

WHEN RECORDED RETURN TO:

City of Tempe
31 E. Fifth Street
Tempe, AZ 85281
Attn: City Clerk

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PASCUA YAQUI TRIBE
AND
THE CITY OF TEMPE**

This Intergovernmental Agreement (“Agreement”) is entered into by and between the Pascua Yaqui Tribe, a Federally-Recognized Indian Tribe, and the City of Tempe (“Tempe” or “City of Tempe”), a political subdivision of the State of Arizona.

RECITALS

1. The Pascua Yaqui Tribe and the City of Tempe may enter into an agreement with one another for the distribution of a portion of 12% of the Pascua Yaqui annual contribution (“Contribution”) 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.
2. The Pascua Yaqui Tribe is authorized 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.
3. The City of Tempe is authorized by A.R.S. § 11-951 through § 11-954 and City of Tempe Charter to enter into agreements for the purpose of accepting distributions to cities for governmental services that benefit the general public.
4. The Pascua Yaqui Tribe desires to convey to City of Tempe a portion of its annual 12% local revenue-sharing contribution (“Contribution”) required pursuant to Arizona law to be paid to local governments for government services that benefit the general public.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, the Pascua Yaqui Tribe and the City of Tempe hereby mutually agree as follows:

AGREEMENT

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(s), as hereinafter defined. The City of Tempe may enter into separate funding agreements with recipients that are not departments, agencies or offices of the City of Tempe (“non-City recipients”).

2. **Contribution.** The Pascua Yaqui Tribe shall make a one-time payment to the City of Tempe in the amount of \$32,000.00 (“Contribution”) to be distributed as follows:

- \$10,000.00 Compadre High School, Jobs for Arizona Graduates (JAG) Program
- \$22,000.00 Tempe Union High School District Indian Education Program

Total Disbursement: \$32,000.00

3. **Payment and Use of Funds.**

a. Use of Funds for Purposes Other Than to Fulfill Agreement and Funding Agreement. The City of Tempe’s portion of the Contribution shall be used only for the express purpose contained herein. The City of Tempe further agrees to disburse the non-City recipients’ portion for purposes listed in the separate funding agreements.

b. Inspection and Audit. To ensure compliance with this Agreement and the separate funding agreements, the Pascua Yaqui Tribe reserves the right to inspect any and all records maintained by the City of Tempe with respect to this transaction upon seven (7) days prior, written notice to the City of Tempe. The City of Tempe shall allow the Pascua Yaqui Tribe reasonable access to the records pertaining thereto. This section shall survive termination, cancellation, or revocations, whether whole or in part, of this Agreement for a period of one (1) year following the date of such termination, cancellation, or revocation.

4. **Disbursement of Contribution.**

a. Disbursing Contribution and Recordkeeping. The City of Tempe shall have responsibility for disbursing the Contribution to the recipients in amounts consistent with this Agreement. Within a reasonable time following receipt of the Contribution from the Pascua Yaqui Tribe, the City of Tempe shall distribute the Contribution in accordance with applicable City of Tempe policies and procedures governing the disbursement of funds. The City of Tempe shall keep and maintain records relating to the disbursements and this Agreement.

b. Post-Disbursement Responsibilities. The parties agree that the City of Tempe is merely acting as a conduit for distribution of funds to the non-City recipients. Upon distribution of the Contribution to the non-City recipients as specified in Section 2 of this Agreement, the City of Tempe shall have no further responsibility to the Pascua Yaqui Tribe with respect to such funds or the use thereof by the non-City recipients. Therefore, upon the City of Tempe's payment of the Contribution to the non-City recipients as provided in Section 2, the Pascua Yaqui Tribe shall release the City of Tempe from any and all claims, demands, debts, liabilities, or obligations that may arise in the event that the non-City recipients fail for any reason to expend the Contribution in accordance with Section 2. The Pascua Yaqui Tribe further agrees that the City of Tempe shall have no obligation to reimburse the Pascua Yaqui Tribe the amount of the Contribution for any reason after the City of Tempe disburses the Contribution to the non-City recipients and that the Pascua Yaqui Tribe shall look solely to the non-City recipients for repayment of the Contribution in the event the Contribution are not used for the intended purposes.

5. **Notices.** 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 postmarked or verified delivery date.

For the Pascua Yaqui Tribe Peter Yucupicio, Chairman
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, Arizona 85757

For the City of Tempe: City Council for the City of Tempe, Arizona
Attn. Mayor Hugh Hallman
31 East 5th Street
Tempe, Arizona 85281

6. **Transactional Conflict of Interest.** All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Tempe pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

7. **Consideration and Reliance.** The City of Tempe's promise to accept and disburse all funds that the City of Tempe receives 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 Pascua Yaqui Tribe.

8. **Term and Termination of Agreement.**

- a. Effective Date. This Agreement shall become effective when all Parties have signed. The date this Agreement is signed by the last party, as indicated by the date associated with the party's signature, shall be deemed the Effective Date.
- b. Term. This Agreement shall commence upon the Effective Date and shall terminate when the Contribution has been received and fully disbursed by the City of Tempe as specified in Section 2 of this Agreement.
- c. Termination. The Pascua Yaqui Tribe may terminate this Agreement with or without cause at any time by providing the City of Tempe Fifteen (15) days advance notice in writing. In the event the Pascua Yaqui Tribe terminates this Agreement after the City of Tempe receives the Contribution but before the City of Tempe has disbursed the Contribution to the recipients, the Pascua Yaqui Tribe shall include in the notice of termination specific instructions regarding disposition of the Contribution.

9. Indemnification.

- a. Indemnification. Each party (as "Indemnitor") shall indemnify, defend, and hold harmless the other party (as "Indemnitee"), 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, attorneys', consultant's and accountant fees or costs and expenses of whatsoever kind and nature (collectively referred to as "Claims"), arising out of bodily injury of any person (including death) or property damage but only to the extent that such Claims which result in liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, or employees.
- b. Severability. This section 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 paragraph shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this paragraph survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.

10. 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 provisions 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.
- g. Waiver. No waiver, whether written or tacit of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement or a permanent waiver of the provision concerned, unless otherwise stated in writing by the Party to be bound thereby.

11. Non-Waiver of Sovereign Immunity. Nothing in this Intergovernmental Agreement or any associated Funding Agreements shall be construed to waive the Sovereign Immunity of the Pascua Yaqui Tribe.

IN WITNESS WHEREOF, the City of Tempe has caused this Intergovernmental Agreement to be approved by the City of Tempe Council and executed by its Mayor or his designee pursuant to the above state powers and authority, and the Pascua Yaqui Tribe has caused this Intergovernmental Agreement to be executed by the Pascua Yaqui Tribe Council and attested to by its President.

[SIGNATURE PAGE TO FOLLOW]

PASCUA YAQUI TRIBE
INDIAN COMMUNITY, a
Federally recognized tribe

CITY OF TEMPE, a
municipal corporation

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing Intergovernmental Agreement between the City of Tempe and the Pascua Yaqui Tribe has been reviewed by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the Constitution of the Pascua Yaqui Tribe, the State of Arizona and the United States to those parties to the Intergovernmental Agreement represented by the undersigned.

Attorney General

Date

City Attorney

Date