



Joint Special Council/BFPD
06/20/16 07:00:PM
City Manager Department
Charles C. Mitchell
Contract
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AGENDA ITEM

AGENDA MATTER:

AGREEMENT BETWEEN LOS COYOTES BAND OF CAHUILLA AND CUPEÑO INDIANS, BARWEST, L.L.C., AND THE CITY OF BARSTOW REGARDING TITLE EXCEPTIONS AND MUNICIPAL SERVICES AGREEMENT

EXECUTIVE SUMMARY:

Staff is requesting that the City Council approve the attached Agreement between the Los Coyotes Band of Cahuilla and Cupeño Indians, Barwest, L.L.C., and the City of Barstow regarding title exceptions and the Municipal Services Agreement (MSA), and authorize the City Manager to execute the same.

DISCUSSION:

The Bureau of Indian Affairs is working on the Los Coyotes Band of Cahuilla and Cupeño Indians fee-to-trust application. The environmental study is completed and everything is in order except that there are title policy issues that need to be addressed. The U.S. Department of Interior has asked that certain exceptions in the Los Coyotes' title policy (exceptions 11 and 12) which relate to obligations to install infrastructure in any development of land in the City of Barstow be addressed. The proposed agreement specifies that the Los Coyotes will provide infrastructure in accordance with the provisions of the MSA and the City's Municipal Code. The Department of Interior has also asked that Barwest, as the current landowner, be made a party to the agreement.

FISCAL IMPACT:

None.

RECOMMENDED ACTION:

Approve the Agreement between the Los Coyotes Band of Cahuilla and Cupeño Indians, Barwest, L.L.C., and the City of Barstow regarding title exceptions and the Municipal Services Agreement, and authorize the City Manager to execute the same.

**AGREEMENT BETWEEN LOS COYOTES BAND OF CAHUILLA AND CUPEÑO INDIANS,
BARWEST, L.L.C., AND THE CITY OF BARSTOW REGARDING TITLE EXCEPTIONS AND
MUNICIPAL SERVICES AGREEMENT**

This Agreement regarding certain title exceptions is made this ____ day of June, 2016, by and between the City of Barstow ("City"), Barwest, L.L.C., a Michigan limited liability company ("Barwest"), and the Los Coyotes Band of Cahuilla and Cupeño Indians ("Tribe"); and is founded upon the following recitals:

RECITALS

WHEREAS, the Tribe filed with the Department of the Interior, Bureau of Indian Affairs, a fee-to-trust application and request for two-part determination pursuant to and in accordance with the provisions of Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465 and the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et seq.*, requesting that the United States accept trust title to a parcel in the City described as: All that real property located in the City of Barstow, County of San Bernardino, State of California described as follows: Parcels 2 through 4, inclusive, of Parcel Map No. 14373 in the City of Barstow, County of San Bernardino, State of California, as per map recorded in Book 170, Pages 5 and 6 of Parcel Maps, in the Office of the County Recorder of said County (Trust Lands), presently owned by Barwest, and that the Secretary issue a two-part determination that the Tribe's proposed trust acquisition and gaming development is in the best interest of the Tribe and not detrimental to the surrounding community pursuant to Section 20(b)(1)(A) of IGRA;

WHEREAS, in connection with the Tribe's fee-to-trust application and two-part determination request, and planned gaming development in the City, the Tribe and the City entered into an Amended Municipal Services Agreement dated August 21, 2006 (MSA) (attached as Exhibit 1);

WHEREAS, in connection with the Tribe's fee-to-trust application and two-part determination request, the Tribe had a Commitment for Title Insurance for the Trust Lands prepared on January 25, 2012 ("Commitment for Title Insurance");

NOW, THEREFORE, the Parties agree as follows:

The Tribe and the City agree that the MSA dated August 21, 2006 governs the obligations of the Tribe and the City as provided therein.

The Tribe and the City agree that under Section 6 of the MSA, the Tribe will "pay for all road improvements that are reasonable and necessary" in connection with development of the Trust Lands. The Tribe and the City agree that under Section 7 of the MSA, the Tribe "shall provide for sewage disposal by connection to the City's existing sewer collection system" in connection with development of the Trust Lands.

The Tribe and the City agree that under Section 2 of the MSA, the Tribe "shall require that all tribal development projects occurring on the Trust Lands be used and developed in a manner that is consistent with the Barstow Municipal Code . . . in effect at the time of any project development." The Tribe and the City agree that the City's current public improvement ordinance, Barstow Municipal Code Sec. 12.04.020, requires that any owner who constructs a new commercial or industrial building "shall also provide for the construction or installation, to established city standards, of sidewalks, curbs, gutters, street trees, adequate street lighting, street paving to the center line of the street, required public utilities, and necessary drainage structures, unless such improvements already exist along street frontages adjoining the lot on which the building or parking lot is to be constructed, enlarged, or altered."

The City, Barwest, and the Tribe agree, as to the Trust Lands, that: (i) the provisions of the MSA supersede any prior obligations of the parties contained in the Subdivision Deferred Improvement Agreement recorded December 3, 1992 as Instrument No. 92-498081, and an Agreement recorded December 3, 1992 as Instrument No. 92-498082, referenced in Exceptions 11 and 12, respectively, of the Commitment for Title Insurance, and (ii) once the United States accepts trust title to the Trust Lands on behalf of the Tribe, that the aforementioned agreements shall no longer run with the land nor shall the obligations therein be assumed by the United States.

WHEREFORE, IN WITNESS HEREOF, 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.

BARWEST, L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY

By: Barwest Manager, Inc., Its Manager
Michael J. Malik, Sr., President

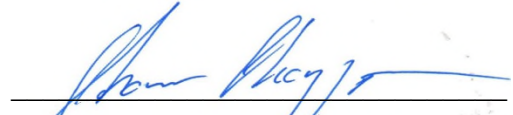
Date: _____

By: Barwest Manager, Inc., Its Manager
Marian Ilitch, Treasurer

Date: _____

Attachment: LCB Barstow Agreement re title issues.5.146 (2694 : Agreement Between Los Coyotes Band of Cahuilla and Cupeno Indians,

LOS COYOTES BAND OF CAHUILLA AND CUPEÑO INDIANS



By: Shane Chapparosa
Tribal Chairman

Date: June 10, 2016

CITY OF BARSTOW

By: Julie Hackbarth-McIntyre
Mayor

Date: _____

APPROVED AS TO FORM:

By: Terri Highsmith
City Attorney

Attest: _____
Joanne Cousino
City Clerk

Attachment: LCB Barstow Agreement re title issues.5.146 (2694 : Agreement Between Los Coyotes Band of Cahuilla and Cupeno Indians,