

**MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF HIGHLAND AND SAN
MANUEL BAND OF MISSION INDIANS FOR IMPLEMENTATION OF THE
PROJECT APPROVAL/ENVIRONMENTAL DOCUMENT PHASE OF THE
VICTORIA AVENUE INTERCHANGE PROJECT**

This Memorandum of Understanding (“MOU”) is made and entered into as of the date the last party executes this Agreement by and between City of Highland (“**Highland**”) and San Manuel Band of Mission Indians (“**SMBMI**”), hereinafter collectively referred to as “**Parties**” or individually as a “**Party**.”

RECITALS

WHEREAS, in April 2011, Caltrans completed a Project Study Report/Project Development Support to evaluate the feasibility of constructing a new interchange within Highland on SR-210 at Victoria Avenue (“**Victoria Avenue Interchange**”); and

WHEREAS, in January 2014, San Bernardino County Transportation Authority, under contract with Highland, completed a Feasibility Study to perform additional traffic operational analysis and alternatives evaluation of the new Victoria Avenue Interchange; and

WHEREAS, construction of a new Victoria Avenue Interchange on SR-210 will help relieve traffic congestion on the SR-210 freeway mainline and improve regional traffic circulation; and

WHEREAS, the next development phase of the Victoria Avenue Interchange, Project Approval/Environmental Document (“**PAED**”), is hereinafter referred to as “**Project**;” and

WHEREAS, the parties intend for the Project to be reviewed pursuant to the National Environmental Policy Act (“**NEPA**”) and the California Environmental Quality Act (“**CEQA**”);

WHEREAS, the Indian Gaming Local Community Benefit Committee previously allocated \$1,000,000 in Indian Gaming Special Distribution Funds to Highland to be used on the Victoria Avenue Interchange, and Highland paid \$100,000 to San Bernardino County Transportation Authority for preparation of the Feasibility Study;

WHEREAS, the current Indian Gaming Special Distribution Fund balance is \$1,270,196.84 with such funds continuing to earn interest (the “**Balance**”); and

WHEREAS, the Parties agree that \$150,000 of the Balance will be retained by Highland to be used to reimburse Highland’s cost for review of the PAED and processing of CEQA (“**Highland Retention**”) and that the remainder of the Balance will be used to reimburse San Manuel for costs associated with the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises made herein, the Parties agree as follows:

- A. **Agreement.** San Manuel will be the applicant for the Project with Highland for CEQA review. San Manuel agrees to support Highland serving as the CEQA lead agency for the Project and Highland agrees that it is willing to serve as the CEQA lead agency.

- B. **Application Processing.** San Manuel expressly acknowledges that the Project shall be processed like any other project submitted to Highland as the CEQA lead agency, and that Highland shall exercise its independent judgment in processing the Project application.
- C. **Project Costs.** The Parties agree that Highland shall debit its costs for review of the PAED and processing of CEQA for the Project against the Highland Retention. The Parties further agree that Highland shall reimburse San Manuel for its Project costs up to the remainder of the Balance minus the Highland Retention within thirty (30) days upon submittal of an invoice for such Project costs.
- D. **Counterpart Signatures.** This Agreement may be signed in counterparts, each of which shall constitute an original.
- E. **Effective Date.** The effective date of this Agreement is the latest date when all members of the Parties have executed the Agreement.
- F. **Term.** This MOU shall terminate upon Project closeout.
- G. **Early Unilateral Termination.** This Agreement may be terminated upon 30 days written notice by any Party.
- H. **Incorporation of Recitals.** The Recitals to this Agreement are true and correct and are incorporated into this Agreement.
- I. **Signatory Authorization.** All signatories hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by executing this Agreement, the Parties hereto are formally bound to this Agreement.
- J. **Choice of Law.** Except on subjects preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California. All Parties agree to follow all applicable local, state, county and federal laws and ordinances with respect to performance under this Agreement.
- K. **Severability.** If any clause or provisions of this Agreement is fully and finally determined by a court of competent jurisdiction to be illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the illegal, invalid or unenforceable clause or provision shall be deemed severed from this Agreement and the remainder of this Agreement shall not be affected but shall remain in full force and effect.
- L. **Complete Agreement and Amendment.** This Agreement represents the complete integrated agreement between the parties as to the Project and cannot be amended or modified in any way except in writing, signed by all Parties hereto.
- M. **Assignment.** Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.

IN WITNESS THEREOF, this Agreement has been executed by the Parties hereto:

SIGNATURES ON FOLLOWING PAGE

City of Highland

San Manuel Band of Mission Indians

By: _____
Penny Lilburn, Mayor

By: _____
Laurens Vosloo, Chief Executive Officer

Date: _____

Date: _____

Approved as to form:

By: _____
Maricela E. Marroquin
City Attorney

By: _____
Michelle Hickey
VP Associate General Counsel

Date: _____

Date: _____