



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Award Contract Grant

Requested Board Meeting Date: 06/19/2018

or Procurement Director Award

* = Mandatory, information must be provided

***Contractor/Vendor Name/Grantor (DBA):**

Pascua Yaqui Tribe

***Project Title/Description:**

Intergovernmental Agreement (IGA) between Pima County and the Pascua Yaqui Tribe for Animal Care Services

***Purpose:**

This IGA enables the County and the Pascua Yaqui Tribe to collaborate on the provision of animal care and control-related services for the period July 1, 2018 through June 30, 2019. Pima County will, on a full cost recovery basis, provide assistance to the Pascua Yaqui Tribe with animal care and control-related services to dogs and cats coming from within the geographical boundaries of tribal territory. This may include such services as vaccination and veterinary care, sheltering and humane care of surrendered and stray animals, animal cruelty and neglect, dangerous animals, diseased animals, and biting animals.

***Procurement Method:**

This IGA is a non-procurement contract, and is exempt from the standard procurement rules.

***Program Goals/Predicted Outcomes:**

Increase the safety and health of animals, reduction in stray and dangerous animals, and reduction of animal cruelty and neglect.

***Public Benefit:**

By providing cost-effective, humane, animal sheltering and related veterinary services to dogs and cats from the Pascua Yaqui Tribe, Pima County helps protect the health and safety of residents and visitors, and their companion animals.

***Metrics Available to Measure Performance:**

The Pima Animal Care Center (PACC), on behalf of the County will provide monthly, quarterly and fiscal year end reports that include:

- Services provided such number of animals processed, cared for and placed in the community.
- Financial reports that include the costs associated with those services.

***Retroactive:**

No. The Tribal Council passed a resolution on April 28 empowering the Pascua Yaqui Tribe to enter into this IGA. This intergovernmental agreement has been reviewed by the Tribal Attorney General's Office and will back to Tribal Council for execution at their June 27 meeting.

To: COB 6/12/18 (1)
vers.: 1
pgs.: 9
ADDENDUM

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Contract / Award Information

Document Type: CTN Department Code: PAC Contract Number (i.e., 15-123): 18-178

Effective Date: 7/1/2018 Termination Date: 6/30/2018 ²⁰¹⁹ Prior Contract Number (Synergen/CMS): N/A

Expense Amount: \$* _____ Revenue Amount: \$ 48,550.74

*Funding Source(s) required: N/A - revenue

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

Expense or Revenue Increase Decrease Amount This Amendment: \$ _____

Is there revenue included? Yes No If Yes \$ _____

*Funding Source(s) required: _____

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Effective Date: _____ Termination Date: _____ Amendment Number: _____

Match Amount: \$ _____ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? _____

Contact: Sharon Grant / Sarah Davis

Department: Office of Health Services for PAC Telephone: 724-7842/724-7855

Department Director Signature/Date: [Signature] 5/20/18

Deputy County Administrator Signature/Date: [Signature] 5/20/18

County Administrator Signature/Date: [Signature] 5/29/18
(Required for Board Agenda/Addendum Items)

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PIMA COUNTY AND THE PASCUA YAQUI TRIBE
FOR ANIMAL SHELTERING AND VETERINARY SERVICES**

This Intergovernmental Agreement (hereinafter "Agreement") is entered into pursuant to A.R.S. § 11-952 and Article VI, Section 1(a) of the Constitution of the Pascua Yaqui Tribe by and between the Pascua Yaqui Tribe (hereinafter "the Tribe"), a sovereign Tribe and Pima County, (hereinafter "the County") a political subdivision of the State of Arizona.

RECITALS

WHEREAS, the Tribe desires to enter into an agreement with the County for the provision of sheltering and veterinary services for pets originating within the exterior boundaries of the Pascua Yaqui Reservation.

The Tribe has its own legal requirements and laws that govern rabies vaccination, leash use, sheltering and humane care of surrendered and stray animals, animal cruelty and neglect, dangerous animals, diseased animals, biting animals, animal waste, and excessive noise; and

WHEREAS, pursuant to A.R.S. § 11-1013, the County operates the Pima Animal Care Center (PACC) for the intake and sheltering of stray and surrendered animals; and

WHEREAS, the County has the experience and expertise to engage in activities relating to vaccination, rabies control, and stray and surrendered animal intake and sheltering; and

WHEREAS, the County may contract for services and enter into agreements with the Tribe for joint and cooperative action pursuant to A.R.S. § 11-951, et seq, and the Tribe may contract for services and enter into agreements with the County for joint and cooperative action pursuant to Article VI, Section 1(a) of the Tribe's Constitution.

NOW, THEREFORE, the Tribe and the County, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

AGREEMENT

1.0 Purpose. The purpose of this Agreement is to set forth the responsibilities of the parties for the provision of animal sheltering and humane care of surrendered and stray animals originating from the geographical jurisdiction of the Tribe.

2.0 Term/Effective Date. This Agreement is effective for one (1) year from July 1, 2018 through June 30, 2019, coinciding with the County's fiscal year. The Parties shall have the option to extend this Agreement for up to four (4) additional one (1) year periods or any portion thereof. Any modification, termination, or extension shall be made by formal written amendment executed by the Parties.

3.0 Scope of Services.

3.1 The County shall staff, equip, furnish, support and maintain the Pima Animal Care Center, and provide all facilities and vehicles, including replacements, maintenance, repair, gasoline, and oil as necessary for the operation of the Pima Animal Care Center.

3.2 The County shall provide humane treatment of all animals housed at the Pima Animal Care Center, including provision of adequate food, water, shelter, exercise, and timely and appropriate veterinary care in accordance with nationally accepted shelter care standards. The Pima Animal Care Center shall develop a strategy and procedures to further reduce euthanasia through effective adoption and rescue programs. If necessary, animals shall be euthanized in such a manner that provides for humane treatment of the animal and in accordance with the standards set forth by the American Veterinary Medical Association Guidelines for the Euthanasia of Animals: 2013 Edition. Effort shall be made to decrease shelter intake through but not limited to owner education and community wide spay/neuter programs.

3.3 All animals presented for sheltering and care to PACC become the property of PACC upon delivery.

4.0 Payment. The Tribe will reimburse the County a maximum of \$48,550.74¹ for Fiscal Year 2018-2019, with the understanding that further negotiations will be necessary between the Parties should County's costs to provide services to the Tribe exceed that amount. The County will bill the Tribe monthly for services. The total cost delineated in 4.1 below is the estimated cost of service for the Tribe. Actual cost may vary and will be based on documented services provided to the Tribe or the Tribe's residents. Monthly bills may be adjusted on a quarterly basis as set forth in Section 5.2.1.

4.1 The Tribe will reimburse the County for expenses associated with providing the scope of services outlined in Section 3. Annual costs of service units are projected below.

<u>Expenses</u>	<u>Amount</u>	<u>Allocation Basis</u>
Administrative Service Charges	\$ Waived	Ratio of all Services Provided
Operations and Management	\$ 6,401.16	Ratio of all Services Provided
Shelter	\$ 26,048.14	Ratio of Animals Handled
Veterinary Services	\$ 16,101.44	Ratio of Animals Handled
TOTAL	\$ 48,550.74	

¹ The annual estimated allocation is based on data PACC has of services provided to the Tribe in the previous two fiscal years as compared to the total expenses for services provided for all jurisdictions. The County will provide the Tribe the annual estimated expenses for PACC and the Tribe's estimated share of expenditures for Fiscal Year 2019/20 no later than January 30, 2019.

4.2 After the initial term of this Agreement and upon negotiation of the Parties, the Tribe will reimburse County for County indirect service expenses associated with providing PACC administrative systems support such as Finance, Human Resources, Procurement, Legal and other indirect County support services based on the federally approved internal cost allocation plan. Such services are listed as Administrative Service Charges.

4.3 Donations to and solicited by PACC are the sole property of PACC and will be allocated against the Tribe's expenses in accordance with PACC fund development policies.

5.0 **Reporting.** The County will provide the Tribe the following information:

5.1 Monthly:

5.1.1 By jurisdiction, a statement of period-end and year-to-date receipts, disbursements, and the balance of the County Rabies Control Fund.

5.1.2 By jurisdiction, the percentage of administrative services allocated, the number of animals processed at the shelter, the number of animals adopted, the number of animals euthanized, the number of animals spayed and neutered, the number of animals that died in the kennels and the number of educational event units performed.

5.1.3 The total Pima County Animal Care adopted budget, including operating revenues by revenue source and operating expense by type of expense.

5.2 Quarterly:

5.2.1 The County will perform an audit to assure correct cost allocation and to verify jurisdictional information on a quarterly basis. If, pursuant to paragraph 4.1, the outcome of the audit indicates an overpayment by the Tribe or results in additional funds being due to the Tribe, County shall transfer the additional funds to the Account within ninety (90) days following the end of the quarter. If, pursuant to paragraph 4.1 the outcome of the audit indicates an underpayment by the Tribe or in additional funds being due to the County, the amount of the underpayment will be billed to the Tribe by the County in the next monthly statement. In no event shall the Tribe be billed for any underpayment in excess of \$5,000.00.

5.2.2 The Tribe will designate a representative to attend quarterly meetings with representatives from Pima County Administration, Pima County Health Department, Pima Animal Care Center and each jurisdiction with which the County has an Intergovernmental Agreement to provide PACC services.

5.3 Fiscal Year End: The County shall prepare a final financial report for each Fiscal Year that includes the following information:

- 5.3.1 By jurisdiction, a statement of period-end and year-to-date receipts, disbursements, and the balance of the County Rabies Control Fund.
- 5.3.2 By jurisdiction, the percentage of administrative services allocated, the number of animals processed at the shelter, the number of animals adopted, the number of animals euthanized, the number of animals spayed and neutered, the number of dead animals picked up, the number of animals that died in the kennels and the number of educational event units performed.
- 5.3.3 The total Pima County Animal Care adopted budget including operating revenues by revenue source and operating expenses by type of expense.

6.0 **Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Tribe or the County. This Agreement and all obligations upon the Tribe or County arising therefrom shall be subject to any limitations of budget law or other applicable local law or regulations.

7.0 **Audit.** The Tribe shall have the right to audit the books of the County relating to the Pima Animal Care Center and to the collection of licensing fees and other fines and fees related to the services being provided.

8.0 **Termination.** Either party may terminate this Agreement by giving written notice to the other party not less than six (6) months prior to the termination date. In the event of termination, each party shall be liable for its proportionate share of the costs and expenses incurred or arising out of performance of activities required by this Agreement occurring prior to the termination date. Termination of this Agreement shall not relieve either party from liabilities or costs already incurred under this Agreement.

9.0 **Assignment of Rights.** Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.

10.0 **Construction of Agreement.**

10.1 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.

10.2 Captions and headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

11.0 **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

12.0 **Severability.** In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void

provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

13.0 No Joint Venture. 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 the Tribe and any County employees or between the County and any Tribe employees. 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 itself or any of its employees.

14.0 No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or effect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

15.0 Compliance with Laws. The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and executive orders, without limitation to those designated within this Agreement.

15.1 Anti-Discrimination. To the extent applicable to each Party, the provisions of A.R.S. § 41-1463 and Executive Order Number 2009-09 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.

15.2 Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

16.0 Non-Waiver. The failure of either Party to insist upon the complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not constitute 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 the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time shall not constitute an accord and satisfaction.

17.0 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 purpose 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 the 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 Tribal 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 such inability with all reasonable dispatch.

- 18.0 Notification.** All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Pima County:
Francisco Garcia, MD, MPH
Assistant County Administrator
Pima County

Kristen Auerbach
Director
Pima Animal Care Center
Tucson, Arizona 85714

Pascua Yaqui Tribe:

Pascua Yaqui PD, Attn: Chief Michael A. Valenzuela
7474 S. Camino De Oeste
Tucson, Arizona 85746

With a copy that shall not constitute service to:

Pascua Yaqui Tribe
Office of the Attorney General
7777 S. Camino Huivisim, Bldg C
Tucson, Arizona 85757

- 19.0 Remedies.** Either party 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 in equity or by virtue of this Agreement.

- 20.0 Indemnification.** To the extent permitted by law, each party (as “indemnitor”) agrees to indemnify, defend and hold harmless, the other party (as “indemnitee”) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “claims”) arising out of the bodily injury of any person (including death) or property damage, but only to the extent that such claims, which result in vicarious/derivative liability to the indemnitee, and are caused by the act, omission,

negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

21.0 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterpart and attached to a single instrument.

22.0 Legal Arizona Workers Act. Tribe hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Tribe's employment of its employees, and with all applicable requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Tribe shall further ensure that each subcontractor who performs any work for Tribe under this Contract likewise complies with all applicable State and Federal Immigration Laws.

22.1 Pursuant to A.R.S. § 41-4401, County shall have the right at any time to inspect the books and records of the Tribe and any subcontractor, as they pertain to this Contract, in order to verify such party's compliance with all applicable State and Federal Immigration Laws.

22.2 To inspect the Tribe's books and records specified in subsection 22.1 above, the County shall send a request to the Tribe pursuant to Section 18 herein. The Tribe may then choose to allow a courtesy inspection of the relevant books and records at a time and date of the Tribe's choosing in recognition of the County's obligations under A.R.S. § 41-4401.

22.3 Any breach of the Tribe's or any subcontractor's warranty of compliance with applicable State and Federal Immigration Laws shall be deemed a material breach of this Contract which can result in the termination of this Contract.

22.4 The Tribe's failure to provide a courtesy inspection of its relevant books and records shall not be deemed a material breach of this Contract, but may result in termination of this Contract at County's election.

22.5 Tribe shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214(A), as applicable. Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this Contract"

subjecting Contractor to penalties up to and including suspension or termination of this Contract."

22.6 Should a subcontract be suspended or terminated due to subcontractor's material breach, at Tribe's election, Tribe shall retain a replacement subcontractor as soon as possible so as not to delay project completion or may self-perform the services that would have been provided under the subcontract.

[VT1][PP2]

23.0 Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.

24.0 Sovereign Immunity. Nothing herein constitutes an express or implied waiver of the Tribe's immunity from suit in any forum or in any jurisdiction.

IN WITNESS WHEREOF, the County has caused this Agreement to be executed by the Pima County Board of Supervisors, as attested to by the Clerk of the Board, and the Tribe has caused this Agreement to be executed by the Chairman of the Tribe, upon resolution of the Council, attested to by the Tribe's Secretary.

PIMA COUNTY:

PASCUA YAQUI TRIBE:

Chair, Board of Supervisors

Date

Robert Valencia, Chairman

Date

ATTEST

ATTEST

Clerk of the Board

Date

Tribal Secretary

Date

APPROVED AS TO CONTENT



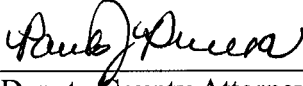
Department Director or designee

5/29/18

Date

ATTORNEY CERTIFICATION

The foregoing Agreement between Pima County and the Tribe has been reviewed pursuant to A.R.S. § 11-952 and the Constitution of the Pascua Yaqui Tribe by the undersigned who have determined that it is in proper form and is within the powers and authority granted each by their governing authority.

 _____	<u>5.25.18</u> Date	_____	_____
Deputy County Attorney		Laura Berglan, Attorney General	Date