

**Fiscal Agent/Grant Agreement  
Among  
Ak-Chin Indian Community  
and  
Pinal County  
and  
Maricopa Pantry**

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; Pinal County ("Municipality"), a political subdivision of the State of Arizona, having its principal place of business at 31 N. Pinal Street, Bldg. A., Florence, Arizona 85132; and (and for the benefit of) Maricopa Pantry ("Grantee"), an Arizona non-profit corporation, having its principal place of business at 4660 N. Hidden Valley Road, Maricopa, Arizona 85139. Community, Municipality, and Grantee may each be referred to individually as a "party" and collectively as the "parties."

**RECITALS**

**WHEREAS**, pursuant to Article IV, Section (b) of the Constitution of the Ak-Chin Indian Community, the Community Council is authorized 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 pursuant to Arizona Revised Statutes (A.R.S.) §11-201, the Municipality is authorized to enter into contracts, such as this Agreement, and accept grant funding on behalf of the Grantee; and

**WHEREAS**, the Grantee is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in nonprofit activity that 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 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**, 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 has made arrangements with the Municipality whereby the Municipality will 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 Municipality 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.

## **AGREEMENT**

**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 Municipality 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 May 25, 2023 (and approved by the Municipality by resolution on June 21, 2023), and (b) seeks funding for the Project (“Project” is defined below in Section 1.2), that the Grantee submitted to the Community for consideration in awarding this Grant and which is attached hereto and incorporated herein by this reference as Attachment “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) the resolution

(Resolution No. 062123-AKCHIN-PANTRY which is dated June 21, 2023) showing that the Municipality 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 Municipality related to the Grantee's Application and submitted in consideration for receiving a Grant.

- (b) "Fiscal agent" means the Municipality, 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. Municipality shall make every effort to disburse the funding to the Grantee within thirty (30) days from the date on which the Municipality 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 "Maricopa Pantry Warehouse/Community Center Phase 1" 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 or 2) January 1, 2024.

2.2 Unless otherwise terminated in accordance with the Article IX 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 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 XI 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 attachments 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

unless otherwise approved by the Community, which such approval may be given in the form of a Community resolution, without requiring further written amendment of this Agreement. Beyond acting as a fiscal agent and accepting Grant funding on behalf of the Grantee, the Municipality 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 EIGHTY-NINE THOUSAND DOLLARS (\$89,000.00), which is one-time funding, the funding for which shall be accepted by the Municipality 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, EXCEPT salaries and wages, but which may include 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 Attachment 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 Municipality 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 Municipality 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 Municipality changes in such a manner that the Municipality 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 Municipality 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, the property shall be returned to the Community for contribution to another eligible recipient. The Municipality 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 other 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 Municipality's W-9, the Community will arrange to issue to the Municipality Grant funding in the amount set forth in Article IV, Section 4.1. Unless otherwise requested by the Municipality, the Grant funding will be sent via FedEx or other express mail service to the Municipality at the address provided in Article XII, Section 12.2, below.

5.2 Upon receipt of the Grant funding, the Municipality 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 Municipality receives funding from the Community. The Municipality may not charge the Grantee or the Community any administration, management, or other fee for acting as the fiscal agent.

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

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

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

(c) The Municipality 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 Municipality will act as promptly as possible to provide the Grant funding to the Grantee; provided that the Municipality shall provide the Grant funding to the Grantee within three (3) months of receiving the funding from the Community.

6.2 The Municipality acknowledges that nothing contained in this Agreement, nor any act of the Community, the Municipality, 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 Municipality 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) 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 a 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 Attachment 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 Municipality, 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 or the Municipality and the Grantee.

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

8.1 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.

8.2 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") to the Grantee with a copy to the Municipality. No later than thirty (30) calendar days after the Grantee's 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 this Agreement, (b) suits for declaratory judgment, specific performance, or 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 this Agreement, the Community will provide written Default Notice to the Grantee and the Grantee has thirty (30) calendar days to either: (a) commence performing as required under this 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, the Grantee shall return to the Community all Grant funding and/or any property purchased with the Grant funding.

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

8.6 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 Municipality and returning **ALL** Grant funding to the Community.

9.2 The Municipality may terminate this Agreement before accepting any Grant funding from the Community. After the Municipality has accepted funding from the Community, the Municipality may only terminate this Agreement if the Municipality has not yet provided the Grant funding to the Grantee. The Municipality 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 and not yet provided to the Grantee 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 Municipality 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 this 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, 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) calendar days after:

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

11.3 The Grantee shall also provide to the Municipality appropriate financial reports in accordance with A.R.S. § 11-624. The Grantee agrees to allow the Municipality to conduct financial monitoring and audits of the Grantee, and the Grantee agrees to cooperate fully with any financial monitoring or audits the Municipality conducts or requires. The Grantee agrees at all times, both during and after expiration or termination of this Agreement, to maintain and preserve its records in a manner consistent, and in compliance, with all applicable laws and regulations. This Section shall survive expiration or termination of this Agreement.

## **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  ATTN: 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>CC:</p>	<p>Maricopa Pantry  ATTN: Paul Shoaf, CEO  4660 N. Hidden Valley Rd.  Maricopa, Arizona 85139</p> <p>Maricopa Pantry  ATTN: Alice Shoaf, Vice-President  4660 N. Hidden Valley Rd.  Maricopa, Arizona 85139</p>
<p>If to the Municipality:</p> <p>PRIMARY ADDRESS</p>	<p>Pinal County  ATTN: Heather Patel, Grants Manager  PO Box 1348  Florence, Arizona 85132</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 Municipality, 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 Attachment 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 Grantee hereby warrants that it will, at all times, during the term of this Agreement comply with all federal immigration laws applicable to employment of its employees and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the "State and Federal Immigration Laws"). A breach of the foregoing warranty shall be deemed a material breach, and the Municipality shall have the right to terminate this Agreement for such a breach, in addition to any other applicable remedies. The Municipality retains the legal right to inspect the papers of each contractor or subcontractor employee of Grantee who performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

12.11 This Agreement is subject to cancellation pursuant to A.R.S. §38-511, the pertinent provisions of which are incorporated herein by reference.

12.12 The parties shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Agreement.

12.13 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 Municipality 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.

12.14 To the fullest extent permitted by law, the Grantee (as "Indemnitor") hereby agrees to defend, indemnify, and hold harmless the Community and the Municipality and their respective departments, agencies, officers, officials, agents, employees, and volunteers (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including, but not limited to, court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter

referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused as a direct or indirect result of any acts or omissions of the Grantee or any of its owners, officers, directors, agents, employees, or subcontractors, regardless of whether or not such Claims are caused in part by a party indemnified hereunder. This indemnity includes, but is not limited to, any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Grantee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is agreed that Grantee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. The Grantee shall not be obligated to defend Indemnitee against any Claims or indemnify Indemnitee resulting solely from the negligence or willful misconduct of Indemnitee and not in any way resulting from any act or omission of the Grantee or anyone directly or indirectly employed by the Grantee or anyone for whose acts the Grantee may be liable. The Grantee agrees to waive all rights of subrogation against the Community and the Municipality, their respective departments, agencies, officers, officials, agents, employees, and volunteers for losses arising from the work performed by the Grantee for the Community or the Municipality. This indemnification shall survive the termination of this Agreement. Any insurance, its limits, amount and type required herein to be maintained by the Grantee shall in no way be construed as limiting the scope of this indemnity.

#### **APPROVALS**

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.

[THIS SPACE BLANK INTENTIONALLY]

**COMMUNITY:**  
AK-CHIN INDIAN COMMUNITY

**GRANTEE:**  
PINAL COUNTY

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

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Jeff Serdy  
Chairman, Board of Supervisors

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Natasha Kennedy  
Clerk of the Board

**GRANTEE:**  
MARICOPA PANTRY

*Paul Shoaf* 10/16/23  
\_\_\_\_\_  
Paul Shoaf  
CEO

ATTEST:

*Alice R. Shoaf*  
\_\_\_\_\_  
Name:  
Title: Vice President  
Maricopa Pantry