

RESOLUTION 62-2009

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA APPROVING A GRANT IN AID FROM THE TOHONO O'ODHAM NATION FOR \$9,600 TO PURCHASE DEFIBRILLATORS FOR THE CITY OF BENSON POLICE DEPARTMENT

WHEREAS, the Benson Police Department desires to purchase defibrillators to enhance its ability to provide first-responder services for the people of Benson and thereby increasing the safety and well-being of the community; and

WHEREAS, the Tohono O'odham Nation is willing to fund the purchase of the defibrillators in the amount of \$9,600, pursuant to a Grant in Aid Agreement attached hereto, as part of its commitment to the State of Arizona to share gaming profits with local governments and non-profits.

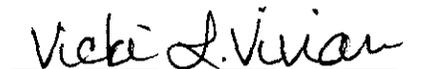
NOW, THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Benson, Arizona that the Grant in Aid Agreement with the Tohono O'odham Nation, attached hereto as Exhibit A, is hereby approved and the Mayor is authorized to execute said Agreement on behalf of the City.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA this 12th day of October, 2009.



Mark M. Fenn, Mayor

ATTEST:


Vicki L. Vivian, City Clerk

APPROVE AS TO FORM


Michael J. Masee, City Attorney

**Grant-in-Aid Agreement
between
the Tohono O'odham Nation
and
City of Benson**

THIS GRANT-IN-AID AGREEMENT ("Grant") is entered into as of the 12th day of October, 2009, by and between the Tohono O'odham Nation, a federally recognized Indian tribe (the "Nation"), and City of Benson, a Municipality.

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 Chairman 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 City of Benson is authorized to negotiate and conclude agreements with other governmental entities pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, and its Mayor and Council has, by Resolution, authorized its Mayor to execute this Agreement on behalf of the City of Benson.

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

PROVISIONS

1. **Purpose.** The purpose of this Grant 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 written consent of the Nation.

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, 2009.

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 7 below, upon the complete execution of this Grant.

4. **Money Unclaimed.** In the event that the City of Benson fails to accept the grant funding on or before January 1, 2010, this Grant 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 Grant 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, 2010, the City of Benson shall provide a report to the Nation explaining how and when the funds provided under this Grant 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: (i) changes in the scope of the project or purchase funded under this grant, (ii) the total expenses under the project or purchase funded by the Grant, (iii) a brief description of who has benefited from this Grant, and (iv) the Grantee's next steps with regard to the project or purchase made under this Grant. The Grantee will submit a final report to the Nation within 30 days of the end of this Agreement.

7. **Notices.** Any notice, consent or other communication required or permitted under this Grant 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

Veronica Geronimo
Special Counsel
P.O. Box 837
Sells, Arizona 85634
Fax: 520.383.3379

If to the GRANTEE: Paul F. Moncada
 360 S. Gila St
 Benson, AZ 85602
 Phone: (520)586-2211
 Fax: (520)586-2520
 Email: pfmoncada@cityofbenson.com

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 Grant.** The term of this Grant shall begin on the date of execution and shall terminate on the one-year anniversary of this Grant.

9. **Entire Grant, Waivers and Amendments.** This Grant is executed in three (3) duplicate originals, each of which is deemed to be an original. This Grant constitutes the entire understanding and agreement of the parties. This Grant 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 Grant and all amendments hereto must be in writing and signed by the appropriate authorities of each of the parties to this Grant.

10. **No Waiver.** Except as otherwise expressly provided in this Grant, 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 Grant shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Grant shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

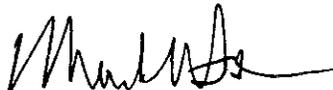
12. **Sovereign Immunity.** Nothing in this Grant shall be deemed a waiver of either party's sovereign immunity in any forum or jurisdiction.

TOHONO O'ODHAM NATION

Ned Norris, Jr., Chairman
Tohono O'odham Nation

Dated _____

GRANTEE



Mark M. Fenn, Mayor

Dated 10-13-09

Attest: *Vicki & Vivian*

Approved as to form

Jonathan Jantzen, Attorney General
Tohono O'odham Nation

Dated _____

EXHIBIT "A"

Program
Defibrillators

Contribution

TOTAL

\$9,600.00