

City Commission Meeting

6.1.

Meeting Date: 12/18/2018

Submitted By: Jacqueline Cook, Engineering EA

SUBJECT:

CONSIDER AGREEMENT FOR SUPPORT OF SECTION 20 APPLICATION AND FOR PAYMENT AND COOPERATION AND PAYMENT IN LIEU OF TAX AGREEMENT WITH THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA.

BACKGROUND:

The United Keetoowah Band of Cherokee Indians in Oklahoma (the UKB), have interest in locating a casino in Enid, Oklahoma. The UKB presented a proposal at the September 18, 2018 Special Study Session. The proposal is premised upon the execution of two agreements. The first includes a payment of eleven million seven hundred thousand and seventy dollars (\$11,770,000.00) over seven years to the City of Enid in exchange for the City's support of the casino during the Section 20 application process. The agreement provides a waiver of sovereign immunity by both parties and the UKB agree to submit its developments' site plan for approval to the MAPC and City Council. Utilities will be paid at ordinance rates. If the agreement is executed, the City is committed to support the casino and the City would be in breach of the agreement if it withdraws its support for the casino and subject to liquidated damages of one thousand dollars (\$1,000.00) a day.

The second agreement provides that the UKB will pay 4.6% of the sales of food, beverage and other non-gaming goods to the City of Enid for twenty five years. The City may renew the agreement for another twenty five years option. The agreement also provides that the UKB will provide a payment each year in lieu of the payment of ad valorem taxes.

If these agreements are approved, the City Manager will provide a letter of support to the UKB and a resolution of support will be drafted and placed on the agenda for the first meeting in January, 2019.

RECOMMENDATION:

Discuss.

PRESENTER:

Attachments

Section 20 Application
Casino Payment

**AGREEMENT FOR SUPPORT OF
SECTION 20 APPLICATION AND FOR PAYMENT**

This **AGREEMENT FOR SUPPORT OF SECTION 20 APPLICATION AND FOR PAYMENT** (the "Agreement") is made and entered into as of December 18, 2018 ("Effective Date"), by and between the CITY OF ENID, an Oklahoma municipality ("City") and the UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, a federally recognized Indian tribe ("UKB" or "Tribe") (referred to collectively as the "Parties").

WITNESSETH:

WHEREAS, the UKB wishes to apply to the U.S. Department of the Interior to have land, which lies within the boundaries of the City, taken into trust for the benefit of the UKB for the purpose of establishing casino gaming on such land;

WHEREAS, the City wishes to support the UKB's application by submitting a letter of support during the Section 20 application process, and continuing to support the application throughout the application process, including to the Governor of Oklahoma, who must consent to any such land being taken in trust for the UKB; and

WHEREAS, in exchange for the City's support, the UKB wishes to pay the City ELEVEN MILLION SEVEN HUNDRED SEVENTY THOUSAND Dollars (\$11,770,000) over the course of seven years beginning with the fourth month after which a UKB casino within the external City boundaries, opens its doors to the public; and

WHEREAS, the UKB is desirous of providing such financial assistance to the City for any purpose the City deems appropriate;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree, intending to be legally bound, as follows:

**ARTICLE I
PAYMENT OF MONIES OWED**

1. Beginning the fourth month after a UKB casino opens for public gaming within the external boundaries of the City, UKB will pay \$_____ per month no later than the 15th day of each month for a period of eighty four months as set forth in the amortization schedule attached as Exhibit A.

2. If the UKB casino does not produce at least \$_____ in Net Income for the UKB in any given month, the payment owed to the City for the next month shall be reduced to the UKB's Net Income. For instance, if the UKB casino produces only \$50,000 in net income for the UKB in one month, the UKB's payment to the City for the next month will be \$50,000.

For purposes of this paragraph, “Net Income” shall be defined as earnings before interest, taxes, depreciation, and amortization (EBITDA) with development fees (if any), management fees (if any), loan payments (if any) and payments made under this Agreement deducted from earnings to calculate Net Income. Payments of at least \$____.____ shall continue beyond eighty four months until the total amount paid by the UKB to the City under this Agreement equals ELEVEN MILLION SEVEN HUNDRED SEVENTY THOUSAND Dollars (\$11,770,000).

ARTICLE II CITY’S OBLIGATIONS

3. The City will support the UKB’s Section 20 application by submitting a letter of support to the Bureau of Indian Affairs, Secretary of the Interior, and Governor of Oklahoma, and will provide other statements of support throughout the Section 20 application process, as requested by the UKB.

4. The City agrees to enter into agreements concerning law enforcement and fire protection and to provide utility services at the standard ordinance rates for water, sewer, storm water and trash. The City agrees to assist the UKB in working with other public service entities to provide public services for the proposed UKB casino when appropriate and authorized by law.

ARTICLE III DISPUTE RESOLUTION

5. The Parties agree to resolve all disputes arising under this Agreement in the American Arbitration Association (“AAA”), under its Commercial Rules in effect at the time of the dispute. Any award from the AAA may be enforced in federal, state, or tribal court.

6. The Parties agree to waive their sovereign immunity from suit for all arbitrations arising under this Agreement, provided the UKB only waives its sovereign immunity for monetary damages to revenues of the proposed UKB casino in the City.

7. If, after executing this Agreement, the City opposes the Section 20 application process, or refuses to provide written letters of support as authorized in this Agreement, the UKB shall be deemed to have incurred liquidated damages of \$1,000 per day for every day the City continues to withhold supporting letters or takes formal action in opposition to the Section 20 application process. Such liquidated damages may be enforced in the AAA as set forth under this Article.

8. This Agreement shall be deemed to have been made within the State of Oklahoma and shall be construed and interpreted in accordance with the laws of the State of Oklahoma, without regard to conflicts of law.

**ARTICLE IV
MISCELLANEOUS**

9. The UKB agrees to submit its site plan for the proposed UKB casino and other UKB developments to the Metropolitan Area Planning Commission and to the City for approval.

10. If the proposed UKB casino closes its doors and the UKB seeks to sell the property, the UKB shall give notice to the City, and the City shall have a right of first refusal to purchase the property, effective for ninety (90) days after the UKB gives notice of its intent to sell the property.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the December 18, 2018.

(SEPARATE SIGNATURE PAGES FOLLOW)

SEPARATE SIGNATURE PAGE OF THE CITY

Date: _____

“CITY”
The City of Enid,
An Oklahoma Municipal Corporation

William E. Shewey, Mayor

(SEAL)

ATTEST:

Alissa Lack, City Clerk

Approved as to Form and Legality:

Carol Lahman, City Attorney

SEPARATE SIGNATURE PAGE OF UKB

Date: _____

“UKB”

Chief Joe Bunch

WITNESSED:

Signature

Printed Name and Title

EXHIBIT A
PAYMENT AMORTIZATION SCHEDULE

| | | |
|----------|-------------|-----------------|
| Month 1 | \$98,083.33 | \$11,671,916.67 |
| Month 2 | \$98,083.33 | \$11,573,833.34 |
| Month 3 | \$98,083.33 | \$11,475,750.01 |
| Month 4 | \$98,083.33 | \$11,377,666.68 |
| Month 5 | \$98,083.33 | \$11,279,583.35 |
| Month 6 | \$98,083.33 | \$11,181,500.02 |
| Month 7 | \$98,083.33 | \$11,083,416.69 |
| Month 8 | \$98,083.33 | \$10,985,333.36 |
| Month 9 | \$98,083.33 | \$10,887,250.03 |
| Month 10 | \$98,083.33 | \$10,789,166.70 |
| Month 11 | \$98,083.33 | \$10,691,083.37 |
| Month 12 | \$98,083.33 | \$10,593,000.04 |
| Month 13 | \$98,083.33 | \$10,494,916.71 |
| Month 14 | \$98,083.33 | \$10,396,833.38 |

| | | |
|----------|-------------|-----------------|
| Month 15 | \$98,083.33 | \$10,298,750.05 |
| Month 16 | \$98,083.33 | \$10,200,666.72 |
| Month 17 | \$98,083.33 | \$10,102,583.39 |
| Month 18 | \$98,083.33 | \$10,004,500.06 |
| Month 19 | \$98,083.33 | \$9,906,416.73 |
| Month 20 | \$98,083.33 | \$9,808,333.40 |
| Month 21 | \$98,083.33 | \$9,710,250.07 |
| Month 22 | \$98,083.33 | \$9,612,166.74 |
| Month 23 | \$98,083.33 | \$9,514,083.41 |
| Month 24 | \$98,083.33 | \$9,416,000.08 |
| Month 25 | \$98,083.33 | \$9,317,916.75 |
| Month 26 | \$98,083.33 | \$9,219,833.42 |
| Month 27 | \$98,083.33 | \$9,121,750.09 |
| Month 28 | \$98,083.33 | \$9,023,666.76 |
| Month 29 | \$98,083.33 | \$8,925,583.43 |
| Month 30 | \$98,083.33 | \$8,827,500.10 |

| | | |
|----------|-------------|----------------|
| Month 31 | \$98,083.33 | \$8,729,416.77 |
| Month 32 | \$98,083.33 | \$8,631,333.44 |
| Month 33 | \$98,083.33 | \$8,533,250.11 |
| Month 34 | \$98,083.33 | \$8,435,166.78 |
| Month 35 | \$98,083.33 | \$8,337,083.45 |
| Month 36 | \$98,083.33 | \$8,239,000.12 |
| Month 37 | \$98,083.33 | \$8,140,916.79 |
| Month 38 | \$98,083.33 | \$8,042,833.46 |
| Month 39 | \$98,083.33 | \$7,944,750.13 |
| Month 40 | \$98,083.33 | \$7,846,666.80 |
| Month 41 | \$98,083.33 | \$7,748,583.47 |
| Month 42 | \$98,083.33 | \$7,650,500.14 |
| Month 43 | \$98,083.33 | \$7,552,416.81 |
| Month 44 | \$98,083.33 | \$7,454,333.48 |
| Month 45 | \$98,083.33 | \$7,356,250.15 |
| Month 46 | \$98,083.33 | \$7,258,166.82 |

| | | |
|----------|-------------|----------------|
| Month 47 | \$98,083.33 | \$7,160,083.49 |
| Month 48 | \$98,083.33 | \$7,062,000.16 |
| Month 49 | \$98,083.33 | \$6,963,916.83 |
| Month 50 | \$98,083.33 | \$6,865,833.50 |
| Month 51 | \$98,083.33 | \$6,767,750.17 |
| Month 52 | \$98,083.33 | \$6,669,666.84 |
| Month 53 | \$98,083.33 | \$6,571,583.51 |
| Month 54 | \$98,083.33 | \$6,473,500.18 |
| Month 55 | \$98,083.33 | \$6,375,416.85 |
| Month 56 | \$98,083.33 | \$6,277,333.52 |
| Month 57 | \$98,083.33 | \$6,179,250.19 |
| Month 58 | \$98,083.33 | \$6,081,166.86 |
| Month 59 | \$98,083.33 | \$5,983,083.53 |
| Month 60 | \$98,083.33 | \$5,885,000.20 |
| Month 61 | \$98,083.33 | \$5,786,916.87 |
| Month 62 | \$98,083.33 | \$5,688,833.54 |

| | | |
|----------|-------------|----------------|
| Month 63 | \$98,083.33 | \$5,590,750.21 |
| Month 64 | \$98,083.33 | \$5,492,666.88 |
| Month 65 | \$98,083.33 | \$5,394,583.55 |
| Month 66 | \$98,083.33 | \$5,296,500.22 |
| Month 67 | \$98,083.33 | \$5,198,416.89 |
| Month 68 | \$98,083.33 | \$5,100,333.56 |
| Month 69 | \$98,083.33 | \$5,002,250.23 |
| Month 70 | \$98,083.33 | \$4,904,166.90 |
| Month 71 | \$98,083.33 | \$4,806,083.57 |
| Month 72 | \$98,083.33 | \$4,708,000.24 |
| Month 73 | \$98,083.33 | \$4,609,916.91 |
| Month 74 | \$98,083.33 | \$4,511,833.58 |
| Month 75 | \$98,083.33 | \$4,413,750.25 |
| Month 76 | \$98,083.33 | \$4,315,666.92 |
| Month 77 | \$98,083.33 | \$4,217,583.59 |
| Month 78 | \$98,083.33 | \$4,119,500.26 |

| | | |
|----------|-------------|----------------|
| Month 79 | \$98,083.33 | \$4,021,416.93 |
| Month 80 | \$98,083.33 | \$3,923,333.60 |
| Month 81 | \$98,083.33 | \$3,825,250.27 |
| Month 82 | \$98,083.33 | \$3,727,166.94 |
| Month 83 | \$98,083.33 | \$3,629,083.61 |
| Month 84 | \$98,083.33 | \$3,531,000.28 |
| Month 85 | \$98,083.33 | \$3,432,916.95 |
| Month 86 | \$98,083.33 | \$3,334,833.62 |
| Month 87 | \$98,083.33 | \$3,236,750.29 |
| Month 88 | \$98,083.33 | \$3,138,666.96 |
| Month 89 | \$98,083.33 | \$3,040,583.63 |
| Month 90 | \$98,083.33 | \$2,942,500.30 |
| Month 91 | \$98,083.33 | \$2,844,416.97 |
| Month 92 | \$98,083.33 | \$2,746,333.64 |
| Month 93 | \$98,083.33 | \$2,648,250.31 |
| Month 94 | \$98,083.33 | \$2,550,166.98 |

| | | |
|-----------|-------------|----------------|
| Month 95 | \$98,083.33 | \$2,452,083.65 |
| Month 96 | \$98,083.33 | \$2,354,000.32 |
| Month 97 | \$98,083.33 | \$2,255,916.99 |
| Month 98 | \$98,083.33 | \$2,157,833.66 |
| Month 99 | \$98,083.33 | \$2,059,750.33 |
| Month 100 | \$98,083.33 | \$1,961,667.00 |
| Month 101 | \$98,083.33 | \$1,863,583.67 |
| Month 102 | \$98,083.33 | \$1,765,500.34 |
| Month 103 | \$98,083.33 | \$1,667,417.01 |
| Month 104 | \$98,083.33 | \$1,569,333.68 |
| Month 105 | \$98,083.33 | \$1,471,250.35 |
| Month 106 | \$98,083.33 | \$1,373,167.02 |
| Month 107 | \$98,083.33 | \$1,275,083.69 |
| Month 108 | \$98,083.33 | \$1,177,000.36 |
| Month 109 | \$98,083.33 | \$1,078,917.03 |
| Month 110 | \$98,083.33 | \$980,833.70 |

| | | |
|--------------|---------------------|--------------|
| Month 111 | \$98,083.33 | \$882,750.37 |
| Month 112 | \$98,083.33 | \$784,667.04 |
| Month 113 | \$98,083.33 | \$686,583.71 |
| Month 114 | \$98,083.33 | \$588,500.38 |
| Month 115 | \$98,083.33 | \$490,417.05 |
| Month 116 | \$98,083.33 | \$392,333.72 |
| Month 117 | \$98,083.33 | \$294,250.39 |
| Month 118 | \$98,083.33 | \$196,167.06 |
| Month 119 | \$98,083.33 | \$98,083.73 |
| Month 120 | \$98,083.73 | \$0.00 |
| Total | \$11,770,000 | |

Cooperation and Payment in Lieu of Tax Agreement

This Memorandum of Agreement (“Agreement”) is effective as of the ____ day of _____, 2018, by and between the City of Enid (the “City”) and the United Keetoowah Band of Cherokee Indians in Oklahoma (the “Tribe”), a federally recognized Indian tribe (referred to herein collectively as “the Parties” and as to each as a “Party”). The terms “City” and “Tribe” as used herein shall include the Parties’ governmental entities, departments and officials unless otherwise stated.

RECITALS

WHEREAS, the Tribe is a federally-recognized Indian Tribe seeking to place land within the Enid city limits into trust through the Section 20 process for gaming purposes; and

WHEREAS, under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* (“IGRA”), the Tribe may engage in gaming as a means of promoting Tribal economic development, self-sufficiency and strong Tribal government; and

WHEREAS, IGRA generally requires that Class III gaming be conducted pursuant to a Tribal-State Class III gaming compact; and

WHEREAS, the Tribe plans to enter into the standard Oklahoma gaming compact agreed to by Oklahoma voters with the State of Oklahoma (“Compact”), as contemplated under IGRA; and

WHEREAS, the Tribe desires to operate Tribal economic development projects in a manner that benefits the Tribe, its members, and the community as a whole, and the City recognizes the mutual benefit that can be derived if those goals are achieved; and

WHEREAS, the Tribe and the City have participated in a series of joint meetings to address City services such as police, fire, water, and sewer required with respect to proposed economic development projects, consistent with the Tribe's sovereignty, applicable law, and the Compact; and

WHEREAS, proposed and future Tribal development are not City projects and are not subject to the discretionary approval of the City and absent this Agreement the City has limited opportunity to collect tax revenue from the Tribe’s economic development projects; and

WHEREAS, the Parties recognize that this Agreement is an important step in furthering a government-to-government relationship and building trust, mutual respect

and cooperation that is intended to benefit the Tribe, its members and the entire City of Enid community;

NOW, THEREFORE, the Parties agree as follows:

This Agreement between Parties shall provide for cooperation between the Parties in the provision of city services to the Tribe's proposed economic development within the City boundaries.

1. The Tribe agrees to pay to the City an amount equal to 4.6% of the sales of food, beverages, gift shop items and other non-gaming goods, which shall be identified as a payment in lieu of taxes, each month beginning the month in which the Tribe's proposed casino opens its doors to the public for Class II or Class III gaming. The Tribe also agrees to pay the City an amount equal to the property tax that would otherwise be leveled on any land within the City of Enid that is held, which shall be identified as a payment in lieu of taxes, each year no later than January 30, beginning the year after the Tribe's proposed casino opens its doors to the public for Class II or Class III gaming.

2. Such payments shall continue for the term of this Agreement. Should the Tribe's casino close for any reason the obligation to make these payments in lieu of taxes shall cease immediately.

3. In exchange for the identified payment in lieu of taxes, the City agrees to provide all services provided to other businesses within the City's boundaries and agrees not to discriminate between the Tribe's economic development projects and other non-tribal businesses.

4. Also in exchange for the identified payment in lieu of taxes, the City agrees to provide a letter of support for the Tribe's Section 20 application to have land placed in trust for its benefit within the City of Enid. The City also agrees to provide any needed supporting documents for review by the Department of the Interior and the Governor of Oklahoma, and to assist the Tribe in its efforts to have such land taken into trust for its benefit.

5. The City shall have the right to review, within reason, receipts for sales of non-gaming goods at the Tribe's proposed casino for auditing purposes.

6. The Parties expressly agree to waive their sovereign immunity from suit for purposes of enforcement of this Agreement only.

7. Oklahoma law shall govern this Agreement.

8. Any disputes shall be resolved in the American Arbitration Association, in accordance with its commercial rules. Awards, orders and judgments from the American

Arbitration Association may be enforced in federal or state court.

9. Nothing in this Agreement shall preclude or restrict the ability of Parties to voluntarily pursue, by mutual agreement, any other method of dispute resolution.

10. Notices and service of process shall be sent to the contacts listed below or to such other person or address as shall be provided in writing by the party. Service of process in any judicial or arbitration proceeding is waived in favor of delivery of documents by Certified Mail – Return Receipt Requested to the following:

For the Tribe:

Chief Bunch
United Keetoowah Band of Cherokee Indians in Oklahoma
PO Box 746
Tahlequah, OK 74465

With a copy simultaneously delivered to:

City Manager Jerald Gilbert
City of Enid
P.O. Box 1768
Enid, OK 73702

11. Nothing in this Agreement is intended to confer or expand the jurisdiction of any local, state or federal agency or other governmental body, nor is this Agreement intended to infringe or otherwise usurp the authority of any regulatory body including local, state, federal or Tribal agencies that may have jurisdiction over or related to Tribal activities, development or projects.

12. This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party including, without limitation, no rights in any Interested Persons, nor does it create any private right of action for any third party nor permit any third party to bring an action to enforce any of its terms.

13. This Agreement may be modified or amended only by mutual and written agreement of the Parties.

14. The invalidity of any provisions or portion of this Agreement shall not affect the validity of any other provisions of this Agreement or the remaining portions of the applicable provisions, unless such provision is material to the reasonable expectation of the Parties. Without limiting the foregoing, if the Agreement or any provision thereof is

declared invalid by a court of competent jurisdiction or the Department of Interior, then the Parties shall use their best efforts to renegotiate the terms of the invalid provisions.

15. Force Majeure. The Parties shall not be liable for any failure to perform, or for delay in performance of a party's obligations, and such performance shall be excused for the period of the delay and the period of the performance shall be extended when a force majeure event occurs; provided however that the party whose performance is prevented or delayed by such event of force majeure shall give prompt written notice of such event to the other party. For purposes of this Section, the term "force majeure" shall include, without limitation, war, epidemic, rebellion, riot, civil disturbance, earthquake, fire, flood, acts of governmental authorities, acts of God, acts of terrorism (whether actual or threatened), acts of the public enemy and in general, any other severe causes or conditions beyond the reasonable control of the Parties, the consequences of which in each case, by exercise of due foresight such party could not reasonably have been expected to avoid, and which by the exercise of due diligence it would not have been able to overcome, when such an event prevents the Tribe from meeting its obligations under this Agreement due to gaming activities ceasing operations for an extended period or prevents the City from meeting its obligations under this Agreement due to an interruption of County government operations.

16. This Agreement binds the Parties and their departments, affiliates, agents, representatives, successors, contractors, officials and related entities, which such Agreement shall also be reflected in a resolution of each Party's respective governing body approving the Agreement.

17. This Agreement shall continue for a term of twenty- five years from the date on which the Casino opens its doors to the public. At the end of the twenty- five years, the City has the option of renewing the agreement for another twenty five years by providing written notice to the Tribe in the manner outlined in Paragraph 10. agree to renegotiate the payment in lieu of taxes in good faith.

IN WITNESS WHEREOF, the Parties hereby execute and enter into this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

(SEPARATE SIGNATURE PAGES FOLLOW)

SEPARATE SIGNATURE PAGE OF THE CITY

Date: _____

“CITY”
The City of Enid,
An Oklahoma Municipal Corporation

William E. Shewey, Mayor

(SEAL)

ATTEST:

Alissa Lack, City Clerk

Approved as to Form and Legality:

Carol Lahman, City Attorney

SEPARATE SIGNATURE PAGE OF UKB

Date: _____

“UKB”

Chief Joe Bunch

WITNESSED:

Signature

Printed Name and Title