

**Fiscal Agent/Grant Agreement  
Among  
Ak-Chin Indian Community  
and  
Cochise County  
and  
Sunsites-Pearce Fire District**

This Fiscal Agent / Grant Agreement ("Agreement") is entered into by and among 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, Cochise County ("County"), a county incorporated under the laws of the State of Arizona having its principal place of business at 1415 Melody Lane, Building G, Bisbee, Arizona 85603, and (and for the benefit of) Sunsites-Pearce Fire District ("Grantee"), a non-profit and special taxing district established under the laws of the State of Arizona having its principal place of business at 105 N. Tracy Rd., Pearce, Arizona 85625.

**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 authorities granted to counties incorporated pursuant to Arizona Revised Statutes §11-201, the County is authorized to enter into contracts, such as this Agreement, and accept grant funding on behalf of the Grantee; and

**WHEREAS**, the Grantee is a non-profit organization that, pursuant to its Articles of Organization and A.R.S. §48-805 (A)(11), can 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 did agree 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**, non-profit organizations, which provide a service for the general public, may also benefit from 12% Contribution funds provided that a city, town, or county will (1) accept the funding on behalf of the non-profit organization's behalf and (2) provide that funding to the non-profit, thereby acting in the capacity as a fiscal agent for the non-profit; and

**WHEREAS**, the Grantee is a non-profit organization and has made arrangements with the County whereby the County has agreed to accept a grant on behalf of the Grantee and act as a fiscal agent so that the Grantee may receive a 12% Contribution; and

**WHEREAS**, the Grantee submitted an application ("Application") to the Community for a grant from the 12% Contribution ("Grant") which, among other things, included assurances that the County would work with the Grantee for the purpose of obtaining the Grant funding; and

**WHEREAS**, the Community desires to award a 12% Contribution Grant to the Grantee for the exclusive purpose of supporting select expenditures and tasks 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, with the County acting as the fiscal agent, the Grant, subject to the following terms and conditions:

### **ARTICLE I - GENERAL PROVISIONS**

1.1 Contents of Agreement. The agreement 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 which is supported by the County, as documented in a letter from the County dated April 19, 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 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 Exhibit "A" and which includes the following: (1) the Ak-Chin Indian Community Grant Cover Sheet, (2) the narrative submitted by the Grantee, (3) the Letter from Cochise County dated April 9, 2019, showing that the County has agreed to accept funding on behalf of the Grantee, (4) any and all attachments to the Application

(including, but not limited to, proof of tax-exempt status), and (5) any and all other documents submitted to the Community by the Grantee or the County related to the Grantee's Application and submitted in consideration for receiving a Grant.

- (b) "Fiscal agent" means the County, under an agency relationship, which has agreed, and is authorized by the Grantee, to conduct only the following transactions: (1) accepting the Community's 12% Contribution Grant funding on behalf of Grantee and (2) promptly disbursing the Community's 12% Contribution Grant funding to Grantee. County shall make every effort to disburse the funding to the Grantee within thirty (30) days from the date on which the County receives the Grant funding from the Community.
- (c) "Grant" means funding awarded by the Community as a part of the Community's 12% Contribution.
- (d) "Project" means the "Replace Outdated Cardiac Monitors" program or project proposed in and 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

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 managing the grant funding provided by the Community for the benefit of the Project in accordance with the terms and conditions set forth in this Agreement including all exhibits hereto. Further, 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. Beyond acting as a fiscal agent and accepting Grant funding on behalf of the Grantee, the County assumes no responsibility for participating in the Project,

supporting the Grantee, or ensuring that the Grantee fulfills all obligations under this Agreement.

#### **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 ONE HUNDRED TWENTY-SIX THOUSAND SEVEN HUNDRED EIGHTY-NINE DOLLARS AND NINETY-NINE CENTS (\$126,789.99), which is one-time funding, the funding for which shall be accepted by the County on behalf of the Grantee.

4.2 The Grantee will use the Grant exclusively to support the Project for those services and activities represented in the Application, including costs attributable to and arising from providing those services and activities that are part of the Project. The Grantee bears the responsibility for monitoring and ensuring that the funding is used for only those purposes, services, and activities included in Exhibit A.

4.3 The Grant made under this Agreement has been awarded in reliance upon the Grantee's proposal in the Application, including certain representations made by the Grantee regarding the Grantee's arrangement with the County to act as Grantee's fiscal agent regarding Grant fund acceptance. Any material change in the term or scope of the Project must first be approved by the County in writing prior to submitting such request to the Community; then, such a request must be presented to the Community for 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 Grantee must notify the Community if the relationship between the Grantee and the County changes in such a manner that the County is no longer willing to collaborate with the Grantee and act as a fiscal agent for the Grantee.

4.5 The Community reserves the right to terminate this Agreement, pursuant to Article IX, if either the Grantee or the County fails to fulfill its respective obligations under this Agreement or if the Project changes in a material way.

4.6 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. The County may choose to act, but is not required to so act, as a purchasing agent for the Grantee; provided that any property purchased with Grant funding shall become the property of the Grantee, subject to the limitations provided in this Article IV, Section 4.6. At the conclusion of the Term, the Community will not retain any rights or interests in any property purchased with this Grant.

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

#### **ARTICLE V - DISBURSEMENT OF GRANT**

5.1 Upon the Community's receipt of a fully executed copy of this Agreement and a copy of the County's W-9, the Community will arrange to issue to the County Grant funding in the amount set forth in Article IV, Section 4.1. Unless otherwise requested by the County, the Grant funding will be sent via FedEx or other express mail service to the County at the address provided in Article XII, Section 12.2, below.

5.2 Upon receipt of the Grant funding, the County will follow its own internal administration and processing policies to accept and subsequently provide the funding to the Grantee; provided that such administration and processing period shall not take more than three (3) months from the date on which the County receives funding from the Community. The County may not charge the Grantee or the Community any administration, management, or other fee for acting as the fiscal agent.

#### **ARTICLE VI – COUNTY'S REPRESENTATIONS, WARRANTIES, AND SPECIFIC OBLIGATIONS**

6.1 By executing this Agreement, the County 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 County have been fully adopted, passed, or enacted by the County's governing body.

(b) This Agreement is valid and legally binding upon the County and has been executed and delivered by the County in such manner and form as to comply with all laws, regulations, and policies applicable to the County.

(c) The County will not assess any fee, tax, or other charge upon either the Grantee or the Community in relation to this Agreement or any administrative or management obligation arising hereunder.

(d) Upon receipt of the Grant from the Community, the County will act as promptly as possible to provide the Grant funding to the Grantee; provided that the County shall provide the Grant funding to the Grantee within three (3) months of receiving the funding from the Community.

6.2 The County acknowledges that nothing contained in this Agreement, nor any act of the Community, the County, or the Grantee, will be deemed or construed to create

any principal and agency, partnership, joint venture, or other similar association or relationship among the Community and the County or the Grantee.

## **ARTICLE VII – GRANTEE’S REPRESENTATIONS, WARRANTIES, AND SPECIFIC OBLIGATIONS**

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

(a) The Grantee is duly organized and validly existing under Arizona law, is exempt from federal income taxes under Section 501(c) (3) of the Internal Revenue Code (or some other applicable provision of the Internal Revenue Code), and has all requisite power and authority to enter into this Grant Agreement and accept this Grant funding.

(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 applicable bylaws or organizational documents of the Grantee.

(c) There is no action, proceeding, or investigation now pending, nor any basis therefore, known or believed to exist by the Grantee, which: (i) questions the legal status of the Grantee or its authority, including the Grantee’s or its officers’ ability to enter into and validly execute this Agreement; or (ii) is likely to result in any material adverse change in the authorities, properties, assets, liabilities, or conditions (financial or otherwise) of the Grantee which would materially and substantially impair the Grantee’s ability to manage funding or to perform any of the obligations imposed upon the Grantee by this Agreement.

(d) The representations, statements, and other matters contained in this Agreement and Exhibit A are true and complete and are not misleading in any material 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.

(e) The Grantee will comply with all applicable federal, state and local laws in carrying out its obligations under this Agreement.

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

## **ARTICLE VIII - DEFAULTS AND REMEDIES**

8.1 The Grantee will be considered in default if the Grantee either: (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.

8.2 If the Community has reason to believe that the Grantee has default on any obligations under this Agreement, the Community will issue a Notice of Default ("Default Notice") to the Grantee with a copy to the County. No later than thirty (30) 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.

8.3 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, temporary or permanent injunctions, and (c) and any other available remedy.

8.4 The Community may terminate this Agreement if the Community determines that the Grantee Has defaulted on any of its obligations under this Agreement. Prior to terminating the Agreement, the Community will provide written Notice of Default to the Grantee and the Grantee has thirty (30) calendar days to either: (a) commence performing as required 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 terminate this Agreement. If this Agreement is terminated by the Community, all Grant funding and any property purchased with the Grant funding shall be returned to the Community.

8.4 The County will be deemed in default if the County has not provided the Grant funding to the Grantee within three (3) months after accepting Grant funding from the Community.

8.5 Any dispute between the parties hereto regarding the interpretation, performance, breach, or enforcement of this Agreement shall be submitted to and resolved by arbitration in accordance with procedures mutually agreed to by the parties hereto; or, when the parties cannot agree, in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Any arbitration awarded shall not include punitive, incidental, or consequential damages.

## **ARTICLE IX - TERMINATION OF AGREEMENT**

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

9.2 The County may terminate this Agreement before accepting any Grant funding from the Community. After the County has accepted funding from the Community, the

County may only terminate this Agreement if the County has not yet provided the Grant funding to the Grantee. The County must immediately provide written notice of any decision to terminate this Agreement to the Community and the Grantee, and must return **ALL** Grant funding received to the Community with the notice of termination.

9.3 The Community may terminate this Agreement if the Community determines that either Grantee or the County has defaulted on its respective obligations agreed upon herein, as explained in Article VIII.

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

#### **ARTICLE X - CERTIFICATIONS BY GRANTEE**

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 XI - REPORTS**

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

- (a) The first six (6) months of the Term; and
- (b) Completion of the Project or the 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.

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

#### **ARTICLE XII - MISCELLANEOUS**

12.1 All amendments, notices, requests, and disclosures of any kind made pursuant to this Agreement shall be in writing unless otherwise provided for in this Agreement.

12.2 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:

<p>If to the Community:</p> <p>PRIMARY ADDRESS</p> <p>CC:</p>	<p>Ak-Chin Indian Community  c/o Council Executive Secretary  42507 W. Peters and Nall Rd.  Maricopa, Arizona 85138</p> <p>Strickland &amp; Strickland, P.C.  Ak-Chin Indian Community General Counsel  4400 E. Broadway, Suite 700  Tucson, Arizona 85711</p>
<p>If to the Grantee:</p> <p>PRIMARY ADDRESS</p>	<p>Sunsites-Pearce Fire District  ATTN: Josh Steinberg Fire Chief  105 N. Tracy Rd.  Pearce, Arizona 85625</p>
<p>If to the County:</p> <p>PRIMARY ADDRESS</p>	<p>Cochise County  ATTN: Arlethe Rios Morrison  1415 Melody Lane, Building G  Bisbee, Arizona 85603</p>

12.3 This Agreement, including any right, benefit, or obligation arising hereunder, may not be transferred or assigned without the prior written approval of the Community. Notice of any assignment approved by the Community must be provided to all other parties by the party requesting the assignment.

12.4 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.

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

12.6 This Agreement, and any attachments or incorporated documents, constitutes the entire agreement between the Community, the County, 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 Exhibit A, the provisions of this Agreement will prevail.

12.7 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.

12.8 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.

12.9 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.

12.10 Notwithstanding any other provision herein to the contrary, nothing in this Agreement shall be deemed a waiver of any party's applicable sovereign immunity. The Community and the County shall have no liability for any of the Grantee's actions under or pursuant to this Agreement. The Grantee agrees to be responsible for liabilities arising from all claims, damages, or suits arising from the negligence or willful misconduct of its officers, agents, and employees.

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

**COUNTY:**  
COCHISE COUNTY

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Robert Miguel  
Chairman

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Thomas E. Borer  
Chairman, Board of Supervisors

ATTEST:

ATTEST:

\_\_\_\_\_  
Victoria A. Smith  
Council Executive Secretary

\_\_\_\_\_  
Arlethe Rios Morrison  
Clerk of the Board of Supervisors

**GRANTEE:**  
SUNSITES-PEARCE FIRE DISTRICT

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Josh Steinberg  
Fire Chief

ATTEST:

\_\_\_\_\_  
NAME \_\_\_\_\_  
TITLE \_\_\_\_\_