



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

Award  Contract  Grant

Requested Board Meeting Date: 09/19/2017

\* = Mandatory, information must be provided

or Procurement Director Award

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

Fort McDowell Yavapai Nation

**\*Project Title/Description:**

Fort McDowell Yavapai Nation Fiscal Year 2017-2018 12% Gaming Distribution Funds grant-in-aid agreement designating Pima County as the pass-through entity to accept and distribute \$15,000.00 to the University of Arizona Arizona State Museum ("ASM") on behalf of the Fort McDowell Yavapai Nation.

**\*Purpose:**

Pursuant to A.R.S. § 5-601.02, the Fort McDowell Yavapai Nation ("the Nation") released a request for proposals from non-profit organizations, cities, towns, and counties to receive 12% Gaming Distribution Funds during fiscal year 2017-2018. For its 2017 revenue sharing, the Nation has designated ASM to receive grant funds. Per the Nation, local jurisdictions are required to develop grant-in-aid agreements with the Nation to accept grant awards and pass-through funds to designated organizations.

**\*Procurement Method:**

Not Applicable

**\*Program Goals/Predicted Outcomes:**

If accepted, this funding will be passed-through to ASM to supplement Arizona State Museum efforts to build a new research and curation facility for its expanding inventory of ancient artifacts from the US Southwest and Northern Mexico.

**\*Public Benefit:**

The ASM serves the public by preserving local culture, contributing to tourism and education.

**\*Metrics Available to Measure Performance:**

The contract will be satisfied immediately after funds are disbursed to ASM and evidence of disbursement is provided to the Nation.

**\*Retroactive:**

No.

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**Contract / Award Information**

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

Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$\* \_\_\_\_\_  Revenue Amount: \$ \_\_\_\_\_

**\*Funding Source(s) required:**

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

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

**\*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: CTN Department Code: CED Grant Number (i.e.,15-123): 18-53

Effective Date: Upon Signature Termination Date: 1 Year From Signature Amendment Number: n/a

Match Amount: \$ \_\_\_\_\_  Revenue Amount: \$ 15,000.00

**\*All Funding Source(s) required:** Gaming revenue sharing from the Fort McDowell Yavapai Nation.

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

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

**\*Funding Source:** N/A

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

Contact: Molly Hilber

Department: CED Grants and Data Office Telephone: (520)724-8562

Department Director Signature/Date: [Signature] 09/13/17

Deputy County Administrator Signature/Date: [Signature] 9/13/17

County Administrator Signature/Date: [Signature] 9/13/17  
*(Required for Board Agenda/Addendum Items)*

**Intergovernmental Agreement**

**Between**

**Pima County and The Fort McDowell Yavapai Nation**

**To**

**Provide Funds for Promoting Public Programs**

**In Pima County**

**And**

**Surrounding Communities**

**Pursuant To A Tribal Revenue Sharing Agreement**

**Authorized By**

**Section 12 Payment of Regulatory Costs; Tribal Contributions**

**Fort McDowell Yavapai Nation and State of Arizona**

**Gaming Compact 2002,**

**And**

**A.R.S. § 5-601.02**

**Fort McDowell, Arizona**

**Intergovernmental Agreement**  
**Between**  
**Pima County and The Fort McDowell Yavapai Nation to**  
**Provide Funds for Promoting Tourism and other Public Programs**  
**in Pima County and Surrounding Communities**

This Intergovernmental Agreement (this "Agreement") is entered into by and between Pima County, a political subdivision of the State of Arizona (the "County") and the Fort McDowell Yavapai Nation (the "Nation"), a Federally-Recognized Indian Tribe, pursuant to Section 12 Payment of Regulatory Costs; Tribal Contributions ("Section 12") of the Fort McDowell Yavapai Nation and State of Arizona Gaming Compact 2002 (the "Compact") and A.R.S. § 5-601.02.

**Recitals**

- A. The County and Nation may enter into an agreement with one another for the distribution of 12% of the Nation's annual contribution under Section 12(b)(1) of the Compact to cities, towns, or counties that benefit the general public or promote commerce and economic development and pursuant to A.R.S. § 5-601.02.
- B. The Nation is authorized by Section 13(A)(15) of Article V, Legislative Branch, of the Constitution of the Fort McDowell Yavapai Nation to consult, negotiate, contract and conclude and perform agreements with Federal, state, local governments and Indian tribes, as well as any person, association, partnership, corporation, government or other private entity.
- C. The County is authorized by A.R.S. §§ 5-601.02 and 11-952 to enter into agreements with Indian Tribes for the purpose of accepting distributions to cities, towns or counties for governmental services that benefit the general public, including public safety, mitigation of impacts of gaming, or promotion of commerce and economic development.
- D. The County and Nation desire to enter into this Agreement to provide funds for the purpose of promoting tourism and other public programs in the State of Arizona and Pima County and surrounding communities, as designated by the Nation, hereinafter referred to as the "Designated Entity", as more particularly described in Exhibit A attached hereto and incorporated herein by reference.
- E. The County and Nation desire to enter into this Agreement to define the terms and conditions of the Nations' funding of the Designated Entity.
- F. The total cost of the Designated Project(s) is: \$1,250,319.00
- G. The amount of \$15,000.00 is hereby made available for the Designated Entity from revenue generated by the Nation's Gaming Enterprise also known as the Fort McDowell Casino.
- H. The Nation intends to provide \$15,000.00 (the "Funds"), which represents a portion of its contribution pursuant to a Tribal Revenue Sharing Agreement authorized by Section 12 of the Compact and A.R.S. § 5-601.02.

## Agreement

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, the Nation and the County, hereby mutually agree as follows:

1. **Designated Entity.** The Designated Entity(s) is the County and/or a non-profit entity within the County of Pima which operates for the public benefit in Pima County and surrounding areas, as identified in the attached Exhibit A.
2. **Disbursement of Funds.** After receipt of the Funds from the Nation, the County shall send a payment to such Designated Entity(s) in the amount of the payment received from the Nation as expeditiously as possible.
3. **Consideration and Reliance.** The Nation expressly acknowledges that the County's promise to accept and disburse to the Designated Entity all Funds received by the County pursuant to this Agreement is full and adequate consideration and shall render this promise to provide funding irrevocable, and this Agreement shall constitute a binding obligation of the Nation under applicable law.
4. **Limited Duties of County.** The Nation further expressly agrees that, except as specifically set forth in this Agreement, the County has no duties under or related to this Agreement other than to receive the Funds and deliver same to the Designated Entity; selection of Designated Entity and determination as to the amount of funding are solely at the discretion of the Nation. The Parties agree that there are no third-party beneficiaries to this Agreement.
5. **Financing; Verification of Payment.**
  - A. *Nation Deposit.* The Nation shall deposit with the County the amount of \$15,000.00 within thirty (30) days of the Effective Date of this Agreement to be disbursed according the Designated Project amounts in Exhibit A.
  - B. *Verification of Payment.* At the request of the Nation, the County shall provide a verification of payment to the Designated Entity. The County's responsibility is limited to disbursement to each Designated Entity and the County has no further duty with regard to third party, provided that the disbursement is complete.
6. **Inspection and Audit.** To ensure compliance with the County's limited duties herein, the Nation may inspect any and all records maintained by the County with respect to the Project upon seven (7) days prior, written notice to the County. This Section 6 shall survive termination, cancellation, or revocation, whether whole or in part, of this Agreement for a period of one (1) year following the date of such termination, cancellation, or revocation.
7. **Term and Termination of Agreement.**
  - A. *Effective Date.* This Agreement shall be effective on the date it is signed by the Nation's authorized representative.
  - B. *Term.* This Agreement shall commence upon the Effective Date and shall terminate when the funds have been received by the County and disbursed to the Designated Entity.

- C. *Termination.* The Nation may terminate this Agreement with or without cause at any time prior to providing payment to the County, provided that such notice shall be in writing and delivered to the parties' designated representatives, as set forth in the Notice section.
- D. *Cancellation.* Each party acknowledges that the County has the statutory right for three (3) years to cancel this Agreement if, while this Agreement or any extension is in effect, any person significantly involved in negotiating, drafting or securing this Agreement on behalf of any party is (i) an employee or agent of the other party in any capacity, or (ii) a consultant to the other party with respect to the subject matter of this Agreement, as provided pursuant to AR.S. § 38-511.

## 8. **Indemnification.**

- A. *Indemnification.* Each party shall indemnify, defend, and hold harmless the other party, its governing body, officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's, and account's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees or agents in performing the duties set forth in this Agreement.
- B. *No Liability for Other Party's Debts and Obligations.* Neither party shall be liable for any debts, accounts, obligations, nor other liabilities whatsoever of the other, including and without limitation the other party's obligation to withhold employment and income taxes for itself or any of its employees.
- C. *Severability.* This Section 8 shall survive termination, cancellation, or revocation, whether whole or in part, of this Agreement for a period of one (1) year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. § 12-821.01, in which case this Section 8 shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this Section 8 survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.

## 9. **Interpretation of Agreement.**

- A. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
- B. *Amendment.* This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by both parties.
- C. *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 contained herein.
- D. *Relationship of the Parties.* Neither party shall be deemed to be an employee or agent of the other party to this Agreement.
- E. *Days.* Days shall mean calendar days.
- F. *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.

10. **Waiver.** Waiver or delay in enforcement by either party of any breach of a term, covenant, or condition contained herein shall not be deemed a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition contained herein.
11. **Notification.** Any notice, communication, or modification shall be given in writing and shall be given by registered or certified mail or in person to the following individuals. The date of receipt of such notices shall be the date the notice shall be deemed to have been given.

For the Fort McDowell Yavapai Nation:

Bernadine Burnette, President  
Fort McDowell Yavapai Nation  
P.O. Box 17779  
Fountain Hills, AZ 85269

Diandra Benally, General Counsel  
Fort McDowell Yavapai Nation  
P.O. Box 17779  
Fountain Hills, AZ 85269

For Pima County:

Clerk of the Board  
130 W. Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701

Pima County  
Civil Division  
32 N. Stone Avenue  
Tucson, AZ 85701

12. **Assignment and Delegation.** Neither party shall assign nor delegate any of its rights, interest, obligations, covenants, or performance under this Agreement. Any termination shall not relieve either party from liabilities or costs already incurred under this Agreement.
13. **Non-Waiver of Sovereign Immunity.** Nothing in this Agreement, Exhibit A or the Funding Agreements shall be construed to waive the Sovereign Immunity of the Nation.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Pima County has caused this Intergovernmental Agreement to be executed by the Chairman of the Board of Supervisors, upon resolution of the Board of Supervisors and attested by the Clerk of the Board, and the Fort McDowell Yavapai Nation has caused this Intergovernmental Agreement to be executed by the Nation's Tribal Council and attested to by its Secretary.

This Agreement is effective upon signature of a duly appointed representative of the Fort McDowell Yavapai Nation.

**ATTEST:**

**FORT MCDOWELL YAVAPAI NATION**

Selena Castaneda  
Selena Castaneda, Secretary  
Fort McDowell Yavapai Nation

Bernadine Burnette  
Bernadine Burnette  
President, Tribal Council  
Fort McDowell Yavapai Nation

8/7/17  
Date

8/7/17  
Date

**ATTEST:**

**PIMA COUNTY**, a political subdivision of the State of Arizona

Julie Castaneda, Clerk of the Board

Sharon Bronson  
Sharon Bronson, Board of Supervisors Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

The undersigned attorney acknowledges that he has reviewed the above Agreement on behalf of the FORT MCDOWELL YAVAPAI NATION, and has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the Constitution of the Fort McDowell Yavapai Nation, Section 13(A)(15), Article V Legislative Branch, as adopted October 19, 1999 and approved by the U.S. Deputy Commissioner of Indian Affairs November 12, 1999. This acknowledgement shall not constitute nor be construed as a waiver of the Sovereign Immunity of the Fort McDowell Yavapai Nation.

Diandra Benally 8/8/17  
Diandra Benally, General Counsel      Date  
Fort McDowell Yavapai Nation

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges that (i) he has reviewed the above Agreement on behalf of PIMA COUNTY and (ii) as to the PIMA COUNTY only, has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the laws of the State of Arizona.

Karen A. Isaiar 8-29-17  
Deputy County Attorney      Date  
Pima County



**EXHIBIT A  
DESIGNATED ENTITY**

<b>Entity(s)</b>	<b>Purpose</b>	<b>Award</b>	<b>Contact</b>
Arizona State Museum at the University of Arizona	Education	\$15,000.00	Dr. Kimberly Espy
<b>TOTAL</b>		<b>\$15,000.00</b>	