



BOARD OF SUPERVISORS AGENDA ITEM REPORT CONTRACTS / AWARDS / GRANTS

Award Contract Grant

Requested Board Meeting Date: February 18, 2020

* = Mandatory, information must be provided

or Procurement Director Award

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

Earthworks, On Behalf of Arizona Mining Reform Coalition

***Project Title/Description:**

Agreement between Pima County and Earthworks, on behalf of Arizona Mining Reform Coalition, to distribute State-Shared Revenue Program grant funds awarded by the Tohono O'odham Nation to Earthworks, on behalf of Arizona Mining Reform Coalition, during Fiscal Year 2019-2020.

***Purpose:**

This Agreement is pursuant to A.R.S. § 5-601.02, which requires 12% of funds generated from gaming operations to be distributed to governments or 501(c)(3) organizations or entities for services benefiting the general public. On November 19, 2019, the Pima County Board of Supervisors executed a Grant-In-Aid Agreement with the Nation, GTAW 20*056, committing to accept and pass-through funds on behalf of 501(c)(3) organizations identified by the Nation. On October 29, 2019, the Nation identified Earthworks, on Behalf of Arizona Mining Reform Coalition, as a grantee, based on their proposal for the Pilot Project, in response to a Request for Proposals released in May 2019.

***Procurement Method:**

This Grant Agreement is a non-Procurement contract and is not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

The \$40,000 award distributed to Earthworks, on behalf of Arizona Mining Reform Coalition, will be used toward the Pilot Project as described in their proposal.

***Public Benefit:**

Proposals were selected by the Nation based on their ability to address one or more of the Nation's priority areas, including education, health care, public safety, child advocacy, economic development, and/or cultural & environmental development and protection.

***Metrics Available to Measure Performance:**

Earthworks, on Behalf of Arizona Mining Reform Coalition, agrees to submit reports to the funder, the Tohono O'odham Nation, to describe their use of grant funds.

***Retroactive:**

No

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To: BBR - 2-12-20

Ver. 1
02-4 (1)

Revised 9/2019

Page 1 of 2

Appendum

Procure Dept 02/27/2020 M1010

Contract / Award Information

Document Type: CT Department Code: GMI Contract Number (i.e., 15-123): 20*0187

Effective Date: 2/18/2020 Termination Date: 2/17/2021 Prior Contract Number (Synergen/CMS):

 Expense Amount: \$* 40,000.00 Revenue Amount: \$ _____***Funding Source(s) required:** 12% Gaming Revenue Sharing grant funds from the Tohono O'odham NationFunding 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 22-10.***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

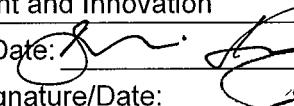
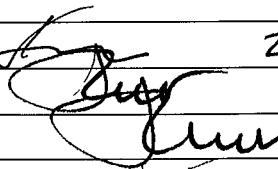
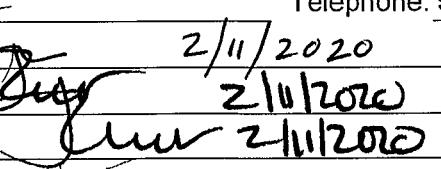
Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

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: Rebecca Lee 45479 Alicia Montoya 44004

Department: Grants Management and Innovation Telephone: 520-724-5479

Department Director Signature/Date:  2/11/2020Deputy County Administrator Signature/Date:  2/11/2020County Administrator Signature/Date:  2/11/2020
(Required for Board Agenda/Addendum Items)

Indian Gaming Revenue Funding Agreement

Between

Pima County and Earthworks, on Behalf of Arizona Mining Reform Coalition

This Grant-in-Aid Revenue Sharing Funding Agreement ("Agreement") is entered into by and between Pima County ("County"), a body politic and corporate of the State of Arizona, and Earthworks, on Behalf of Arizona Mining Reform Coalition ("Grantee"), a non-profit registered in Washington DC.

RECITALS

- A. Pursuant to a compact with the State of Arizona and A.R.S. §§ 5-601.02, the Tohono O'odham Nation ("the Nation") provides grants to cities, towns and counties for services benefiting the general public, including public safety, promotion of commerce and economic development through its State-Shared Revenue Program.
- B. On October 29, 2019, the Nation notified County that it had awarded \$40,000.00 of shared-revenue funds ("the Contribution") to the Grantee.
- C. On November 19, 2019, the Pima County Board of Supervisors executed a Grant-In-Aid Agreement with the Nation, GTAW 20*056, committing to pass-through a designated portion of the Contribution to Grantee for the Pilot Project ("the Project").
- D. This Agreement authorizes the transfer of the Contribution to Grantee for the Project upon receipt of the Tohono O'odham State Shared Revenue Funds.

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

AGREEMENT

1. **Purpose.** This Agreement sets forth the rights and responsibilities of County and Grantee with respect to the payment and distribution of the Contribution for the Project. Neither County nor Grantee may change the Project without the express written consent of the Nation.
2. **Term.** The term of this Agreement will begin on the date of the last signature by either the County or the Grantee's authorized representative and will terminate one year from the execution date.
3. **Disbursement of Contribution.** In accordance with County's policies and procedures, and as quickly as feasible, County will distribute the Contribution in one payment to Earthworks, on behalf of the Grantee in the amount of **\$40,000.00**.
4. **Fees.** County will not charge Grantee and will waive any applicable administrative or other fees related to the distribution of the Contribution and will not deduct any funds from the Contribution.
5. **Dispute Resolution.** The parties agree that any disputes arising between them pursuant to this Agreement will be resolved through informal dispute resolution. In the event of a dispute, both Grantee and County will notify the Nation. All disputes that cannot be resolved through informal channels will be brought in a court of the State of Arizona in Pima County.
6. **Notices.** Any notice, consent or other communication required or permitted under this Grant will be in writing and will 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 Pima County:

Regina Kelly, Director
Pima County Grants and Data Office
32 N. Stone Ave., 3rd Floor
Tucson, Arizona 85701
Phone: (520) 724-6679
Fax: (520) 770-4125
Email: Regina.Kelly@pima.gov

If to Arizona Mining Reform Coalition:

Roger Featherstone
PO Box 43565
Tucson, AZ 85733
520-777-9500
roger@azminingreform.org

Jennifer Krill, Executive Director
Earthworks
1612 K Street, NW, Suite 904
Washington, DC 20006
(202) 887- 1872
jkrill@earthworksaction.org

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

7. Insurance. Grantee shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Grantee from liabilities that arise out of the performance of the work under this Agreement. If necessary, Grantee may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

7.1. Commercial General Liability (CGL). Occurrence Form with limits of \$1,000,000 Each Occurrence and \$1,000,000 General Aggregate. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

7.2. Business Automobile Liability. Not required

7.3. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage- \$1,000,000 each accident and each person - disease.

7.4. Professional Liability (Errors and Omissions) Insurance. Not required

7.5. Claim-Made Insurance Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and

limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance policy shall cover professional misconduct or negligent acts of anyone performing any services under this Agreement.

- 7.5. Claim-Made Insurance Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and Grantee must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.
- 7.6. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice shall include the Pima County project or contract number and project description.
- 7.7. Verification of Coverage. Grantee shall furnish Pima County with certificates of insurance as required by this Agreement. An authorized representative of the insurer shall sign the certificates.
 - 7.7.1. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Agreement must be in effect at, or prior to, commencement of work under this Agreement. Failure to maintain the insurance coverages or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.
 - 7.7.2. All certificates required by this Agreement shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Agreement at any time.
- 7.8. Approval and Modifications. The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Grantee, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.
8. Indemnification. To the extent permitted by law, Grantee will indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by Grantee, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Agreement and the Project.
9. Compliance with Laws. Grantee will 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 will apply, but do not require an amendment.
10. Workers' Compensation. Both parties will comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and such party shall have the sole responsibility of the payment of Worker's Compensation benefits or other fringe benefits of said employees.

11. Nondiscrimination. The Parties:

- 11.1. Will comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. During the performance of this Agreement.
- 11.2. Will 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.
12. Legal Jurisdiction. Nothing in this Agreement will be construed as either limiting or extending the legal jurisdiction of either Party.
13. No Joint Venture. It is not intended by this Agreement, and nothing contained in this Agreement will 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 will 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. Authority to Contract. Neither party warrants to the other party its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that any party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, shall be null and void, and no recovery may be had by any party against the other for lack of performance or otherwise.
15. 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.
16. Third Party 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.
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, will 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 will not be construed as accord and satisfaction.
18. Remedies. In compliance with paragraph 5 – Dispute Resolution, any 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 will be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.
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 will be given written notice by the other party of the nature of the alleged default. The party said to be in default will 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 will not relieve either party from liabilities or costs already incurred under this Agreement.
 - 19.2. Funding Sources; Budget; Non-appropriation. This Agreement and all obligations upon the parties arising therefrom will 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 will be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, the parties hereto will have no further obligation to the other party other than for payment for services rendered prior to cancellation.

20. No Waiver. Except as otherwise expressly provided in this Grant, any failure or delay by any party in asserting any of its rights or remedies as to any default, will 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.
21. Severability. If any provision of this Grant will be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Grant will not be affected thereby and will be valid and enforceable to the fullest extent permitted by law.
22. Entire Agreement, Waivers and Amendments. This Agreement constitutes the entire understanding and agreement of the parties pertaining to the subject matter hereof. All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate authorities of each of the parties to this Agreement.

NAME OF GRANTEE

PIMA COUNTY



Jennifer Krill, Executive Director
Earthworks, on Behalf of
Arizona Mining Reform Coalition

Richard Elías, Chairman,
Pima County Board of Supervisors

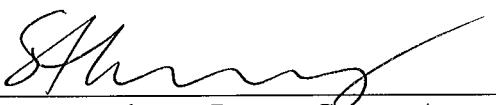
Date 12/19/19

Date _____

ATTEST:

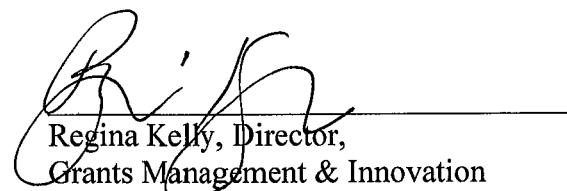
Clerk of the Board

Approved as to form:



Stacey Roseberry, Deputy County Attorney

Approved as to content:



Regina Kelly, Director,
Grants Management & Innovation

Date 12/9/19

Date _____