

SAN MANUEL BAND OF MISSION INDIANS/SBPD MEMORANDUM OF AGREEMENT

This San Manuel Band of Mission Indians/SBPD Memorandum of Agreement (this "Agreement") is entered into and made effective this January 1st, 2021 (the "Effective Date"), by and among the City of San Bernardino, a California municipal corporation (the "City"), and the San Manuel Band of Mission Indians, a federally recognized Indian tribe (the "Tribe"). The City and the Tribe may each individually be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Tribe and the City have previously entered into that certain Restricted Grant Agreement ("Grant Agreement") effective as of October 1, 2017, providing funding from the San Manuel Community Credit Fund in support of the City's police department, the San Bernardino Police Department ("SBPD"), to improve police visibility and public safety in the off-Reservation community surrounding the Tribe's reservation ("Reservation"); and

WHEREAS, the SBPD has previously provided and has expressed a willingness to provide supplemental policing, community and traffic control services in the areas surrounding the San Manuel Reservation, including the Highland Avenue corridor, and properties owned or operated by the Tribe or its affiliates and/or related entities within the City as more specifically described in Exhibit A hereto ("Service Areas"); and

WHEREAS, the Parties now wish to enter into an agreement in which the SBPD provides supplemental policing, community and traffic control services in the Service Areas as more specifically described in Exhibit B hereto ("Services") and additional services as requested by the Tribe and as more specifically described in Exhibit B hereto ("Additional Services") and the Tribe grants funding for the Services, Additional Services, and certain equipment as more specifically described in Exhibit C hereto ("Funding").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The SBPD shall provide the Services and Additional Services as more specifically described in Exhibit B in accordance with the provisions of this Agreement.
2. City and SBPD Representations and Warranties. For the duration of this Agreement, the City and SBPD represents and warrants and will ensure that:
 - (a) SBPD and its Officers (as hereinafter defined) will provide the Services and Additional Services in a professional manner to the best of their ability and consistent with all applicable federal, state and local laws and regulations. In performing the Services and Additional Services, SBPD shall provide and exercise no less than the standard of care, skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of like services. SBPD, in conjunction with its

personnel, may determine the method, manner, and means of performing the Services and Additional Services. The Tribe may not control the manner or determine the method of accomplishing such Services and Additional Services. Notwithstanding the foregoing, SBPD shall only be compensated pursuant to the terms set forth in this Agreement, including the terms regarding compensation.

- (b) SBPD shall provide at all times during the Term (as defined in Section 6) not less than four (4) Officers to be solely dedicated to the provision of Services and will operate in the Service Areas unless they are required to respond to a high priority call outside the Service Area.
- (c) At no time shall there be less than one (1) Officer dedicated to or available to perform the Services on shift within the Service Areas.
- (d) Representatives from SBPD and representatives from the Tribe's Department of Public Safety will engage in no less than weekly briefings to coordinate efforts related to performing the Services and Additional Services. Additionally, the SBPD's Captain of Patrol or their designee and the Vice President of the Tribe's Department of Public Safety or their designee shall have regular bi-monthly management meetings to discuss any challenges and recommendations related to performing the Services and any notice given by the Tribe for Additional Services.
- (e) SBPD personnel and SBPD Officers have and will maintain all equipment necessary and appropriate to provide the Services and Additional Services.
- (f) SBPD will maintain records of the hours spent in providing the Services and Additional Services, which records may be examined by representatives of the Tribe and will be provided promptly upon request.
- (g) City and SBPD have performed all acts precedent to the execution of this Agreement, including but not limited to matters of procedure and notice, and City has the full power and authority to execute this Agreement and perform its obligations and cause SBPD to perform its obligations in accordance with the Agreement's terms and conditions.
- (h) The representative executing this Agreement on behalf of the City is duly authorized to so execute and deliver the Agreement.

3. Tribe's Representations and Warranties.

- (a) The Tribe has performed all acts precedent to the execution of this Agreement, including but not limited to matters of procedure and notice and has the full power and authority to execute this Agreement and perform its obligations in accordance with its terms and conditions, and that the representative(s) executing this Agreement on its behalf is duly authorized to so execute and deliver the Agreement.

4. Personnel.

- (a) The personnel provided by the SBPD to fulfill the Services shall be sworn police officers of the SBPD (each an "Officer" and collectively the "Officers") that are trained to perform the Services. The personnel provided by the SBPD to fulfill the Additional Services shall be Officers or, to the extent sufficient numbers of Officers are unavailable, non-sworn personnel who are trained to perform the Additional Services. The SBPD shall notify each of its personnel providing the Services or Additional Services of their obligations and responsibilities under this Agreement and will remain liable for their compliance.
- (b) The SBPD shall maintain in full force and effect, all required governmental or professional licenses, credentials, authorizations, and approvals for itself, its facilities, equipment, Officers, personnel and employees necessary for the Services and Additional Services, as applicable.
- (c) SBPD will bear sole responsibility for payment of compensation to its personnel, including Officers who perform Services and personnel who perform Additional Services. SBPD will pay and report federal and state income tax withholding, social security taxes, and unemployment insurance applicable to all of its personnel as its employees. SBPD will bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which such personnel and Officers may be entitled and any cost of materials and expenses to perform the Services and Additional Services.
- (d) SBPD shall make every effort to provide Additional Services in a manner utilizing the most appropriate rank for the requested Additional Services while considering cost efficiencies.

5. Additional Services.

- (a) The Tribe shall have a right to, and SBPD shall provide, any Additional Services provided that the Tribe provides no less than seven (7) days' prior notice of the need for such Additional Services to SBPD outlining the scope of the Additional Services.
- (b) Notwithstanding Section 5(a), should SBPD be unable to perform any noticed Additional Services due to a lack of personnel, SBPD shall not be in breach of this Agreement provided (i) SBPD provides no less than three (3) days' prior notice of its inability to perform, or (ii) circumstances arise beyond SBPD's control, at which point SBPD will provide immediate notification to the Tribe and make all reasonable efforts to find additional competent personnel.

6. Term/Termination.

- (a) The term of this Agreement will be from the Effective Date through the date that is four (4) years following the Effective Date ("Term"). However, the indemnification obligations in Sections 9 and 10 hereof will survive any expiration or termination of this Agreement, along with any other provisions that by their nature are also intended to survive.
- (b) Either Party hereto may terminate this Agreement upon not less than fifteen (15) days' prior written notice to the other Party for failure on the part of the other Party to perform a material obligation hereunder to the detriment of the terminating Party that cannot be

cured or, if curable, is not cured to the non-terminating Party's satisfaction within three (3) business days, or for breach of a Party's representation or warranty made in this Agreement to the detriment of the terminating non-breaching Party.

- (c) Either Party may also terminate this Agreement for any reason or no reason whatsoever, in its sole discretion, upon six (6) months' prior written notice to the other Party.

7. SBPD Funding.

- (a) The Tribe shall provide Funding for the Services and Additional Services in accordance with Exhibit C hereto.
- (b) Both Parties agree that the Services and Additional Services provide a benefit to the surrounding community and the remaining funds for the Grant Agreement will be used to pay all invoices for Additional Services approved by the Tribe until such Grant Agreement funds are exhausted. Upon the exhaustion of the Grant Agreement funds, the Tribe will pay all invoices for Additional Services both approved by the Tribe and performed by the SBPD. The SBPD shall provide to the Tribe for approval a monthly invoice with a detailed listing of the Additional Services performed, including the personnel used to provide the Additional Services and the hours such personnel worked. The Tribe shall approve or object to such invoice within thirty (30) days following receipt of such invoice. Notwithstanding anything to the contrary, an invoice shall be deemed approved by the Tribe if the Tribe does not object within thirty (30) calendar days following receipt of such invoice.
- (c) The amounts invoiced for Additional Services shall be based upon the schedule of rates attached in Exhibit C hereto, which schedule may only be modified upon thirty (30) days' prior written notice and following the Tribe's written consent, not to be unreasonably withheld.
- (d) The Tribe shall also provide Funding toward the purchase of certain equipment to be utilized by SBPD in accordance with Exhibit C hereto.
- (e) Notwithstanding anything to the contrary, the Tribe may change the Services and Additional Services, including, but not limited to, increasing or decreasing the number of personnel needed to provide the Additional Services. In addition, the Tribe may suspend any requested Additional Services, upon 36 hours' notice and the Tribe shall only be responsible for compensation of those Additional Services requested and provided.
- (f) Following notice of Additional Services by the Tribe and upon the Tribe's request, the SBPD shall provide a reasonable total estimated cost for providing such Additional Services ("Estimate") and the actual cost of providing the Additional Services shall not exceed an amount equal to twenty percent (20%) of the Estimate without obtaining additional prior written approval from the Tribe.
- (g) Notwithstanding anything to the contrary in this Agreement, any increase in the number of Officers performing the Services is subject to the prior written consent of the Tribe at its sole discretion.

8. Signage.

- (a) SBPD shall create and install no less than twelve (12) signs of durable construction, at a size and in locations mutually agreed upon by the Parties within the Service Areas that state: "Law Enforcement for this neighborhood funded in part by the San Manuel Band of Mission Indians." SBPD shall submit in advance to Tribe the proposed designs, dimensions, and materials to be used for the signs for Tribe's timely written approval.
- (b) License. City and SBPD acknowledge and agree that Tribe is the owner of all right, title and interest in and to Tribe's name and logo (collectively its "Marks") and that SBPD's use of the Marks pursuant to this Agreement inures to the benefit of Tribe. Tribe hereby grants SBPD a non-exclusive and non-transferable license, without the right to sublicense, to use the Marks solely in connection with providing signage pursuant to this Agreement. SBPD shall have no rights in or to the Marks, except as expressly granted herein. Tribe expressly reserves to itself all rights in and to the Marks not expressly granted to SBPD pursuant to this Agreement. The manner and use of the Marks shall: (i) comply with all applicable laws, including those pertaining to false or deceptive advertising and intellectual property; (ii) not be in connection with any objectionable material (e.g., material that is defamatory, scandalous, pornographic, disparaging or illegal); and (iii) comply with all applicable Marks usage policies as may be communicated by Tribe to SBPD from time to time. Any use of the Marks shall clearly indicate Tribe's ownership of the Marks and SBPD shall not modify, obscure or delete such notices. All uses of the Marks by SBPD are subject to the prior written approval of Tribe. In no event shall SBPD make any unapproved changes to the Marks. Tribe reserves the right in its sole discretion to terminate this license at any time or modify SBPD's permission to display the Marks, and to take action against any use that does not conform to this Agreement, infringes any of Tribe's intellectual property or other rights, or violates applicable law.
- (c) Upon termination of this Agreement, any and all copies of the Marks in City's or SBPD's possession shall be deleted or destroyed, and City and SBPD shall provide written confirmation that such copies of the Marks have been deleted or destroyed.

9. Indemnification by Tribe.

- (a) Unless resulting directly from the SBPD's or the City's gross negligence or willful misconduct, the Tribe will defend, indemnify, protect and hold SBPD, its related instrumentalities and entities (including the City) and its current and future affiliates, and their respective officers, managers, members, directors, employees, representatives and agents, (each referred to as an "SBPD Indemnitee" and collectively as "SBPD Indemnities") harmless from any cost, expense, claim, demand, liability, loss and/or damage, including, but not limited to, reasonable attorneys' fees and costs (each a "Claim" and collectively "Claims"), arising directly or indirectly from or in connection with (A) any false or misleading representation made by the Tribe, its agents, employees or delegated representatives in connection with this Agreement, (B) the Tribe's breach of any term of the Agreement, (C) the Tribe's performance of any of its obligations under the Agreement, or (D) the negligent acts or omissions or willful misconduct of the Tribe or their respective officers, managers, members, directors, employees, representatives and agents.

- (b) SBPD Indemnitees will give the Tribe prompt written notice of any matter upon which such SBPD Indemnitees intend to base a Claim for indemnification (an "Indemnity Claim") under this Section 9. The SBPD Indemnitees may, but are not required to, participate jointly with the Tribe in the defense, settlement or other disposition of any such Indemnity Claim and the Tribe shall be responsible for payment of all reasonable costs of the defense incurred by the SBPD Indemnitees separately or jointly by SBPD Indemnitees and the Tribe.

10. Indemnification by SBPD.

- (a) Unless resulting directly from the Tribe's gross negligence or willful misconduct, City and SBPD will jointly and severally defend, indemnify, protect and hold the Tribe, its related instrumentalities and entities and its current and future affiliates, and their respective officers, managers, members, directors, employees, representatives and agents, (each referred to as a "Tribe Indemnitee" and collectively as "Tribe Indemnities") harmless from any and all Claims arising directly or indirectly from or in connection with (A) any false or misleading representation made by City, SBPD, or their agents, employees or delegated representatives in connection with this Agreement, (B) City's or SBPD's breach of any term of the Agreement, (C) City's or SBPD's performance of any of its obligations under the Agreement, (D) the provision of Services and Additional Services, or (E) the negligent acts or omissions or willful misconduct of the City, SBPD or their respective officers, managers, members, directors, employees, representatives and agents.
- (b) City and SBPD will defend, indemnify, and hold the Tribe Indemnities harmless from and against any Claims relating to such respective compensation, tax, insurance, or benefit matters described in Section 4(c).
- (c) Tribe Indemnities will give the City and SBPD prompt written notice of any matter upon which such Tribe Indemnities intend to base a Claim for indemnification (an "Indemnity Claim") under this Section 10. The Tribe Indemnities may, but are not required to, participate jointly with the SBPD in the defense, settlement or other disposition of any Indemnity Claim and SBPD and the City shall be jointly and severally responsible for payment of all reasonable costs of the defense incurred by the Tribe Indemnities separately or jointly by Tribe Indemnities, City and SBPD.

11. Independent Contractor. The relationship between SBPD and the Tribe and City and the Tribe will be that of independent contractor-grantor and not employee-employer or agent-principal. None of City's or SBPD's personnel are entitled to nor will be provided by the Tribe with medical coverage, insurance of any kind, vacation pay, pension benefits or any other type of employment benefit. The only monetary or economic obligation of the Tribe to City and/or SBPD is to provide payment under the terms of this Agreement. Neither City nor SBPD shall have the authority to legally bind the Tribe in contract, debt, or otherwise and the Tribe shall not have the authority to legally bind the City or SBPD in contract, debt, or otherwise. Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that (i) neither City, SBPD nor any of their staff, agents, employees or subcontractors will be entitled to receive employee benefits from the Tribe, its instrumentalities and entities and its current and future affiliates; (ii) neither the Tribe, nor any of the Tribe's instrumentalities and entities and its current and future affiliates will not be responsible for, nor incur any liability for, any local, state

or federal withholding or other taxes or for FICA or state unemployment insurance for City or SBPD, their agents, employees or subcontractors; and (iii) the payment of any such taxes incurred or due by City or SBPD will be the sole responsibility of City or SBPD, respectively. Neither City, SBPD nor their staff or subcontractors will represent themselves as employees or agents of the Tribe or its instrumentalities and entities and its current and future affiliates.

12. **Continuing Obligation to Perform.** SBPD shall diligently and promptly provide and perform all Services, Additional Services, and other obligations under and in accordance with this Agreement within such time schedule agreed to by the Parties and the Parties acknowledge that in the event SBPD fails to do so, the Tribe may suffer unanticipated damages, costs and expenses by reason of such failure. If there is a dispute between City and the Tribe or SBPD and the Tribe, City and SBPD will expeditiously and diligently proceed with the performance of all of their obligations under this Agreement with a reservation of all rights and remedies they may have under or pursuant to this Agreement at law or in equity.
13. **Waiver.** No delay or omission, or series of delays or omissions, by the Tribe to exercise any right hereunder will be construed as any type of waiver of any such right, and the Tribe reserves the right to exercise any such right from time to time as often as may be deemed expedient by the Tribe.
14. **Notices.** All notices, requests, demands, or other communication permitted or required to be given under this Agreement shall be in writing and shall be deemed given or made when received by the receiving Party after being sent (a) by United States certified or registered mail, return receipt requested and postage prepaid, (b) by a nationally recognized overnight courier, delivery fee prepaid, or (c) via electronic mail provided that such communication is also made through (a) or (b) above and in any case to the persons and at the addresses specified below:

If to Tribe: San Manuel Band of Mission Indians
26569 Community Center Drive, Highland, California 92346
Attention: Steven Gomez

With Copy to: San Manuel Band of Mission Indians
674 E Brier Dr., San Bernardino, CA 92408
Attention: Legal Department
With a copy to: contractsadministration@sanmanuel.com

If to City/SBPD: Robert D. Field
City Manager
City of San Bernardino
290 North D Street
San Bernardino, CA 92418

With Copy to: Administrative Captain
 San Bernardino Police Department
 710 N. D St.
 San Bernardino, CA 92401


15. Governing Law. This Agreement will be governed by, and will be construed in accordance with, the laws of the State of California without regard to its conflict of laws provisions.
16. Recitals. The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the Parties represent they are true, accurate and correct.
17. Amendment. This Agreement may only be amended in a writing signed by all of the Parties hereto.
18. No Authority Over Tribal Activities. Nothing in this Agreement is intended to confer or expand the jurisdiction of any local, state or federal agency or other governmental body over Tribal activities, developments or projects, nor is this Agreement intended to infringe or otherwise usurp the authority of any regulatory body including local, state, federal or Tribal agencies that may have jurisdiction over Tribal activities, developments, or projects.
19. Severability. In the event any portion of this Agreement or any amendments or addenda hereto shall be held illegal, void or ineffective, the remaining portions hereof shall remain in full force and effect. If any of the terms or conditions of this Agreement is in conflict with any applicable statute or rule of law, then such term or condition shall be deemed inoperative to the extent that it conflicts therewith.
20. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof will be deemed to be an original instrument, but all such counterparts together will constitute but one agreement.
21. Complete Agreement. This Agreement and the other writings referred to herein or delivered pursuant hereto which form a part hereof contain the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements and understandings among the Parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by the Parties hereto. Notwithstanding the foregoing, except as specifically set forth herein, no provision of this Agreement shall be construed so as to negate, modify or affect in any way the provisions of any other agreement between the Parties or any of them unless specifically referred to, and solely to the extent provided, in any such other agreement.
22. Attorneys' Fees. If either Party institutes any action or proceeding against the other relating to the provision of this Agreement or any claimed default hereunder, the prevailing Party in such action or proceeding (including the prevailing Party in any appeals) shall be entitled to recover attorneys' fees and costs from the non-prevailing Party.

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

San Manuel Band of Mission Indians

By: 
Laurens G. Vosloo, Chief Executive Officer

City of San Bernardino

By: 
Robert D. Field, City Manager

Approved as to Form

PP. 
By:  Sonia R. Carvalho, Appointed City Attorney

EXHIBIT A

Service Areas

- **The Commons (see attached Map 1)**
- **Hospitality Lane property (see attached Map 2)**
- **Arrowhead Springs Resort (see attached Map 3)**
- **The area surrounding the Reservation and within the City of San Bernardino with Sterling Avenue being the western border, Highway 210 being the southern border and Highway 330 being the eastern border (see attached Map 4)**

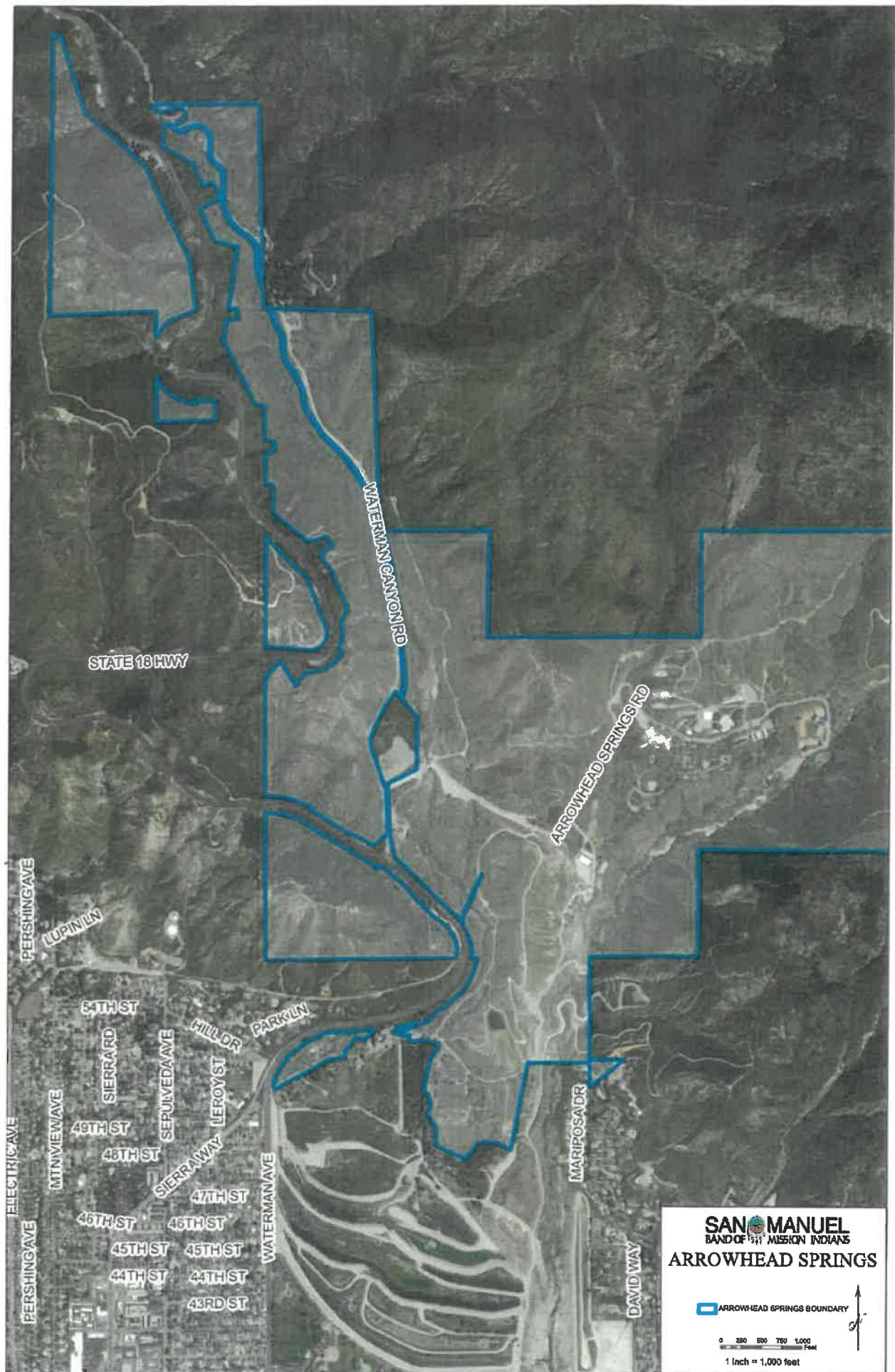




SAN MANUEL
BAND OF MISSION INDIANS
HOSPITALITY LANE

 **HOSPITALITY PARCEL**

0 75 150 225 300
Feet
1 inch = 150 feet



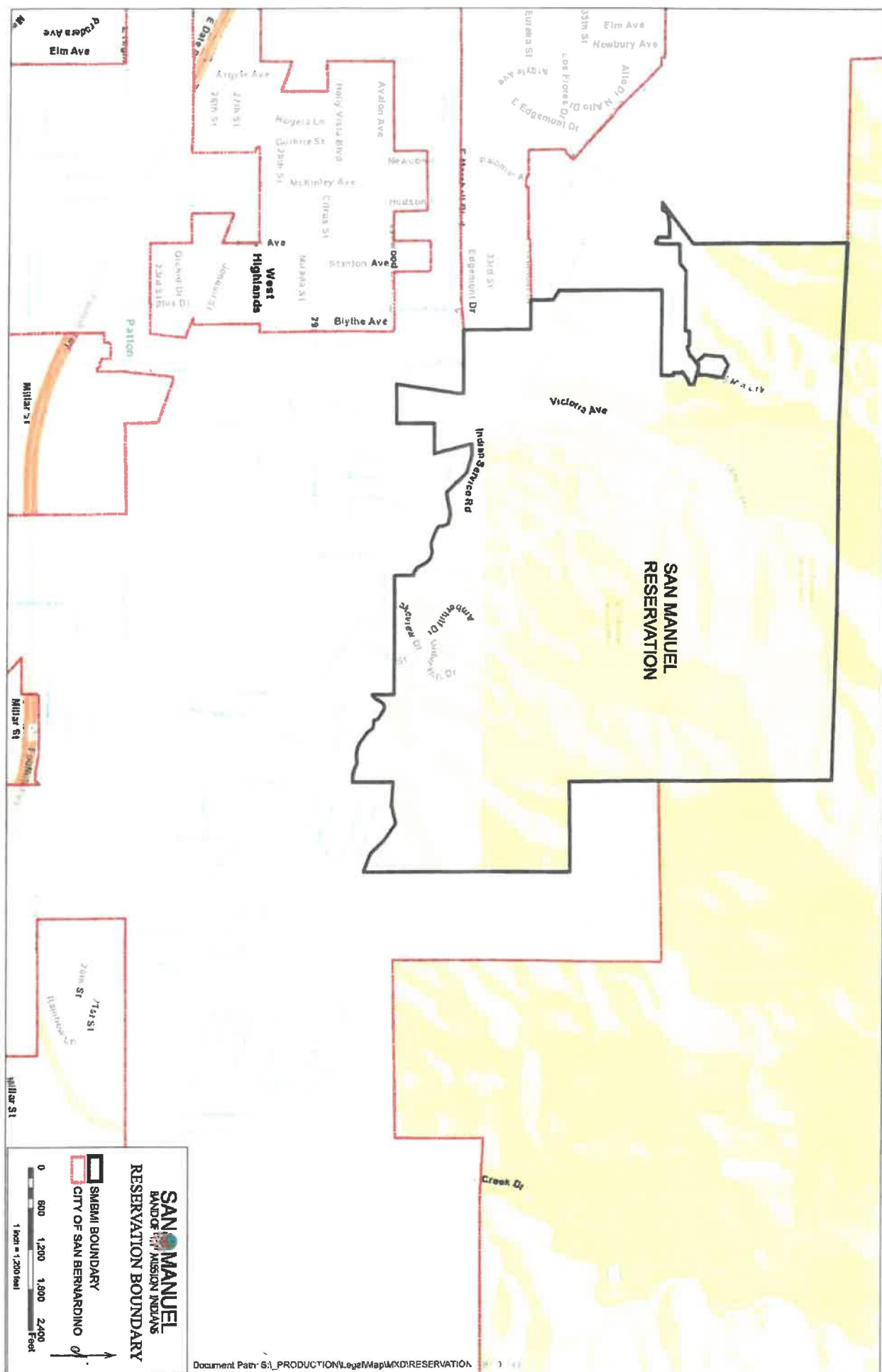


EXHIBIT B

Services and Additional Services

Services

Services shall include daily general policing and traffic control services within the Service Areas, including without limitation (1) providing traffic control, (2) handling parking issues, traffic collision reports and basic reports exclusively in the Service Areas and (3) observing, reporting, and conducting vacation checks in the neighborhoods located in the Service Areas, by no less than four (4) Officers devoted solely to such Services as coordinated with the Tribe's Department of Public Safety. SBPD shall submit a brief monthly report to the Tribe's Chief Physical Security Officer to include the following information: (1) a summary of calls for service in the Service Areas (type and number), (2) a summary of crimes reported in the Service Areas (type and number), and (3) a summary of arrests in the Service Areas (type and number). As part of the Services, SBPD shall regularly incorporate Explorers from San Bernardino Police Explorer Post 303 in special Services, at the discretion and responsibility of SBPD, through ride-along activities throughout the Term; however, there shall be no liability for the Tribe or additional compensation from the Tribe for or related to the fulfillment of the obligations regarding San Bernardino Police Explorer Post 303.

Additional Services

Additional Services shall mean policing, safety, and traffic control services by Officers in addition to the Services that are noticed by the Tribe in accordance with the Agreement, which may include but shall not be limited to:

1. Traffic control and safety support along key corridors such as Highland Avenue and Victoria Avenue and at key intersections during ingress and egress to improve traffic flow and traffic safety; and
2. Action plans and traffic and policing support for activities, events and holidays in cooperation and coordination with the Tribe's Department of Public Safety.

EXHIBIT C

Funding

Services: Upon the later of the Effective Date or the full execution of the Agreement, the Tribe shall fund an SBPD account with the estimated equivalent of the annual salaries for four SBPD Officers, at the amounts set forth below and 25% of the estimated salary for a supervisor for the Officers equal to \$48,724. SBPD shall draw reimbursement from the account only for the actual cost for the Officers' salaries and the 25% of the actual salary of the assigned supervisor. SBPD shall maintain a record of the actual cost of the Officers' and their assigned supervisor's salaries and provide an update of such record on no less than a quarterly basis. On each anniversary of the Effective Date of the Agreement, the Tribe shall renew such payment for the Term calculating any remaining funds from the previous year(s) into the renewal amount. Should the Agreement terminate prior to a full year of Services following the initial payment or any payment renewal, or if there is Funding remaining at the end of the Term, the SBPD and/or City shall promptly refund the unspent Funding.

Salaries:

\$161,000 per Officer for the first year,
\$165,000 per Officer for the second year,
\$172,000 per Officer for the third year, and
\$180,000 per Officer for the fourth year

Additional Services: Per hour rates:

Sergeant: \$127.13 (1st year), \$133.49 (2nd year), \$140.16 (3rd year), \$147.17 (4th year)
Detective: \$112.57 (1st year), \$118.20 (2nd year), \$124.11 (3rd year), \$130.31 (4th year)
Officer: \$99.04 (1st year), \$103.99 (2nd year), \$ 109.19 (3rd year), \$114.65 (4th year)
Unsworn personnel: actual cost, but not to exceed \$48 per hour.

Equipment: The Tribe shall provide Funding of up to \$60,000 per year for the duration of the Term toward the purchase of equipment identified as necessary for SBPD to provide Services in the Service Areas and deemed necessary for personnel assigned to patrol in the Service Areas. Such equipment shall be subject to written approval by the Tribe prior to purchase. SBPD shall invoice the Tribe for such equipment within thirty (30) days of purchase accompanied by proof of purchase.