

RESOLUTION NO. 19-27

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING THE SUBMITTAL OF A GRANT APPLICATION TO THE AK-CHIN INDIAN COMMUNITY FOR PROPOSITION 202 FUNDS AND AUTHORIZATION FOR THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO ACCEPT THE FUNDS FOR POLICE SWAT TEAM SAFETY EQUIPMENT.

WHEREAS, in 2002, Proposition 202 authorized new gaming compacts between the State of Arizona and Arizona Indian Tribes which included sharing of gaming revenues; and

WHEREAS, a portion of this state-shared revenue in an amount of 12% can be retained by an Indian Tribe and distributed to cities, towns or counties for government services that: 1) benefit the general public; 2) mitigate the impacts of gaming; and/or 3) promote commerce and economic development; and

WHEREAS, the Ak-Chin Indian Community (the "Community") has decided to exercise its option to retain and administer the 12% share itself and has adopted guidelines and procedures for this new program; and

WHEREAS, the Community developed an expanded list of "priority areas" for which funding will be concentrated, including education, public safety, health, environment, promotion of commerce, and economic and community development; and

WHEREAS, the funds may be accepted by cities and towns pursuant to A.R.S. 11-952 through an intergovernmental agreement which establishes the obligations of the Community and any grantee.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AS FOLLOWS:

Section 1:

Staff is authorized to submit an application on behalf of the City of Apache Junction Police Department, to the Ak-Chin Indian Community for Proposition 202 funds, and the mayor is authorized to sign the application, the form of the attached intergovernmental agreement set forth in Exhibit A, and grant documents for receipt and distribution of the Proposition 202 funds for SWAT safety equipment in an amount not to exceed \$16,865.58.

Section 2:

The mayor is authorized to take any and all actions necessary to implement and complete the activities submitted in the application.

Section 3:

The city manager or his or her designee is hereby authorized to take whatever steps necessary to administer and procure the funding.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS ____ DAY OF _____, 2019.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 2019.

JEFF SERDY
Mayor

ATTEST:

JENNIFER PENA
Deputy City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney

EXHIBIT A

**Intergovernmental Agreement
Between
Ak-Chin Indian Community
and
City of Apache Junction**

This Intergovernmental Agreement ("Agreement") is entered into by and between the Ak-Chin Indian Community ("Community"), a federally recognized Indian tribe having its principal place of business at 42507 W. Peters and Nall Road, Maricopa, Arizona, 85138, and the City of Apache Junction (the "Grantee"), an Arizona Municipal Corporation, having its principal place of business at 300 E. Superstition Blvd., Apache Junction, Arizona, 85119.

RECITALS

WHEREAS, the Community Council is authorized pursuant to Article IV, Section (b) of the Constitution of the Ak-Chin Indian Community to "negotiate and enter into contracts with federal, state, local and tribal governments, and with individuals, associations, corporations, enterprises or organizations"; and

WHEREAS, pursuant to the authority granted to cities incorporated pursuant to Title 9 of the Arizona Revised Statutes, the Grantee is authorized to enter into agreements, such as this Agreement, and accept grant funding thereunder; and

WHEREAS, pursuant to Section 12 of the Tribal/State Gaming Compact between the Community and the State of Arizona ("Compact"), in exchange for substantial exclusivity covenants by the state, the Community agreed to contribute a portion of its annual gaming revenues for regulatory costs and other public benefits; and

WHEREAS, pursuant to Compact Section 12(d), instead of making a deposit to the state, the Community may award up to 12% of its annual contribution ("12% Contribution") directly to cities, towns, or counties of the Community's choosing, for services that benefit the general public; and

WHEREAS, the Grantee submitted an application ("Application") to the Community for a grant ("Grant") from the 12% Contribution; and

WHEREAS, the Community desires to award a 12% Contribution Grant to the Grantee for the exclusive purpose of the project proposed in the Application ("Project"), which the Grantee wishes to accept.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Community hereby agrees to make, and the Grantee agrees to accept, a Grant subject to the following terms and conditions:

ARTICLE I - GENERAL PROVISIONS

1.1 Contents of Agreement. The understanding between the parties will consist of this Agreement and the Grantee's Application ("Application," as defined further in Section 1.2), which (a) was signed by the Grantee on July 8, 2019; and (b) seeks funding for the Project ("Project" is defined below in Section 1.2), that the Grantee submitted to the Community and which is attached hereto and incorporated herein by reference as Exhibit "A."

1.2 General Definitions. Unless otherwise provided herein, when used in this Agreement:

- (a) "Application" means the application submitted by the Grantee, which is attached hereto and incorporated herein as Attachment A and which includes the following: (1) the Ak-Chin Indian Community Grant Cover Sheet; (2) the narrative submitted by the Grantee; (3) any and all attachments to the Application (including, but not limited to, proof of tax-exempt status); and (4) any and all other documents submitted to the Community by the Grantee or the municipality related to the Grantee's Application and submitted in consideration for receiving a Grant.
- (b) "Grant" means funding awarded by the Community as a part of the Community's 12% Contribution.
- (c) "Project" means the "Apache Junction SWAT Safety Equipment" program or project described by the Grantee in its Application.

ARTICLE II - TERM

2.1 The term of this Agreement ("Term") will commence upon the effective date ("Effective Date") which shall be the later of either: 1) the date this Agreement is fully executed by all parties; or 2) January 1, 2020.

2.2 Unless otherwise terminated in accordance with the Article VIII below or extended upon the approval of the Community, which such approval may be given in the form of a Community resolution, without requiring further written amendment of this Agreement, the Term of this Agreement will expire on occurrence of the first of either: (a) one (1) calendar year from the Effective Date; or (b) the date upon which (i) the Project proposed in the Application (which is more fully described in Article III of this Agreement) is completed, and (ii) the Community receives the Grantee's final report, as described more fully in Article X below.

ARTICLE III - SCOPE

The Grantee has overall responsibility for the timely completion of the Project proposed in the Application in accordance with the terms and conditions set forth in this Agreement. The Grantee agrees and shall use the Grant exclusively for the Project as detailed in the Application.

ARTICLE IV - AMOUNT AND AUTHORIZED USES OF GRANT FUNDS

4.1 In consideration of the various obligations undertaken by the Grantee pursuant to this Agreement, as represented by the Grantee in the Application proposing the Project, the Community agrees, subject to the terms and conditions set forth herein, to provide the Grantee with a Grant in the amount of SIXTEEN THOUSAND EIGHT HUNDRED SIXTY-FIVE DOLLARS AND FIFTY-EIGHT CENTS (\$16,865.58).

4.2 The Grantee will use the Grant exclusively to support the Project represented in the Application, including costs attributable to and arising from providing those services and activities that are part of the Project.

4.3 The Grant made under this Agreement has been awarded in reliance upon the Grantee's proposal in the Application. Any material change in the Term or scope of the Project must have the prior written approval of the Community, which may be given in the form of a Community resolution, without requiring further written amendment of this Agreement.

4.4 The Community reserves the right to terminate this Agreement, pursuant to Article VIII, if the Grantee fails to fulfill its obligations under this Agreement or if the Project changes in a material way.

4.5 Title to any property, both real and personal, purchased with this Grant shall be taken in the name of the Grantee; provided that, if the Grantee fails to fulfill its obligations under this Agreement during the Term of the Agreement, the property shall be returned to the Community for contribution to another eligible recipient. At the conclusion of the Term, the Community will not retain any rights or interests in any property purchased with this Grant.

4.6 Unless otherwise stipulated in writing, this Grant is made with the understanding that Community has no obligation to provide the Grantee with any other funding or support except the amount granted in Article IV, Section 4.1 herein.

ARTICLE V - DISBURSEMENT OF GRANT

Upon the Community's receipt of a fully executed copy of this Agreement, and a copy of the Grantee's W-9, the Community will issue to the Grantee Grant funding in the amount set forth in Article IV, Section 4.1. Unless otherwise requested by the Grantee, the Grant funding will be sent via FedEx or other express mail service to the Grantee at the address provided in Article XI, Section 11.2, below.

ARTICLE VI - REPRESENTATIONS, WARRANTIES, AND SPECIFIC OBLIGATIONS

6.1 By executing this Agreement, the Grantee represents and warrants that:

- (a) All resolutions or other formalities necessary to authorize the execution and delivery of this Agreement by the person executing this Agreement on behalf of the Grantee have been fully adopted, passed, or enacted by the Grantee's governing body;
- (b) This Agreement is valid and legally binding upon the Grantee and has been executed and delivered by the Grantee in such manner and form as to comply with all laws, regulations, and policies applicable to the Grantee.
- (c) The representations, statements, and other matters contained in the Application are true and complete and not misleading in any respect. The Grantee is aware of no change that would require any modification to the approved Application as of the date of execution of this Agreement.

6.2 The Grantee acknowledges that nothing contained in this Agreement, nor any act of the Community or the Grantee, will be deemed or construed to create any principal and agency, partnership, joint venture, or other similar association or relationship between the Community and the Grantee.

ARTICLE VII - DEFAULTS AND REMEDIES

7.1 The Grantee will be considered in default if the Grantee: (a) uses Grant funds for any purpose other than activities related to the Project; or (b) fails to perform its obligations agreed to in this Agreement.

7.2 If the Community has reason to believe that the Grantee has defaulted on any obligations under this Agreement, the Community will issue a Notice of Default ("Default Notice"). No later than thirty (30) calendar days after receipt of the Default Notice, the Grantee shall deliver all reports, records, and accountings sufficiently necessary to provide the Community with the current status of the Project, including but not limited to information documenting the Grantee's use of the grant funding.

7.3 Upon the occurrence of any default, the Community may take appropriate action to recapture the Grant funding. For purposes of this section, "appropriate action" means any remedial action legally available, including, without limitation: (a) terminating the Agreement; (b) suits for declaratory judgment, specific performance, or temporary or permanent injunctions; and (c) and any other available remedy.

7.4 The Community may terminate this Agreement if the Community determines that the Grantee has defaulted on its obligations under this Agreement. Prior to terminating the Agreement, the Community will provide written Default Notice to the Grantee and the Grantee has thirty (30) calendar days to either: (a) commence performing under the

Agreement, which must be proven through documentation showing progress; or (b) provide the Community with reports and other evidence refuting the allegation of default. If the Grantee does not provide evidence of progress to the Community's satisfaction, the Community may move forward with terminating this Agreement. If this Agreement is terminated by the Community, the Grantee shall return to the Community all Grant funding and/or any property purchased with the Grant funding.

7.5 The Ak-Chin Indian Community Courts shall have jurisdiction over disputes arising under this Agreement.

ARTICLE VIII - TERMINATION OF AGREEMENT

8.1 The Grantee may terminate this Agreement at any time during the Term by providing thirty (30) calendar days' written notice to the Community and returning **ALL** Grant funding to the Community.

8.2 The Community may terminate this Agreement if the Community determines that the Grantee has defaulted on its obligations under this Agreement.

8.3 The Community's rights and remedies will survive termination of the Agreement.

ARTICLE IX - CERTIFICATIONS BY GRANTEE

9.1 In signing this Agreement, the Grantee certifies that:

- (a) All of the representations and warranties of the Grantee as set forth in this Agreement and the Application are valid and true; and
- (b) The Grant funds awarded will be used for costs actually incurred or to be incurred in fulfillment of the obligations agreed to in this Agreement; and
- (c) The payment requested does not duplicate a payment or reimbursement of costs and services received from any other source.

ARTICLE X - REPORTS

10.1 During the term of this Agreement, the Grantee must submit progress reports that summarize both expenditures made and provide updates on the general status of the Project no later than thirty (30) calendar days after:

- (a) The first six (6) months of the Term; and
- (b) Completion of the Project or end of the Agreement Term, whichever occurs first. If a Grant was awarded to make a purchase, the date of delivery of all items shall be deemed completion of the Project.

10.2 Upon request by the Community, the Grantee shall provide promptly such additional information, reports, and documents as the Community may request.

ARTICLE XI - MISCELLANEOUS

11.1 All amendments, notices, requests, and disclosures of any kind made pursuant to this Agreement shall be in writing.

11.2 Any communication will be deemed effective as of the date such communication is received by the addressee, return receipt requested, delivered to the following primary address listed for each party:

If to the Community: PRIMARY ADDRESS	 Ak-Chin Indian Community c/o: Council Executive Secretary 42507 W. Peters and Nall Rd. Maricopa, AZ 85138 Strickland & Strickland, P.C. Ak-Chin Indian Community General Counsel 4400 E. Broadway, Suite 700 Tucson, Arizona 85711
If to the Grantee: PRIMARY ADDRESS	 City of Apache Junction c/o: Mayor Jeff Serdy 300 E. Superstition Blvd. Apache Junction, AZ 85119 Apache Junction Police Department ATTN: Thomas Kelly, Chief of Police 300 Superstition Blvd. Apache Junction, AZ 85119

11.3 This Agreement, including any right, benefit, or obligation arising hereunder, may not be transferred or assigned without the prior written approval of the Community.

11.4 No delay or omission of the Community in exercising any right or remedy available under this Agreement will impair any such right or remedy, or constitute a waiver of any default, or an acquiescence thereto.

11.5 The invalidity of any provision of this Agreement will not affect the validity of the remaining provisions hereof.

11.6 This Agreement, and any attachments or incorporated documents, constitutes the entire agreement between the Community and the Grantee, and supersedes all prior oral and written agreements between the parties hereto with respect to this Grant. Notwithstanding the provisions of Article I, Section 1.1 of this Agreement, in the event of any inconsistency between the provisions of this Agreement and anything contained in the Exhibit A, the provisions of this Agreement will prevail.

11.7 This Agreement may be executed in any number of counterparts. All such counterparts will be deemed to be originals and together will constitute but one and the same instrument.

11.8 Upon the Community's prior written approval, the Grantee is permitted to issue press releases and host other publicity events highlighting the Grant from the Community.

11.9 The Community reserves and has the exclusive right to waive any requirement or provision under this Agreement; provided that, no act, by or on behalf of the Community, will be deemed or construed to be a waiver of any such requirement or provision, unless the same be in writing expressly stated to constitute such waiver.

11.10 Notwithstanding any other provision herein to the contrary, nothing in this Agreement shall be deemed a waiver of the Community's sovereign immunity. The Grantee agrees to indemnify the Community with respect to any claims arising from the Project funded by the Grant.

11.11 This Agreement is subject to and may be terminated by city in accordance with the provision of A.R.S. 38-51

[THIS SPACE BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective, duly authorized representatives, as of the day and year written below.

COMMUNITY AK-CHIN INDIAN COMMUNITY _____/____/____ Robert Miguel Chairman ATTEST: _____ Victoria A. Smith Council Executive Secretary APPROVAL AS TO FORM: _____ Community Counsel	GRANTEE: CITY OF APACHE JUNCTION _____/____/____ Jeff Serdy Mayor ATTEST: _____ Jennifer Pena Deputy City Clerk APPROVAL AS TO FORM: _____ Richard J. Stern City Attorney
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