding neighborhoods. With the assistance of County Counsel, the Department drafted an MOU for a phased implementation of service, which would start with one Deputy at development groundbreaking and gradually increase until it reached the level of five Deputies (the equivalent of one Deputy Sheriff around-the-clock) and one Community Services Officer II at the grand opening of the development. The Department will seek Board approval to add position control numbers for this service approximately 120 days prior to the scheduled groundbreaking.

As of this writing, the Department has not been notified of a groundbreaking date for the development, so budget adjustments are not recommended this fiscal year. Conservatively, a full year of service cost with the full complement of personnel is currently estimated at \$1,123,000. All costs for this service will be fully recovered through Board-approved rates.

**HORSESHOE GRANDE DEVELOPMENT IMPACT MITIGATION  
MEMORANDUM OF UNDERSTANDING FOR LAW ENFORCEMENT SERVICES  
BETWEEN THE SOBOBA BAND OF LUISEÑO INDIANS  
AND THE COUNTY OF RIVERSIDE**

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and entered into by and between the SOBOBA BAND OF LUISEÑO INDIANS, a federally recognized Indian tribe (hereinafter "the Tribe") and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, on behalf of the Riverside County Sheriff's Department (hereinafter "the County").

**WHEREAS**, the Tribe has requested the Bureau of Indian Affairs to acquire in trust approximately 535 acres of land in Riverside County currently held in fee by the Tribe, of which the Tribe proposes to develop approximately 55 acres, bordered by Lake Park Drive and Soboba Road, into a destination hotel/casino complex (as reflected in the May 2009 Executive Summary of the Horseshoe Grande Fee-to-Trust Project Draft Environmental Impact Study proposed by the Soboba Band of Luiseño Indians, page ES-1); and,

**WHEREAS**, the Tribe proposes to relocate its existing casino to the project site and to develop a 300-room hotel, restaurants, retail establishments, a convention center, an events arena and a spa and fitness center within a 729,500± square-foot complex, as well as a fire station, and a 12-pump gas station with a 6,000 square-foot convenience store ("Development"); and,

**WHEREAS**, as a matter of federal law, pursuant to Public Law 280 most state criminal laws continue to apply in Indian country, including the Tribe's Development, and the State retains jurisdiction over the enforcement of those laws; and,

**WHEREAS**, the County, through its Sheriff's Department, projects that law enforcement needs generated by the Development will require an additional full-time deputy over a 24-hour time period, which equates to five sworn deputy positions and one non-sworn Community Service Officer ("New Positions"), the cost of which the Tribe will reimburse the County.

**NOW THEREFORE**, the Tribe and the County hereby agree as follows:

**1. PURPOSE**

The Tribe agrees that its proposed Development will have an impact on law enforcement services provided by the County. To mitigate this impact, the Tribe and County have set forth in this MOU the law enforcement services which shall be implemented by the Sheriff upon initiation of construction and the opening of the Development facilities. The parties agree that the undertakings set forth in this Agreement fully and completely address to

the satisfaction of the County the Development's projected impacts upon law enforcement services.

## **2. TERM**

2.1 Effective Dates. This MOU shall be effective from \_\_\_\_\_, 2011, through the end of the fifth full year following the grand opening of the Development.

2.2 Termination. Notwithstanding Paragraph 2.1 above, either party may terminate this MOU upon sixty (60) days notice in writing to the other party if the other party is in breach of its obligations under this MOU.

2.3 Implementation. One officer shall begin no later than fourteen (14) days prior to the groundbreaking; two additional officers no later than at the sixty percent (60%) completion date; and the final two officers and the Community Service Officer upon the grand opening of the Development.

## **3. SCOPE OF SERVICE**

3.1 Sheriff agrees to utilize the New Positions to address additional law enforcement needs generated by the Development at the service level detailed in Attachment A. This service shall be provided to the Development and surrounding area. As of the date of MOU execution, this service level is the minimum level expected. Sheriff agrees to initiate this service incrementally if the Development facilities are opened in phases. Sheriff also agrees to provide all investigative support necessary to complete investigations conducted hereunder.

3.2 Sheriff shall have authority to enforce only those state laws applicable under P.L. 280 on the trust land, in the same manner and to the same extent as the Sheriff has such jurisdiction elsewhere in the County. Sheriff may enter the Development facilities in accordance with state law procedures in performance of the services hereunder. The Tribe shall allow Sheriff access to the Development without interference and unnecessary delay, and without Tribal escort. The Tribe and Sheriff shall cooperate in good faith to develop protocols for coordination with Tribal casino security and Tribal law enforcement of Sheriff's officers entering the Development.

3.3 Ninety (90) days prior to each anniversary of the date when the first New Position was filled, Sheriff or a designated representative shall meet and confer in good faith with the Tribe or its designated representative regarding staffing levels and costs for the coming year, and the amount payable by the Tribe to the County shall be adjusted accordingly as agreed upon by the parties. The adjusted amount shall be based upon: (a) actual costs for the prior year's calls for service; (b) a future workload analysis based on historic calls for service related to the Development; (c) the impact of Tribal casino security and law enforcement on the level of services required; and, (d) any proposed changes to or expansion of the development contemplated for the upcoming year.

3.4 In performing the services required by this MOU, Sheriff agrees to use that degree of care and skill ordinarily exercised under similar circumstances by law enforcement officers.

#### **4. PROVISION OF SUPERVISION, LABOR, AND EQUIPMENT**

4.1 Supervision. Supervision over the rendition of law enforcement services, the standards of performance, the discipline of officers, and other matters incident to the performance of such services and the control of personnel so employed shall remain with Sheriff.

4.2 Labor and Equipment. For the purpose of performing services, Sheriff shall furnish and supply all labor, supervision, equipment, and supplies necessary to maintain the level of service to be rendered hereunder. Location of the above will not necessarily be in the service area.

#### **5. COMPENSATION**

5.1 Payment Basis. Upon commencement of services, the Tribe shall reimburse Sheriff the cost of the New Positions at rates established periodically by the County Board of Supervisors, which rates shall include all items of cost and expense to the Sheriff for providing the services hereunder. Such cost of services shall be established in the form of hourly rates for Sheriff's Department personnel and vehicle mileage rates. "Cost" as used herein shall not include items of expense attributable to services or facilities normally provided or available to all territory within the County as part of the County's obligation to enforce state law.

Pursuant to Government Code Section 51350, County shall not charge the Tribe for services it would provide to any jurisdiction in the County free of charge. These services, which are provided at the discretion of County, could typically include the services of the Sheriff's Special Investigations Bureau, Emergency Services Team, Canine Unit and Aviation Unit.

5.2 Establishment of Costs. In FY 2011-12, the total service cost to the Tribe is estimated to be \$1,123,000. The rates to be charged the Tribe shall be adjusted periodically, but not more than once each fiscal year, to reflect any changes in the cost to the County for providing services hereunder. The Tribe shall be notified of any change in the rates to be charged to the Tribe, and the Tribe shall be given the opportunity to review the proposed change with County personnel, prior to submittal of the proposed change to the County Board of Supervisors for adoption. The Tribe shall be notified of adoption by the County of the rates to be charged, and said new rates shall take effect on the same date as the County incurs the associated costs.

5.3 Payment of Costs. The Tribe shall provide initial funding for phasing in the New Positions per the three development milestones specified in Section 2.3. No later than (a)

fourteen (14) days prior to the groundbreaking, (b) sixty percent (60%) completion, and (c) grand opening of the Development, the Tribe shall deposit with an escrow agent acceptable to the County an amount equal to the estimated cost for the provision of that level of service for the remainder of the fiscal year ending June 30<sup>th</sup>. The escrow agent shall be instructed to release the funds to the County per the Sheriff's contract billing schedule. Within 30 days of the conclusion of each calendar month, the County will present a bill to the escrow agent for services rendered. Further, per Section 5.2, the County shall submit an annual bill to the escrow agent, reflecting the Board-approved rate adjustments. The escrow agent shall remit payment to the County within 30 days after receipt of such statements.

## **6. LIMITED WAIVER OF SOVEREIGN IMMUNITY**

6.1 The Tribe hereby grants a limited waiver of its sovereign immunity from unconsented suits (hereinafter "limited waiver") as described herein solely for actions brought by the County, but not brought by any other person or entity, requesting specific performance against the Tribe to enforce the terms of this MOU. This limited waiver is to be strictly construed in favor of the Tribe and may be enforced only under the conditions and procedures set forth herein.

6.2 Meet and Confer. Prior to instituting an action hereunder, the County must first raise the matter in dispute for which it is seeking specific performance with the Tribal Council of the Tribe by requesting that a Meet and Confer be held. This notice shall be in writing and shall set the Meet and Confer for a time at least twenty-one days after the notice is delivered, and shall state the location for the meeting, which shall be held on the Development. The County and the Tribe may jointly decide to meet at another time and place. Attendees at the Meet and Confer shall have sufficient authority to resolve the matter at issue. Meet and Confer sessions shall be private. The parties agree to maintain the confidentiality of the Meet and Confer and shall not rely on, or introduce as evidence in any judicial or other proceeding: (a) views expressed or suggestions made by the other party with respect to a possible settlement of the dispute; (b) admissions made by the other party during Meet and Confer; (c) proposals made or views expressed; or (d) the fact that the other party had or had not indicated a willingness to accept a proposal. This section shall apply to anything communicated, exchanged, said, done or occurring in the course of the Meet and Confer. The Meet and Confer is to be considered a settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during a Meet and Confer by any party or a party's agent, representative, employee or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with the Meet and Confer.

6.3 Claims for Specific Performance. An action for specific performance, if any, may

only be brought by the County after a Meet and Confer is held, following the procedures set forth in subsection 6.2 above. No causes of action or claims in law or in equity are cognizable against the Tribe except actions against the Tribe itself for specific performance of this MOU (namely, the payments required of the Tribe under the MOU). No actual, consequential, punitive or other damages of any kind suffered by the County may be sought hereunder. The source of any specific performance award to be paid by the Tribe shall be limited to the general revenues of the Tribe and shall specifically exclude any funds from a federal, state, tribal or other governmental grant or contract, and shall further exclude any trust assets of the Tribe, any assets of its business enterprises, or those funds set aside for per capita distribution to Tribal members. This limited waiver does not allow any actions to be brought against Tribal council members, Tribal employees, Tribal agents, Tribal members, attorneys for the Tribe or any other individual acting on behalf of the Tribe.

Any cause of action or claim brought pursuant to this limited waiver shall be submitted for hearing in the State or Federal courts located in Riverside County. The parties specifically agree that the applicable court shall have jurisdiction to enter judgments enforcing the rights and remedies provided for in this MOU which shall be binding and enforceable on the parties, subject to the limitations set forth in this MOU. No party to this MOU shall contest jurisdiction or venue of the above-referenced courts, but only for claims or controversies arising from this MOU. Neither the County nor the Band shall plead or invoke the doctrine of exhaustion of Tribal or other administrative remedies, defenses of immunity or indispensable parties beyond those contemplated in this Agreement.

## **7. GENERAL**

7.1 The persons signing this MOU warrant and represent that: (i) they have the full power to enter into this MOU on behalf of the parties; (ii) each party is entitled to conduct business as described herein; (iii) all actions and approvals have been taken which are necessary to make this MOU a binding and enforceable obligation of each party; and (iv) they are fully authorized to execute this MOU. Opinions from counsel representing the County and the Tribe confirming that their respective clients have validly approved this MOU will be delivered to the other party with the executed copy of this MOU.

7.2 Any notices required or desired to be served by either party upon the other shall be addressed to the respective parties as set forth below and shall be deemed received upon personal service, fax receipt, or 72 hours after deposit in the U.S. mail, 1<sup>st</sup> class, postage paid:

County  
Stanley L. Sniff Jr., Sheriff  
Riverside County Sheriff's Department  
Post Office Box 512  
Riverside, California 92502

Tribe  
Soboba Tribe of Luiseño Indians  
P.O. Box 487  
San Jacinto, California 92581  
Attn: Chairman

## **ATTACHMENT A**

### **LEVEL OF MITIGATING LAW ENFORCEMENT SERVICE TO BE PROVIDED FOR THE CASINO/HOTEL FACILITIES KNOWN COLLECTIVELY AS THE HORSESHOE GRANDE PROJECT AND THE SURROUNDING AREA**

#### Average Patrol Services

24.4 supported hours per day (Approximate equivalent of five (5) Deputy Sheriff positions @ 1,780 annual productive hours per position).

#### Dedicated Positions

One (1) Community Services Officer II position



7.3 Any modification to this MOU must be in the form of a written amendment.

7.4 Unless otherwise stated, this MOU shall be construed under the laws of the State of California. In the event any action or proceeding is filed to interpret, enforce, challenge, or invalidate any term of this MOU, venue shall lie only in the State or federal courts located in Riverside County.

The undersigned hereby agree to each of the provisions of the foregoing Memorandum of Understanding:

SOBOBA BAND OF LUISEÑO INDIANS

Dated: 10/23/11

By: Scott Cozart  
Scott Cozart, Chairman

COUNTY OF RIVERSIDE

By: \_\_\_\_\_  
Stanley L. Sniff Jr., Sheriff-Coroner-PA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bob Buster, Chairman  
Riverside County Board of Supervisors

ATTEST:

Kecia Harper-Ihem  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

FORM APPROVED COUNTY COUNSEL  
BY: Neal R. Kipnis DATE 6/23/11