

**Indian Gaming Revenue Funding Agreement  
between  
the Tohono O'odham Nation  
and  
Pima County**

THIS Grant-in-Aid Indian Gaming Revenue Funding Agreement, ("Agreement") is entered into by and between the Tohono O'odham Nation, a federal recognized Indian tribe ("Nation") and Pima County, a body politic and corporate of the State of Arizona ("County").

**RECITALS**

- A. The Constitution of the Tohono O'odham Nation, Article VI, Section 1(f) provides that the Tohono O'odham Legislative Council is authorized to negotiate and conclude agreements on behalf of the Tohono O'odham Nation with Federal, State and local governments.
- B. The Constitution of the Tohono O'odham Nation Article VII, Section 2(f) provides that the Chairperson of the Nation is the official representative of the Tohono O'odham Nation; and as such, upon passage of the Resolution by the Legislative Council approving of any agreements with Federal, State and local governments, the Chairperson is authorized to sign such agreements on behalf of the Nation.
- C. Pursuant to A.R.S. §§ 11-254.04, 11-251(5) and 11-251(17), Pima County may appropriate and spend public monies for and in connection with activities that the Pima County Board of Supervisors finds and determines will assist in the improvement or enhancement of the economic welfare and health of Pima County inhabitants.
- D. WHEREAS, Nation and County have reached an agreement, memorialized in this document, whereby the Nation will provide funding to Pima County for distribution to the designated organization which promotes community development and economic welfare.

Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

**PROVISIONS**

- 1. Purpose. The purpose of this Agreement is to set forth the rights and responsibilities of the parties with respect to the payment and distribution of the Contribution, as hereinafter defined. County may not change the scope of the projects or use the funds for projects other than that described in Exhibit "A" without the consent of the Nation which may be issued in the form of a Resolution approving modifications to this Grant.
- 2. Term of Agreement. The term of this Agreement shall begin on the date of execution by both parties and shall terminate on the one-year anniversary of that execution.

3. Consideration and Reliance. It is acknowledged that Pima County's promise to accept and disburse the funds received by Pima County pursuant to this Agreement is full and adequate consideration and shall render this promise to provide funding binding upon the parties absent amendment to or termination of this Agreement.
4. Amount of Funding. Nation hereby gives over to County the sum of \$45,000.00 to be expended for the purposes set forth in Exhibit "A". The County may not change the scope of the project or use the funds for projects other than that described in Exhibit "A" without the written consent of the Nation.
5. Funding. The Contribution payment shall be delivered to County without any further notice or invoice required, at the address set forth in Paragraph 6 below, upon the complete execution of this Agreement.
6. Reports. Unless otherwise extended by the Nation upon request of County, no later than July 31, 2014, County shall provide a report to the Nation explaining how and when the funds provided under this Agreement were used. This report may be in the form of an affidavit signed by an officer of grantee and may be accompanied by supporting documentation. The report shall address changes in the scope of the projects, purchases funded under this Agreement, the total expenses under the projects, a brief description of who has benefited from the grant and future plans with regard to the projects and purchases made under this Agreement.
7. Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service, or if mailed, three (3) days after the notice is deposited in the United States mail. Addressed as follows:

If to the Nation:       Ned Norris, Jr.  
                                  Chairman  
                                  Tohono O'odham Nation  
                                  P.O. Box 837  
                                  Sells, Arizona 85634  
                                  Fax: 520-383-3379

And  
                                  Veronica Geronimo  
                                  P.O. Box 837  
                                  Sells, Arizona 85634  
                                  Fax: 520-383-3379

If to Grantee:         Margaret Kish, Director  
                                  Pima County Community Development  
                                  2797 E. Ajo Way  
                                  Tucson, Arizona 85713  
                                  Fax: 520-243-6796

Any period of time stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other parties as provided in this paragraph.

8. Dispute Resolution. The parties mutually agree that any disputes arising between the Nation and Grantee pursuant to this Grant shall be resolved through informal dispute resolution. All disputes that cannot be resolved through informal dispute resolution shall be brought in a court of the State of Arizona in Pima County.
9. No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
10. Severability. If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
11. Sovereign Immunity. Nothing in this Agreement shall be deemed a waiver of any party's applicable immunity in any forum or jurisdiction.
12. Compliance with Laws. The parties shall comply with all Federal, State, and Local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. Any changes in the governing laws, rules and regulations during the terms of this Agreement shall apply, but do not require an amendment.
13. 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.
14. Nondiscrimination. The Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors.** Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website [http://www.azgovernor.gov/dms/upload/EO\\_2009\\_09.pdf](http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf) which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, the Parties shall not

discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

15. Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of County or Nation.
16. 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.
17. 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.
18. Cancellation for Conflict of Interest. This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
19. 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.
20. Remedies. Any of the three parties may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.
21. Termination.

21.1 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.

21.3 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.

22. Entire Agreement, Waivers and Amendments. This Agreement may be executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incident hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement and all amendments hereto must be in writing.

TOHONO O'ODHAM NATION

PIMA COUNTY

\_\_\_\_\_  
Ned Norris, Jr., Chairman  
Tohono O'odham Nation

\_\_\_\_\_  
Chair, Board of Supervisors

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of the Board of Supervisors

Approved as to Form:

*Margaret M. Kish*

\_\_\_\_\_  
Margaret Kish, Director  
Pima County CDNC

Dated: 10/31/2013

Approved as to form and found to be within the powers and authority of the Tohono O'odham Nation.

Approved as to form and found to be within the powers and authority of the Pima County Board of Supervisors under the laws of the State of Arizona.

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\_\_\_\_\_  
Jonathan L. Jantzen  
Attorney General

*Karen S. Friar*  
\_\_\_\_\_  
Karen S. Friar  
Deputy County Attorney

**EXHIBIT "A"**

<u>Program</u>	<u>Contribution</u>
Sahuarita Food Bank Walk-in Refrigerator/Freezer	\$45,000.00
	<b>TOTAL \$45,000.00</b>