



Staff Report

Agenda Item: **AGREEMENT BETWEEN THE TOWN OF CLARKDALE AND THE CLARKDALE CHAMBER OF COMMERCE FOR THE DISTRIBUTION OF TRIBAL CONTRIBUTIONS** – Discussion and consideration of an agreement between the Town of Clarkdale and the Clarkdale Chamber of Commerce for the distribution of tribal contributions according to the State of Arizona Gaming Compact 2002 A.R.S. 5-601-02.

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: September 9, 2008

Background: Proposition 202, passed by Arizona voters in 2002, specifies various guidelines for new gaming compacts between the State of Arizona and the respective Indian tribal nations in the state. A key provision of Proposition 202 is the sharing of gaming revenue with the state. The stipulations for gaming compacts also permit each individual Indian tribe to retain and administer a portion of the revenue.

Specifically, the compacts permit an Indian tribe to make 12% of its total annual contribution to “cities, towns, or counties for government services that benefit the general public, including public safety, mitigation of the impacts of gaming, or promotion of commerce and economic development.”

Each year since 2002, the Yavapai-Apache Nation has distributed funds to the Town of Clarkdale through this provision in the gaming compact. However, although the Nation makes the distribution of a total amount to the Town of Clarkdale, each year they have requested Clarkdale to disburse a portion of the total distribution to outside entities. As an example, the Nation requested that the \$46,368.75 distribution presented to Clarkdale in February, 2008 be distributed as follows:

- 40% Clarkdale Jerome School Education and Tutoring Programs (\$18,547.50)
- 25% Town Priority (\$11,592.19)
- 25% Chamber of Commerce (\$11,592.19)
- 10% Clarkdale Jerome School Athletics Program (\$4,639)

The distribution of funds directly to an outside entity poses a financial management issue for the Town of Clarkdale. As a municipality, we are prohibited from “donating” money to outside entities. The two entities that have received funding through the Nation’s request have been the Clarkdale Chamber of Commerce and the Clarkdale-Jerome School District. Up to this point, we’ve made the distributions as requested by the Nation by adopting a resolution that directed the Finance Department to make those distributions. However, from an audit and financial accountability perspective, that does not address our problem

Cities, towns and counties all over the state are facing the same issue, as many of the Tribes in Arizona make requests to the local governments to disburse the monies to other agencies. We've asked the Nation to make their distributions directly to the entities they wish to fund, however, without a rulemaking process to better define Proposition 202, the Tribes can only give distributions to the local governments.

The most commonly used method to rectify this issue is for the local government to contract with the agency to whom the distribution is made. The contract (which can be an IGA or other form of agreement) outlines the public benefits that the municipality will see as a result of the funding provided.

At the June 10, 2008 Council meeting, after discussing various options, the Council gave direction to staff to bring back a proposal that would fold the distribution of these funds into the Town's non-profit funding process, thereby assuring accountability for how the funds are disbursed and that there is public benefit derived from their use.

After review of staff's draft of a funding process at the July 8, 2008 Council Meeting, staff was directed to bring back additional alternatives to the Council that included:

- A simplified application process with less reporting; the ability to receive funds at the outset of a project instead of on a reimbursable basis, but some type of accountability as to how the funds were spent and how Clarkdale citizens were benefitted.
- An alternate plan for utilizing an agreement or intergovernmental agreement to disperse the funds.
- Clarification from the Town Attorney with regard to the prohibition for the Town to make donations to other entities.

Additionally, Mayor Von Gausig, Vice Mayor Wiley and Town Manager Mabery met briefly with Chairman Beauty of the Yavapai-Apache Nation on August 28th to discuss this issue and determine the Nation's preference for handling the distribution, both now and in the future.

With regard to future distributions, Chairman Beauty informed us that he will be spearheading a new process for the consideration of the Proposition 202 funding. He will be meeting personally in advance with each City and Town that receives funding, so that he can better understand the needs of the individual City or Town and make a specific recommendation to the Tribal Council as to the award of funds. He acknowledged past discussions about Clarkdale's desire to see our funds designated as broadly as possible within the guidelines of the legislation (i.e. for government services that benefit the general public, including public safety, mitigation of the impacts of gaming, or promotion of commerce and economic development) so that we had more opportunity to determine the types of projects that get funded with that money. Chairman Beauty believes that his new process would support that effort.

Chairman Beauty clarified, however, that because the Tribal Council had already made requests for uses of the funds for 2008, that he was not in a position as Chairman to suggest that type of flexibility

for funds that have already been given to Clarkdale this year. With that in mind, it seems that the Nation's preference with regard to our discussions at the September 9th Council meeting regarding the processes for distribution of the 2008 Proposition 202 funds, would be the use of agreements rather than a competitive funding process.

With these parameters in mind, staff has included the following options for the Council's consideration:

Chamber of Commerce Agreement - Option A: An agreement between the Town of Clarkdale and the Clarkdale Chamber of Commerce, that:

- allows the Town to pass through the specified funds;
- requires an annual report from the recipient to the Town as verification that the funds were used for the purposes identified in the agreement;
- acknowledges that the Town has no duties other than to deliver the funds to the recipient;
- acknowledges that the determination of the total amount of funding provided is solely based on the request of the Yavapai-Apache Nation, but gives parameters on the projects that the funds should be designated for .

As you can see in Option A, while the total amount of funding awarded to the Clarkdale Chamber of Commerce is consistent with the Nation's request of \$11,592.19, that amount has been broken down into various specific projects related to economic development. The projects listed in this particular example came directly from the list of projects that the Chamber previously identified as targets for funding, the Council could also enter discussions with the Chamber to narrow or broaden the list of projects and funding amounts for each project.

Chamber of Commerce Agreement – Option B: The alternative approach for the contract with the Chamber would be to simply list “commerce and economic development” as the project, and \$11,592.19 as the total amount. All other parameters of the agreement remain the same.

Both options with regard to the agreement with the Chamber of Commerce would provide the Town with a method of dispersing the Proposition 202 funds in a way that meets the law. The distinction between the two, and the primary decision for the Council, is whether to pass through the funds in total, with no parameters for designated projects, or to specify the use of the funds by defining specific economic development projects.

Both forms of the agreement are in forms ready for Council adoption at the September 9th meeting. If the Council prefers the concept of listing specific economic development projects, but wants more discussion as to which projects to designate, the agreement would need to come back for future consideration.

Staff Recommendation – Staff recommends that the Council approve Option A or Option B of the draft agreements with the Chamber of Commerce.

If the Council wants more discussion as to the specific projects to be funded under the Chamber of Commerce agreement, staff recommends that the Council direct the Town Manager to work with two Council Members and the Chamber of Commerce to recommend an alternate list of projects for approval.

OPTION "A"

**AGREEMENT BETWEEN THE TOWN OF CLARKDALE AND THE CLARKDALE
CHAMBER OF COMMERCE FOR THE DISTRIBUTION OF
TRIBAL CONTRIBUTIONS, ACCORDING TO THE STATE OF ARIZONA
GAMING COMPACT 2002 AND A.R.S. 5-601.02**

Recitals

WHEREAS, pursuant to A.R.S. 5-601.02, the Yavapai-Apache Nation is required to distribute 12% of the Nation's annual contribution under Section 12(b)(1) of the 2002 Gaming Compact to cities, towns, or counties to benefit the general public or promote commerce and economic development; and,

WHEREAS, the Yavapai-Apache Nation has distributed a portion of this contribution to the Town of Clarkdale for this purpose; and

WHEREAS, the Yavapai-Apache Nation has requested that the Town of Clarkdale consider distributing a portion of the funds given to the Town of Clarkdale from the Yavapai-Apache Nation to the Clarkdale Chamber of Commerce; and,

WHEREAS, the Town of Clarkdale supports the request of the Yavapai-Apache Nation to distribute funds to the Clarkdale Chamber of Commerce and finds that the Clarkdale Chamber of Commerce provides benefits to the general public and/or promotes commerce and economic development as required under Section 12(b)(1) of the 2002 Gaming Compact, and desires to define the terms under which the distribution should be made.

NOW, THEREFORE BE IT RESOLVED, in consideration of mutual covenants, terms and conditions, it is agreed as follows:

Agreement

THIS AGREEMENT, is made and entered into as of the 23rd day of September, 2008, by and between the Town of Clarkdale, Arizona, hereinafter referred to as "TOWN", and the Clarkdale Chamber of Commerce, hereinafter referred to as "CHAMBER".

Effective Date

This agreement shall be effective on the date it is signed by both parties.

Term

This Agreement shall commence upon the Effective Date and shall terminate when the funds have been disbursed to the Chamber by the Town for designated projects, and any required written reports have been submitted to the Town.

Designated Projects

The Yavapai-Apache Nation requested that these funds be used for economic development. The projects designated for funding under this agreement total \$11,592.19, and include:

OPTION "A"

- \$1,000 commitment to Sedona-Verde Valley Tourism Council
- \$1,400 matching commitment for Clarkdale brochure for trade shows, etc through Sedona-Verde Valley Tourism Council
- \$1,000 for additional brochures to put in brochure racks in the Verde Valley
- \$3,000 support for Family Fun Fest in October, 2008
- \$2,000 support for Made In Clarkdale in December, 2008
- \$3,192 to be used for Visitor Center, Clarkdale Heritage Center, and/or promotion of Clarkdale to businesses interested in locating here.

Disbursement of Funds

Promptly after execution of this Agreement by the Town and the Chamber, the Town shall send a payment to the Chamber in the amount specified for the Designated Projects.

Reporting Requirement

On or before June 30, 2009, the Chamber shall submit a written report to the Town that outlines how the project, program or events benefitted the general public and/or promoted commerce and economic development, and verifies that the funds were used for the Designated Projects specified herein.

Limited Duty of the Town

The Chamber expressly agrees that, except as specifically set forth in this Agreement, the Town has no duties under or related to this Agreement other than to deliver the funds to the Chamber; the determination as to the total amount of funding is solely based on the request of the Yavapai-Apache Nation.

Indemnification

- A. *Indemnification.* The CHAMBER shall indemnify, defend and hold harmless the municipality and its officials, employees and agents from and against any and all liabilities, judgments, settlements, losses, costs or charges (including attorneys fees) incurred by the municipality and/or any of its officials, employees or agents as a result of any claim, demand, action, or suit relating to any bodily injury (including death), loss of property, damage caused by, arising out of, related to, or associated with this agreement.
- B. *No Liability for Other Party's Debts or Obligations.* Neither party shall be liable for any debts, accounts, obligations, nor other liabilities whatsoever of the other, including and without limitation the other party's obligation to withhold employment and income taxes for itself or an of its employees.
- C. *Severability.* This Section shall survive termination, cancellation, or revocation, whether whole or in part, of this Agreement for a period of one (1) year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. 12-821.01, in which case this Section shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this Section survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.

OPTION "A"

Insurance

The CHAMBER shall provide to the TOWN a Certificate of Insurance evidencing a blanket insurance policy, to be renewed annually, in the aggregate amount of 1 million dollars, in which the TOWN is an additional named insured.

Attorney's Fees

In any suit which may be brought by either party to enforce this Lease, or any part hereof, or to recover damages for the breach hereof, the Court, sitting without a jury, shall award a reasonable amount as and for attorney's fees to the prevailing party.

Applicable Law

The laws of the State of Arizona shall govern the construction, performance and enforcement of this agreement. Venue for any action arising out of the provisions of this agreement shall be Yavapai County, Arizona.

Dispute Resolution

If a dispute arises out of or relates to this Agreement, or breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

Entire Agreement

This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by both parties.

Severability

Should any part, term or provision of this Agreement be declared invalid, void or unenforceable by statute or judicial decision, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

Notification

Any notice, communication, or modification shall be given in writing and shall be given by registered or certified mail to the individuals identified below. Notices shall be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service.

For the Town of Clarkdale:

Gayle Mabery, Town Manager
Town of Clarkdale
P.O. Box 308
Clarkdale, AZ 86324

For the Clarkdale Chamber of Commerce:

Katie Cannon, President
Clarkdale Chamber of Commerce
P.O. Box 161
Clarkdale, AZ 86324

OPTION "A"

Assignment and Delegation

Neither party shall assign nor delegate any of its rights, interest, obligations, covenants, or performance under this Agreement. Any termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

IN WITNESS WHEREOF, the TOWN and CHAMBER have hereunto executed this document, effective the day and year herein above written.

APPROVED AND ACCEPTED:

Doug Von Gausig, Mayor
Town of Clarkdale, Arizona

Date

ATTEST:

APPROVED AS TO FORM:

Kathleen Bainbridge, Town Clerk

Boyle, Pecharich Cline, Whittington & Stallings
Town Attorneys
By: Robert S. Pecharich, Esq.

APPROVED AND ACCEPTED:

Kathleen Cannon, President
Clarkdale Chamber of Commerce

Date

OPTION "B"

**AGREEMENT BETWEEN THE TOWN OF CLARKDALE AND THE CLARKDALE
CHAMBER OF COMMERCE FOR THE DISTRIBUTION OF
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WHEREAS, the Town of Clarkdale supports the request of the Yavapai-Apache Nation to distribute funds to the Clarkdale Chamber of Commerce and finds that the Clarkdale Chamber of Commerce provides benefits to the general public and/or promotes commerce and economic development as required under Section 12(b)(1) of the 2002 Gaming Compact, and desires to define the terms under which the distribution should be made.

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Effective Date

This agreement shall be effective on the date it is signed by both parties.

Term

This Agreement shall commence upon the Effective Date and shall terminate when the funds have been disbursed to the Chamber by the Town for designated projects, and any required written reports have been submitted to the Town.

Designated Projects

The projects designated for funding under this agreement, include:

- Commerce and Economic Development - \$11,592.19

OPTION "B"

Disbursement of Funds

Promptly after execution of this Agreement by the Town and the Chamber, the Town shall send a payment to the Chamber in the amount specified for the Designated Projects.

Reporting Requirement

On or before June 30, 2009, the Chamber shall submit a written report to the Town that outlines how the project, program or events benefitted the general public and/or promoted commerce and economic development, and verifies that the funds were used for the Designated Projects specified herein.

Limited Duty of the Town

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OPTION "B"

damages for the breach hereof, the Court, sitting without a jury, shall award a reasonable amount as and for attorney's fees to the prevailing party.

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OPTION "B"

APPROVED AND ACCEPTED:

Doug Von Gausig, Mayor
Town of Clarkdale, Arizona

Date

ATTEST:

APPROVED AS TO FORM:

Kathleen Bainbridge, Town Clerk

Boyle, Pecharich Cline, Whittington & Stallings
Town Attorneys
By: Robert S. Pecharich, Esq.

APPROVED AND ACCEPTED:

Kathleen Cannon, President
Clarkdale Chamber of Commerce

Date