Staff Summary Report

Tempe

Council Meeting Date: 06/05/08 **Agenda Item Number:** 92

SUBJECT: Request approval of a Resolution authorizing the Mayor to execute an Intergovernmental Agreement between the Pascua Yaqui Tribe and the City for the upgrade of equipment for specializing in online investigations of internet crimes against children and for training for the project.

DOCUMENT NAME: 20080605graw03 **STATE LEGISLATURE (0107-06)** Resolution No. 2008.49.

SUPPORTING DOCS: No.

COMMENTS: Resolution No. 2008.49 authorizes the execution of an Intergovernmental Agreement between the Pascua Yaqui Tribe and the City to provide funding in the amount of $74,670 to the City.

PREPARED BY: Amber Wakeman, Government Relations Director, (480) 350-8824

REVIEWED BY: Shelley Hearn, Community Relations Manager, (480) 350-8906

LEGAL REVIEW BY: Rosemary H. Rosales, Deputy City Attorney, (480) 350-8698

FISCAL NOTE: None.

RECOMMENDATION: Recommend approval of Resolution No. 2008.49 authorizing the Mayor to execute the Intergovernmental Agreement between the Pascua Yaqui Tribe and the City of Tempe.

ADDITIONAL INFO:

RESOLUTION NO. 2008.49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE PASCUA YAQUI TRIBE AND THE CITY OF TEMPE.

WHEREAS, A.R.S. § 11-952 *et seq.* provides for the ability for the City to enter into an Intergovernmental Agreement for the cooperation of the parties; and

WHEREAS, Article VI, §1(a) of the Constitution of the Pascua Yaqui Tribe (the "Tribe") vests the Tribal Council with the authority to enter into agreements with federal, state, and local governments for governmental purposes serving the general welfare of the Tribe; and

WHEREAS, the Tribe, in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2003 authorizes the Tribe to expend a certain portion of its gaming revenues directly to local governments for governmental purposes; and

WHEREAS, the City and Tribe have reached an agreement whereby the Tribe will provide funding to the City of Tempe for the upgrade of equipment for specializing in online investigations of internet crimes against children and for training for the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Intergovernmental Agreement for funding for the upgrade of equipment for specializing in online investigations of internet crimes against children and for training for the project is approved, and that the Mayor is authorized to sign the Intergovernmental Agreement for the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____day of _____, 2008.

_____
MAYOR

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

INTERGOVERNMENTAL AGREEMENT BETWEEN PASCUA YAQUI TRIBE AND CITY OF TEMPE

This *Intergovernmental Agreement* is entered into this 14th day of May, 2008, by and between the Pascua Yaqui Tribe, a federally recognized Indian Tribe ("Tribe") and the City of Tempe, Arizona, ("City").

RECITALS

A. WHEREAS, A.R.S. § 11-952 *et seq.* provides for the ability for the City to enter into an Intergovernmental Agreement for the cooperation of the parties; and

B. WHEREAS, Article VI, §1(a) of the Constitution of the Pascua Yaqui Tribe vests the Tribal Council with the authority to enter into agreements with federal, state, and local governments for governmental purposes serving the general welfare of the Tribe; and; and

C. WHEREAS, the Tribe, in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2003 authorizes the Tribe to expend a certain portion of its gaming revenues directly to local governments for governmental purposes; and

D. WHEREAS, the City and Tribe have reached an agreement, memorialized in this document, whereby the Tribe will provide funding to the City of Tempe for funding a police investigator position to specialize in online investigations of internet crimes against children and for training and the upgrade of equipment for the project.

NOW, THEREFORE, Tribe and City, in consideration of the mutual representations and covenants set forth herein, and for other good and valuable consideration, do mutually agree as follows.

AGREEMENT

1 Purpose. The purpose of this intergovernmental agreement is to provide funding to the City for the augmentation of the current Computer Crimes Forensic Unit to fund a special investigator position to investigate internet crimes against children and for the upgrade of technology for the unit and training for the staff.

2 Effective Date; Term. This Agreement shall become effective upon filing the original executed Agreement with the office of the Maricopa County Recorder, and shall continue in effect until performance required by the agreement is completed.

3. Amount of Funding. The Tribe hereby gives over to the City the sum of $74,670.00 to be expended in the manner set forth herein, particularly as detailed in paragraph 4 below.

4. Specific Goals. The City may only expend the funds identified in Paragraph 3 in the following manner and for the following purposes:

(a) To implement a special section of their Computer Crimes Forensic Unit, specializing in investigation of internet crimes against children. The funds will be used to implement the new program, to fund an investigator, for training and equipment.

5. Unauthorized Use of Funds Prohibited. Due to the nature of the Tribal State Gaming Compact referenced herein, the use of the funds provided under this Agreement is restricted solely for the intended uses described in paragraph 4 above. Any use of these funds outside the scope of paragraph 4 may subject the City or Tribe to sanction by the State of Arizona, and therefore must be strictly prohibited to the maximum extent possible by either Party. However, nothing in this Agreement shall be interpreted to prevent City from supplementing, or re-prioritizing, the specific amounts set forth in paragraph 4(a), so long as City receives prior written approval from the Tribe.

6. Status of Tribe as Sovereign Nation. The Tribe is a recognized sovereign nation, and nothing in this Agreement is intended to supersede that status.

7. Status of Officers & Employees. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between any Tribe employee or City employee. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for any of its employees.

8. Hold Harmless; Indemnification. Each party shall, to the extent permitted by Arizona and Tribal law, indemnify, defend and hold harmless each other party, its officers, departments, employees and agents from, for and against any and all suits, actions, legal or administrative proceedings, claims, demands liens, losses, fines or damages of any kind or nature, including consequential damages, liability, interest, attorneys' and accountants' fees or costs, and expenses of whatsoever kind and nature, which are in any manner directly or indirectly caused, occasioned or contributed to, by reason of any act, omission, fault, negligence, violation or alleged violation of any law, whether active or passive, of any other party hereto, its agents, employees, or anyone acting under its direction, control, or on his behalf, in connection with or incident to the performance of this Agreement. The mutual indemnifications set forth herein are not intended to, and do not, preclude any party from claiming against another party for breach of this Agreement.

9. Notices. All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made to:

City:	_____ Hugh Hallman, Mayor 31 E. Fifth St. Tempe, AZ 85281	COPY TO:	Andrew B. Ching Tempe City Attorney 21 E. Fifth Street, Suite 201 Tempe, AZ 85281
TRIBE:	Peter Yucupicio, Chairman	COPY TO:	Attn: Attorney General

Pascua Yaqui Tribe 7474 Camino de Oeste Tucson, AZ 85757	Pascua Yaqui Tribe 4725 W. Calle Tetakusim Bldg B Tucson, AZ 85757

10 Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

11 Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the parties.

12 Entire Agreement. This Agreement, including its exhibits and recitals, constitutes the entire agreement between the parties, and includes all prior oral and written agreements of the parties.

13 Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of City or Tribe.

14 No Joint Venture. It is not intended by this Agreement, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties. No party hereto shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including without limitation the other party's obligation to withhold social security and income taxes for itself or any of its employees.

15 Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns.

16 Timeliness. Each of the parties to this Agreement agrees to take such actions as may be necessary to carry out the terms of this Agreement, and to cause such documents as may be necessary to be executed with reasonable promptness.

17 Non-waiver. The failure of any party to insist, on any one or more instances, upon the full and complete performance of any of the terms and provisions of the Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in full or in part in the future. The acceptance by any party of sums of less than may be due and owing it at any time shall not be construed as accord and satisfaction.

18 Severability. In the event that any provision, or any portion of any provision, of this Agreement or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application, which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be deemed to be severable.

19 Termination.

19.1 For Cause. Any party hereto may terminate this Agreement for material breach of the Agreement by another party. Prior to any termination under this section, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

19.2 Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purposes of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove any such inability with all reasonable dispatch.

19.3 Funding Sources; Budget; Non-appropriation. This Agreement and all obligations upon the parties arising therefrom shall be subject to any limitation imposed by budget law. The parties affirm that they have within their respective budgets sufficient funds to discharge the obligations and duties assumed under this Agreement. If for any reason any party does not appropriate sufficient monies for the purpose of maintaining this Agreement, this Agreement shall be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, the parties hereto shall have no further obligation to the other party other than for payment for services rendered prior to cancellation.

19.4 Conflict of Interest. This Agreement may be canceled without penalty or further obligation pursuant to A.R.S. § 38-511, and applicable provisions under the Constitution of the Pascua Yaqui Tribe, the pertinent provisions are incorporated into this Agreement by reference.

19.5 Ownership of Property Upon Termination. Any termination of this Agreement shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the project constructed pursuant to this Agreement.

20. Reporting. City will report on its spending of the funds received under this agreement within 90 days after completion of the project for which funds were granted, including providing an expense report of expenditure of funds and a closing presentation by the City to the Tribe's Tribal Council regarding the project.

In witness whereof, the parties hereto have hereunto set their hands the day and year first above written.

PASCUA YAQUI TRIBE

_____
Peter Yucupicio,
Chairman of the Pascua Yaqui Tribe

ATTEST:

_____
Catalina Alvarez
Secretary of the Pascua Yaqui Tribe

City of Tempe

_____
Hugh Hallman
Mayor, City of Tempe

ATTEST:

_____
Jan Hort
City Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing Intergovernmental Agreement between the City of Tempe and the Pascua Yaqui Tribe has been reviewed pursuant by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the Constitution of the Pascua Yaqui Tribe, the State of Arizona and the United States to those parties to the Intergovernmental Agreement represented by the undersigned.

Pascua Yaqui Tribe

_____
Robert Gillon
Interim Attorney General for the
Pascua Yaqui Tribe

City of Tempe

_____
Andrew B. Ching
As City Attorney and not personally