

# Pascua Yaqui Tribe

Ossay Bo-Oh H55396



March 31, 2016

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## INVITATION TO BID

The Pascua Yaqui Tribe is soliciting bids to reconstruct Ossay Bo-Oh, project identification number H55396, located on the Pascua Yaqui Tribe Reservation. This project is 0.22 miles on BIA Route 101 and consists of pulverize existing pavement, linear grading, construct concrete valley gutter, place minor hot asphalt concrete pavement, and pavement markings, utility adjustments, located on the New Pascua Reservation in Tucson, Arizona.

Native American and local firms will receive preference. The Owner reserves the right to select the most responsive and responsible bidder.

Bid Packages for "Ossay Bo-Oh H55396" may be obtained by visiting Ian M. Geitner at the Pascua Yaqui Tribe Finance Department, or by visiting the web address listed on the Legal Notice.

Bid packages are available beginning April 4, 2016. Only electronic copies of bid packages will be available.

A mandatory Pre-Bid Conference is scheduled for April 14, 2016 at 8 AM in the Housing Warehouse Conference Room, located at 4781 West Torim Road, Tucson AZ 85757.

Sealed bids shall be received up to, but no later than, 4:00 PM local time, May 4, 2016, at Pascua Yaqui Administration Building, Finance Department, located at 7474 S. Camino De Oeste, Tucson AZ 85757. Bids will be publically opened on May 6, 2016 at 9:00 AM in the Housing Warehouse Conference Room, located at 4781 West Torim Road.

All bid questions and Requests for Information (RFI) should be directed to the Project Manager via email. Send to Ian M. Geitner at [ian.geitner@pascuayaqui-nsn.gov](mailto:ian.geitner@pascuayaqui-nsn.gov) and copy Carmen Rivera at [Carmen.rivera@pascuayaqui-nsn.gov](mailto:Carmen.rivera@pascuayaqui-nsn.gov) at the Pascua Yaqui Tribe. No RFIs will be accepted after April 20, 2016. RFI responses will be distributed to all pre-bid meeting attendees via email on April 22, 2016.

For more information, please contact Ian M. Geitner, Pascua Yaqui Tribe Project Manager, at (520) 879-5288.

All bids must be submitted on provided Exhibit (A) Bid Tab. Segregated bids will not be accepted.

### BIDDING

Each bid shall be made out on the bid form marked Exhibit (A) Bid Tab, which shall be accompanied by a certified or cashier's check or bid bond for 20 percent (20%) of the total amount of the bid. Such check or bid bond will be given as a guarantee that the bidder will enter into the contract to perform the work if awarded to him and shall be declared forfeited as liquidated damages if the successful Bidder refuses to enter into the said Contract after being requested to do so by the Owner.

Such check of bid bond will be returned to the respective unsuccessful Bidders upon the Award of the Contract to the successful Bidder, and will be returned to the successful Bidder upon the execution and delivery of satisfactory surety company bonds and construction contract.

Bidders will submit, with the sealed bid, three (3) previous client construction work references, with a contact person. Each reference shall be complete with current address and contact phone numbers.

The contract will be awarded to the lowest responsive/responsible Bidder whose bid does not exceed the amount of funds estimated by the Owner to be available for construction of the project, including any applicable Indian Preference requirements. Only Bids meeting all of the bid requirements included herein shall be considered for award.

The Pascua Yaqui Tribe reserves the right to reject any and all bids, whether within the applicable cost limits and estimated total contract price or not, and to waive any informality in the bids received whenever such rejection is in the interest of the Pascua Yaqui Tribe.

### **INDIAN PREFERENCE**

Competition in this Bid solicitation will be open to all qualified bidders. However, if a bid is received from a qualified responsive/responsible Indian Organization or Indian Owned Economic Enterprise and such bid is within the "X" factor scale of the bid of the lowest responsive/responsible bidder, the Contract will be awarded to the Indian Organization or Indian Owned Economic Enterprise.

"X" FACTOR SCALE PER 24 CFR 135.92:

BID AMOUNT	PERCENTAGE
Up to \$1,000,000	5% with \$30,000 Maximum
At Least \$1,000,000 but less than \$2,000,000	4% with \$60,000 Maximum
At Least \$2,000,000 but less than \$4,000,000	3% with \$80,000 Maximum

Bidders claiming Indian Preference are required to submit to Owner a completed questionnaire/statement to the Owner in accordance with the "Instruction to Bidders", which is contained in the Bid Package.

### **TIMEFRAME OF PROJECT**

Award of this Contract is subject to a determination by BIA that the contractor is eligible to contract for federally funded activities. The Contract time allotted for this project is 90 days.

### **TERO FEE AND TRIBAL TAX**

All Contractors performing construction projects for the Pascua Yaqui Tribe are subject to a TERO Fee and Tribal Tax of 5.5%, as shown on the bid form.

### **TEMPORARY BUSINESS LICENSE AND BUILDING PERMIT**

All Contractors performing construction projects for the Pascua Yaqui Tribe are subject to a \$25.00 TERO Business License Fee and a \$25.00 Facilities Department Building Permit Fee.

### **STATE AND LOCAL TAXES**

The Pascua Yaqui Tribe is a Sovereign Nation. As such, Contractors performing work for the Pascua Yaqui Tribe are exempt from local and state taxes other than those Tribal taxes and inspection fees listed above.

### **TRIBAL AND CERTIFIED WAGES**

The Pascua Yaqui Tribe require that Construction trades performing work on this project are to be paid the higher of the Tribal Wage Scale or the prevailing local wages. This requirement applies to all employees regardless of tribal affiliation. Weekly certified payrolls will be required on this project.

END OF SECTION

INVITATION TO BID

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END OF SECTION

INVITATION TO BID



## INSTRUCTIONS TO BIDDERS

### 1. BID FORM

- A. All bids must be submitted on forms furnished by the Owner and shall be subject to all requirements of the specifications and drawings. Bids will be furnished in duplicate, one to be submitted with the bid (original and copy) and one to be retained by the bidder for his records. Only one of the two copies of the bid shall be signed. The other shall be conformed. The following documents constitute a complete bid and are required to be submitted to form a responsive bid:

- (1) Form of Bid – Unit Price Schedule (Exhibit A)
- (2) Bid Guarantee (See Section 3, Exhibits B & C)
- (3) Form of Non-Collusive Affidavit (Exhibit D)
- (4) Bidder's Certification of Eligibility (Exhibit E)
- (5) Contractor's Questionnaire (Exhibit F)

### 2. INTERPRETATIONS

- A. No oral interpretation will be made to any bidder as to the meaning of the specifications and drawings. Every request for an interpretation shall be made in writing and any inquiry received by April 20, 2016 will be given consideration. Interpretations will be distributed on April 22, 2016 via emails provided during the pre-bid meeting and be on file in the offices of the Owner. Any reference to days shall be interpreted to mean calendar days.

### 3. BID GUARANTEE

- A. The bid guarantee shall not be less than twenty percent (20%) of the amount of the bid, and at the option of the bidder, may be a certified check, or bank draft, irrevocable letter of credit, U.S. Governments bonds at par value, or a bid bond secured by a surety appearing on the Treasury Department's most current Circular 570 as amended. Any certified check, bank draft, or letter of credit must be made payable to the order of the Owner. The bid guarantee shall ensure the execution of the contract and the furnishing of performance and payment bond or bonds by the successful bidder in the appropriate amount. The bid guarantee of unsuccessful bidders shall be returned as soon as practicable after the opening of the bids (see Exhibits B and C).
- B. Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

### 4. NON-COLLUSIVE AFFIDAVIT

- A. Each person submitting a bid for any portion of the work contemplated by the bidding documents shall execute an affidavit, in the form provided by the Owner, to the effect that he has not colluded with any other person, firm or corporation in regard to any bid submitted. Such affidavit shall be attached to the bid (See Exhibit D)

## **5. BIDDER'S CONSTRUCTION EXPERIENCE**

- A. Before a bid is considered for award, the bidder may be requested by the Owner to submit additional information regarding his previous experience in performing comparable work, his business and technical organization, and finance resources. If a bidder is claiming Indian Preference, he must submit a Questionnaire/Statement to the Owner seven (7) calendar days prior to the time of the bid opening. This Questionnaire/Statement must include, or have attached as an Exhibit, the following minimum data:
  - 1. Whether he is seeking Indian Preference as a bidder;
  - 2. Evidence showing fully the extent of Indian Ownership/Control and interest in the enterprise;
  - 3. Evidence of structure and financing of the enterprise, major subcontracts and purchase agreements and management and profit sharing arrangements, including evidence showing the effect of all these on the extent of Indian Ownership and interest;
  - 4. A demonstration that the bidder has the experience and capability for timely completion of the contract work;
  - 5. A current financial statement indicating financial status of the enterprise; and
  - 6. Current resumes of principles of the firm or company who will be active in the supervision of the work (See Exhibit E).
- B. All bidders must provide references from a minimum of three (3) recent successful projects. The references shall be listed in the Contractor Questionnaire (Exhibit F) and shall include the owner's name, address, and phone number.

## **6. TIME FOR RECEIVING BIDS**

- A. Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered; except that when a bid arrives by mail after the time fixed for opening, but before award is made, and it is shown to the satisfaction of the officer authorized to make the award, that non-arrival on time was due solely to delay in the mail for which the bidder was not responsible, such bid will be received and considered. No responsibility will attach to an officer for the premature opening of a bid not properly addressed and identified. Unless specifically authorized by telegraphic bids will not be considered, and modification by telegraph of bids already submitted will not be considered even if received prior to the hour set for opening and written confirmation of such modification, over the signature of the bidder, is placed in the mail and postmarked prior to the time set for bid opening. The term "telegraph" includes mailgrams.

- B. Bidders are cautioned telegraphic changes of bids will not be accepted.

## **7. OPENING OF BIDS**

- A. At the time and place fixed for opening of bids, every bid received within the time fixed for receiving bids will be opened and publicly read aloud, irrespective of any irregularities therein. Bidders (and/or their representatives) and other persons properly interested may be present.

## **8. WITHDRAWAL OF BIDS**

- A. Bids may be withdrawn on written or telegraphic request dispatched by the bidder, in time for delivery in the normal course of business, prior to the time fixed for opening; provided that written confirmation of any telegraphic withdrawal, over the signature of the bidder, is placed in the mail and postmarked prior to the time set for bid opening. Negligence on the part of the bidder in preparing his bid confers no right of withdrawal or modification of his bid after such bid has been opened.

## **9. AWARD OF CONTRACT: REJECTION OF BIDS**

- A. The contract will be awarded to the responsible bidder submitting the lowest proposal complying with the conditions of the Invitation for Bids and Instruction to Bidders, provided his bid is reasonable and it is to the interest of the Owner to accept it. The bidder to whom the award is made will be notified at the earliest practicable date. The Owner, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the Owner.
- B. The Owner also reserves the right to reject the bid of any bidder and/or subcontractor who has previously failed to perform properly, or to complete on time, contracts of a similar nature; who is not in a position to perform the contract; or who has habitually and without just cause neglected the payment of bills or otherwise disregarded his obligations to subcontractors, materials, men or employees.
- C. The ability of a bidder to obtain a performance and payment security shall not be regarded as the sole test of such bidder's competency or responsibility.

## **10. EXECUTION OF CONTRACT, PERFORMANCE AND PAYMENT SECURITY**

- A. Subsequent to the award of the contract and within ten days after the prescribed forms are presented for signature, the successful bidder shall execute and deliver to the Owner a contract in the form furnished in such number of counterparts as the Owner may require. Having satisfied all conditions of the award, as set forth elsewhere in these documents, the successful bidder shall, with the approval of the Owner, present with the contract one of the following:

1. Performance and Payment Bond

- a. The bond must be in a penal sum of at least the full amount of the contract as awarded, and secure the faithful performance of the contract and the payment of all persons, firms or corporations to whom the contractor may become legally indebted for labor, materials, tools, equipment, or services, of any nature, employed or used by him in performing the work.
- b. On each bond, the rate of premium shall be stated, together with the total amount of the premium charged. The current power of attorney for the person who signs for any surety company shall be attached to such bond. The bond shall be in the form of Exhibit (G).
- c. Surety companies executing bonds must appear on the Treasury Department's most current list and must be authorized to transact business in the state where the project is located.

## 2. Letter of Credit

- a. The contractor shall furnish (1) a Letter of Credit for 20% of the total contract price, and (2) a Completion Assurance Agreement. The Letter of Credit shall read as Exhibit (H). The Completion Assurance Agreement shall read as Exhibit (I). The Letter of Credit shall be irrevocable and unconditional and shall be payable to the Owner according to its provisions and the provisions of the Completion Assurance Agreement. The Letter of Credit shall be interpreted and used in conjunction with the Completion Assurance Agreement. The Letter of Credit shall be on bank letterhead and signed by an officer of the bank legally authorized to execute it. The Completion Assurance Agreement shall be signed by the contractor and the Owner.

## 3. Cash Deposit

- a. The contractor shall establish in a bank acceptable to the Owner an account in the name of the Owner of not less than 20 percent (20%) of the contract amount. This account shall be in the form of Certificates of Deposit or other interest-bearing accounts. The contractor shall provide evidence of this account in the form of a letter from said bank to the Owner agreeing to the terms of this procedure, along with such Certificates of Deposit or deposit acknowledgments as are applicable. This letter shall be on bank letterhead and signed by an officer of the bank legally authorized to execute it. The letter shall read as Exhibit (J). The account will be administered in accordance with the terms of the letter evidencing it and a Completion Assurance Agreement (see Exhibit I).
- b. If either Exhibit (H) or (J) is used by the contractor, there shall be retained, from each partial payment under the construction contract, 10 percent (10%) of the estimated amount of such payment until interim settlement.

- c. The failure of the successful bidder to execute the contract and to supply the required performance and payment security within ten days after the prescribed forms are presented for signature, or within such extended period as the Owner may grant, shall be grounds for the Owner to either award the contract to the next lowest responsible bidder or re-advertise for bids. In such event, the Owner may charge against the bidder the difference between the amount of the bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guaranty.

## **11. INDIAN PREFERENCE**

- A. Attention is called to the Indian Preference provisions of the contract, set forth in the Indian Preference section of the Invitation for Bids.

## **12. EQUAL EMPLOYMENT OPPORTUNITY**

- A. Attention is called to the Equal Employment Opportunity provisions of the Contract and the requirements for affirmative action by the Contractor thereunder.
- B. A Certification of Non-segregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. Such a certification is printed on Exhibit (M) and is deemed executed by submission of the bid.
- C. The Contractor must also provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause:
  - 1. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES:
  - 2. A Certificate of Non-segregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.
  - 3. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.
- D. Certifications submitted by subcontractors shall be retained in the files of the prime contractor or subcontractor receiving the certification. Where a prime contractor or subcontractor does business with a concern on a continuing basis, a single certification may be submitted periodically, rather than with each transaction.

### 13. PRE-CONSTRUCTION CONFERENCE

- A. Within ten calendar days of the contract execution and prior to the commencement of work, the contractor or his representative and all known subcontractors shall attend a Pre-construction Conference with the Owner and/or his representative. The conference will serve to acquaint the participants with the general plan of contract administration and requirements under which the construction operation is to proceed, and will inform the contractor or subcontractor in detail of their obligations under Indian Preference, Equal Employment Opportunity, and Labor Standards Provisions, if applicable.
- B. The date, time, and place of the conference will be furnished to the contractor by the Owner.

### 14. TAXES

- A. All applicable local taxes shall be included in the bid. There is no state sales tax on this project.
- B. All contractors performing construction projects for the Pascua Yaqui Tribe are subject to a TERO and Tribal Tax of 5.5%.

### 15. ELIGIBILITY OF BIDDER

- A. The Owner is prohibited from making any awards to contractors or accepting as subcontractors any individuals or firms which are ineligible to be awarded contracts by any agency of the United States Government. Exhibit (E) **Bidder's Certification of Eligibility** must be executed by the bidder and included in the bid submission.

**BUREAU OF INDIAN AFFAIRS  
WESTERN REGIONAL OFFICE  
DIVISION OF TRANSPORTATION**

**UNIT PRICE SCHEDULE (ADDITION TO SF-1442)**

The bid must be submitted on the Unit Price Schedule below without modification.

Before preparing and submitting bid, please read carefully the Solicitations Provisions and fill in the Unit Price Schedule below.

**SCOPE OF WORK:**

**Furnish all labor, materials, equipment and services required to pulverize and reconstruct the full width of pavement, from gutter edge to gutter edge, perform linear grading operations and install Minor Hot Asphalt Concrete Pavement for 0.22 miles on BIA Route 101(7). Utility adjustments are included in the project.**

This work is for PYIR 101(7) on the Pascua Yaqui Indian Reservation, Pima County, Arizona and shall be in accordance with the FP-03 Specifications, Special Contract Requirements and Drawings.

**UNIT PRICE SCHEDULE**

<u>RESERVATION</u>	<b>615 Pascua Yaqui</b>	<u>COUNTY</u>	<b>019 Pima</b>
<u>PROJECT NAME</u>	<b>PYIR 101(7)</b>	<u>STATE</u>	<b>04 Arizona</b>
<u>ROUTE NO</u>	<b>101(7)</b>	<u>PROJECT ID</u>	<b>H55396</b>
<u>LENGTH</u>	<b>0.22 Miles</b>		

<b>Item No.</b>	<b>Item Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Amount</b>
15101	Mobilization	1	LS		
15201	Construction survey and staking	1	LS		
15301	Quality control	1	LS		
15714	Soil erosion control	1	LS		
15901	TERO fee and tribal tax	1	LS		
20305	Removal of structures and obstructions	1	LS		
21202	Linear grading	1,179	LF		
40401	Minor hot asphalt concrete	3,246	SY		
60401	Manhole, adjust frame and cover	8	EA		
60911	Portland cement concrete gutter, valley	970	SF		
61107	Water valve, adjust frame and cover	12	EA		
61108	Repair, adjust and/or relocate existing water system	100	LF		
63309	Sign installation, warning and regulatory with new steel post(s) and foundation(s)	2	EA		
63310	Sign installation, street sign assembly	6	EA		
63401d	Pavement markings, type H, 18 inch solid white, 0.090 inch thick	13	LF		
63401g	Pavement markings, type H, crosswalk, 12 inch solid yellow lines, 0.090 inch thick	1	EA		
63401h	Pavement markings, type H, 12 inch solid white lines, 0.090 inch thick	84	LF		
63501	Temporary traffic control	1	LS		
<b>Total Construction Cost</b>					

**EXHIBIT B**

**(Bank Letterhead)**

**BID SECURITY  
IRREVOCABLE LETTER OF CREDIT**

Dear \_\_\_\_\_:

We hereby authorize you to draw on us to the aggregate amount of \$\_\_\_\_\_ (five percent of the amount of the bid) in the event \_\_\_\_\_ withdraws its bid within the bid holding period, or upon being awarded a contract, fails to provide adequate performance and payment security as required by the Contract documents.

Such drafts must be accompanied by the following document:

A written certification by you that the proceeds of any draft drawn on this Letter of Credit will be used solely to indemnify the Owner against loss or damage suffered by it resulting from any act or omission described in the above paragraph.

We warrant to you that all drafts drawn in compliance with the terms of this Letter of Credit will be unconditionally and duly honored upon delivery of the documentation specified and presented to this office.

This Letter of Credit is irrevocable and shall be in full force and effect until notification in writing is received from you that a contract for Project \_\_\_\_\_ has been awarded and executed, whereupon this Letter of Credit shall automatically be canceled.

This Letter of Credit shall not be modified or amended except upon the written agreement of this Bank and the Owner.

Sincerely yours,

President

## EXHIBIT C

### BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_ PRINCIPAL, and as SURETY, are held and firmly bound unto herein called the "Owner" in the penal sum of \$ \_\_\_\_\_, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted this accompanying bid, dated \_\_\_\_\_, for \_\_\_\_\_

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period specified, within sixty (60) days after the said opening, and shall within the period specified therefore, or, if no period specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Owner in accordance with the bid as accepted, and have the required performance and payment security for the faithful performance and proper fulfillment of such contract; or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give security within the time specified, if the Principal shall pay the Owner the difference between the amount specified in said bid and the amount for which the Owner may procure the required work or supplies or both, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

(Signatures must be notarized.)

(Power-of-Attorney for person signing for surety company must be attached to bond.)

**EXHIBIT D**

**FORM OF NON-COLLUSIVE AFFIDAVIT**

**AFFIDAVIT**

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says:

That he is, \_\_\_\_\_ the party making the foregoing proposal for bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has no colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not, in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Owner or any person interested in the proposed contract, and that all statements in said proposal for bid are true.

Project No. \_\_\_\_\_

Location \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title

\_\_\_\_\_  
Date

(Signature should be notarized.)

## EXHIBIT E

### BIDDER'S CERTIFICATION OF ELIGIBILITY

By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person of firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government

\_\_\_\_\_  
Company Name of Bidder

\_\_\_\_\_  
Address

BY:

Title:

**NOTE:** This certification is a material representation of fact upon which reliance is placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal programs.

**EXHIBIT F**  
**CONTRACTOR QUESTIONNAIRE**

NAME \_\_\_\_\_

SOCIAL SECURITY NUMBER \_\_\_\_\_

D.B.A. \_\_\_\_\_

STREET ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

TELEPHONE \_\_\_\_\_

STATE LICENSE NO. \_\_\_\_\_

TYPE \_\_\_\_\_

BANK REFERENCES:

\_\_\_\_\_  
\_\_\_\_\_

LIST THREE MOST RECENT CONSTRUCTION JOBS BY NAME AND ADDRESS  
AMOUNT CONTACT PERSON:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HOW LONG IN BUSINESS? \_\_\_\_\_

HOW MANY EMPLOYEES? \_\_\_\_\_

ARE YOU AN EQUAL OPPORTUNITY EMPLOYER? \_\_\_\_\_

ARE YOU ELIGIBLE TO PERFORM FEDERAL GOVERNMENT WORK? \_\_\_\_\_

NAME AND ADDRESS OF INSURANCE CARRIER:

\_\_\_\_\_  
\_\_\_\_\_

Conflict of Interest: Are you or any member of your family related to

(1) Any employee of the Owner or member of the governing board of the Owner?

No \_\_\_\_\_; Yes \_\_\_\_\_.

(2) If yes, please explain relationship:

\_\_\_\_\_

Signature of License Holder      Signature of Company Representative

\_\_\_\_\_      Date \_\_\_\_\_

Signature of Company Representative (if different)

\_\_\_\_\_      Date \_\_\_\_\_

INSTRUCTIONS TO BIDDERS

**EXHIBIT G**

(Page 1 of 4)

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: THAT we, \_\_\_\_\_

\_\_\_\_\_

as PRINCIPAL, and \_\_\_\_\_,

as SURETY, are held firmly bound unto \_\_\_\_\_

\_\_\_\_\_ hereinafter called the Owner, in

the penal sum of \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_), for

the payment of which sum we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

WHEREAS, Principal has entered into a certain Contract with the Owner, dated \_\_\_\_\_, a copy of which is hereto attached and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall in all respects fully perform the Contract and all duly authorized modifications thereof, during its original term and any extensions thereof that may be granted and during any guaranty period for which the Contract provides, and if the Principal shall fully satisfy all claims arising out of the prosecution of the work under the Contract and shall fully indemnify the Owner for all expenses which it may incur by reason of such claims, including its attorney's fees and court costs, and if the Principal shall make full payment to all persons supplying labor, services, materials, or equipment in the prosecution of the work under the Contract, in default of which such persons shall have a direct right of action hereupon; and if the Principal shall pay or cause to be paid all sales and use taxes payable as a result of the performance of the Contract as well as payment of gasoline and special motor fuel taxes in the performance of the Contract and all motor vehicle fees required for commercial motor vehicles used in connection with the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect. No modification of the Contract or extension of the term thereof, nor any forbearance on the part of the Owner shall in any way release the Principal or the Surety from liability hereunder. Notice to the Surety of any such modification, extension, or forbearance is hereby waived.

**EXHIBIT G**

**(Page 2 of 4)**

IN WITNESS WHEREOF, the aforesaid Principal and Surety have executed this instrument and affixed their seals hereto, this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

(Signatures must be notarized.)

(Power-of-Attorney for person signing for Surety Company must be attached to bond.)

The rate of premium on this bond is \$\_\_\_\_\_ per thousand.

The total amount of premium charge is \$\_\_\_\_\_.

(The above is to be filled in by Surety Company.)

**EXHIBIT G**

(Page 3 of 4)

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the  
\_\_\_\_\_  
Secretary of the corporation  
named as Principal in the foregoing bond; that \_\_\_\_\_  
\_\_\_\_\_, who signed the bond on behalf of  
the Principal, was then \_\_\_\_\_ of said corporation; that  
I know his signature thereto is genuine; and that said bond was fully signed, sealed, and  
attested for and in behalf of said corporation by authority of its governing body.

## **EXHIBIT G**

**(Page 4 of 4)**

### **DIRECTIONS FOR PREPARATION OF PERFORMANCE AND PAYMENT BOND**

1. Individual sureties, partnerships or corporations not in the surety business are not acceptable.
2. The name of the Principal shall be shown exactly as it appears in the Contract.
3. The penal sum shall not be less than required by the Contract.
4. If the principals are partners or joint ventures, each member shall execute the bond as an individual and state his place of residence.
5. The official character and authority of the person(s) executing the bond for the Principal, if a corporation, shall be certified by the Secretary of Assistant Secretary thereof under the corporate seal, or copies attached to such records of the corporation as will evidence the official character and authority of the officer signing, duly certified by the Secretary of Assistant Secretary, under the corporate seal, to be true copies.
6. The current power-of-attorney of the person signing for the surety company must be attached to the bond.
7. The date of the bond must not be prior to the date of the contract.
8. The following information must be placed on the bond by the surety company:
  - A. The rate of premium in dollars per thousand; and
  - B. The total dollar amount of premium charged.
9. Type or print the name underneath each signature appearing on the bond.
10. An executed copy of the bond must be attached to each copy of the Contract (original counterpart) intended for signing.

**EXHIBIT H**  
**(Bank Letterhead)**

**IRREVOCABLE LETTER OF CREDIT**

(Address to Owner)

Dear \_\_\_\_\_:

We hereby authorize you to draw on us to the aggregate amount of \$\_\_\_\_\_ in the event name of contractor defaults, or fails to complete construction and/or payments under that certain Construction Contract with you dated \_\_\_\_\_

Such drafts must be accompanied by:

1. Completion Assurance Agreement dated \_\_\_\_\_ for the project known as Project Number \_\_\_\_\_
2. Written certification by you that the proceeds of any draft drawn on this Letter of Credit will be used solely for the purposes and interests described in the Completion Assurance Agreement.

We warrant you that all drafts drawn in compliance with the terms of this Letter of Credit will be duly honored upon delivery of documentation specified and presented to this office until \_\_\_\_\_ or until fifteen months after the date of substantial completion of the Construction Contract dated between \_\_\_\_\_, the contractor, and \_\_\_\_\_, the Owner, as the said date of substantial completion is defined in said Construction Contract, whichever first occurs.

This Letter is irrevocable and shall be in full force and effect unless notification in writing is received by you canceling same.

This credit shall not be modified or amended except upon the written agreement of this Bank and the Owner.

Sincerely,

President

(cc: Contractor)

# EXHIBIT I

(Page 1 of 3)

## COMPLETION ASSURANCE AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_  
by and between the \_\_\_\_\_ (Owner) and  
\_\_\_\_\_ (Contractor).

### WITNESSETH

WHEREAS, the Contractor and the Owner have entered into a Construction Contract dated, providing for the construction of a project described in such Contract; and

WHEREAS, the Contractor desires to meet his obligations to supply 100 percent Performance and Payment Bonds with a substitution of another form of security; and

WHEREAS, the Owner has determined that a Letter of Credit arrangement would provide sufficient security in lieu of a performance and payment bond.

NOW THEREFORE, in consideration of the mutual promises and undertakings herein contained, and for the purpose of inducing the Owner to substitute a Letter of Credit arrangement for a Performance and Payment Bond, the parties hereto agree that:

1. The Contractor has provided the Owner with an unconditional, irrevocable, Letter of Credit (Fund), issued by a banking institution in the amount of \$ \_\_\_\_\_ to secure and indemnify the Owner for any expense, loss or damage suffered or sustained as a result of any default by the Contractor in the performance of its obligations under the Construction Contract. It is expressly understood and agreed that said Fund shall at all times be under the control of the Owner.
2. All disbursements from the Fund shall be authorized and made by the Owner.
3. The Fund shall be maintained as a separate trust account and may be drawn in increments up to its aggregate amount or the aggregate may be drawn. Any incremental draw will not impair or diminish the right of the Owner to make

## EXHIBIT I

(Page 2 of 3)

subsequent draws in any amount(s) up to the aggregate amount of the Fund. The proceeds of a draw may be disbursed as follows:

- A. To the Contractor during the course of construction to promote the completion of the project, as may be deemed necessary by the Owner.
  - B. To the Owner the entire fund or balance remaining therein in the event of a default by the Contractor under the Construction Contract to be used by the Owner to indemnify it for any loss, damage or expense whatsoever which it may suffer by reason of the Contractor's failure to perform the Construction Contract.
  - C. To the Contractor the balance of such fund remaining after three months from the date that the work has been substantially completed in accordance with the Construction Contract (except for punch list items and items awaiting seasonal opportunity to complete) and accepted by the Contracting Officer in accordance with Section 20 of the General Conditions, but only so long as the Project is free and clear of any liens, claims or encumbrances whatsoever. There shall be withheld from the payment of said balance an amount equal to 2-1/2 percent of the total amount of the Construction Contract, which sum is to be retained in account for a period of fifteen months from the date of substantial completion or for another period less than fifteen months if authorized by the Owner. Said sum shall be held as a Fund to guarantee against defects in construction due to faulty materials or workmanship or damage to the premises resulting from such defects, which defects or damage become apparent within one year from the date of substantial completion. Said sum may be used for the correction of defects or damage in the event the Contractor fails to make such corrections. The Contractor's liability for such corrections is not limited by the amount of such sum.
4. It is agreed the Contractor may provide a separate unconditional and irrevocable Letter of Credit to satisfy the requirement set forth in paragraph 3C above, that 2-1/2 percent of the total Construction Contract amount, for latent defects, to be retained for fifteen months beyond the date of substantial completion. If such separate unconditional and irrevocable Letter of Credit is provided, it must be delivered to the Owner and made subject to this Completion Assurance Agreement before any balance remaining in the Fund is released to the Contractor or the Fund is canceled.
5. Any other provision of this Agreement notwithstanding, it is understood and agreed that no funds may be disbursed to the Contractor so long as there are any outstanding liens, claims or encumbrances against the project, written notice of which have been received by the Owner. If any such claims, liens and encumbrances have not been removed or resolved, and written notice of such removal or resolution received by the Owner by the date of substantial completion, the Owner may in its sole discretion exercise any of its rights under the Construction Contract General Conditions.

**EXHIBIT I**

**(Page 3 of 3)**

6. It is expressly understood by all parties hereto that in the event of a default by Contractor in any of its obligations under the Construction Contract, the entire Fund, any part thereof, or balance remaining therein may, at the option of the Owner, be paid to Owner together with an assignment of all rights granted to the Owner.

7. This agreement shall not alter or limit the obligations and liabilities of the Contractor under the Construction Contract, but shall be deemed to be additional security for the performance by the Contractor of its obligations there under.

8. It is understood and agreed in the event the fund is held by a depository, that the depository is not charged with any duty or responsibility to see to the performance of or compliance with any agreements between any of the parties hereto other than that of paying over the fund as directed in writing by the Owner, nor to see to the application of the Fund after making disbursements as so directed. It is expressly understood and agreed that any claim, controversy, dispute or disagreement which may exist between the Contractor and the owner shall have no effect whatsoever upon the obligation of the Depository to pay the Owner promptly upon receipt of a notice issued pursuant to the terms of the Fund and this Agreement.

9. Notwithstanding any other provision of the Construction Contract, it is agreed the fund will be administered pursuant to the terms of the Fund, this Agreement and any consistent provisions in the Construction Contract. Any inconsistent provisions in the Construction Contract shall be superseded and controlled by the Fund and this Agreement. It is expressly agreed that reference to this Agreement or collateral Construction Contract document does not make the issuance of the Fund conditional.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

Approved by Bank:

\_\_\_\_\_  
\_\_\_\_\_

Name and Title

**EXHIBIT J**  
**(Bank Letterhead)**  
**CASH DEPOSIT LETTER**

(Address to Owner)

Dear \_\_\_\_\_:

This will acknowledge that this Bank has established an account in the amount of \$\_\_\_\_\_ with funds received from \_\_\_\_\_.

This account has been issued in the name of \_\_\_\_\_ and the original certificate manifesting the same is being handed to you herewith. It is our understanding that this account is being established in lieu of performance and payment bonds customarily furnished in construction projects. The account shall serve as the "Fund" referred to in the Completion Assurance Agreement, dated \_\_\_\_\_, by and between the Owner and the Contractor.

The Bank shall pay over all or part of the funds in the account together with interest herein to the Owner, or to another as the Owner may designate, upon written notification by the Owner to the Bank of a default by the Contractor under the Construction Contract, or of the Contractor's failure to perform the Construction Contract.

The Bank shall pay over all or part of the funds in the account upon proper notification by the Owner without regard to any objections, claims, defenses, assertions, or actions by the Contractor or any other person or entity acting on behalf of the Contractor. The Bank specifically recognizes that any controversy, dispute, claim or disagreement which may exist between the Contractor and the Owner have no effect whatsoever upon the obligation of the Bank to pay the Owner promptly upon receipt of the notice referred to above.

Sincerely,

President

**EXHIBIT L**  
**NOTICE TO PROCEED**

Date: \_\_\_\_\_  
Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
SUBJECT: \_\_\_\_\_  
Project Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Location: \_\_\_\_\_  
Amount of Contract \$ \_\_\_\_\_

Gentlemen:

Pursuant to the terms of your Contract, dated \_\_\_\_\_,  
you are hereby notified to commence work there under at the start of business on  
\_\_\_\_\_. The time for completion set forth herein is \_\_\_\_\_  
calendar days, including the starting day, which establishes \_\_\_\_\_  
as the completion date.

Please acknowledge receipt of this Notice to Proceed by signing, dating, and returning  
this document to the Contracting Officer.

Sincerely,

Accepted:

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
License No. \_\_\_\_\_  
Date: \_\_\_\_\_

## **EXHIBIT L**

### **CERTIFICATION OF NON-SEGREGATED FACILITIES**

Certification of Non-Segregated Facilities. By submitting a bid, the bidder certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Opportunity clause in the Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certification in his files; and that he will forward a notice to his proposed subcontractors as provided in the Instruction to Bidders.

# CONSTRUCTION AGREEMENT

between the

**PASCUA YAQUI TRIBE**

And

**[company]**

**An Arizona Company**

This Construction Agreement between the Pascua Yaqui Tribe and the Contractor identified below ("Contractor"), (collectively the "Party" or the "Parties"), shall constitute and shall hereinafter be referred to as the "Agreement."

1. **NAME OF CONTRACTOR:** [company]
2. **ADDRESS:** [address]
3. **PRINCIPAL PLACE OF BUSINESS OF CONTRACTOR (if different from above):**  
Same as above
4. **QUALIFICATIONS:**
  - A. Contractor is licensed with the Arizona Registrar of Contractors. ROC [number]
5. **NAME OF PROJECT AND LOCATION WHERE COVERED SERVICES ARE TO BE PROVIDED:**  
(the "Project")  
[project name]
6. **DATE OF AGREEMENT:** [month / day / year]
7. **CONTRACT TIME REQUIREMENTS:**
  - A. Time is of the essence in the construction and completion of all work and services provided by Contractor.
  - B. Work for this Contract shall commence upon the issuance of a Notice to Proceed by the Tribe and shall be completed no later than [days/weeks/other] following the issuance of the Notice to Proceed.
  - C. Specific time requirements: None
  - D. Contractor may be excused from delays of performance of the terms or obligations of this Agreement pursuant to the provisions of the Force Majeure paragraph in the Agreement.

Contractor's excused delay in performance shall equal the period of the duration of the allowable delay.

**8. CONTRACTOR'S COMPENSATION:**

The Contractor's Compensation for this contract is: \$[amount] **CONTRACT CAP:** The total amount of the Contract shall not exceed the amount of \$[amount] ("Contract Cap"). Services performed beyond the Contract Cap shall be paid only with the prior approval of Tribe in a written modification to this Agreement.

**9. FUNDING: IS THIS AGREEMENT SUBJECT TO NON-TRIBAL FUNDING SOURCES/RESTRICTIONS?**

Yes:

No:

Not Applicable:

**10. TAXES.**

- A. Contractor shall pay all taxes applicable to Contractor's operation. Contractor shall hold Tribe harmless from responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or State and local laws and regulations and any other costs.
- B. There is a Tribal Transaction Privilege Tax. The current Tribally Imposed Transaction Privilege Tax is 3%.
  - 1. Waiver. By initialing here the Tribe hereby waives its Transaction Privilege Tax for this Agreement. \_\_\_\_\_
  - 2. Unless waived by the Tribe, the Tribe's Transaction Privilege Tax will be applicable to this Agreement.
- C. Contractor and all its subcontractors are exempt from State of Arizona privilege or sales taxes under the holding in the case of ***Gila River Indian Community v. Waddell, 967 F.2d 1404 (1992)***. Contractor will not charge Tribe any State of Arizona privilege or sales taxes, and will assure that all of its subcontractors do not charge State of Arizona Privilege or Sales Taxes to Contractor or the Tribe on this project. If applicable, Tribe shall provide Contractor with an AZDOR Form 5000, with Box 24 checked, showing this transaction to be exempt from Arizona State and Local Transactional Privilege Taxes.

**11. CHANGE ORDERS:**

- A. Prior to any deviation from the approved plans and specifications as requested by Contractor (a "Change Order"), Contractor shall submit the proposed Change Order to Architect, Tribe's Project Manager, Contracting Officer and the Inspector for written approval, and shall not be reimbursed without first receiving such written Change Order. After Change order is approved, Contractor shall modify pay application and Completion date as approved,

**12. LIQUIDATED DAMAGES:**

Yes \_\_\_\_; No \_\_\_\_\_. If yes:

- A. Tribe will suffer financial loss if Contractor fails to complete or reach substantial completion the Project by the time specified in Section 7 B.
- B. In the event the Project is not completed within the time period set forth in Section 7 B. Contractor shall pay Tribe the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per \_\_\_\_\_ for each calendar day after the end of the required time period, as liquidated damages,

**13. PERFORMANCE BOND:**

- A. For all contracts having a value greater than \$100,000, the Contractor shall be required to execute, in connection with this contract, a performance and payment bond for 100 percent of the contract amount, to secure fulfillment of all Contractor's obligations under this contract, and to assure payment of all persons supplying labor and materials as may be provided in any subcontract or other agreement executed by the Contractor. Said bond(s) shall be executed by one or more Surety companies legally authorized to conduct business in the State of Arizona.
- B. As an alternate to the above bond requirement the Tribe will, in its sole discretion accept one of the alternatives below: (Check if acceptable)
  - 1. \_\_\_: Separate payment and performance bonds, each for 50% of the contract price.
  - 2. \_\_\_: A 20% of contract amount cash escrow account.
  - 3. \_\_\_: A 25% of contract amount irrevocable letter of credit.
  - 4. \_\_\_: An irrevocable letter of credit for 10% of the total contract amount with a monitoring and disbursement agreement with the HUD (applicable only to contracts awarded by an IHA under the Indian Housing Program).

**14. RETAINAGE:**

Yes \_\_\_\_; No \_\_\_\_\_. If yes:

- A. If applicable, during the performance of this Agreement Tribe shall retain 10% of each payment from Contractor. The Contracting Officer may decrease retention amount to 5% when project reaches the 50% competition date depending on contractor's performance.
- B. The Tribe shall hold the Retainage to pay the cost of punch list and/or warranty related repairs (collectively the "Punch List Repairs").
- C. Upon completion of all Work and all punch list items to Tribe's satisfaction the retention amount will be released to Contractor.

**15. PAYMENT PROCEDURES:**

- A. Payments shall be made as follows: [payment terms]
- B. Final Payment shall be made after completion of all work and after final written acceptance is provided by the Tribe. Payment shall not be made until the work site has been cleaned up to Tribe's satisfaction and all work has been inspected, approved and accepted by Tribe. The Project Manager shall review the invoice and inspect the work to ensure that all work has been completed to the satisfaction of the Tribe. All close out items must be submitted.
- C. Invoices must be detailed and must specify charges for different personnel and expense classifications. The invoice must reference the Pascua Yaqui Tribe Purchase Order Number, an invoice number, dates of services, an invoice date and a detailed list of all charges.
- D. Contractor shall submit the invoice to Tribe within \_\_\_\_\_ days of the provision of Covered Services
- E. Contractor shall submit the original invoice and four (4) copies to:  
  
Pascua Yaqui Tribe  
Attn: Contracting Officer  
7474 S. Camino de Oeste  
Tucson, Arizona 85757
- F. Contractor shall submit copies of invoice to the Contracting Officer so that it may be included in the Purchase Order file. In the event Contractor has not made satisfactory progress, the Contracting Office may instruct the Tribe's Finance Department to withhold or delay payment to Contractor.
- G. Contractor shall direct all inquiries concerning claims and payments directly to the Procurement Office, telephone number (520) 879-5142.
- H. Tribe shall make check payable to: [company name]
- I. Tribe shall mail reimbursement to Contractor at the following address:  
[company address]
- J. Payment of any amount by the Tribe does not constitute a waiver of the Tribe's right to subsequently question, dispute, obtain reimbursement of, compromise or request repayment of, or require future credit for, such amount. Tribe retains the right to audit all bills or files that are or have been the subject matter of any billing or payment made pursuant to or in connection with this Agreement of the Facility. In the event of such an audit, Contractor shall produce all documentation that would support the billing submitted by Contractor.

**16. DESCRIPTION OF THE SCOPE OF SERVICES (“Covered Services”):**

- A. Contractor shall perform and complete all services set forth herein and in all attachments. Work shall be performed pursuant to the Contractors Proposal dated [date], and associated or referenced drawings therein, and other drawings and specifications as approved by Tribe.
- B. Contractor shall:  
  
[scope of work]
- C. Contractor acknowledges that Tribe has contracted with Contractor only for the specific Covered Services as designated in the Covered Services section of this Agreement and the Contractors proposal. While providing services to the Tribe or on the Tribe’s Reservation or in or on the Tribe’s facilities, Contractor agrees to limit its activities to those Covered Services set forth herein or those services necessarily and ordinarily related thereto. Contractor also agrees that it will not perform any tasks, duties or actions that are not within or are outside of the Scope of Covered Services to be provided by Contractor.
- D. Contractor shall perform additional services as required by Tribe provided the Contractor and Tribe agree to the scope and compensation for such additional Work in writing. If Contractor reasonably believes that additional services will be required due to circumstances beyond Contractor’s control, Contractor shall provide written notification to Tribe and must receive Tribe’s prior written preauthorization to perform additional services prior to the commencement of such services.
- E. Contractor shall be responsible for the conformance with industry and regulatory standards. Contractor shall provide professional expertise and the quality of work equivalent to work and services performed by licensed individuals, organizations, licensed companies or other agents.
- F. Contractor shall attend construction meetings and other meetings as determined or required by Tribe.

**17. CRITICAL PATH SCHEDULE:** Contractor shall provide a Critical Path Schedule.

Yes \_\_\_\_\_; No \_\_\_\_\_;

- A. If Yes, commencing on the effective date of this Agreement, Contractor shall provide a Critical Path Schedule for all Work to the Tribe and shall include allowances for periods of time required for the Tribe’s review and for approval of submissions by the Contracting Officer having supervisory authority over the Project.
- B. Time limits established by this Critical Path Schedule shall not be adjusted as the Project proceeds without the express written consent of the Contracting Officer.

- C. On a \_\_\_\_\_ basis, Contractor shall update the Critical Path Schedule and shall provide such update to: (i) an inspector or inspectors designated by the Tribe (the "Tribal Inspector"); (ii) the Contracting Officer (defined below); (iii) and the Project Manager or Managers designated by the Tribe (the "Project Manager"). This requirement shall be in force until completion of the Work and until all punch list items are completed.

**18. CONTRACTING OFFICER AND PROJECT MANAGER:**

- A. The Tribe will designate a Project Manager and/or a Contracting Officer for operational issues arising under this Agreement ("Project Manager" and/or "Contracting Officer"). Upon written notice to the Contractor, Tribe's designation of the Project Manager and/or Contracting Officer may be changed.
- B. The Project Manager and/or Contracting Officer shall have authority to enforce the provisions of this Agreement.
- C. The Project Manager and/or Contracting Officer or their designated representative shall visit the Work site to ascertain whether the Work is proceeding in accordance with this Agreement and its specifications and plans.
- D. Tribe designates the following individual as the Contracting Officer: **Carmen Rivera**; telephone number **520-879-5146**.
- E. Tribe designates the following individual as the Project Manager: **Ian Geitner**; telephone number **520-879-5288**.

**19. WARRANTY:**

- A. Contractor warrants that the materials provided by Contractor shall be:
1. Of a quality to pass without objection in the trade under the Contract description.
  2. Fit for the intended purposes for which the materials are used.
  3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units.
  4. Adequately contained, packaged and marked as the Contract may require.
  5. Conform to the written promises or affirmations of fact made by the Contractor.
- B. Contractor agrees to warranty all work for a period of (2) years from the date of final acceptance of the work. Contractor agrees to warranty all products for period of (2) years from the date of final acceptance of the work or for the period warranted by the manufacturer, whichever is longer. Contractor shall remedy at its own expense any defective work or unsuitable materials. Tribe shall notify Contractor, in writing, within a reasonable time after the discovery of any failure or defect. If Contractor fails to correct the

failure or defect within a reasonable time after receipt of notice, Tribe may repair or remedy the failure or defect and charge Contractor for all costs and expenses related to the repair or remedy.

- C. Neither Tribe's final payment nor inspection approval shall relieve Contractor of liability with respect to any express or implied warranties for faulty workmanship or materials.
- D. Prior to the final inspection, Contractor shall provide to Tribe all manufacturers and supplier written guarantees and warranties covering materials and equipment furnished under this Agreement.

## 20. **INSURANCE:**

- A. Insurance Required. Contractor will provide and maintain at all times during the performance of the Agreement the following insurance:
  - 1. Comprehensive Commercial General Liability Insurance. Contractor shall obtain and maintain, and require to be obtained and maintained from all Subcontractors at their sole expense throughout the entire term of this Agreement, a Comprehensive Commercial General Liability insurance policy in the amount of \$1 Million (\$1,000,000) combined single limit Bodily Injury and Property Damage and (\$2,000,000) annual aggregate. The Pascua Yaqui Tribe, its officials, employees, agents and volunteers shall be named as an additional insured for all operations including products and completed operations within the scope of the Agreement. Contractor shall also endorse their policy and require endorsement of subcontractors' policies that the Contractor's and subcontractors' coverage shall be primary and non-contributory to any other insurance available to cover the Pascua Yaqui Tribe. It is further agreed that Contractor's and all subcontractors' policies shall waive their subrogation rights against the Pascua Yaqui Tribe, its officials, agents, employees and volunteers.
  - 2. Umbrella Liability Insurance. Contractor shall obtain and maintain, and require to be obtained by all subcontractors, Umbrella Liability Insurance for a limit of not less than \$2,000,000 annual aggregate. The Contractors and subcontractors' Umbrella Policies must also agree to name the Pascua Yaqui Tribe as an additional insured.
  - 3. Commercial or Business Automobile Liability. If Contractor is required to use Contractor's privately owned vehicle or any other vehicle within the scope of responsibilities and duties as required by this Agreement, Contractor shall maintain Commercial or Business Automobile Liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1 Million (\$1,000,000) combined single limit, or \$1 Million (\$1,000,000) Bodily Injury, \$1 Million (\$1,000,000) Property Damage. Tribe shall be named as an additional insured for all operations performed within the scope of the Agreement between Tribe and Contractor.

4. Workers' Compensation Insurance. If Contractor is providing services through its employees, Contractor agrees to maintain and require all subcontractors to maintain Workers Compensation insurance for all employees, if required by applicable law. Contractor's and subcontractors' Workers Compensation carrier shall be required to waive any rights of subrogation against the Pascua Yaqui Tribe.
- B. Changes in Insurance. Contractor shall provide Tribe with a minimum of thirty (30) days prior written notice in the event any of the policies set forth in this paragraph are modified or canceled.
- C. Certificates of Insurance. Contractor shall provide and require all subcontractors to provide to Tribe, current certificates of insurance, evidencing that the policies of insurance required hereunder are in full force and effect, and valid and existing in accordance with the provisions of this Paragraph. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change to Tribe.
- D. Claims. Contractor shall provide immediate written notice to Tribe of any claims filed against Contractor or its employees, agents or representatives.
- E. Contractor and Subcontractor Floater Policies. Contractor shall, and shall require all subcontractors, to have all property floaters, installation floaters, and transit floaters, including Contractor's equipment floater policies, endorsed to waive subrogation rights against the Tribe, its officials, employees, agents, and volunteers.

21. **INSPECTIONS:** Applicable \_\_\_\_\_; Not Applicable \_\_\_\_\_. If applicable:

- A. The Inspection Department of the Tribe ("Project Inspector") will perform inspections and must provide final inspection approval prior to acceptance and final payment by Tribe. When the work is substantially completed, Contractor shall notify the Tribe in writing that the work will be ready for final inspection on a definite and specific date.
- B. The Project Inspector and any other representative of the Tribe cannot relieve Contractor from any requirements or responsibility for damages or losses.
- C. The Project Inspector or any other representatives of the Tribe is not authorized to modify any term or condition of the specification without the Tribe's written authorization.
- D. Contractor shall, without charge, promptly replace or correct all work determined by either the Contracting Officer, Project Manager or Project Inspector, not to conform to work requirements, unless Tribe agrees to accept the work with an appropriate adjustment in the Project Cost. If the defective work is not promptly corrected, the Tribe may elect to correct the work and charge the cost to make the correction to Contractor or Tribe may elect to terminate the Contract.
- E. If Tribe examines completed work by removing work completed by Contractor, Contractor shall promptly furnish all necessary facilities, labor and material. If the work is determined

to be defective or nonconforming according to the terms of this Agreement, Contractor shall pay for all costs of satisfactory reconstruction. However, if the work is determined to meet Agreement requirements, Tribe shall adjust the contract price to compensate for the additional services required to reconstruct the work and will grant an extension of time if Contractor's work was delayed due to Tribe's removal of work. Rejected work shall be corrected by Contractor immediately.

- F. Tribe's final acceptance of the work shall be final except for latent defects, fraud, gross negligence, and Contractor's warranties, representations or guarantees.
- G. Contractor shall pay an Inspection Fee to Tribe in the amount of 2.5 percent (2.5%) of the total contract award for Tribe to perform inspection services. The Inspection Fee shall be paid monthly to Tribe.
- H. Special Inspection by others for Tribe.

## **22. GENERAL PROVISIONS.**

- A. The Agreement shall not be valid or enforceable unless approved and executed in accordance with the requirements of the Constitution and laws of the Pascua Yaqui Tribe, as they may exist from time to time.
- B. This Agreement is entered into and executed on the Pascua Yaqui Reservation and will be performed in its entirety on the Pascua Yaqui Reservation.
- C. Each person executing this Agreement warrants to all parties hereto that such person is authorized to execute and deliver the Agreement on behalf of the party for which that execution occurs.
- D. Contractor will not be entitled to a Change Order or other modifications to the Contract Documents, or the requirements of the Contract Documents, for conditions about which Contractor knew or reasonably should have known by review of the Contract Documents or work site conditions prior to the execution of the Agreement.
- E. Contractor agrees that in the event, during the term of this Agreement, Contractor becomes aware of any conflicts, errors, ambiguities, or discrepancies in the Contract Documents and/or the Work and/or the Site and/or the Facility, Contractor will immediately notify the Tribe in writing of such conflicts, errors, ambiguities or discrepancies. In the event Contractor fails to so notify the Tribe of any conflicts, errors, ambiguities or discrepancies, and receive written instructions from the Tribe prior to proceeding, Contractor will not be entitled to any change order, and will complete the project without further payment resulting from additional costs or expenses related to such conflict, error, ambiguity or discrepancy.
- F. Contractor will be responsible for paying for, and will pay for, all materials and labor arising hereunder and for making payment to any subcontractors that Contractor uses in connection with its work. In no event will Tribe be responsible for making payments to or

be liable to materials vendors or suppliers or to Contractor's workers, employees, or subcontractors.

- G. Contractor agrees to comply with all applicable tribal, federal and state laws and regulations governing the provision of the product or Covered Services called for in the Agreement.
1. In particular, Contractor will perform its work in conformance with all OSHA and other local, state or other governmental requirements. In particular:
    - a. Contractor will comply with the Drug Free Work Place requirements of Tribe.
    - b. Contractor will maintain appropriate danger or warning signs at the construction site. All signs shall be visible to all individuals who enter the construction site.
    - c. Contractor will insure the safety of visitors when visitors other than the Project Manager or Project Inspector are present.
  2. The Pascua Yaqui Tribe is a right to work jurisdiction. Contractor will not require any person working for contractor to become a member of a labor union or other association in order to work for Contractor on work done under this Agreement, and Contractor will assure that no sub-contractor of Contractor under this Agreement requires an employee of the subcontractor to become a member of a labor union or other association in order to work for the subcontractor on work done under a subcontract under this Agreement.
- H. Contractor will maintain the work area, including any storage areas, free from waste and trash. Contractor shall remove waste and trash from the site on a daily basis. Upon final completion of the Work, Contractor shall remove all debris, waste, trash, tools, and equipment from the site, leaving a clean, neat and orderly site. In the event Contractor fails to clean up the work site to the satisfaction of Tribe, Tribe will charge Contractor clean up costs which amount may be off-set against the final payment.
- I. Contractor shall take prompt and appropriate remedial measures to protect health and safety in the event of the discovery of an unanticipated hazardous condition. Contractor will keep the work site in a safe condition at all times, and will insure that unsafe conditions are remedied immediately, and upon termination of this Agreement as required by law or industry standards.
- J. Contractor shall be responsible for the prompt, appropriate and lawful reporting to the appropriate governmental authorities of the discovery of, or release of, any hazardous or otherwise regulated substances. Contractor shall also provide immediate written notification to Tribe of the discovery of any hazardous materials or conditions. Tribe may require Contractor to notify surrounding property owners in the event that an actual or suspected hazardous or otherwise regulated substances or conditions are encountered at

the Site or otherwise in connection with the Contractor's performance of the Work. Contractor will also promptly notify Tribe of any suspected or other unanticipated conditions or potential conditions that become known to Contractor during or after completion of services and are associated with Contractor's performance under this Agreement.

- K. At Tribe's request, Contractor agrees to assist or report on behalf of Tribe, any disclosures required by law to the appropriate governing agencies. Tribe will hold Contractor harmless for any and all consequences of disclosures made by Contractor which are required by law.
- L. Upon the termination or expiration of this Agreement, Contractor agrees to immediately return to Tribe, all property of Tribe, including, but not limited to manuals, forms, procedures and policies.
- M. Upon termination and prior to termination, all documents, data and reports prepared by Contractor under this Agreement shall become the property of and be delivered to Tribe.

### **23. REPRESENTATIONS AND WARRANTIES:**

In order to induce Tribe to enter into this Agreement, Contractor makes the following representations:

- A. Contractor warrants and represents that Contractor is certified, licensed or specially qualified, as noted above.
- B. Contractor warrants and represents that Contractor has obtained and will maintain throughout the term of this Agreement all licenses, permits, accreditation and certification required by law for Contractor to provide Covered Services. Contractor will provide current copies of applicable certifications, permits and licenses.
- C. Contractor warrants and represents that Contractor possesses the required AZ ROC License and experience required to perform Covered Services as set forth in this Agreement.
- D. Contractor represents and warrants that the information set forth in Contract Attachments and the information set forth in Contractor's application for participation hereunder is true and correct. Contractor shall provide written notification to Tribe of any material changes in the information contained in Contractor's application within thirty (30) days of such change or in the event Contractor is subject to any investigation, disciplinary proceeding or sanction by any governmental authority, regulatory board or agency or professional society and shall provide relevant facts and circumstances, or if there are changes in the status of Contractor's insurance coverage or office address or other information contained in Contractor's application or representations.

- E. Contractor warrants and represents that it has examined and carefully studied this Agreement (including all Exhibits and Attachments) and is familiar with and has satisfied all requirements of the agreement and its attachments.
- F. Contractor warrants and represents that it has, prior to or at the time of its bid, provided the Contracting Officer and Project Manager of the Tribe with written notice of all conflicts, errors, ambiguities, discrepancies or discoverable work site conditions affecting the Agreement that Contractor has discovered, or should have reason to know about, with this Agreement and other documents provided to Contractor in connection with the Project (the "Contract Documents").
- G. Contractor warrants and represents that it is, or will become, familiar with the applicable federal, state, Tribal, and local laws, regulations, codes and ordinances that may affect cost, progress, performance, and all other aspects of completing the work.
- H. The Parties warrant and represent that they know of no impediment to the execution of this Agreement and the performance of its provisions.
- I. All warranties and representations herein shall survive the execution or termination hereof.

**24. STANDARD OF CARE & NOTIFICATION:**

- A. Contractor will conduct its performance under the Contract with the level of care, skill and training expected by members of the profession practicing under the same or similar circumstances at the time performance is rendered. Contractor will exercise appropriate precautions according to industry and regulatory standards and any requirements, if any, pursuant to the Contract Documents. Tribe does not waive any rights it may have against Contractor to any claim or liability that may arise as a result of Contractor's performance under the Contract.
- B. Contractor agrees to comply with and perform all work in accordance with the best modern practice, with new materials and workmanship of the highest quality, in compliance with applicable building codes, federal, state and local laws, rules, regulations and standards, including those relating to safety, environmental protection, quality of workmanship and other standards. Contractor shall check and verify all dimensions, grades and levels before commencement of performance, and whenever necessary during the progress thereof. Contractor, in performing this Agreement, is acting as an independent contractor, and will provide all labor, tools, scaffolding, equipment, supplies and supervision necessary for the complete and satisfactory performance of this contract work.
- C. Contractor hereby agrees that all work performed, whether by Contractor or any Subcontractor, shall meet or exceed all uniform fire, building, plumbing, electrical and mechanical codes as adopted by the Pascua Yaqui Tribe or other applicable governmental authorities (collectively, the "Codes"). In addition, Contractor warrants that all work completed, whether by Contractor or any Subcontractor, shall meet the minimum workmanship standards as set forth by the Arizona Registrar of Contractors and the standards set forth herein (the "Standards"). Any work that is discovered to fall below the

Codes or the Standards shall be deemed substandard and will require appropriate remedial measures; the expense of which shall be the direct and sole responsibility of Contractor.

**25. NOTICES:**

All notices to Tribe must be in writing, payments, requests, demands or other communications required or permitted pursuant to this Agreement may be effected by: (a) personal delivery; (b) certified United States mail, return receipt requested, postage prepaid; or (c) overnight courier or delivery service which provides receipts or delivery notification, and properly addressed to the Parties at the addresses listed immediately below. Notice to Tribe shall not be complete or proper unless given to all addresses. Notices shall be deemed communicated as of the date of actual receipt. Parties may designate a new address after providing actual written notice to the other Party of such new address. All notices shall be delivered as follows:

To Tribe: Pascua Yaqui Tribe  
Attn: Chairman of the Tribe  
7474 South Camino de Oeste  
Tucson, Arizona 85757

With a copy to: Pascua Yaqui Tribe  
Attorney General  
7777 S. Camino Huivisim. Bldg. C  
Tucson, Arizona 85757

With a copy to: Pascua Yaqui Tribe  
Attn: Contracting Officer  
7474 S. Camino de Oeste  
Tucson, Arizona 85757

For Contractor: [company name / address]

**26. CONTRACT ORDER OF PRECEDENCE:**

This Agreement shall prevail over any attachments or contract documents. In the event there is a conflict of contract document terms, other documents shall prevail in the following order:

A. Contractors Proposal

**27. HIRING OF PERSONNEL:**

Contractor agrees to give employment preference to Indians, pursuant to 25 U.S.C. 450e (b). Contractor agrees to execute and comply with Contractor's Agreement with the Tribal Employment Rights Office ("TERO"), hereinafter incorporated into the terms of this Agreement. As a condition of this Agreement, Contractor shall register with the TERO.

**28. OWNERSHIP OF MATERIALS AND INFORMATION:**

- A. Contractor will retain all pertinent records relating to the services performed under this Agreement for the greater of either Seven (7) years after completion of the Work or as otherwise required by industry standards, during which time the records will be made available to Tribe at any time and without charge.

**29. SAMPLES, TEST OR STUDY MATERIALS:**

Contractor shall retain all photographs, surveys, any other data, documents or materials of any nature pertaining to services performed pursuant to this Agreement for a period to be determined by the Tribe. Contractor shall not destroy or otherwise transfer such items without prior written authorization from Tribe.

**30. SUBCONTRACTS:**

In the event that Tribe authorizes Contractor to hire subcontractors, Contractor shall not subcontract with any subcontractor who is presently denied participation in a HUD program or who is presently suspended or barred from participating in contracting programs by any agency of the United States Government, the State of Arizona or the Pascua Yaqui Tribe.

**31. CONTRACT DOCUMENTS:**

The “Contract Documents” that comprise this entire Agreement between Tribe and Contractor concerning the Work shall consist of this Agreement and the following Attachments:

1	Contractor Proposal dated _____
2	Contractor Agreement with Tribal Employment Rights Officer (TERO)
3	Pascua Yaqui Tribe Purchase Request No. _____ dated _____ in the amount of \$[amount]
4	Certificate of Workers’ Compensation Insurance dated _____
5	Certificate of General Liability Insurance dated _____
6	Certificate of Automobile Insurance dated _____
7	TERO Temporary Business License for Pascua Yaqui Reservation dated _____
8	Internal Revenue Service form W-9
9	Notice to Proceed

**32. LICENSURE, ACCREDITATION AND CERTIFICATION:**

If at any time during the term of this Agreement there shall be a voluntary or involuntary restriction, suspension, withdrawal or non-renewal of Contractor’s license, certification or permit, or any of Contractor’s employees, agents, subcontractors or representatives, or any formal charges against Contractor or Contractor’s employees, agents, subcontractors or representatives, by any government agencies or any licensing would, if sustained, materially impair Contractor’s ability to comply with Contractor’s duties or obligations pursuant to this Agreement, Contractor shall immediately notify Tribe of the issuance of such restriction, suspension, withdrawal or non-renewal of Contractor’s license or any of Contractor’s employees, agents, subcontractors or representatives.

**33. CONDITIONS PRECEDENT:**

This Agreement shall become effective only upon satisfaction of the following conditions precedent:

- A. Full execution of this Agreement;
- B. Tribe's receipt of the following in form and substance acceptable to Tribe, each of which shall be attached hereto as the indicated exhibits:
  - 1. Current Certificates of Insurance for all policies set forth herein; and
  - 2. A fully completed Request for Taxpayer Identification Number and Certification, IRS Form W-9.
- C. Payment of any bill by Tribe does not constitute a waiver of Tribe's right to subsequently question, dispute, obtain reimbursement of, compromise or request repayment of future credit, for any bill or invoice previously paid. Tribe retains the right to audit all bills or files which are or have been the subject matter of any billing in the past. Such an audit will require Contractor to produce all documentation which would support the billing submitted by Contractor.

**34. TERMINATION:** (Check Applicable Provisions)

- A. \_\_\_ Tribe shall have the right, in its sole and absolute discretion to terminate this Contract immediately for its convenience. If it does so the Contractor shall be entitled to be paid for the actual cost of work completed in accordance with the Contract to the date of the termination, plus its expected profit margin as applied to the work completed through the date of termination, but shall not be entitled to any extended project costs or the like.
- B. \_\_\_ Tribe may terminate this Contract with cause with \_\_\_ days written notice to Contractor if Contractor breaches any Contract term, representation, warranty or covenant. If the Contract is terminated for cause, Contractor shall be entitled to the cost of work completed in accordance with the Contract, less all damages, including consequential damages, caused by its breach of the Contract. In the event such damages exceed the amount which would otherwise be owed by Tribe, Contractor shall be liable to Tribe for the amount that said damages exceed the amount which the Tribe would otherwise owe on the Contract.
- C. \_\_\_ Tribe may terminate this Contract without cause or for its convenience with \_\_\_ days written notice to Contractor. If it does so the Contractor shall be entitled to be paid for the actual cost of work completed to the date of the termination, plus its expected profit margin as applied to the work completed through the date of termination, but shall not be entitled to any extended project costs or the like.
- D. \_\_\_ Contractor may terminate this Contract with cause with \_\_\_ days written notice to Tribe if Tribe materially breaches this Contract. However, Tribe may cure the breach any time prior to the expiration of the required notice period.

- E. \_\_\_\_ This Agreement will terminate upon the occurrence of any of the following events:
1. Automatically and without notice upon the cancellation or termination of Contractor's general or professional liability insurance;
  2. Subject to state and federal requirements applicable to continuation of services, automatically and without notice if either Party becomes insolvent, or is adjudicated as bankrupt or its business comes into possession or control, even temporarily, of any trustee in bankruptcy, or a receiver is appointed for it, or it makes a general assignment for the benefit of creditors (in those instances no interest in this Agreement will be deemed an asset or liability of either party, nor will any interest in this Agreement pass by the operation of law without the consent of the other party).
  3. In the event that Contractor, in the performance of the contract, engages in any actions outside the scope of Contractor's contracted Scope of Covered Services as described in this Agreement.
- F. Upon notification of termination Contractor will immediately cease all work as directed in the notice, unless otherwise notified by Contractor, and minimize further costs to Tribe.
- G. Contractor agrees that any Tribe decision to terminate this Agreement shall be final. Tribe shall not be bound by any financial obligation to Contractor upon termination of this Agreement, except for payments due in accordance with the terms of this Agreement for Covered Services provided prior to contract termination.

**35. PARTIES REPRESENTED BY COUNSEL:**

This Agreement is made and entered into voluntarily by Tribe and Contractor, free and clear from any duress or influence on either party by the other. Tribe and Contractor warrant that each has read this Agreement in its entirety. Tribe and Contractor have been advised fully and adequately by their respective legal counsel as to the character and legal effect of all terms and covenants contained in this Agreement. Tribe and Contractor further warrant that each fully understands the nature and effect of said terms and covenants prior to the execution of the Agreement.

**36. DOCUMENT RETENTION AND ACCESS.**

- A. If required by an outside funding source, such as the U.S. or the State of Arizona, Contractor agrees to comply with applicable governmental requirements governing the maintenance of documentation with respect to the cost of materials and services rendered pursuant to this Agreement.
- B. If Contractor carries out any of Contractor's duties pursuant to this Agreement through a subcontract, with a value or cost of \$10,000.00 or more over a 12-month period, with a related organization (as that term is defined by relevant Federal statute, rule, or regulation), such subcontract shall contain a clause to the effect subcontractor will also comply with applicable governmental requirements of the government funding the project.

**37. ADDITIONAL DOCUMENTS:**

- A. The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Agreement.
- B. In addition to any documents, reports or information required by any other section of this Contract, Contractor shall furnish Tribe with any further documents and information deemed necessary by Tribe.

**38. AMENDMENTS:**

- A. The terms and/or provisions of this Agreement may not be amended or modified unless the Addendum or Amendment is mutually agreed upon, in writing, approved in accordance with the laws of the Tribe, and signed by both Parties and attached to the original Agreement.
- B. A copy of the fully executed Addendum or Amendment shall be fully incorporated into the original Agreement and made a part hereof.

**39. ASSIGNMENT AND DELEGATION:**

- A. Contractor may not assign any of Contractor's rights or delegate any of Contractor's duties hereunder without the prior written consent of Tribe.
- B. Tribe may assign this Agreement or any of its rights or delegate its duties to any transferee or assignee of Tribe, upon written notice to Contractor.

**40. CHOICE OF LAW, JURISDICTION, AND SOVEREIGN IMMUNITY:**

- A. The validity, interpretation, effect, and any disputes arising out of this Agreement or the performance or lack of performance there under shall be governed exclusively by the laws of the Pascua Yaqui Tribe, without giving effect to the conflict of laws.
- B. All disputes arising under this Agreement shall be resolved pursuant to the laws of the Tribe in the court system of the Tribe.
- C. This Agreement is to be construed strictly according to Pascua Yaqui Tribal law.
- D. Contractor, by signature below, consents to the exclusive jurisdiction of the Pascua Yaqui Tribal Court over all disputes arising under or relating in any way to this Agreement.
- E. By entering into this Agreement, Tribe does not waive any right, privilege, or status, including, but not limited to, Sovereign Immunity.

**41. ATTORNEYS' FEES:**

In any action at law or in equity to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, expenses and necessary disbursements, in addition to other relief which may be granted, subject to Tribe's defense of sovereign immunity.

**42. BINDING EFFECT:**

This Agreement shall be binding upon, and shall inure to the benefit of, the parties to it, and their respective heirs, legal representatives, successors and assigns.

**43. CHANGE IN OWNERSHIP OR COMPOSITION OF CONTRACTOR:**

Contractor shall provide Tribe with immediate written notice in the event of any change in composition or legal or beneficial ownership of Contractor.

**44. COMMUNICATIONS:**

Contractor agrees to meet with Tribe or Tribe's representatives on an as required basis. Contractor's liaison or representative shall have appropriate authority to respond to issues in a timely manner and to bind Contractor for decisions made.

**45. COMPLIANCE WITH RULES, REGULATIONS, POLICIES AND PROCEDURES:**

Contractor agrees to be bound by and comply with all applicable rules, regulations, policies and procedures of Tribe, State of Arizona and Federal government. Contractor agrees to cooperate with any administrative procedures which may be adopted by Tribe regarding the performance of Covered Services pursuant to this Agreement.

**46. CONFIDENTIALITY:**

- A. Contractor acknowledges that all material and information acquired in connection with this Agreement, is confidential and proprietary data and shall not during and after the term of this contract, disclose, duplicate or utilize information without written consent of Tribe.
- B. Contractor shall hold material and information in the strictest of confidence and agrees not to use this information or material in any other manner, except for the performance and management of this Agreement.
- C. Contractor shall return all information, notes and compilations to Tribe immediately after the need for such information has expired.

**47. CONFLICT OF INTEREST:**

- A. During the term of this Agreement, Contractor will not enter into any activity, employment or business arrangement which conflicts with the interest of Tribe or the obligations of Contractor under this Agreement.

- B. Contractor agrees to advise Tribe of Contractor's position with respect to any activity, employment or business arrangement contemplated by Contractor, which might conflict or give the appearance of conflict with the interests of Tribe.

**48. DRUG FREE WORKPLACE:**

Contractor and Contractor's agents and representatives agree to comply with a drug free workplace policy as established by Tribe or Contractor.

**49. DUTIES:**

Contractor shall devote the time, attention and energy necessary for the competent and effective performance of Contractor's duties hereunder.

**50. ENTIRE AGREEMENT:**

- A. This Agreement and its Attachments comprise the entire Agreement and supersedes all prior written or oral agreements, representations and implied contracts.
- B. This Agreement is not conditioned on the performance of any other agreement. All prior and contemporaneous negotiations and understandings between the parties are embodied in this Agreement.
- C. Each Party acknowledges that no representations, enticements, promises or agreements, oral or otherwise, have been made on behalf of any Party, which are not embodied herein, and that no other agreement, statement, or promise, not contained in this Agreement shall be valid or binding.

**51. EXECUTION:**

This Agreement and any amendments may be executed in several counterparts. Each counterpart shall be deemed an original, but all counterparts shall constitute a single instrument.

**52. FORCE MAJEURE:**

- A. Any prevention of performance of the terms or obligations of this Contract by Tribe or Contractor due to strike, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform under this Contract, shall excuse said performance for a period equal to the duration of the prevention or delay.

- B. However, nothing herein shall be construed to prohibit or prevent Tribe from terminating its agreement with Contractor due to Contractor's failure to complete the Work in a timely manner or Contractor's failure to make adequate progress toward completing the Work.
- C. Whether Contractor has failed to complete the work in a timely manner or has failed to make adequate progress toward completing the Work shall be determined in Tribe's sole discretion.

**53. GRATUITIES:**

- A. Tribe may, by written notice, terminate this Contract, in whole or in part, if Tribe determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of Tribe for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance.
- B. Tribe, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by Contractor.

**54. INDEMNIFICATION:**

Regardless of the merits, Contractor agrees to indemnify, hold harmless, and defend Tribe, its officers, and employees against any and all claims for damage, loss, demand, cause of action, liability, injury, punitive damages, costs and expense of every type, arising directly or indirectly from any act or omission of Contractor, Contractor's employees, associates, agents or representatives.

**55. INDEPENDENT CONTRACTOR STATUS:**

- A. This Agreement is not intended to create any relationship between Tribe and Contractor, other than that of independent entities, contracting with each other, solely for the purposes of effecting the provisions of this Agreement.
- B. Tribe shall not be responsible for withholding or payment of taxes on any funds paid to Contractor.
- C. Contractor shall have no authority to incur indebtedness, commit or obligate Tribe as an agent, representative or employee of Tribe, unless such authority is authorized by Tribe in writing.
- D. Contractor shall maintain responsibility for hiring, supervising and paying assistants or other employees to perform Covered Services. However, all employees shall be subject to the terms of this Agreement.
- E. Contractor is not prohibited from performing or making Contractor's services available to the general public on a regular and consistent basis. Nor is Contractor restricted from

seeking and performing other gainful work. Tribe may contract with others to perform the same services as provided by Contractor.

D. Contractor shall determine the order and sequence of Contractor's work.

**56. LIENS:**

Contractor warrants that the materials supplied under this Contract are free of liens.

**57. LOBBYING:**

During the term of this Agreement, Contractor agrees not to engage in any lobbying activity on behalf of Tribe.

**58. NO WAIVER:**

- A. Tribe's failure to take action for any breach of this Agreement shall not be deemed to be a waiver by Tribe, even if it acquiesces to the nature of the performance and fails to object to it.
- B. The subsequent acceptance of partial performance under this Agreement by Tribe shall not be deemed to be a waiver of any preceding breach by Contractor.
- C. In the event a condition is waived, all other terms and provisions shall remain in full force and effect.

**59. NON-APPROPRIATION:**

Notwithstanding any other provision in this Agreement, this Agreement may be terminated if, for any reason, there are insufficient appropriations and available monies.

**60. NON-EXCLUSIVE CONTRACT:**

This is not an exclusive contract. Contractor may continue to provide Covered Services to other clients and Tribe may contract with other contractors for the same services and/or products, as applicable.

**61. NON-EXCLUSIVE REMEDIES:**

The rights and remedies of Tribe under this Agreement are not exclusive.

**62. OWNERSHIP OF WORK PRODUCT:**

- A. All tangible work product produced by Contractor in the performance of this Agreement is specially ordered by Tribe and shall be deemed to be "work-made-for-hire" and shall be the exclusive and unrestricted property of Tribe.

- B. In the event of termination of this Agreement, all materials produced by and in the possession of Contractor shall be returned to Tribe. Contractor relinquishes all reserved rights; including patents, trademarks, copyrights, title and trade secrets.
- C. In the event Contractor acquires any rights to any work product, Contractor hereby grants to Tribe an irrevocable license of unlimited duration for the possession, use and control of the work product for any commercial or non-commercial purpose.

**63. PAYMENT RECOUPMENT:**

Contractor must reimburse Tribe upon demand or Tribe may deduct or offset from future payments for any of the following:

- A. Any amounts received by Contractor from Tribe for Contract Services which have been inaccurately reported or are found to be unsubstantiated.
- B. Any amounts paid by Contractor to a subcontractor not authorized in writing by Tribe.
- C. Any amounts paid by Tribe for which Contractor's books, records, and other documents are not sufficient to clearly substantiate that those amounts were used by Contractor to perform Contract Services.
- D. Any amounts paid or reimbursed in excess of the Contract or service reimbursement ceiling.
- E. Any payments made for services rendered before the Contract begin date or after the Contract termination date.
- F. Any expenses or costs incurred by Tribe or damages assessed by Tribe concerning Contractor's non-conforming performance or failure to perform the Agreement, including expenses, overpayments, costs and damages.
- G. In the event the Agreement has terminated and it is subsequently determined that Tribe has overpaid Contractor, or has incurred costs or damages caused by Contractor, Tribe is entitled to recover the amount of such overpaid costs, or such damages, from Contractor.

**64. RISK OF LOSS:**

- A. Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order.
- B. Receipt of conforming materials does not constitute final acceptance.

**65. SEVERABILITY:**

- A. Provisions of this Agreement are severable.
- B. If any provision of this Agreement is void, invalid or unenforceable, it shall be considered deleted from this Agreement and the invalidity of such provision shall not affect the validity

or enforceability of any other provisions which shall be given effect in the absence of the invalid provision. The remaining provisions shall continue in full force and effect without being invalidated.

**TRIBE:**  
**PASCUA YAQUI TRIBE,**  
**a federally recognized Indian Tribe**

**CONTRACTOR:**  
[company name]  
**an Arizona Company**

By: \_\_\_\_\_  
**Peter Yucupicio Chairman**

By: \_\_\_\_\_

TIN: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

## INDIAN ENTERPRISE QUALIFICATION STATEMENT

NOTE: Submit completed questionnaire to the Pascua Yaqui Procurement Officer within the time frame specified. Use additional sheets to complete answer if needed.

The Undersigned certifies under oath the truth and correctness of all answers to questions made hereinafter:

1. Applicant wishes to qualify as:

An "Economic Enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974 (P.L. 93-262); that is "any Indian-Owned...commercial, industrial or business activity established or organized for the purpose of profit: Provided, that such Indian Ownership shall constitute not less than 51 percent of the enterprise:

--or--

A "Tribal Organization" as defined in Section 4(c) of the Indian Self-Determination and Education Assistance Act (P.L. 93-638); that is: "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant..."

2. Name of Enterprise or Organization: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

3. Check One:

- |  |  |
|--|--|
| <input type="checkbox"/> Corporation         | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Partnership         | <input type="checkbox"/> Other:        |
| <input type="checkbox"/> Sole Proprietorship |  |

4. Answer the following:

If a Corporation:

a. Date of incorporation: \_\_\_\_\_

b. State of incorporation: \_\_\_\_\_

c. Give the names and addresses of the officers of this Corporation and establish whether they are Indian (I) or Non-Indian (NI).

<u>Name and Social Security No.</u>	<u>I or NI</u>	<u>Title</u>	<u>Address</u>	<u>% of Stock Ownership</u>
_____	_____	<u>President</u>	_____	_____
_____	_____	<u>Vice-President</u>	_____	_____
_____	_____	<u>Secretary or Clerk</u>	_____	_____
_____	_____	<u>Treasurer</u>	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

d. Complete the following information on all stockholders who are not listed in c. above, owning 0% or more of the stock. Establish whether they are Indian (I) or Non-Indian (NI).

<u>Name and Social Security No.</u>	<u>I or NI</u>	<u>Address</u>	<u>% of Stock Ownership</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If a Sole Proprietorship or Partnership:

a. Date of Organization: \_\_\_\_\_

b. Give the following information on the individual or partners and establish whether they are Indian (I) or Non-Indian (NI).

<u>Name and Social Security No.</u>	<u>I or NI</u>	<u>Address</u>	<u>% of Stock Ownership</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If a Joint Venture:

a. Date of Joint Venture Agreement: \_\_\_\_\_

b. Attach the information for each member of the joint venture prepared in the appropriate format given above.

5. Give the name, address, and telephone number of the principal spokesperson of your organization: \_\_\_\_\_  
\_\_\_\_\_

6. Has any officer or partner of your organization listed in #4 been an officer or partner of another organization that failed in the last ten years to complete a contract? \_\_\_\_\_

If yes, state circumstances:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Has this enterprise failed in the last ten years to complete any work awarded to it or to complete the work on time? \_\_\_\_

If so, note when, where and why:

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8. Will any officer or partner listed in #4 be engaged in out-side employment?

\_\_\_\_ Yes                      \_\_\_\_ No

If Yes, complete:

<u>Name/Title</u>	<u>Hours Per Week Outside the Enterprise</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

9. If the enterprise or anyone listed in #4 above, currently subject to an administrative sanction issued by any department or agency of the Federal Government?

\_\_\_\_ Yes                      \_\_\_\_ No

If Yes, complete:

<u>Name of person/business</u>	<u>Date of Action</u>	<u>Type of Action</u>	<u>Department or Agency</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

10. Does this enterprise have any subsidiaries or affiliates or is it a subsidiary or affiliate of another concern?

Yes  No

If Yes, complete:

<u>Name and address of subsidiary, affiliate or other concern</u>	<u>Description of Relationship</u>
_____	_____
_____	_____
_____	_____
_____	_____

11. Does this enterprise or any person listed in #4 above have or intend to enter into any type of agreement with any other concern or person which relates to or affects the on-going administration, management or operations of this enterprise? These include but are not limited to management, and joint venture agreements and any arrangement or contract involving the provision of such compensated services as administrative assistance, data processing, management consulting of all types, marketing, purchasing, production and other types of compensated assistance.

Yes  No

If yes, attach a copy of any written agreement or an explanation of any oral or intended agreement.

12. Has this enterprise ever been subject to a judgment of any court or administrative sanction (Federal, State, or Tribal)?

Yes  No

Has any individual listed in #4 ever been subject to judgment of any court or administrative sanction (Federal, State, or Tribal)?

Yes  No

If the answer is Yes to either question, furnish details in a separate attachment.

13. Has any tax lien or other collection procedure been instituted against this enterprise or the individuals listed in #4 as a sole proprietor or partner in their capacities with this enterprise or other enterprise?

Yes  No

If yes, furnish details in a separate exhibit.



18. Bank and credit references (including addresses and phone numbers):

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19. Indicate the core crew employees in your work force, their job titles, and whether they are Indian or Non-Indian. Core crew is defined as an individual who is either a current bonafide employee or who is not a current employee but who is regularly employed in a supervisory or other key skilled position when work is available.

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Over the past three years, what has been the average number of employees:

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- 20. Attach certification by a tribe or other evidence of enrollment in a federally recognized tribe for each officer, partner or individual designated as an Indian in #4.
- 21. Attach a certified copy of the charter, article of incorporation, by-laws, partnership agreement, joint venture agreement and/or other pertinent organizational documentation.
- 22. Explain in narrative form the stock ownership, structure, management, control, financing, and salary or profit sharing arrangements of the enterprise, if not covered in answers to specific questions heretofore. Attach copies of all shareholder agreements, including voting trust, employment contracts, agreements between owners and enterprise. Include information on salaries, fees, profit sharing, material purchases, and equipment lease or purchase arrangements.

Evidence relating to structure, management, control, and financing should be specifically included. Also, list the specific management responsibilities of each principal, sole proprietor, partner, or party to a joint venture (as appropriate) listed in response to #4.

23. Attach evidence that the enterprise (or an individual in it) is appropriately licensed for the type of work that is to be performed. Include Federal ID Number.
24. Attach a brief resume of the education, technical training, business, employment, design and/or construction experience for each officer, partner or sole proprietor listed in #4. Include references.

**NOTES:**

- I. Omission of any information may be cause for this statement not receiving timely and complete consideration.
- II. The persons signing below certify that all information in this INDIAN ENTERPRISE QUALIFICATION STATEMENT, including exhibits and attachments, is true and correct.
- III. Print and type name below all signatures.

If applicant is Sole Proprietor, Sign Below:

_____	_____
Name	Date

If applicant is in a Partnership or Joint Venture, all Partners must sign below:

_____	_____
Name	Date

_____	_____
Name	Date

If applicant is a corporation, affix corporate seal

_____
Corporate Seal

By: _____	_____
President's Signature	Date

Attested by: _____	_____
Corporate Secretary's Signature	Date

WARNING: U.S. Criminal Code, Section 1010, Title 18, U.S.C. provides in part: "Whoever...makes, passes, utters, or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

TRIBAL EMPLOYMENTS RIGHTS ORDINANCE (TERO)

TITLE 8 – REGULATORY CODE  
PART III – LABOR  
CHAPTER 3-1 – EMPLOYMENT

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**TITLE 8 – REGULATORY CODE  
PART III - LABOR  
CHAPTER 3-1—EMPLOYMENT**

*Legislative History: Passed on August 16, 1981 by Tribal Council as TERO Ordinance (Ord. No. 4)  
Enabled on September 23, 1981 by Resolution No. C-43-91 to be full force & effect.  
Amended and codified on February 16, 2005 by Resolution No. C02-34-05.  
Recodified on August 9, 2006 by Resolution No. C08-313-06.  
Amended on August 10, 2011 by Resolution No. C08-234-11 and Ord. No. 20-11*

**SUBCHAPTER A POLICY LEGAL BASIS; DEFINITIONS**

**Section 10 Indian Preference Employment and Training Policy (8 PYTC § 3-1-10)**

- (A) The Pascua Yaqui Tribe believes that, like natural and human resources, jobs in private and public employment on or near the Reservation is a critical resource of Indian people. The Tribal Council must use its sovereign power to obtain the rightful share of such jobs for Indian people and to eradicate discrimination against Indian people. Indians are entitled to the protection of federal laws which have been adopted to combat employment and economic discrimination and the Pascua Yaqui Tribal Council intends to play an important role in the enforcement of such laws.
- (B) The Tribal Council finds it necessary to establish a Tribal Employment Rights Office (TERO) to increase employment of Indians and to ensure that Indian Preference in employment and training is adhered to.

**Section 20 Federal Law as Basis for Indian Preference (8 PYTC § 3-1-20)**

The Indian Self-Determination and Education Assistance Act of 1974 (Public Law 93-638), Section 7(b) states:

Any contract, subcontract, grant or subgrant pursuant to this act...or any other act authorizing federal contracts with or grants to Indian organizations or for the benefit of Indians shall require that to the greatest extent feasible:

- (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
- (2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises...”

**Section 30 Equal Employment Opportunity (8 PYTC § 3-1-30)**

Nothing contained in this Chapter shall violate or undermine federal requirements of Equal Employment Opportunity, namely Title VII of the 1964 Civil Rights Act, the “Office of Federal Contract Compliance Programs” (OFCCP) Compliance of Federal Contract Compliance Program, or Executive Order 11246. Title VII prohibits preferential employment on the basis of race, religion, color, sex or national origin. However, Title VII contains a special exception: Section 30 (i) states: “Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to any publicly announced

employment practice of such business or enterprise under which preferential treatment is given to an individual because he/she is Indian.”

**Section 40 Tribal Power to Impose Preferential Requirements (8 PYTC § 3-1-40)**

The U.S. Congress justifies tribal power to impose preferential requirements on the grounds that: “This exemption is consistent with the federal governmental policy of encouraging Indians employment and with the special legal position of Indians.”

**Section 50 Office of Federal Contract Compliance Program (OFCCP) Regulations (8 PYTC § 3-1-50)**

In January 1977, the OFCCP issued regulations which state: “Work on or near Indian Reservations. It shall not be a violation of the equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian Reservation. The use of the word “near” would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors and subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of region, sex, or tribal affiliation, and the use of such a preference shall not exempt a contractor from complying with the other requirements contained in this Chapter.”

**Section 60 Definitions (8 PYTC § 3-1-60)**

- (A) The term "commerce" includes all trade, traffic, distribution, communication, transportation, provision of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining, gas and oil production.
- (B) The term "employee" shall include any employee or applicant for employment and shall not be limited to the employees of a particular employer, unless a section of this document explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of unfair labor practices and who has not obtained any other regular and substantially equivalent employment. The term "employee" shall not include any individual employed in the domestic service of any family or person at home or any individual employed by any other person who is not an employer as herein defined.
- (C) The term "employees on the Pascua Yaqui Reservation" shall include employees who, in a non-supervisory or non-managerial position, spend more than one-tenth of their working hours per month or per pay period, whichever is shorter, on the Pascua Yaqui Reservation. This term shall also include employees who, in a supervisory or managerial position, spend more than 1/20 of their working hours per month or per pay period, whichever is shorter, on the Pascua Yaqui Reservation.
- (D) The term "employer" includes but is not limited to, any person who engages in commerce through paid agents or servants, and who hires or contracts for services within the boundaries of the Pascua Yaqui Reservation. The term "employer" includes any person acting as an agent, contractor or subcontractor of an employer, directly or indirectly, but shall not include the United States Government or any wholly-owned corporation of said government. This term shall include, however, independent contractors, subcontractors, grantees and subgrantees of the Federal Government or of wholly-owned government corporations.
- (E) The term “covered employer” includes an employer who employs two or more employees on the Pascua Yaqui Reservation for more than two months or on an intermittent but continuing basis.
- (F) The term "Indian" means:
  - (1) any member of any recognized American Indian tribe now under federal jurisdiction;

- (2) descendants of members who were on June 1, 1934 residing within the boundaries of any Indian Reservation;
  - (3) until January 17, 1981 a descendent of at least one-fourth degree Indian ancestry of a currently federally recognized tribe whose rolls have been closed by an Act of Congress;
  - (4) all others of one-half or more Indian blood of tribes indigenous to the United States, Native Alaskan, Eskimo, or other aboriginal people of Alaska; or
  - (5) direct lineal descendants of enrolled tribal members, recognized by the community as Indian.
- (G) The term "Indian-owned firm or entity" means any commercial, industrial or business activity which is owned by an Indian or Indians or other Indian-owned firm or entity, provided that such Indian ownership constitutes not less than 50% of the enterprise and that control of management affairs of the entity is conducted by Indians.
- (H) The term "Indian Preference" means that Indians (as defined in this section) shall be given absolute preference in all phases of employment, training, contracting, and subcontracting. "Preference" means that in all cases where a qualified Indian or Indian firm is available, the Indian shall be granted preference to a similarly qualified non-Indian person or entity.
- (I) The term "Indian resident" or "resident Indian" means any Indian person, without regard to tribal affiliation, who at the time any work commences on the Reservation by any employer, contractor or subcontractor, has resided on the Pascua Yaqui Reservation for not less than the preceding 60 days.
- (J) The term "non-resident Indian" includes all Indians who are not resident Indians within the definition of this section.
- (K) "Notice" is written notification of apparent or alleged non-compliance or violation. As required to be given by the Tribal Employment Rights Office, notice shall be sufficient as to unnamed parties in an action, all interested person not parties to an action, and in all instances where a specific person is not addressed, if it is posted in a public place in the Tribal Employment Rights Office for not less than five working days and is on file in the Tribal Employment Rights Office open to public inspection.
- (L) "Citation" is written notification of findings of non-compliance or violation and sanctions and/or penalties imposed. Citation shall be sufficient if posted in a public place in the Tribal Employment Rights Office for not less than five working days and placed on file in the office open to public inspection, as stated in definition "Notice" above.
- (M) The term "person" shall include both natural persons and artificial persons, including but not limited to corporations, trusts, partnership, unions, agents, societies, sole proprietorships and estates of decedents.
- (N) The term "union" or "labor union" means any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

**SUBSECTION B            GENERAL PROVISIONS**

**Section 70            Tribal Employment Rights Office (8 PYTC § 3-1-70)**

The Pascua Yaqui Tribal Employment Rights Office (TERO) shall be a unit of the Human Resources Department. The Human Resources Department is vested with full supervisory authority in the Human Resources Director who shall report directly to the Tribal Council. The Human Resources Director shall supervise and have authority over the TERO Manager.

**Section 80            Authority of TERO (8 PYTC § 3-1-80)**

- (A)    The TERO Manager shall have authority to hire staff, expend funds appropriated by the Tribal Council, obtain and expend funding from federal, state or other resources to carry out the purposes of the TERO.
- (B)    The TERO Manager shall have authority to issue rules, regulations and guidelines to implement the employment and contracting rights requirements imposed by this chapter, to hold compliance hearings, to subpoena witnesses and documents, to require employers to submit records, to issue cease and desist and related orders, through its own office or through the Tribal Court, to petition Tribal Court for removal orders, to conduct site monitoring on employer premises, to interview employees throughout the Reservation at any time, to examine employer records and documents on the Reservation and to take such other actions as are necessary for the fair and vigorous implementation of this chapter.
- (C)    The TERO Manager may appoint another person to serve as Tribal Employment Rights Officer for the conduct of any hearing

**Section 90            Publication to Bidders (8 PYTC § 3-1-90)**

The obligation of all employers to comply with this chapter shall be made known to all existing and future employers, contractors and subcontractors. All bid announcements issued by any tribal, federal, state or other private or public entity for the benefit or use of Pascua Yaqui Indians shall contain a statement that the successful bidder will be obligated by tribal law to comply with this chapter and that a bidder or potential bidder may contact the TERO to obtain additional information.

**Section 100          Tribal Departments' and Agencies' Responsibilities (8 PYTC § 3-1-100)**

Those departments responsible for issuing business licenses or contracts or subcontracts or otherwise engaged in activities involving contact with prospective employers or contractors on the Reservation shall be responsible for informing such prospective employers or contractors of their obligations under this chapter.

**Section 110          TERO Responsibilities (8 PYTC § 3-1-110)**

Within one month of the effective date of this chapter and for each amendment thereto, the TERO shall send copies of this chapter to every employer and contractor/subcontractor presently operating on the Reservation. It shall be the responsibility of the TERO to send copies of any future revisions to the chapter to all Tribal departments and agencies as described in Section 100 of this chapter.

## **SUBCHAPTER C          EMPLOYMENT PREFERENCE**

### **Section 120          Scope of Indian Preference in Employment (8 PYTC § 3-1-120)**

- (A) All existing and future covered employers operating within the boundaries of the Pascua Yaqui Reservation are required to give absolute preference to qualified Indians in all phases of employment and training (including recruitment, advertising of jobs, hiring, upgrading, promotion, transfer, rate of pay, layoff or termination and selection for training or apprenticeship). Indian preference means that if a qualified Indian is available, he or she will be given preference over a qualified non-Indian in any phase of employment. All jobs which exist within the boundaries of the Reservation, permanent, temporary, contracted or subcontracted are subject to Indian preference.
- (B) All covered employers and agencies shall comply with the rules, regulations and guidelines of the TERO with regard to Indian Preference.

### **Section 130          Specific Indian Preference Obligations of Employers (8 PYTC § 3-1-130)**

- (A) The TERO shall establish the minimum number or percentage of Indian persons that each employer must employ in its work force during any year that its employees work on the Reservation. The goals set shall be based on knowledge of the available Indian labor pool and projected employment opportunities.
- (B) The employer shall meet with the TERO before it actually begins work on the reservation and immediately after a contract is signed.
- (C) For existing employers, Indian preference employment goals shall be reviewed by the TERO at least annually and revised as necessary to reflect changes in the Indian work force available and in the employer's hiring plans.
- (D) Each employer shall submit reports to the TERO with a frequency established by the TERO, indicating number of Indian and non-Indian employees, hires, terminations, layoffs, promotions, pay increases, reprimands, how close the employer is to meeting its goals and such other information as the TERO requests. An employer who fails to submit these reports in a timely manner shall be subject to the sanctions provided for in Subchapter E of this chapter.
- (E) Each employer shall meet its minimum goals for the employment of Indians or shall demonstrate by written and other evidence that it has made every possible effort to meet its goals, including actively recruiting Indians on and off the Reservation, interviewing and if necessary skill testing Indian applicants, providing trainee positions if no qualified Indians are available, posting public notices for job opportunities and other actions which indicate the employer has made every possible effort.

### **Section 140          Non-Compliance (8 PYTC § 3-1-140)**

- (A) The TERO shall have authority to issue a notice of non-compliance when, based on reports, observations or other evidence, reason exists to believe the employer is not meeting or making every effort to meet its goals for Indian preference. Before issuing citations for non-compliance, however, the TERO will make every reasonable effort to resolve the non-compliance by informal means.
- (B) Upon receipt of such notice, an employer shall be entitled to a hearing as provided in Subchapter E of this chapter. The burden shall be on the TERO to demonstrate that an employer has failed or is failing to meet its goals or abide by the chapter or TERO Guidelines. The burden shall then shift to the employer to demonstrate that it has made every possible effort to meet its goals or come into

compliance with the regulations. An employer who is found to be out of compliance because it failed or failing to meet its goals and commitments to the TERO and who is unable to demonstrate by evidence that it made every possible effort to do so, shall be subject to remedial actions and sanctions provided for in Subchapter E.

**Section 150 Subcontractors (8 PYTC § 3-1-150)**

The Indian preference requirements contained in this chapter shall be binding on all subcontractors of covered employers, regardless of their size and shall be deemed a part of all resulting subcontract specifications. The primary employer or contractor shall have the initial and primary responsibility for ensuring that all its subcontractors comply with these requirements. The TERO is authorized to impose sanctions and penalties on the primary employer as well as on the subcontractor if the subcontractor fails to comply.

**Section 160 Employment Procedures (8 PYTC § 3-1-160)**

The employer may use whatever employment process it chooses, provided a non-Indian person will not be hired if there is a similarly qualified Indian available. The employer may obtain qualified Indian referrals from the TERO and other sources. The employer is cautioned to thoroughly check the documentation of Indian blood of any potential employee not referred by the TERO to ensure that the person is qualified as defined in Section 60 of this chapter. In all cases, the employer is required to notify the TERO and post in the TERO office all jobs planned for a project. Except for key personnel of the employer (which must be identified in the TERO/Employer Agreement signed before commencement of work), all jobs existing or planned to exist on the Reservation are subject to Indian preference requirements.

**Section 170 Notification of Jobs (8 PYTC § 3-1-170)**

Each employer is required to notify the TERO a reasonable time ahead of all planned employment on the Reservation. For the purposes of this requirement "reasonable time" is defined as: (a) for construction jobs, the TERO shall have 49 working hours' notice to locate plus 12 hours to refer a qualified Indian; (b) for all non-construction jobs, the TERO shall have five working days' notice to refer qualified Indians.

**Section 180 Waiver of Notice to TERO (8 PYTC § 3-1-180)**

The TERO will consider waivers of requirement for advance notification stated in Section 170 for specific individual jobs, upon a showing by the employer that such time period imposes an undue burden on employer. Proof of undue burden rests with the employer.

**Section 190 Violation of Notice to TERO (8 PYTC § 3-1-190)**

Any job not first cleared through the TERO shall be subject to suspension by TERO Manager. The employer shall be subject to a fine as proved in Subchapter E.

**Section 200 Employer's Right to a Hearing (8 PYTC § 3-1-200)**

Any employer cited for violation of Section 190 has the right to a hearing and appeal in accordance with subchapter E.

**Section 210 Lay-Offs (8 PYTC § 3-1-210)**

In all layoffs or reductions in force, no Indian worker shall be terminated or laid off if a non-Indian worker is still employed in the same craft or job classification. Non-Indians shall be terminated first as long as an Indian employee meets the threshold qualifications for the job. Further, if the employer lays off by crews, qualified Indians shall be transferred to crews that will be retained so long as there are non-Indians in the same craft or job classification employed elsewhere on the Reservation.

**Section 220 Promotion, Career Advancement, Job Enhancement, Pay Policies  
(8 PYTC § 3-1-220)**

Employers shall give Indians preferential consideration for all promotional opportunities, career advancement/enhancement opportunities or programs, specialized or general training opportunities, employee or management development activities, etc. Each employer shall adopt goals and timetables each year to develop Indian employees for positions in each job classification/category (for example, manager/official, professional, office/clerical, skilled craft, technician and service worker).

**Section 230 Training and Apprenticeship (8 PYTC § 3-1-230)**

- (A) All employers, as requested by the TERO, shall participate in existing and planned training programs to assist Indians in becoming qualified for job classifications used by the employer. In cases where there is an inadequate pool of qualified Indians to fill certain job categories, the employer may be required to institute formal classroom and/or on the job training programs to fulfill this obligation.
- (B) Construction employers shall employ the maximum number of Yaqui apprentices or trainees allowable under Federal law or, in the absence of federal guidelines, according to the guidelines set forth by the TERO.
- (C) To the extent they are available, all trainees or apprentices employed by an employer on the Reservation shall be Indian people referred through the TERO.

**Section 240 Part-Time, Temporary, Summer and Co-Operative Student Employees  
(8 PYTC § 3-1-240)**

- (A) Opportunities for part-time, temporary, summer and co-operative student employment shall be reserved for Indians. The TERO will work in conjunction with employers to locate and refer qualified candidates.
- (B) Employers are further encouraged to make every effort to promote after-school, summer and vacation employment for Indian youth.

**Section 250 Religious Accommodation (8 PYTC § 3-1-250)**

- (A) Employers shall make accommodations to the religious beliefs and practices of Indian workers in accordance with Public Law 95-341, "American Indian Religious Freedom", and tribal custom.
- (B) Employers should be aware that Indians of various tribes practice different religions, both traditional Indian religions and modern American religions. Therefore, the specific religious practices of an Indian employee may vary from any other Indian employee. Employers are advised to contact the TERO in all instances where an Indian employee has requested special accommodation to his/her religious beliefs, to request counsel in determining that the request is both necessary and reasonable.

**Section 260 Counseling and Support Programs (8 PYTC § 3-1-260)**

- (A) The TERO and other Tribal and federal departments will provide counseling and other support services to Indians employed on and off the Reservation. Employers are advised to cooperate with such counseling and support services, since most are aimed toward assisting the employee in retaining employment.
- (B) The Equal Employment Opportunity Commission (EEOC) contracts with the TERO to protect Indian employment rights. Therefore, the TERO not only represents the Tribe's laws but also those of the Federal Government.

- (C) The TERO staff is available to assist both employees and employers in improving communications and avoiding discrimination complaints or formal charges.

**Section 270 Job Qualification Requirements of Employers (8 PYTC § 3-1-270)**

- (A) A employer may use no job qualification criteria or personnel requirements that serve as a barrier to the employment of Indians or that has an adverse impact on Indians as a group or as individuals. The exception is a Bona Fide Occupational Qualification as defined by the EEOC.
- (B) The burden shall be on the TERO to demonstrate that a criteria or personnel requirement is a barrier to Indian employment. The burden will then shift to the employer to demonstrate that (a) a criteria or personnel requirement is not a barrier to Indian employment or (b) such criteria or requirement is a valid requirement of the job.
- (C) If the employer fails to meet this burden, the employer will be required to eliminate the criteria or requirement at issue.

**Section 280 Right of Appeal (8 PYTC § 3-1-280)**

Where the TERO and employer are unable to reach agreement on the matters covered in Section 270 the employer is entitled to a hearing as provided in Subchapter E. The employer may appeal the TERO's decisions as provided in Subchapter E.

**Section 290 Reporting Requirements and On-Site Inspections (8 PYTC § 3-1-290)**

- (A) Employers shall submit reports and such other information as are requested by the TERO. Failure to do so may result in the levying of sanctions as provided in Subchapter E.
- (B) Employees of the TERO shall have the right to make on-site inspections during regular working hours in order to monitor an employer's compliance. TERO shall have the authority to inspect and copy all relevant records of an employer, of an employer's signatory unions or subcontractors, to speak with employees on the job site, and to engage in similar investigatory activities. Employers operating on the Pascua Yaqui Reservation shall not have authority to prevent, prohibit or restrict said activities by TERO employees.

All information and documentation collected by the TERO shall be kept confidential unless disclosure is required during a hearing or appeal as provided in Subchapter E of this chapter.

**Section 300 Compliance Plan (8 PYTC § 3-1-300)**

No employer may commence work on the Pascua Yaqui Reservation until it has signed a TERO/Employer Agreement and provided an acceptable Indian Preference Plan for meeting its obligations under this chapter.

**Section 310 Unions (8 PYTC § 3-1-310)**

- (A) Employers shall be responsible for obtaining agreement from all signatory unions stating that the union will comply with the Tribe's TERO requirements before the employer will be permitted to commence work on the Reservation. Such agreements shall be subject to approval of the TERO.
- (B) Unions must agree to:
  - (1) give absolute preference to qualified Indians in referrals, regardless of which union referral list they are on;

- (2) cooperate with TERO hiring and employment procedures;
  - (3) establish a mechanism so that Indians are not required to travel on a regular basis to retain their place on union lists. (This could involve phone or mail registration or a union sub-office on the Reservation, for example);
  - (4) indenture and refer only qualified Indian apprentices to employers;
  - (5) remove all barriers to entry into the union for Indians who are qualified for journey person status and wish to join the union;
  - (6) grant temporary work permits to Indians who do not wish to join the union; and
  - (7) meet such other requirements as the TERO may deem necessary to fulfill the employer's Indian preference obligations.
- (C) The model union/TERO/employer agreement provided at the end of this document is by reference incorporated as part of this chapter. The TERO's participation in a written agreement with a union in no way constitutes official tribal recognition of the union or tribal endorsement of any recruiting activities conducted by the union.
- (D) If a union fails to meet its obligations under this chapter, the TERO has authority to require the employer to accept other Indian referrals. The TERO will cooperate and work in conjunction with union hiring halls to ensure that the requirements of the employer, the union and TERO are met.

**Section 320 Issuance of Regulations (8 PYTC § 3-1-320)**

In issuing rules, regulations and guidelines, the TERO shall be guided by the policy and standards enumerated throughout this chapter and by any such further resolutions as the Tribal Council may issue. The TERO shall insure that all rules, regulations and guidelines issued provide due process.

**SUBCHAPTER D INDIAN PREFERENCE IN CONTRACTING AND SUBCONTRACTING**

**Section 330 Indian Preference on Contracting and Subcontracting (8 PYTC § 3-1-330)**

- (A) All covered employers and state and local governments operating on the Reservation or for the benefit of the Yaqui Indians shall give preference in the award of contracts, subcontracts, grants and subgrants to tribally owned and other Indian owned businesses. Federal agencies are not subject to this chapter, since they are covered by federal laws governing Indian preference.
- (B) The TERO shall maintain a list of Indian-owned businesses, and all employers shall make use of the list to contact Indian-owned businesses and invite their participation in contracting and subcontracting, regardless of size or amount of contract. Employers shall be required to provide documented evidence of their efforts to carry out Indian preference in contracting and subcontracting. Subchapter C provides detailed regulations on this matter.

**Section 340 Coverage (8 PYTC § 3-1-340)**

- (A) These rules and regulations apply to all construction and non-construction contracts and subcontracts involving work to take place "on or near the Pascua Yaqui Reservation." A contract or subcontract taking place "on or near the Yaqui Reservation" means 50% or more of the work under contract or subcontract is to be performed within daily commuting distance of the Yaqui Reservation.

- (B) Indian contract preference requirements set out in Subchapter C, Sections 360 and 370 of this chapter shall apply to:
  - (1) All contracts and subcontracts which are federally funded.
  - (2) All contracts and subcontracts which are non-direct federal or federally funded contracts.
  - (3) All contracts and subcontracts which are for the benefit of Indians and which therefore are covered by Section 7(b) of the Indian Education and Self Determination Act (P.L. 93-638).
  - (4) All contracts and subcontracts “on or near the Pascua Yaqui Reservation.”

**Section 350 Definitions (8 PYTC § 3-1-350)**

- (A) "Indian Contractor" is a contractor that is 51% or more Indian owned and controlled. The TERO reserves the right to require such proof as it deems necessary to substantiate that a firm actually is 51% or more Indian owned and controlled.
- (B) "For the Benefit of Indians" is work to be performed under a federal or federally funded contract for the benefit of Indians if the benefits provided to Indians are in addition to any incidental benefits which might accrue to the general public.
- (C) "Prime Contractor" is the prime construction, forestry, mining or other contractor on a project. This is the entity responsible for the entire project.
- (D) "Subcontract" is any contract let by a prime contractor or its subcontractors for supplies, services, or work on prime contracts, regardless of tier.
- (E) "On or Near the Reservation" means that 50% or more of the work under contract or subcontract is to be performed within the boundaries of the Yaqui Reservation or within daily commuting distance of the Reservation.
- (F) "Direct Federal Contract" is a contract let by a Federal agency directly to a prime contractor.
- (G) "Federally Funded Contracts" is one in which the Federal Government has contracted or granted funds to an entity which, in turn, lets the prime contract.

**Section 360 Indian Contract Preference Requirements in Prime Contracts (8 PYTC § 3-1-360)**

Each entity (including Tribal Agencies, State or Local Government, Indian Organization, Private Corporation, Association, Partnership, Individual Enterprise, Tribal Enterprise, or other) letting contracts for construction, mining forestry, services, supplies or other work on the Yaqui Reservation shall comply with the following requirements when letting prime contracts.

- (A) The entity shall obtain from the Pascua Yaqui TERO the source list of Indian contractors and subcontractors.
- (B) The entity shall send summaries of the proposed prime contract to Indian firms on that list to determine if any Indian contractor is interested in and qualified to bid on the proposed prime contract.
- (C) If more than one Indian firm expresses an interest in the contract and is qualified to perform it, the entity shall restrict competition to those Indian firms.

- (D) If the entity letting the contract determines that no Indian firm is interested in or qualified to perform the contract, the entity may let the bid on an open and competitive basis and award the contract in such a manner as it so chooses without regard to this section of the rules and regulations.
- (E) If only one Indian firm expresses an interest in the contract and is qualified to perform it, the entity shall determine if that Indian firm is capable of performing the contract within the fiscal limitations. Based on this information, the entity may elect to award the contract to the Indian firm or, in the case of limited fiscal capability of the Indian firm, may let the bid on an open and competitive basis, considering the bid of the Indian firm along with other non-Indian firms, so long as equitable and complete cost negotiations have taken place.
- (F) The entity letting the contract shall be responsible for making the determination whether or not an interested Indian firm is qualified to perform the work. However, the TERO reserves the right to require documentation from the entity supporting its conclusion that an Indian firm is not qualified to perform the work.
- (G) The entity letting the contract shall be responsible in all cases for reviewing the proposed contract to explore the possibility of dividing the work into components or sub-components such that a larger number of Indian contractors and subcontractors would be qualified to perform the work.
- (H) All subcontract let by the prime contractor shall require formal bid advertising and opening procedures and shall be bound by Section 370, Indian Preference in Subcontracting.
- (I) The entity letting the contract or subcontract shall require a format as to acceptable compliance with this chapter.

**Section 370 Indian Preference in Subcontracting (8 PYTC § 3-1-370)**

- (A) Prior to the letting of any contract to be performed on the Pascua Yaqui Reservation, whether that contract is a direct federal contract, a federally funded contract or a non-federal contract, the TERO shall be contacted by the awarding entity to establish the portion of work that shall be performed by Indian contractors and subcontractors. The TERO may establish a percentage of work in terms of total subcontracting dollars to be awarded to Indian firms, based on: availability of Indian subcontractors, nature of work to be performed, requisite skills to perform the work, and such other factors as may be recommended by the entity letting the contract and accepted by the TERO. Before setting requirements, the TERO shall meet with the entity letting the contract to inform it of the proportion it is proposing and to explain how it reached its conclusions. The TERO shall provide the entity letting the contract with a copy of this chapter, a memo setting forth the proportion of work to be performed by Indian contractors and a list of Indian contractors available to perform subcontract work on the contract.
- (B) All federal and non-federal contracts shall require that the agency letting the contract include in its bid offering material which sets forth Indian preference requirements and appropriate listings of Indian contracts or subcontracts.
- (C) The entity letting the prime contract shall require every bidder to submit, as part of its bid, a plan describing how it will satisfy the Indian subcontractor utilization requirement established by the TERO. A bid that fails to contain a satisfactory Indian subcontractor utilization plan shall be considered a non-qualifying bid, because it violates this chapter.
- (D) The successful prime contractor selected by the entity letting the contract shall be free to select its subcontractors in whatever manner it so chooses and to make its own determination on qualifications and reasonableness in price. However, a successful contractor who fails to meet the requirements for utilization of Indian subcontractors shall be required to demonstrate to the TERO that good cause exists for its failure to meet said requirements. If it fails to demonstrate good

cause, it shall be subject to one or more of the sanctions set forth in this chapter, pursuant to the procedures and appeals processes set forth in subchapter E.

- (E) Prime contractors shall be encouraged to explore the possibility of dividing their subcontracts into components or sub-components that would enable the maximum number of Indian contractors and subcontractors to apply.

**Section 380 Responsibilities of the TERO (8 PYTC § 3-1-380)**

- (A) The TERO shall develop and keep updated a list of Indian contractors available to perform work on or near the Yaqui Reservation. The list shall include information on the areas in which these Indian contractors consider themselves qualified to work and their present availability to the extent known. The TERO shall coordinate with the Bureau of Indian Affairs, Indian Health Service, Indian Housing Authority, Council for Tribal Employment Rights, Department of Defense, and other agencies that maintain Indian contractor source lists.
- (B) The TERO shall work closely with the federal agencies which have regulations requiring Indian contract preference (Bureau of Indian Affairs, Indian Health Service, Indian Housing Authority, Office of Federal Contract Compliance Programs, and others) to seek to coordinate their requirements, monitoring efforts and sanctioning activities to the extent feasible.
- (C) Within available resources, the TERO shall provide advice and counseling to Indian contractors located on or near the Pascua Yaqui Reservation on the ways and means to improve their capability and qualifications; assist them in obtaining bonding; assist them in understanding the nature of federal procurement processes and requirements; assist them in locating other resources for technical assistance in the field; and shall carry out such other activities as will promote the development of Indian enterprises on other contracts on the Pascua Yaqui Reservation.
- (D) The TERO shall take steps to ensure that all federal and non-federal agencies or entities letting contractors on the Pascua Yaqui Reservation have notice of this chapter and its requirements.

**SUBCHAPTER E ADMINISTRATION; ENFORCEMENT; APPEALS**

**Section 390 Administration (8 PYTC § 3-1-390)**

The Administration of this chapter is vested in the Pascua Yaqui Tribal Council and shall be exercised by the Tribe's Tribal Employment Rights Office. The authority and duties of the TERO Manager are as set forth in Subchapter B, Sections 80 and 110.

**Section 400 Administrative Review (8 PYTC § 3-1-400)**

If an employer appears to be out of compliance with the laws, rules, regulations or guidelines on Indian preference, the TERO shall take remedial action to correct the problem.

**Section 410 Informal Resolution (8 PYTC § 3-1-410)**

If the TERO has reason to believe an employer has failed to comply with any part of the chapter, the TERO shall notify the employer in writing, specifying the alleged violation and scheduling a meeting to resolved the issue. If after discussion, the employer refuses to come into compliance, the TERO shall issue a formal citation stating the sanctions provided for in Subchapter E, Section 430.

**Section 420      Hearing (8 PYTC § 3-1-420)**

- (A) The employer shall then be entitled to a hearing before the TERO to present evidence and call witnesses to demonstrate that it has complied with the requirements of the chapter or has made every possible effort to do so.
- (B) The TERO shall have the right to subpoena witnesses and documents, to put witnesses under oath, to present evidence in the Tribe's behalf, and to take such other steps as are necessary to ensure a fair and complete hearing on the issues.
- (C) On the basis of the evidence presented at the hearing and the information collected, the TERO shall determine whether or not the employer is in compliance or has made every possible effort to comply.
- (D) The TERO, if it finds the employer out of compliance, shall issue a formal decision, imposing one or more of the sanctions provided for, as appropriate, and shall order the employer to take such corrective action as is necessary to remedy any harm done to the tribe or to individual Indians by the employer's non-compliance. The TERO shall send copies of the decision to the Tribal Judge and Council Officers.

**Section 430      Sanctions and Penalties (8 PYTC § 3-1-430)**

In the event an employer is found out of compliance with the requirements of this chapter, the TERO shall be authorized to impose any or all of the following sanctions or penalties, after considering such mitigating factors as the employer's efforts to comply and its efforts to remedy any harm done to the tribe or to individual Indians by its non-compliance:

- (A) Monetary fines not to exceed \$500 per day per violation.
- (B) Suspension of employer's operations until corrective action is taken or a plan for corrective action developed.
- (C) Termination of employer's operations.
- (D) Prohibition of employer from engaging in any future operations on the Pascua Yaqui Reservation.
- (E) Order to remove and/or hire certain employees.
- (F) Provision by employer of back pay, employment, promotion, training and/or other relief to individual Indians.
- (G) Order to employer to make such changes in its procedures or policies as is necessary to comply with this chapter.
- (H) The TERO shall obtain a Pascua Yaqui Tribal Court Order to enforce injunction and removal orders. All other orders of the TERO are self-executing.

**Section 440      Individual Complaint Procedures (8 PYTC § 3-1-440)**

- (A) Any Indian, group of Indians, or representatives of a class of Indians who believes that any employer has failed to comply with this chapter or who believes that an Indian has been discriminated against by any covered employer, may file a complaint with the TERO. Persons may file a complaint whether or not they can show that they were personally harmed by the employer's non-compliance.

- (B) Upon receipt of such a complaint, the TERO shall conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the TERO shall hold a hearing on the matter, shall make a determination on the validity of the charge, and shall order such relief as is deemed necessary to restore the rights or repair the damages to any Indian who was harmed by the employer's non-compliance or discriminatory behavior. The TERO's decision shall be sent to all parties in writing within 30 calendar days of the initial receipt of the complaint.

**Section 450 Retaliation by Employer (8 PYTC § 3-1-450)**

The employer is prohibited from taking any retaliatory action against an employee who has filed a complaint of non-compliance or discrimination with the TERO. Such actions will be deemed serious violations of this chapter. Retaliatory actions may include, but are not limited to, termination of employment, demotion, suspension, reprimand, withdrawal of benefits or privileges, layoff, etc. Further, the TERO is authorized to obtain from the Tribal Court a temporary injunction to prevent any harm or further harm caused by an employer, union or person's retaliatory actions.

**Section 460 Judicial Review: Appeals Procedure and Jurisdiction (8 PYTC § 3-1-460)**

- (A) Any person or entity aggrieved by an order of the TERO may file an appeal with the Pascua Yaqui Tribal Court, asking that the order be modified or set aside in whole or in part. An appeal must be filed within 20 calendar days after receipt of notice of the TERO's decision. The TERO Manager shall represent the interests of the Tribe during appeal. A copy of the appeal shall be sent by the Tribal Court Clerk to the TERO Manager upon receipt.
- (B) Upon filing of the appeal, the Tribal Court shall have exclusive jurisdiction to affirm, modify or set aside such order, in whole or in part, so far as it is applicable to the petitioner. Findings of fact by the Tribal Court, when supported by substantial evidence, shall be conclusive. No objection to the order of the TERO shall be considered by the Tribal Court unless such objections have been urged before the TERO Manager or unless reasonable grounds are established.

**Section 470 Enforcement (8 PYTC § 3-1-470)**

- (A) The Pascua Yaqui Tribal Court is vested with jurisdiction over every person and entity engaging or continuing in business activity on or near the Pascua Yaqui Reservation and with jurisdiction to hear and determine any challenge to the validity of this chapter either generally or as applied to any person or entity.
- (B) The Tribal Court is vested with jurisdiction to issue removal, restraining or other legal orders affecting any person or entity transacting business on or near the Pascua Yaqui Reservation and to direct the Tribal Police to carry out any such orders.

**Section 480 Effective Date (8 PYTC § 3-1-480)**

This chapter shall take effect upon enactment by the Pascua Yaqui Tribal Council and conditions imposed by this chapter shall become binding upon every covered person and entity performing work on the Reservation after August 16, 1984.

**DISPOSITION TABLE**

<b>Former Section</b>	<b>New Section</b>
<b>Article One</b>	<b>Subchapter A</b>
Section 1101	Section 10
Section 1102	Section 20
Section 1103	Section 30
Section 1104	Section 40
Section 1105	Section 50
Section 1106	Section 60
<b>Article Two</b>	<b>Subchapter B</b>
Section 1201	Section 70
Section 1202	Section 80
Section 1203	Section 90
Section 1204	Section 100
Section 1205	Section 110
Section 1206	
<b>Article Two</b>	<b>Subchapter C</b>
Section 1207	Section 120
Section 1208	Section 130
Section 1209	Section 140
Section 1210	Section 150
Section 1211	Section 160
Section 1212	Section 170
Section 1213	Section 180
Section 1214	Section 190
Section 1215	Section 200
Section 1216	Section 210
Section 1217	Section 220
Section 1218	Section 230
Section 1219	Section 240
Section 1220	Section 250
Section 1221	Section 260
Section 1222	Section 270
Section 1223	Section 280
Section 1224	Section 290
Section 1225	Section 300
Section 1226	Section 310
Section 1227	Section 320
<b>Article Four</b>	<b>Subchapter D</b>
Section 1401	Section 340
Section 1402	Section 350
Section 1403	Section 360
Section 1404	Section 370
Section 1405	Section 380

<b>Former Section</b>	<b>New Section</b>
<b>Article Five</b>	<b>Subchapter E</b>
Section 1501	Section 390
Section 1301	Section 400
Section 1302	Section 410
Section 1303	Section 420
Section 1304	Section 430
Section 1305	Section 440
Section 1306	Section 450
Section 1307	Section 460
Section 1502	Section 470
Section 1503	Section 480

# PASCUA YAQUI TRIBE

RESOLUTION NO: C10-230-13

## RESOLUTION OF THE PASCUA YAQUI TRIBE REVISING THE TRIBE'S CONSTRUCTION WAGE SCALES.

**WHEREAS,** the Pascua Yaqui Tribal Council is vested with the power to develop and adopt ordinances, resolutions, rules and regulations to facilitate the conduct and operation of tribal government (Article VI, Section 1(o) of the Constitution of the Pascua Yaqui Tribe) ; and

**WHEREAS,** the Tribal Council adopted Resolution No. C08-313-06 on August 9, 2006 which recodified the Tribal Employment Rights Ordinance ("TERO"); and

**WHEREAS,** The Pascua Yaqui Tribal Council funds construction projects entirely from the Tribe's resources or in partnership with Federal Agencies and other financing mechanisms; and

**WHEREAS,** All contractors employed by the Pascua Yaqui Tribe are required to adhere to the rules, regulations and standards established and enforced by the TERO Office, including hiring members of the Tribe at a specified minimum wage rate; and

**WHEREAS,** the current wage scales have not been revised by the Pascua Yaqui Tribe for seventeen years and a new wage scale has been developed and reviewed by the Human Resources Oversight Committee which has requested that the attached Construction Wage Scale be presented to Tribal Council.

**NOW THEREFORE BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE** that the Tribal Council hereby approves the attached Construction Wage Scale and that all future construction contractors employed by the Pascua Yaqui Tribe will adopt the attached wage scale for members of the Tribe employed as construction workers.

**BE IT FURTHER RESOLVED** that the Tribal Council hereby authorizes the Chairman to take any necessary and proper action to execute, implement, and enforce this resolution.

**BE IT FINALLY RESOLVED** that this Resolution shall go into effect immediately.

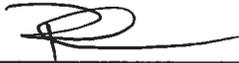
**PAGE 2**  
**RESOLUTION NO. C10-230-13**  
**REVISING THE TRIBE'S CONSTRUCTION WAGE SCALES**

**CERTIFICATION**

**THE FOREGOING** was on **October 9, 2013** duly adopted by a vote of **TEN** in favor, **ZERO** opposed, and **ZERO** abstained, by the Tribal Council of the Pascua Yaqui Tribe pursuant to authority vested in it by Article VI, Sections 1(o) and Section 2 and Article VII, Section 1, of the Constitution of the Pascua Yaqui Tribe as adopted on January 26, 1988 and approved by the Secretary of the Interior on February 8, 1988 pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).



\_\_\_\_\_  
**CHAIRMAN OF THE PASCUA YAQUI TRIBE**



\_\_\_\_\_  
**SECRETARY OF THE PASCUA YAQUI TRIBE**



## PASCUA YAQUI TRIBAL WAGE SCALE

<b>CLASSIFICATION</b>	<b>RESIDENTIAL</b>	<b>COMMERCIAL</b>	<b>HEAVY</b>
BLOCKLAYER	20.00	22.00	23.00
ELECTRICIAN	21.00	24.00	28.00
ELECTRICIAN-LOW VOLTAGE	21.00	24.00	
CARPENTER	22.00	25.00	28.00
CEMENT MASON/CONCRETE FINISHER	20.00	23.00	27.00
DRYWALL HANGER/METAL STUD FRAMER	19.00	21.00	
DRYWALL TAPER	20.00	22.00	
HVAC INSTALLATION	19.00	21.00	
INSULATOR - BATT/BLOWN	15.00	16.00	
IRON WORKER STRUCTURAL		34.00	47.00
IRON WORKER REINFORCING	20.00	22.00	25.00
IRON WORKER ORNAMENTAL	18.00	19.00	
LATHER	18.00	20.00	
PAINTER	18.00	19.00	
PAINTER-BRUSH	18.00	19.00	22.00
PAINTER-PAVING/PARKING LOT STRIPPING		19.00	22.00
PAINTER-ROLLER/SPRAY	18.00	19.00	22.00
PIPEFITTER	20.00	22.00	25.00
SPRINKLER FITTER (FIRE)		25.00	28.00
PIPELAYER	18.00	20.00	22.00
PLASTERER	19.00	20.00	
PLUMBER	22.00	25.00	28.00
FENCE INSTALLER	15.00	16.00	19.00
GUARD RAIL INSTALLER	15.00	16.00	19.00
SCAFFOLD ERECTOR (CERTIFIED)	15.00	17.00	19.00
SIGN INSTALLER	14.00	16.00	18.00
STONE MASON	18.00	21.00	23.00
ROOFER	17.00	19.00	
IRRIGATION TECHNICIAN	14.00	17.00	
FORM WORKER	18.00	21.00	25.00
GLAZIER	16.00	18.00	
TILE SETTER	19.00	20.00	
WELDER	RATE PRESCRIBED FOR CRAFT PERFORMING		
<b>LABORER</b>			
ASPHALT WORKER-(RAKER, SHOVELER OR SPREADER)	15.00	17.00	20.00
DEMOLITION	13.00	15.00	
GENERAL/CLEAN UP	12.00	14.00	17.00
GRADE CHECKER	15.00	17.00	20.00
LANDSCAPE	12.00	14.00	
MASON TENDER – BLOCK	16.00	19.00	
MASON TENDER – CEMENT/CONCRETE/ STONE	16.00	19.00	21.00
<b>POWER EQUIPMENT OPERATORS</b>			
BACKHOE	16.00	18.00	20.00
BLADE (ROUGH)	18.00	21.00	23.00
BLADE (FINISH)	20.00	23.00	26.00
GRADER	18.00	20.00	23.00
SKIDSTEER/BOBCAT	15.00	16.00	18.00
LOADER	16.00	18.00	20.00
BULLDOZER	18.00	20.00	22.00

ROLLER/COMPACTOR	16.00	18.00	20.00
EXCAVATOR	20.00	22.00	25.00
FORKLIFT	16.00	18.00	20.00
PAVER-ASPHALT/AGGREGATE/CONCRETE	21.00	23.00	25.00
SCRAPER	21.00	23.00	25.00
TRACTOR	20.00	22.00	24.00
SCREED	20.00	22.00	24.00
TRENCHER	18.00	23.00	25.00
TRACKHOE	18.00	20.00	22.00
KICKBROOM	15.00	17.00	19.00
OILER	18.00	20.00	23.00
POWER TOOL	18.00	19.00	21.00
SWEEPER	16.00	17.00	18.00
CRANE	22.00	24.00	27.00
<b>TRUCK DRIVERS (CDL ENDORSEMENTS)</b>			
DUMP	18.00	20.00	22.00
WATER	15.00	17.00	20.00
WATER PULL	17.00	20.00	23.00
FLATBED	16.00	18.00	20.00