

RESOLUTION NO. 45-2007

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOHONO O'ODHAM NATION, A FEDERALLY RECOGNIZED INDIAN TRIBE (THE "NATION") AND THE CITY OF BENSON, A MUNICIPALITY IN THE STATE OF ARIZONA.

WHEREAS, the Constitution of the Tohono O'odham Nation, Article VI, Section 1(f) provides that the Tohono O'odham Legislative Council is authorized to negotiate and conclude agreements on behalf of the Tohono O'odham Nation with Federal, State and local governments; and

WHEREAS, the Constitution of the Tohono O'odham Nation, Article VII, Section 2(f) provides that the Chairperson of the Nation is the official representative of the Tohono O'odham Nation, and as such, upon passage of a Resolution by the Legislative Council approving of any agreement with Federal, State and local governments, the Chairman is authorized to sign such agreements on behalf of the Tohono O'odham Nation; and

WHEREAS, the Nation provides funding under A.R.S. § 5-601.02(H)(4) for government services that benefit the general public, and has identified the City of Benson as a recipient of such funding; and

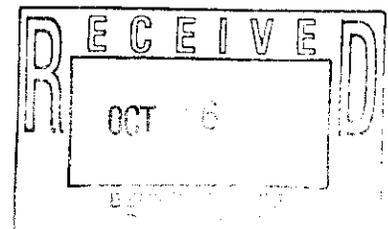
WHEREAS, such funding was approved for the City of Benson Police Department in the amount of twelve thousand two hundred fifty dollars (\$12,250.00) to assist in the Project "Request for funding for Public Safety Equipment"; and

WHEREAS, the Tohono O'odham Nation has delivered to the City an Intergovernmental Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, providing for the funding for government services that benefit the general public; and

WHEREAS, A.R.S. §§ 9-240, 9-499.01 and 5-601.02(H)(4) authorize the City of Benson to enter into said Intergovernmental Agreement with the Nation, for the purposes described above and therein; and

WHEREAS, the Mayor and Council of the City of Benson have determined that approval of said Intergovernmental Agreement is in the best interests of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, that the City hereby approves the Intergovernmental Agreement between the Tohono O'odham Nation and the City of Benson, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and the Mayor is hereby directed to execute said Agreement on behalf of the City of Benson.



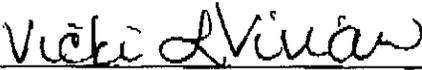
BE IT FURTHER RESOLVED that the staff of the City is hereby directed to take all actions necessary to implement said Intergovernmental Agreement and further its purposes.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 22nd day of October, 2007.



MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, Interim City Attorney

Exhibit "A"
Intergovernmental Agreement between the
Tohono O'odham Nation and the City of Benson

**Intergovernmental Agreement
between
the Tohono O'odham Nation
and
the City of Benson, Arizona**

THIS Intergovernmental Agreement ("Agreement") is entered into as of the 22nd day of October, 2007, by and between the Tohono O'odham Nation, a federally recognized Indian tribe (the "Nation"), and the City of Benson, an Arizona municipal corporation (the "Grantee").

RECITALS

- A. The Constitution of the Tohono O'odham Nation, Article VI, Section 1(f) provides that the Tohono O'odham Legislative Council is authorized to negotiate and conclude agreements on behalf of the Tohono O'odham Nation with Federal, State and local governments.
- B. The Constitution of the Tohono O'odham Nation Article VII, Section 2(f) provides that the Chairperson of the Nation is the official representative of the Tohono O'odham Nation; and as such, upon passage of a Resolution by the Legislative Council approving of any agreement with Federal, State and local governments, the Chairman is authorized to sign such agreements on behalf of the Nation.
- C. The Nation provides funding under A.R.S. § 5-601.02(H)(4) for government services that benefit the general public, and has identified the City of Benson as a recipient of such funding.

Now, therefore, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

PROVISIONS

- 1. **Purpose.** The purpose of this Agreement is to set forth the rights and responsibilities of the parties with respect to the payment and distribution of the Contribution, as hereinafter defined. The Grantee may not change the scope of the project or use the funds for a project other than that explained in Exhibit "A" without the consent of the Nation, which will be issued in the form of a Resolution approving modifications to this Agreement.
- 2. **Contribution.** The Nation shall issue payment to the City of Benson in the amount described in Exhibit "A" (the "Contribution") for the purpose(s) detailed in Exhibit "A" no later than October 25, 2007.

- 3. **Funding.** The Contribution payment shall be delivered to the City of Benson, without any further notice or invoice required, at the address set forth in Paragraph 6 below, upon the complete execution of this Agreement.
- 4. **Money Unclaimed.** In the event that the City of Benson fails to accept the Agreement funding on or before April 1, 2008, this Agreement will be deemed to have been terminated by the City of Benson and the Nation will award the grant funding to another applicant.
- 5. **Dispute Resolution.** The parties mutually agree that any disputes arising pursuant to this Agreement shall be resolved through informal dispute resolution. For all disputes arising under this agreement the Nation and the City of Benson shall first attempt to negotiate a resolution. All disputes that cannot be resolved through informal dispute resolution shall be resolved in the Courts of the Nation, subject to the laws of the Nation.
- 6. **Reports:** Unless otherwise extended by the Nation upon request of the City of Benson, no later than July 31, 2008, the City of Benson shall provide a report to the Nation explaining how and when the funds provided under this Agreement were used. This report may be in the form of an affidavit signed by an officer of the City of Benson and may be accompanied by supporting documentation. The report shall address changes in the scope of the project or purchases funded under this Agreement that were made, the total expenses under the project or purchase funded by the Agreement, a brief description of who has benefited from this Agreement and the Grantee's next steps with regard to the project or purchase made under this Agreement.
- 7. **Notices.** Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to the Nation: Ned Norris, Jr.
 Chairman
 P.O. Box 837
 Sells, Arizona 85634
 Fax: 520.383.3379

and

Jonathan L. Jantzen
 Attorney General
 P.O. Box 837
 Sells, Arizona 85634
 Fax: 520.383.2689

If to the GRANTEE: Martin Roush
City Manager
P.O. Box 2223
Benson, Arizona 85602
Fax: 520.586.3375

and

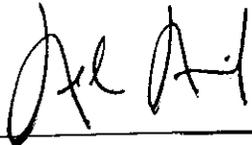
Thomas A. Benavidez
Interim City Attorney
7440 N. Oracle Rd., Bldg. 7
Tucson, Arizona 85704
Fax: 520.293.2793

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

8. **Term of Agreement.** The term of this Agreement shall begin on the date of execution and shall terminate on the one-year anniversary of this Agreement.
9. **Entire Agreement, Waivers and Amendments.** This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incident hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate authorities of each of the parties to this Agreement.
10. **No Waiver.** Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
11. **Severability.** If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
12. **Sovereign Immunity.** Nothing in this Agreement shall be deemed a waiver of either party's sovereign immunity in any forum or jurisdiction.
13. **Notice of Right to Terminate Contract.** Pursuant to A.R.S. § 38-511, the City of Benson reserves the right to cancel this Agreement, within three years after the effective date of this Agreement, without penalty or further obligation, if any

person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Benson is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of the Nation in any capacity or a consultant to the Nation with respect to the subject matter of this Agreement. Cancellation under this section by the City of Benson shall be effective when written notice from the City Manager is received by the Nation. The City of Benson may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Benson from the Nation arising as the result of the contract.

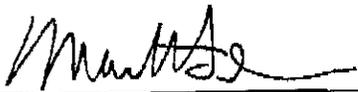
TOHONO O'ODHAM NATION



Chairman
Tohono O'odham Nation

Dated 10/25/07

GRANTEE

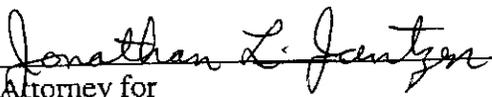


Title Mayor

Dated 10-24-07

Attest:

Approved as to form and found to be within the powers and authority of the
Tohono O'odham Nation


Attorney for
Tohono O'odham Nation

Dated 10/25/07

EXHIBIT "A"

Program

Contribution

15 taser cams and 5 tasers

\$12,250.

TOTAL

\$12,250.