

REQUEST FOR QUALIFICATIONS

RFQ ID: 2016-PYIR-TIP-P1

RFQ NAME: TRIBAL TRANSPORTATION IMPROVEMENT PROGRAM (TIP) ENGINEERING SERVICES

PASCUA YAQUI TRIBE OF ARIZONA



1. Description of Project - The Pascua Yaqui Tribe is actively seeking qualified and experienced firm to perform Engineering Consulting Services for phase 1 of the Tribal Transportation Improvement Program. Phase 1 of the program will replace roughly 3.5 miles of existing low capacity to medium capacity reservation roads and/or specify pavement preservation treatments.

The term of the contract for specific projects and miscellaneous projects shall be for a 1 year period with option to renew each year for 3 years, subject to Tribe preference, satisfactory performance, and vendor acceptance.

No guarantee is expressed or implied as to the amount of work or total number of project task authorizations provided to any firm for the life of the contract.

The Tribe intends to award one (1) single contract however, the Tribe reserves the right to award to as many or as few as the Tribe deems in its best interest. As each project is identified, the selected firm will be requested to submit cost proposal.

Pre-proposal meeting will be held on September 20, 2016 at 11:00 AM Arizona Time at Housing Warehouse Conference Room located at 4781 West Torim Road, Tucson Arizona 85757.

2. Tribe Background - The Pascua Yaqui Indian Reservation is located in Pima County, in the Southwestern part of the Tucson metropolitan area, amidst the suburban communities of Drexel Heights and Valencia West, and Adjacent to the eastern section of the Tohono O’odham Indian Reservation. It has a land area of 1,194 acres, and a 2010 census resident population of 3,410 persons. The community is governed by a Chairman, Vice Chairman, Treasurer, Secretary, and seven Council Members.
3. Scope of Services - The scope of services sought by the Tribe shall include, but are not necessarily limited to the following disciplines:
 - a. Civil Engineering
 - b. Structural Engineering
 - c. Geotechnical Engineering
 - d. Traffic Engineering
 - e. Engineering Studies
 - f. Transportation Studies
 - g. Value Engineering
 - h. Sampling and Testing Services
 - i. Inspection Services
 - j. Construction Administration Services
 - k. Cost Estimating
 - l. Plan Development & Review

The selected Consultant(s) may be required to investigate, analyze, evaluate, report, coordinate, prepare plans, specifications and contract documents, bid/award and evaluation and services during construction, perform construction engineering services, for any of the aforementioned disciplines, related matters, as well as any engineering assignments upon the request of the Tribe. The Tribe may require based upon the

firm's evaluation to identify needs, develop and improve programs, establish cost effective priorities for making improvements and develop a short-term or a long-range program for implementation on request. The selected Consultant shall provide certified testing lab services as necessary to fulfill the requirements or certain regulatory agencies and related soil analysis.

4. RFQ Instructions

- a. Minimum Proposer Qualifications. Proposers must meet all of the following minimum qualifications to be eligible to respond to this RFQ and enter into a contract with the Tribe:
 - i. Be licensed in the State of Arizona and certified to perform the engineering services.
 - ii. Have a sufficient number of on staff professional engineers experienced in civil engineering and design projects of the same size, scope and complexity described herein.
- b. General Requirements.
 - i. Each Statement of Qualification (SOQ) must be typewritten and printed single-sided on 8.5" x 11" format. SOQs with 11" by 17" pages are allowed but must be folded into an 8.5" x 11" format.
 - ii. No facsimile SOQs will be accepted.
 - iii. An authorized representative of the Proposer must sign the SOQ and his/her name and title must appear below the person's signature. The signing of the SOQ certifies:
 1. The person signing the SOQ has the legal authority to do so on behalf of the Responder;
 2. The Responder has not made and will not make any attempt to induce any other person or firm to submit or not submit an SOQ;
 3. That to the best of Responder's knowledge, no employee of the Tribe, or any partnership or corporation in which a Tribal employee has an interest, will or has received any remuneration of any description from Responder, either directly or indirectly, in connection with the letting or performance of any contract resulting from this RFQ;
 4. If awarded the contract for engineering services, Responder will strictly comply with all applicable terms and conditions of the Tribe; and
 5. The statements contained in the SOQ are true and complete.
- c. Submission Requirements.
 - i. Statements of Qualifications shall be delivered in a sealed envelope and addressed to Pascua Yaqui Tribe, Finance and Operations Department, Attn: Ian M. Geitner, 7474 S. Camino De Oeste, Tucson Arizona 85757, until, October 7, 2016 at 4:00 PM Arizona Time.

- ii. Submit five (5) complete paper copies of the statement of qualifications in a sealed envelope marked

“SEALED QUALIFICATIONS - PASCUA YAQUI TRIBE - TIP ENGINEERING SERVICES – PHASE 1”

To: Pascua Yaqui Tribe
Attn: Ian M. Geitner
Finance and Operations
7474 S. Camino De Oeste
Tucson, Arizona 85757

- iii. It is the responsibility of the Responder to get the SOQ to the above location by said date and time.
 - iv. Submissions will be publically opened and **NAMES** of Responders will be read aloud on October 10, 2016 at 10:00AM at Housing Warehouse Conference Room located at 4781 West Torim Road, Tucson Arizona 85757. All Consultants or their representatives are invited to attend the public opening meeting.
- d. Interpretation and Addenda.
- i. All questions regarding this RFQ shall be directed to Ian M. Geitner, Pascua Yaqui Tribe Project Manager, at 520-345-1976 or ian.geitner@pascuayaqui-nsn.gov if necessary, interpretations or clarifications in response to such questions will be made by issuance of an “Addendum” to all prospective responders. Only questions answered by formal written addenda will be binding. Addenda will be published on the Pascua Yaqui Development Services Announcement Website. Oral and other interpretations or clarifications will be without legal effect. Any Addendum issued, as a result of any change in the RFQ, must be acknowledged by the Responder in its SOQ submittal.
 - ii. Deadline to Submit Questions: September 22, 2016 at 4:00 PM Arizona Time
 - iii. Addenda Publish Date (If Necessary): September 23, 2016 at 10 AM Arizona Time
 - iv. Addendum website address:

<http://www.pascuayaqui-nsn.gov/index.php/announcements>
- e. SOQ Contents.
- i. Qualified consultants interested in performing the work described in this Request For Qualifications shall provide the following information presented in a clear, comprehensive, and concise manner, illustrating the firm’s capabilities and technical expertise:
 - 1. Introductory Letter (2 page maximum) – Content at discretion of Proposer.
 - 2. General Firm Qualifications (5 pages maximum) – Provide a statement that portrays the firm’s qualifications as related to its experience in the project description. The response should include the following (but not limited to):
 - a. Summary of the consultant’s general qualifications, specific disciplines that are applicable to the proposed work, background, number of employees,

office locations, etc. Please limit employee information to that which is specific to the local office.

- b. Outline the consultant’s capacity to carry out the scope and the extent of the work required. State disciplines where any sub-consultants will be utilized.
 - c. Percent of firm revenue that is received from governmental agencies.
 - d. Description of any litigation in which the firm is or was a party within the last five (5) years.
 - e. Any previous contracts that the firm defaulted on and/or was terminated and reasons for the default(s) and/or termination(s).
3. References – Provide five (5) recent/current professional references, including detailed contact information.
 4. Project Experience Form – Provide details for a minimum of five (5) recent major successfully completed road projects similar in size and complexity to the description of the project, as well as reference contact information for those projects. The examples must be projects in which your firm was a primary consultant (maximum 2 pages per project). (Note: The references required may overlap and include the reference/contract information in this subsection 3. No Specific Form Required)
 5. Staff Qualification Form – Provide qualifications of each key staff member, including area of expertise/title, home office location, years of experience (total), education and other relevant information regarding the staff member’s qualifications to perform the required services (maximum 2 pages per person. No Specific Form Required).
 6. Certificate of Insurance – Include a copy of Proposer’s Certificate(s) of Insurance indicating the types and amounts of insurance coverage’s maintained by the Proposer.
 7. Addendum Acknowledgment Form – Include signed Addendum 1 with submittal. Placement in submittal does not matter. See addendum 1 sheet for signature field.

5. Evaluation and Selection of Consultants

a. Evaluation Criteria and Agreement

- i. The Project Manager, Contracting Officer, Development Services Director, Three Tribal Construction Inspectors will select the engineering firm(s) they determine most qualified and rank them. Firms will be ranked on the basis of evaluations of their expertise and quality of previous engineering services relative projects similar in size, scope and complexity, qualifications of available staff, demonstrated experience and quality of performance dealing with governmental agencies, adequate financial resources and insurance. The Tribe will evaluate each consultant’s experience in completing similar work for municipalities and other units of government. The Tribe will contact the firm ranked

most qualified, interview as necessary, and attempt to negotiate a contract at a fair and reasonable compensation, taking into account the estimated value, scope, complexity, and professional nature of the services to be rendered. If the Tribe is unable to negotiate a satisfactory contract with the firm which is most preferred, negotiations with that firm shall be terminated and the Tribe shall begin negotiations with the firm which is next preferred. Responders are not requested or required to submit a 2016 Rate Schedule or to determine it's not to exceed cap with its SOQ submittal. When a Responder is notified that it has been determined to be the most qualified by selection committee, the Responder shall be asked to submit its 2016 Fee Schedule as part of the negotiation of fair and reasonable compensation. The Tribe's minimum insurance and indemnification requirements, permitted limitations on Engineer's liability, and other required terms and conditions will be incorporated in a written contract prepared by the Tribe and presented to the Pascua Yaqui Tribe Legal Department for form approval. Notwithstanding the foregoing, the contract as modified by the final terms of the "Agreement" between the Tribe and Engineer will be subject to approval by the Pascua Yaqui Tribe Council in their sole and absolute discretion. Compensation will either be a fixed price or hourly cost reimbursement type contract with a not to exceed cap amount.

- ii. Tribe May Request More Information. It is the intent of the Tribe to make evaluations and ranking of engineering firms based on the Statement of Qualifications submitted. However, more information may be requested to fully and accurately evaluate SOQs. The Tribe reserves the right to obtain clarification on any point in a firm's SOQ or to obtain additional information necessary to properly evaluate a particular submittal. Failure to respond to such a request for additional information or clarification could result in rejection of the Responder's SOQ. The engineering firm rated the most qualified will be so notified, and the engineering firm and the Tribe will attempt to negotiate a fair and reasonable compensation as well as the final terms of the Agreement.
- iii. Prior to making a determination of the most qualified engineering firm, interviews may be held at the Tribe's option in its sole and absolute discretion for informational purposes only. Alternatively, the Tribe may elect to choose an engineering firm to negotiate an Agreement to perform the required engineering services based on the SOQs and any additional information provided above.
- iv. Terms and Conditions. The following terms and conditions also apply:
 1. The Tribe reserves the right to accept or reject any submittals and to waive any minor irregularity, informality, or non-conformity with the provision of procedures of this RFQ.
 2. The Tribe reserves the right to request clarification of information contained in qualification statements and to request additional information from any responding firm.
 3. A firm may withdraw its qualifications submittal any time prior to the submission deadline.
 4. The professional services Agreement shall be subject to approval by the Tribal Council.

5. The contracted firm shall not assign any interest in the contract and shall not transfer any interest without the prior express written consent of the Tribe.
 6. The Tribe understands that certain engineering services may not be performed by in house engineers, but may be contracted out, for example geotechnical services. Any such anticipated subcontract services shall be identified by the Responder and the subcontracted services shall be subject to the Tribe’s approval.
 7. The Tribe considers engineering services to be a professional service and exempt from standard bidding requirements. The Tribe reserves the right to select or reject engineering firms based on evaluation of the criteria described above.
 8. The Tribe reserves the right to investigate the references and past performance of any Responder with respect to its successful performance of similar services, compliance with contractual obligations, and other factors as may be relevant to the ranking of the Responder.
- v. The following criteria shall be used to rate the responses:
1. Introduction Letter (5)
 2. General Firm Qualifications (25)
 3. References (5)
 4. Project Experience Forms (No Specific Form Required) (30)
 5. Staff Qualifications Form (No Specific Form Required) (30)
 6. Tribal Preference (5)

6. Schedule of Activities

Pre-Proposal Meeting:	September 20, 2016 @ 11AM
RFQ Questions Submission Deadline:	September 22, 2016 @ 4PM
RFQ Addenda Release (If Necessary):	September 23, 2016 @ 10AM
RFQ Submission Deadline:	October 7, 2016 @ 4PM
Public Opening:	October 10, 2016 @ 10AM
Interviews (If Necessary):	October 11-19, 2016
Final Selection(s):	October 20-21, 2016

*Firm Selection will be published at <http://www.pascuayaqui-nsn.gov/index.php/announcements>

7. Disclaimer

- a. The Tribe makes no representation regarding the information herein provided. Responder is solely responsible to establish, verify, and ensure that any and all information is correct, complete and necessary to provide a complete and informed submittal.
- b. Neither this Request for Qualifications nor selection of a responding firm by the Tribe will commit the Tribe to award a contract, to pay any costs incurred in the preparation of a response to this request, and/or to procure or contract for services or supplies.

- c. Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under this Tribal Transportation Program. Under 25 U.S.C 450e (b), Indian organizations and Indian-Owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the Tribal Transportation Program.

- d. Responders are responsible for making certain that their submissions are received at the location specified by the due date and time. The Pascua Yaqui Tribe is not responsible for delays caused by any mail, package or courier service, including the U.S. mail, or caused by any other occurrence or condition. No oral, telegraphic, electronic, facsimile, or telephonic submissions or modifications will be considered. Submissions received after the due date and time will be returned to the Consultant unopened.

//END RFQ



ADDENDUM 1

PYT TIP Engineering Services

RFQ ID: 2016-PYIR-TIP-P1

9/23/16

- 1) Can the Pascua Yaqui Tribe provide a sample contract agreement?
 - a. Sample Contract Included in revised RFQ dated 9/23/16
- 2) Section 4 and 5 of the RFQ references a "Project Experience Form" and a "Staff Qualification Form". Do these sections require forms to be filled out or should the sections be in narrative form?
 - a. No specific forms required for RFQ response.
- 3) Can the Pascua Yaqui Tribe identify the 3.5 miles of roadway that is part of Phase 1?
 - a. At this time we cannot. However, Los Reales, Calle Tetakusim, and Ignacio Baumea reconstruction is scheduled for phase 1, the remaining road miles will be various neighborhood streets.
- 4) Have any projects been identified in Phases 2 or 3?
 - a. Remaining neighborhood streets.
- 5) What level of structural engineering services does the Pascua Yaqui Tribe anticipate needing? Will it only be small box culverts/drainage structures or is a larger scope anticipated?
 - a. Small Box Culverts / Drainage Structures at this time. This is subject to construction budget.
- 6) Is there an overall page limit, and if there is a page limit would the SOQ cover be included in the page count?
 - a. Refer to section 4e for page limits. The cover will not be counted.
- 7) Zip Code on Business Card is different than RFQ, which one should we use?
 - a. Use Zip Code found in the RFQ. 85757
- 8) Is there Tribal Preference?
 - a. Yes, for prime consultant only, worth (5) points. Updated rating criteria included in the revised RFQ. See section 5a(v)

Addendum Acknowledgment Form Added to Section 4e "SOQ Contents" as #7. See Section 4e #7.

Acknowledgment - Include This Form with Your Submission

Responder Name

Responder Signature

PART 1
ENGINEERING AGREEMENT

between the

PASCUA YAQUI TRIBE,
A Federally Recognized Indian Tribe,

and

[company]
A _____ Corporation

The Agreement between the Pascua Yaqui Tribe (“Tribe”) and the Engineer named below in Paragraph 1, shall be comprised of this Part One (“Part 1”) of the Engineering Agreement and Part Two, the Standard Terms and Conditions (“Part 2”). This Part 1 and Part 2, shall constitute and shall hereinafter be referred to as the “Agreement.” In the event that terms of Part 1 conflict with terms of Part 2 or any other attachments, this Part 1 shall supersede and take precedence and unless otherwise noted in this Part 1, terms of Part 2 shall supersede all other documents. Unless specifically provided in this Part 1, all capitalized terms shall have the meaning set forth in Part 2.

1. **NAME OF ENGINEER:**
2. **ADDRESS:**
3. **PRINCIPAL PLACE OF BUSINESS OF ENGINEER (if different from above):**
4. **LOCATION WHERE COVERED SERVICES ARE TO BE PROVIDED:**

Pascua Yaqui Reservation:

5. **DATE OF AGREEMENT:**

EFFECTIVE DATE: If different than date of Agreement, this Contract shall become effective on the date that both parties execute this Agreement and shall remain in effect through completion of the Work. Applicable terms of this Agreement shall survive through the date that defective workmanship is discovered and remedied.

6. **INITIAL AGREEMENT TERM:**
7. **OPTION TO RENEW:** Yes ___ ; No ___ ;
8. **RENEWAL TERMS:**
9. **DEFINITIONS:**

A. Engineer: The contractor, [name], which is the entity engaged by the Tribe to perform engineering, design, and other services related to the work as provided for in the Contract. The Engineer

shall serve as a technical representative of the Contracting Officer. The Engineer's authority is as set forth elsewhere in this Contract.

B. Builder or Building Contractor: Any contractor, other than Engineer, who performs services or work for Tribe to complete construction.

C. Covered Service(s): All services for which Engineer is contracting to provide to Tribe as described in this Agreement.

D. Parties: Means both parties to this Agreement, the Pascua Yaqui Tribe and [engineer company]

10. SITE OF THE PROPOSED PROJECT (If different from the Location):

11. DESCRIPTION OF THE SCOPE OF SERVICES ("Covered Services"):

A. Engineer's Basic Services: Engineer will provide engineering services for _____ . To specifications and requirements determined by Tribe in its Request for Proposal and in the Engineer's bid in response to the Request for _____. Contractor shall also provide _____ of the Project to be performed by the project general contractor(s).

(1) Areas of Engineer's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Engineer shall provide the Tribe with professional services in the following areas:

- (a) Architect: Yes ____; No ____;
- (b) Site Planning: Yes ____; No ____;
- (c) Structural Engineering: Yes ____; No ____;
- (d) Mechanical Engineering: Yes ____; No ____;
- (e) Electrical Engineering: Yes ____; No ____;
- (f) Civil Engineering: Yes ____; No ____;
- (g) Landscape Architect: Yes ____; No ____;
- (h) Cost Estimating: Yes ____; No ____;
- (i) Construction Contract Administration: Yes ____; No ____;

(2) Phases and Descriptions of Basic Services.

(a) Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Tribe, the Engineer shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the Road (s), and site design(s), planned to promote economy both in construction and in administration and to

comply with current program and cost limitations. The Engineer shall revise these documents consistent with the requirements and criteria established by the Tribe to secure the Tribe's written approval. Additionally, the Engineer shall make an independent assessment of the accuracy of the information provided by the Tribe concerning existing conditions. Documents in this phase shall include:

(b) Design Development Phase. After receipt of written approval of schematic design/preliminary study documents, the Engineer shall prepare and submit to the Tribe design development documents. The Engineer shall revise these documents consistent with the requirements and criteria established by the Tribe to secure the Tribe's written approval. These documents shall include the following:

- [1] Drawings sufficient to fix and illustrate project scope and character in all essential design elements.
- [2] Outline specifications.
- [3] Cost estimates and analysis.
- [4] Recommendations for phasing of construction.
- [5] Site plan(s).
- [6] Landscape plan.
- [7] Engineering drawings

c) Bidding, Construction and Contract Document Phase. After receipt of the Tribe's written approval of design development documents, the Engineer shall prepare construction documents. After consultation with the Tribe and Tribe's attorney, if requested by the Tribe, the Engineer shall also prepare and assemble all bidding and contract documents. The Engineer shall revise these bidding, construction and contract documents consistent with the requirements and criteria established by the Tribe to secure the Tribe's written approval. They shall include in a detailed manner, all work to be performed; all material; workmanship; finishes and equipment required for the Engineer, structural, mechanical, electrical, and site work; survey maps furnished by Tribe; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- [1] Solicitation for Bids.
- [2] Form of Contract.
- [3] Special Conditions.
- [4] General Conditions.
- [5] Technical Specifications.
- [6] Plans and drawings.
- [7] Updated cost Estimates.

(d) Bidding and Award Phase. After written approval of bidding, Construction and Contract Documents from the Tribe, the Engineer shall assist in administering the bidding and award of the Construction Contract. This shall include:

- [1] Responding to inquires.
- [2] Drafting and issuing addendum approved by Tribe.
- [3] Attending pre-bid conference(s).
- [4] Attending public bid openings.
- [5] Reviewing and tabulating bids.
- [6] Recommending list of eligible bids.
- [7] Recommending award.
- [8] Altering drawings and specifications as often as required to award within the estimated construction contract cost.

(e) Construction Phase. After execution of the construction contract, the Engineer shall in a prompt and timely manner administer the construction contract and all work required by the bidding, construction and contract documents. The Engineer shall endeavor to protect the Tribe against defects and deficiencies in the execution and performance of the work. The Engineer shall:

- [1] Administer the construction contract.
- [2] Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Tribe.
- [3] Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- [4] At the Tribe's written request, and as additional service, procure testing from qualified parties.
- [5] Monitor the quality and progress of the work and furnish a written field report: Weekly ____; This service shall be limited to a period amounting to 100% of the construction period as originally established under the Construction Contract unless construction has been delayed due to the Engineer's failure to properly perform its duties and responsibilities. The Tribe may direct additional monitoring but only as additional services.
- [6] Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Engineer.
- [7] Review, approve and submit to Tribe the contractor requests for payment.

[8] Conduct all job meetings and record action in a set of minutes which are to be provided to the Tribe.

[9] Make modifications to construction contract documents to correct errors, clarify intent or to accommodate change orders.

[10] Make recommendations to Tribe for solutions to special problems or changes necessitated by conditions encountered in the course of construction.

[11] Promptly notify Tribe in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.

[12] Negotiate, prepare cost or price analysis for and countersign change orders.

[13] Prepare written punch list, certificates of completion and other necessary construction close out documents.

[14] Prepare a set of reproducible record prints of drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the Contractor to the Engineer.

(f) Post Completion/Warranty Phase. After execution of the certificate of completion by the Tribe, the Engineer shall:

[1] Consult with and make recommendations to Tribe during warranties regarding construction, and equipment warranties.

[2] Perform an observation of construction work, material, systems and equipment no earlier than nine (9) months and no later than ten (10) months after completion of the construction contract and make a written report to the Tribe. At the Tribe's request, and by Amendment to the additional services section of this Contract, conduct additional warranty inspections as additional Services.

[3] Advise and assist Tribe in construction matters for a period up to eighteen (18) months after completion of the project, but such assistance is not to exceed forty (40) hours of service and one (1) non-warranty trip away from the place of business of the Engineer.

(3) Time of Performance. The Engineer's schedule for preparing, delivering and obtaining Tribe's approval for Basic Services shall be as follows:

(a) Schematic Design/Preliminary Study Documents within ____calendar days from the date of the receipt of a Notice to Proceed.

(b) Design Development Documents within ____ calendar days from the date of receipt of written approval by the Tribe of Schematic Design/Preliminary Study Documents.

(c) Bidding, Construction and Contract Documents within ____ calendar days from the date of receipt of written approval by the Tribe of Design Development Documents.

B. Engineer's Additional Services:

(1) Description of Additional Services. Additional services are all those services provided by the Engineer on the Project for the Tribe that are not defined as Basic Services, or otherwise required to be performed by the Engineer under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Engineer and not due to any errors, omissions or failures on the part of the Engineer to carry out obligations otherwise set out in this Agreement.

(2) Written Addendum or Contract Amendment. All additional services not already expressly required by this Agreement shall be agreed to through either a written addendum or amendment to this Agreement.

C. Engineer shall perform and complete all services set forth in this Part 1 (hereinafter "Covered Services" or "Work" or "Project") and all attachments. Work shall be performed pursuant to drawings and specifications as approved by Tribe.

D. Engineer will provide all services requested in Tribe's Request for Proposal dated _____ and proposed by Engineer in its proposal/bid dated _____ and according to the Terms and Conditions of this Agreement, exhibits and attachments.

E. Engineer shall perform additional services as required by Tribe provided the Engineer and Tribe agree to the scope and compensation for such additional work. If Engineer reasonably believes that additional services will be required due to circumstances beyond Engineer's control, Engineer shall provide written notification to Tribe and must receive Tribe's prior written pre-authorization to perform additional services prior to the commencement of such services.

G. Engineer shall perform such other services as delineated in Tribe's Request for Proposal. Tribe reserves the right to modify specifications of the Project to meet the intent of the Request for Proposal and Engineer's bid in response.

H. Engineer shall use its professional judgment to determine the accuracy of data it reviews or otherwise collects and its reasonable reliance thereof.

I. Engineer shall be responsible for the conformance with industry and regulatory standards, professional expertise and quality of work performed by any individuals, organizations, companies or other agents, subcontractors or the like which Engineer uses to perform services under this Agreement.

J. Engineer shall attend construction meetings and other meetings as determined or required by Tribe.

12. ENGINEER'S DUTIES AND RESPONSIBILITIES AS THE CONSTRUCTION ADMINISTRATOR:

A. The Engineer shall serve as the Contracting Officer's technical representative with respect to Engineer, engineering, and design matters related to the work performed under the Contract. The Engineer may provide direction on Contract performance. Such direction shall be within the scope of the Contract and may not be of a nature which: (1) institutes additional work outside the scope of the Contract; (2) constitutes a change; (3) causes an increase or decrease in the cost of the Contract; (4) alters

the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the Contract.

B. The Engineer's duties and responsibilities may include but shall not be limited to:

(1) Making periodic visits to the work site, and on the basis of his/her on-site observations, issuing written reports to the Tribe which shall include all observed deficiencies. The Engineer shall file a copy of the report with the Contractor's designated representative at the site;

(2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other Contract modifications for issuance by the Contracting Officer;

(3) Reviewing and making recommendations with respect to (a) the Contractor's construction progress schedules; (b) the Contractor's shop and detailed drawings; (c) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (d) the Contractor's price breakdown and progress payment estimates; and

(4) Assisting in observations, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the Contract.

C. Other Contracts. The Tribe may undertake or award other contracts for additional work at or near the site of the work under this Contract. The Engineer shall fully cooperate with the other contractors and with Tribe employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Engineer shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Tribe employees.

13. PERMITS AND UTILITIES:

A. Engineer shall obtain all permits and utilities required to perform covered services.
Yes _____; No _____; Not Applicable _____.

B. Engineer shall apply for and obtain all required licenses to perform services within the scope of this Agreement.

C. Engineer shall make arrangements with Tribe to access the project site to access structures, utility sites or other resources or information required to carry out the terms and conditions of this Agreement.

14. CRITICAL PATH SCHEDULE: Engineer shall provide a Critical Path Schedule.
Yes _____; No _____;

15. INSPECTIONS: Applicable _____; Not Applicable _____.

16. CONTRACT TIME REQUIREMENTS:

A. Time is of the essence in the completion of all Work and services provided by Engineer (subject to Part 2, Paragraph 32). Engineer's services shall be performed as expeditiously as possible and in a manner that is consistent with professional skill and care and the orderly progress of the Work. Engineer shall complete its Work so as to prevent delays in construction by Building Contractor.

B. Unless otherwise indicated, Engineer shall commence work upon receipt of the Notice to Proceed issued by Tribe.

C. Engineer shall complete all Covered Services related to Engineer and engineering within _____ days after issuance of the Notice to Proceed to Engineer.

17. CHANGE ORDERS: Tribe, or its representatives, have approved the plans and specifications for the Work. Prior to any deviation from the approved plans and specifications as may be requested by the Engineer (a "Change Order"), Engineer shall submit the proposed Change Order, along with an estimate of the cost associated with such proposed Change Order to Tribe for its review and approval. Only those Change Orders that have been reviewed and approved in writing by Tribe shall be allowed to be included as an addition to the Project Cost.

18. MINIMUM QUALITY AND WORKMANSHIP STANDARDS: Engineer warrants that all Work completed, whether by Engineer or any Subcontractor, shall meet the minimum workmanship standards as set forth by the Arizona Registrar of Contractors and the General Terms and Conditions (collectively, 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 Engineer.

19. STANDARD OF CARE & NOTIFICATION:

A. Engineer shall 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. Engineer 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 Engineer to any claim or liability that may arise as a result of Engineer's performance under the Contract.

B. If Engineer creates a work site on the Tribe's reservation, Engineer shall leave the work site in a safe condition and ensure any unsafe conditions are remedied prior to termination of this Agreement or at any time subsequent to termination of this Agreement as required by law or industry standards.

C. Engineer shall be responsible for the prompt, appropriate and lawful reporting to the appropriate governmental authorities of the discovery or release of any hazardous substances or conditions or otherwise regulated substances. Engineer shall also provide immediate written notification to Tribe of the discovery of any hazardous materials or conditions. Engineer shall provide professional analysis, recommendations, and reporting, including, plans and specifications for isolation, removal, or remediation. The Engineer shall notify Tribe of hazardous substances or conditions not contemplated of which the Engineer actually becomes aware. Upon such notice by the Engineer, the Engineer may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Engineer is to proceed with the services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

D. At Tribe's request, Engineer agrees to assist or report on behalf of Tribe, any disclosures required by law to the appropriate governing agencies.

20. CONDITIONS:

A. Engineer agrees to perform all work required by the Agreement in accordance with the best modern practice, in compliance with federal, state and local laws, rules, regulations and standards.

Engineer shall check and verify all dimensions, grades and levels before commencement of theirs or others' performance, and whenever necessary during the progress thereof. Engineer, in performing this Agreement, is acting as an independent contractor, and will provide all labor and supervision necessary for the complete and satisfactory performance of this contract work.

B. N/A

C. Engineer must apply for and possess a current Pascua Yaqui Tribe Business License prior to beginning any Work.

D. In the event federal funds are utilized to fund this Project, Engineer acknowledges that the use of federal grant monies requires adherence with certain applicable additional conditions.

E. Compliance with Laws, Codes, Ordinances and Regulations. The Engineer shall perform services that conform to all applicable Tribal, Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Tribe. The Engineer shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations.

21. CONTRACT ADMINISTRATION:

A. Prohibition of Assignment. The Engineer shall not assign, subcontract, or transfer any obligations, or interest in this Agreement, without the prior written consent of the Tribe.

B. Ownership of Documents. All drawings, specifications, studies and other materials prepared under this Contract shall be the property of the Tribe and at the termination or completion of the Engineer's services shall be promptly delivered to the Tribe. The Engineer shall have no claim for further employment or additional compensation as a result of exercise by the Tribe of its full rights of ownership.

C. Substitutions.

(1) The Engineer shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Tribe.

(2) The Engineer's personnel identified below, or in Engineer's Bid Proposal, are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Engineer shall notify the Tribe reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the Contract. No diversion or substitution of such key personnel shall be made by the Engineer without the prior written consent of the Tribe.

D. Suspension. The Tribe may give written notice to the Engineer to suspend work on the Project or any part thereof. The Tribe shall not be obligated to consider a claim for additional compensation if the Engineer is given written notice to resume work within three hundred (300) calendar days.

E. Subcontracts. The Engineer will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

F. Insurance. The Engineer shall carry commercial or comprehensive general liability insurance, professional liability insurance, and other insurance as are required by law, all in minimum

amounts as set forth in this Agreement. If the Engineer's professional liability insurance is on a "claims made" basis, said insurance shall be in force for a period extending ___ years past the date of completion of construction of the project. The Engineer shall furnish the Tribe with certificates of insurance and they shall state that a thirty (30) day notice of prior cancellation or change will be provided to the Tribe. Additionally, the Tribe shall be an additional insured on all commercial or comprehensive general liability policies.

G. Retention of Rights. Neither the Tribe's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Engineer shall be and remain liable to the Tribe in accordance with the applicable law for all damages to the Tribe caused by the Engineer's negligent performance of any of the services furnished under this Contract.

22. QUALIFICATIONS:

- A. Engineer is a licensed Engineering firm in the State of Arizona.
- B. Other certifications, licenses, permits and/or special qualifications: None

23. ENGINEER'S REPRESENTATIONS AND WARRANTIES: In order to induce Tribe to enter into this Agreement, Engineer makes the following representations:

A. Engineer warrants and represents that the work product produced by Engineer shall conform to the written promises or affirmations of fact made by Engineer.

B. Engineer has examined and carefully studied this Agreement (including all Exhibits and Attachments) and is familiar with and has satisfied all requirements, specifically, but not limited to attachments, specifications, requirements and drawings.

C. In connection with Engineer's performance of the Work, Engineer will visit the site of the Proposed Project and shall become familiar with the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

D. Engineer 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.

E. Engineer has provided the Contracting Officer and Project Manager of the Tribe with written notice of all conflicts, errors, ambiguities, or discrepancies that Engineer has discovered or should have reason to know, in this Agreement and other documents provided to Engineer in connection with the Project (the "Contract Documents"). In the event, during the term of this Agreement, Engineer becomes aware of any conflicts, errors, ambiguities, or discrepancies in the Contract Documents, Engineer shall immediately notify the Tribe in writing of such conflicts, errors, ambiguities or discrepancies. In the event Engineer fails to so notify the Tribe of any conflicts, errors, ambiguities or discrepancies, Engineer shall indemnify and hold Tribe harmless from any cost and/or liability arising from such conflicts, errors, ambiguities or discrepancies.

F. N/A.

G. Engineer acknowledges that Tribe has contracted with Engineer only for the specific Covered Services as designated in the Covered Services paragraph of this Agreement. While providing services to the Tribe or on the Tribe's Reservation or in or on the Tribe's facilities, Engineer agrees to limit its activities to those Covered Services set forth herein or those services necessarily and ordinarily

related thereto. Engineer 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 Engineer.

24. ENGINEER'S RESPONSIBILITIES:

A. Basic Services. The Engineer shall provide the Basic Services.

B. Additional Services. When required under this Agreement or as required in writing by Tribe, the Engineer shall provide Additional Services on the Project.

C. General Responsibilities. The Engineer shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Engineer under this Agreement. The Tribe's review, approval, acceptance of, or payment for Engineer services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Engineer's negligent performance under this Agreement. *Furthermore*, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Tribe or Engineer by law.

D. Designing Within Funding Limitations. The Engineer shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) \$or (2) such other amount as may be provided by the Tribe in writing to the Engineer prior to the commencement of Engineer services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Tribe, but only with written notice to the Engineer. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Engineer and the Tribe may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Tribe may require the Engineer to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost with additional compensation and reimbursement, to be negotiated by separate agreement.

E. Seal. Licensed Engineers shall affix their seals and signatures to drawings and specifications produced under this Agreement.

F. Attendance at Conferences. The Engineer or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this Contract.

25. WARRANTY: Neither Tribe's final payment nor inspection approval shall relieve Engineer of liability with respect to any express or implied warranties.

26. ENGINEER'S COMPENSATION: Tribe shall reimburse Engineer at the following rate(s) and as defined in Exhibit B:

A. Basic Services

(1) Fixed fee for Basic Services. The Tribe will pay the Engineer for Basic Services performed, a Fixed Fee (stipulated sum) of \$. Such payment shall be compensation for all Basic Services required, performed or accepted under this Contract.

B. Reimbursable.

(1) Reimbursable Expenses. The Tribe will pay the Engineer for the Reimbursable Expenses listed below up to a maximum amount of \$. Reimbursable Expenses are in addition to

the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Engineer in connection with the Project as enumerated below.

(a) Reproduction Costs: Yes ____; No____; Not Applicable____. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Engineer or subcontractor's own use.

C. Additional Services.

(1) Payment for additional services. The Tribe will pay the Engineer only for Additional Services as agreed upon as listed in this Agreement. Payment for all such Additional Services shall be based upon an hourly basis for a maximum amount:

<u>Title</u>	<u>Billing Rate</u>
Principal	\$ /hr
Project Manager	\$ /hr
Technical – Level II	\$ /hr
Technical – Level I	\$ /hr
CAD Draftsman	\$ /hr
Clerical	\$ /hr

D. Invoicing and Payments:

(1) Invoices. All payments shall require a written invoice from the Engineer. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

(2) Time of Payment. Upon the Engineer's proper submission of invoices for work performed or reimbursable expenses, the owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within ____ days of the Tribe's receipt of the invoice.

27. TRAVEL AND EXPENSE REIMBURSEMENT:

A. Engineer may be reimbursed for expenses necessary for the performance of Covered Services: Yes ____; No ____; If Yes, the below listed terms and conditions shall apply.

28. CONTRACT CAP:

The total amount of the Contract shall not exceed the amount of \$ ("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.

29. TRIBE SHALL BE ENTITLED TO LIQUIDATED DAMAGES IF CONTRACTOR FAILS TO COMPLETE COVERED SERVICES/WORK WITHIN THE TIME SPECIFIED:

Yes ____; No ____; Not Applicable ____.

30. PAYMENT PROCEDURES:

A. Payments shall be made in accordance with the payment schedule as established in this Part 1 or the Notice to Proceed, as applicable, and the General Conditions (the "Payment Schedule").

B. Engineer shall be paid for Covered Services rendered contingent upon approval and verification of the services provided or hours worked. Approval and verification of Engineer's hours worked or services provided shall be made by the individual designated as the Project Manager. Engineer must obtain the signature of the Project Manager to verify the hours worked or services provided.

C The invoices will be based upon the portion of total Services performed at the time of billing.

D. Engineer will submit invoices to Tribe on a monthly basis. 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.

E. Engineer shall submit the invoice to Tribe within _____ days of the provision of Covered Services

F. Engineer shall submit the original invoice and ___ copy(ies) to:

Pascua Yaqui Tribe
Attn:
7474 S. Camino de Oeste
Tucson, AZ 85757

G. Engineer shall direct all inquiries concerning claims payments directly to the Procurement Office, telephone number (520).

H. Tribe shall make check payable to:

I. Tribe shall mail reimbursement to Engineer at the address as indicated on Engineer's invoice.

J. This Agreement has been made in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. The Engineer shall begin work timely after receipt of a fully executed copy of this Agreement and will complete the Services described in this Agreement within _____ months following issuance of the Notice to Proceed. If such delay or suspension extends for more than _____ months for reasons due to Tribe's unreasonable delay, the rates of compensation provided for in this Agreement may be renegotiated.

K. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of Tribe for any payment may arise beyond the current fiscal year.

L. 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 Engineer.

31. FUNDING: IS THIS AGREEMENT SUBJECT TO NON-TRIBAL FUNDING SOURCES/RESTRICTIONS? Yes: _____; No: _____; (If Yes, please complete A or B)

- A. x This Agreement shall be funded through grant funds awarded to the BIA Grant Award. In the event that grant funds become insufficient or unavailable, Tribe may elect to terminate this Agreement. Engineer acknowledges that grant funds will be utilized to fund this Contract.

32. PROFESSIONAL LIABILITY INSURANCE:

Contractor to provide professional liability insurance: Yes ___; No ___; Not Applicable ___.

33. AUTOMOBILE INSURANCE:

Contractor to use Contractor's own automobile: Yes ___; No ___; Not Applicable ___. (If so, evidence of automobile insurance is required.) If this paragraph is not applicable, if Contractor becomes aware or should become aware that Contractor is using its privately owned vehicle or any other vehicle within the scope of responsibilities or duties of this Agreement, Contractor must comply with Automobile insurance requirements of this Agreement.

34. 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 Engineer, 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:: telephone number

E. Tribe designates the following individual as the Project Manager:: telephone number

35. TRIBE'S RESPONSIBILITIES:

A. Tribe may provide information regarding requirements for the Project, including a program that shall set forth Tribe's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

B. Tribe will provide all criteria and information as to Tribe's requirements, objectives and expectations for the Project, including performance requirements, budgetary limitations, and copies of all design and construction standards which the Client will require to be used or included in the drawings and specifications.

C. Tribe will assist the Engineer by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to studies, design, or construction or

operation of the Project.

D Tribe will furnish to the Engineer, as required for performance of the Engineer's Services (except to the extent provided otherwise), data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other special data or consultations; all of which Engineer may use and rely upon in performing services under this Agreement.

E. Tribe will establish reference points for construction (except to the extent provided otherwise).

F. Tribe will arrange for access to and make all provisions for the Engineer to enter upon public and private property as required for the Engineer to perform services under this Agreement.

G. Tribe will examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Engineer, obtain advice of an attorney, insurance counselor and other consultants as Tribe deems appropriate for such examination and render in written decisions pertaining thereto within a reasonable time so as not to delay the services of Engineer. Engineer shall have no liability to Tribe for delays resulting from Tribe's failure to review documents promptly.

H. Tribe will furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

I. Tribe will cause to be provided such accounting, legal, independent cost estimating and insurance counseling services as may be required for the Project, including services for issues raised by any other contractor(s) of Tribe ("Building Contractor"), such auditing services as Tribe may require to ascertain how the Building Contractor has used the moneys paid to it under the construction contract, and such inspection services as Tribe may require to ascertain that the Building Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to it.

J. Tribe will furnish to Engineer data or estimates as to Tribe's anticipated costs for services to be provided by others as required for Engineer to support opinions of probable total Project costs.

K. Tribe will attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.

L. Tribe will give prompt written notice to Engineer whenever Tribe observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services, or any defect or nonconformance in any aspect of the Project.

M. The tribe shall provide information regarding requirements for the Project. The Tribe shall also establish and update the Maximum Construction Cost. This shall include the Tribe's giving notice of work to be performed by the Tribe or others and not included in the Construction Contract for the Project. The Engineer, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

36. DISPUTES: All claims, disputes and other matters in question arising between the parties under this Agreement shall be resolved through a mutually agreed upon mediation process or by arbitration in accordance with the Pascua Yaqui Rules of Arbitration currently in effect. If such rules do not exist, the Tribe may elect in its sole discretion, to resolve the dispute in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) or other AAA rules, as applicable. The demand for arbitration shall be filed in writing with the other party to this Agreement. Arbitration and mediation shall not be enforceable or binding. In the event the Parties fail to reach an agreement in an arbitration or mediation proceeding or if Tribe makes the determination to forego arbitration and mediation proceedings, all claims, disputes and other matters in question under this Agreement shall be resolved pursuant to the Pascua Yaqui Tribe in the court system of the Tribe. Parties agree that the terms and conditions of the Contract shall be governed exclusively by Pascua Yaqui Tribal law. The rights and remedies for the Tribe under this Agreement are not exclusive.

37. TERMINATION:

A. The following Termination Provision(s) shall apply: [*Check applicable provision(s)*]

(1) ___ Tribe shall have the right, in its sole and absolute discretion to terminate this Contract immediately for its convenience.

(2) ___ Tribe may terminate this Contract with cause with ___ day(s) written notice to Engineer if Engineer performs a breach of any Contract term, representation, warranty or covenant. However, Engineer may cure the breach any time prior to the expiration of the required notice period.

(3) ___ Tribe may terminate this Contract without cause or for its convenience with ___ days written notice to Engineer.

(4) ___ Engineer may terminate this Contract with cause with ___ days written notice to Tribe if Tribe performs a material breach of this Contract. However, Tribe may cure the breach any time prior to the expiration of the required notice period.

(5) ___ Engineer may terminate this Contract without cause with ___ days written notice to Tribe.

B. In the event this Agreement is terminated, the amount payable to the Engineer will be a proportional amount of the total fee based on a ratio of the services done, to the total services which were to have been performed.

C. Termination. Upon receipt of such termination notice, the Engineer shall immediately deliver to the Tribe all information, reports, papers and other materials accumulated or generated in performing this Contract whether completed or in process. If the termination is for convenience of the Tribe, the Tribe shall be liable only for payment for accepted services rendered before the effective date of termination.

D. This Agreement will terminate upon the occurrence of any of the following events:

(1) Automatically and without notice upon the cancellation or termination of Engineer'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).

E. This Agreement shall be automatically and immediately terminated in the event that Engineer performs any actions outside the Scope of Engineer's contracted Scope of Covered Services as described in this Agreement.

38. ADDITIONAL NOTICES: In addition to the persons set forth in the Standard Terms and Conditions, the following persons should receive notices given by Engineer in connection with this Agreement:

For Engineer:

For Tribe:

39. CONTRACT ORDER OF PRECEDENCE: This Part 1 shall prevail over the Agreement; Part 2 shall then prevail over all other Contract Documents. In the event there is a conflict of contract document terms, others documents shall prevail in the following order: [*List documents such as the Request for Proposal, Engineer Bid Proposal, and other documents*]

- A. Contract Part 1 and Part 2
- B. Request for Proposal Dated _____
- C. Engineer's Bid/Proposal Dated _____

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

41. OWNERSHIP OF MATERIALS AND INFORMATION:

A. All reports, maps, plans, topographical surveys, photographs, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents and any data whatsoever prepared by Engineer or provided to Engineer by Tribe or any other entity and used pursuant to this Agreement are the proprietary materials of Tribe and shall remain the property of Tribe. All costs for reproduction of any documents, unless specifically identified in Engineer's proposal and accepted in writing by Tribe, shall be the responsibility of Engineer. The obligations of Engineer and the rights of Tribe described in this paragraph shall be in addition to and shall not in any respect diminish the obligations and rights set forth in the paragraph entitled "Confidentiality".

B. Engineer 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.

C. Tribe reserves the right to require that any employee, agent or subcontractor or any other person responsible for completion of Engineer's performance under this Agreement sign a confidentiality agreement.

42. SAMPLES, TEST OR STUDY MATERIALS: Engineer shall retain all photographs, surveys, soil, rock and water samples and documentation thereof, and 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. Engineer shall not destroy or otherwise transfer such items without prior written authorization from Tribe.

43. SUBCONTRACTS: Engineer shall not enter into any subcontract with any subcontractor who is presently denied participation in a BIA 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.

44. CONTRACT DOCUMENTS:

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

1	Request for Proposals dated
2	Engineer’s Bid Proposal dated
3	Employer/Union Agreement with Tribal Employment Rights Officer (TERO)
4	Notice to Proceed issued to Engineer from the Pascua Yaqui Tribe (This Document must be attached after issuance).
5	Pascua Yaqui Tribe, Title 4 – Tribal Employment Rights Ordinance
6	Pascua Yaqui Tribe Purchase Order No. ____ dated ____ in conjunction with Contract No. _____ in the amount of \$
7	Certificate of Workers’ Compensation Insurance dated
8	Certificate of Professional Liability Insurance dated
9	Certificate of General Liability Insurance dated
10	Certificate of Automobile Insurance dated
11	Application for Temporary Business License for Pascua Yaqui Reservation dated _____
12	Internal Revenue Service form W-9

B. Contract Documents also include documents that may be delivered or issued by Tribe after the Effective Date of the Agreement that may not be attached hereto, including documents amending, modifying, or supplementing the Contract Documents.

C. Parties acknowledge that the Notice to Proceed to Engineer shall be issued by Tribe and attached as Attachment “6” following the Parties Preconstruction Meeting which shall occur within a reasonable time after execution of this Agreement.

45. OTHER CONDITIONS:

A. Additional Services. If Tribe performs a cost or price analysis prior to the issuance of a contract modification/amendment for Additional Services, such Additional Services shall be within the general scope of services covered by this Agreement. Engineer shall provide supporting cost information in sufficient detail to permit Tribe to perform the required cost or price analysis.

B. Engineer shall not require the use of materials, products or services that unduly restrict competition.

C. Design Certification. Where Tribe is required to provide an Engineer certification regarding the design of the Project(s), Engineer shall provide such a certification to Tribe.

D. Retention and Inspection of Records. Access shall be given by Engineer to Tribe, the Comptroller General of the United States, or other federal agency, or any of their duly authorized representatives, to any books, documents, papers, and records of Engineer which are pertinent to the Agreement for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for five (5) years after Tribe makes final payment and all other pending matters are closed.

E. Engineer shall pay all royalties and license fees. All drawings and specifications prepared by the Engineer pursuant to this Contract will identify any applicable patents to enable the general contractor to fulfill the requirements of the Construction Contract.

F. As evidenced by their execution of this Contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with this Agreement.

G. Clean Air and Water. Engineer shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 U.S.C. § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

H. Energy Efficiency. As long as the Tribe is current in all payments due hereunder Engineer shall comply with the standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

I. Prohibition Against Liens. Engineer is prohibited from placing a lien on Tribe's property. This prohibition shall be placed in all of Engineer's subcontracts.

46. SPECIAL STIPULATIONS:

In addition to the foregoing, the following Special Stipulations shall apply to the terms and conditions of this Agreement:

(If no Special Stipulations apply to this Agreement, Please check here:)

ADDITIONAL PAGES MAY BE ATTACHED IF NECESSARY.

This Part 1 is attached to and is a part of that Agreement or even date herewith.

TRIBE:
PASCUA YAQUI TRIBE,
a federally recognized Indian Tribe

CONTRACTOR:
A _____ Corporation

By: _____
Peter Yucupicio
Chairman of the Tribe
7474 South Camino de Oeste
Tucson, Arizona 85757
(520) 883-5000

By: _____

TIN: 58-0885615

Date: _____

Date: _____

SAMPLE

PART 2
(Standard Terms and Conditions)

AGREEMENT

PASCUA YAQUI TRIBE,
A Federally Recognized Indian Tribe,

[company]
A _____ Corporation

1. GENERAL.

The AGREEMENT (hereinafter referred to as “Agreement” or “Contract”) is executed on the date set forth on Part 1 and effective as of the date set forth on Part 1 provided the effective date is a date different than the date of execution of this Agreement. This Agreement is entered into between the PASCUA YAQUI TRIBE, with offices located at 7474 South Camino de Oeste, Tucson, Arizona 85757, a federally recognized Indian Tribe pursuant to Congressional Act, Public Law 95-375, 92 Stat 712 (1978), as amended by Public Law 103-357, 108 Stat. 12 (1994), 25 U.S.C. 1300F-2 (hereinafter referred to as the “Tribe” or “PYT”), and the person(s) or entity(ies) set forth on Part 1 (“Contractor”), whose principal place of business is located at the location set forth on Part 1.

The Agreement is intended by Tribe and Contractor (“Parties”) hereto to: (i) evidence Contractor’s agreement to provide the Covered Services (defined in Part 1) and (ii) to set forth the terms and conditions regarding the provision of the Covered Services.

The Agreement between the Parties shall consist of the Terms and Conditions described herein; and the terms and conditions set forth in the Exhibits to this Agreement, to the extent such terms and conditions do not conflict with this Agreement, in which instance the provisions set forth in Part 1 and this Agreement shall control (the attachments are incorporated by this reference into and shall become a part of this Agreement; all references to this “Agreement” or “Contract” shall include the attachments). Together these elements will constitute the entire Agreement.

2. QUALIFICATIONS.

A. Contractor warrants and represents that Contractor is certified, licensed or specially qualified, as noted in Part 1.

B. Contractor hereby 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 (defined in Part 1). Contractor will provide current copies of applicable certifications, permits and licenses.

C. Contractor warrants and represents that Contractor possesses the required education, training and experience required to perform Covered Services as set forth in this Agreement.

D. Contractor hereby warrants that all representations as set forth in the Contract Attachments and the information set forth in Contractor's application for participation hereunder are true and correct and the attached resume shall be incorporated and made a part of this Agreement.

E. Contractor represents and warrants that 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.

F. Contractor agrees that upon the request of Tribe, Contractor will release to Tribe and provide written authorization for other organizations, including, but not limited to criminal investigative agencies, insurance companies, or other state or federal regulatory agencies, to release to Tribe the factual details that were the basis for the changes described above.

3. 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 or accreditation organization which 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.

4. DESCRIPTION AND SCOPE OF SERVICES. Contractor shall provide those goods, work and/or services set forth on Part 1 attached hereto and by this reference made a part hereof (the "Covered Services").

5. SUPPLIES AND EQUIPMENT. Any supplies and equipment to be utilized by Contractor in connection with the Covered Services shall be subject to the provisions set forth on Part 1.

6. INSURANCE. B through D as made applicable in Part I of the Contract, E is Required

A. Malpractice Insurance/Professional Liability Insurance.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. Claims. Contractor shall provide immediate written notice to Tribe of any claims filed against Contractor or its employees, agents or representatives.

I. Contractor and Subcontractor Floater Policies. Contractor shall, and shall require all subcontractors, to have all property floaters, builder's risk, 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.

7. 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) Any and all licenses and/or authorizations issued by the appropriate governmental authorities necessary to allow Contractor to legally perform the services required under this Agreement;

(2) A current Certificates of Insurance for all polices set forth herein; and

(3) A fully completed Request for Taxpayer Identification Number and Certification, IRS Form W-9.

8. COMPENSATION OF CONTRACTOR.

A. Contractor shall be paid on the basis set forth on Part 1

B. The total amount of the Agreement shall not exceed the amount set forth on Part 1. This amount is Tribe's maximum financial liability for contracted Covered Services and does not indicate a guaranteed amount. Services provided beyond this limit shall be paid only with the prior approval of Tribe in a written modification to the Agreement.

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.

D. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of Tribe for any payment may arise beyond the current fiscal year.

9. CONTRACT TERM. This Contract shall commence on the Effective Date (or immediately if the Effective Date is not specified) and will continue through the date set forth in Part 1.

10. OPTION TO RENEW.

11. TERMINATION.

A. Contractor and Tribe may terminate this Agreement as set forth in Part 1.

B. 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.

C. Upon notification, Contractor shall immediately cease all work as directed in the notice and minimize further costs to Tribe.

D. In the event termination notice is provided, neither party shall suspend performance of any of its obligations or undertakings under this Contract until the notice period has expired. The non-terminating party shall deem notification effective upon receipt. Each party shall cooperate in making an orderly transition for termination of the Contract.

E. 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.

F. The use of any signs, trademarks, letterhead, forms or other materials associating Contractor with Tribe is specifically forbidden without the express written approval of Tribe. In the event of termination or expiration of this Agreement, any such approvals are automatically withdrawn and all such use shall be ceased.

G. Upon 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.

12. CONTACT PERSON. Tribe designates (See Part 1) as the contact person and the alternate contact person for all issues arising under this Agreement.

13. NOTICES. See Part 1 for additional Notice requirements.

All notices to Tribe must be in writing. All notices, payments, requests, demands or other communications required or permitted pursuant to this Agreement may be effected either by personal delivery or delivered by overnight courier which regularly provides receipts or certified or registered mail, return receipt requested, postage prepaid 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
Office of the Attorney General
4725 W. Calle Tetakusim, Bldg. B
Tucson, Arizona 85757

14. ACCESS TO LEGAL 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, of their own choice, 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.

15. DOCUMENT RETENTION AND ACCESS. Contractor agrees to comply with all U.S. Government and other applicable governmental requirements governing the maintenance of documentation with respect to the cost of materials and services rendered pursuant to this Agreement.

A. Until the expiration of seven (7) years after the furnishing of Services pursuant to this Agreement, Contractor shall make available, upon written request by the Secretary of the Department of the Interior (DOI), the Secretary of the Department of Health and Human Services (“DHHS”), and the Comptroller General of the U.S. (“CG”), or any authorized representative of the DOI, the DHHS or the CG, the contracts, books, documents, and records of Contractor that are necessary to certify the nature and extent of the costs of, and payments to, Contractor pursuant to this Agreement; and

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 that until the expiration of seven (7) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the DOI, the DHHS, or the CG, or any of their duly authorized representatives, the books, documents, and records of related organizations that are necessary to verify the nature and extent of the costs of such subcontract.

- 16. ADDITIONAL DOCUMENTS.** The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Agreement.
- 17. AMENDMENTS.** The terms and/or provisions of this Agreement may not be amended or modified unless the Addendum or Amendment is mutually agreed upon, written and signed by both Parties and attached to the original Agreement. A copy of the fully executed Addendum or Amendment shall be fully incorporated into the original Agreement and made a part, hereof.
- 18. ASSIGNMENT AND DELEGATION.** Contractor may not assign any of Contractor's rights or delegate any of Contractor's duties hereunder without the prior written consent of Tribe. 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.
- 19. 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.
- 20. 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.
- 21. 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.
- 22. 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.
- 23. 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.
- 24. CONFIDENTIALITY.** 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. 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. Contractor shall return all information, notes and compilations to Tribe immediately after the need for such information has expired.
- 25. CONFLICT OF INTEREST.** 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. 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.
- 26. CONTRACT ORDER OF PRECEDENCE.** See Part 1 for additional requirements.

In the event of a conflict in the provisions of the Contract, the following shall prevail in the following order:

A. Part 1

B. Part 2

27. 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.

28. DUTIES. Contractor shall devote the time, attention and energy necessary for the competent and effective performance of Contractor's duties hereunder. Contractor shall furnish such Covered Services in accordance with all applicable Federal, State and Tribal statutes and regulations.

29. ENTIRE AGREEMENT. This Agreement, consisting of Part 1 and Part 2, and its Attachments comprise the entire Agreement and supersedes all prior written or oral agreements, representations and implied contracts. This Contract 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. 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.

30. 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.

31. FITNESS. Contractor warrants that any material supplied to Tribe shall fully conform to all requirements of the Contract and all representations of Contractor, and shall be fit for all purposes and uses required by the Contract.

32. FORCE MAJEURE. 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.

33. GOVERNING LAW. The validity, interpretation, effect and any disputes arising from this Agreement shall be governed exclusively by the laws of the Pascua Yaqui Tribe, without giving effect to the conflict of laws.

34. GRANT REQUIREMENTS. Contractor agrees to become familiar with and comply with all applicable grant requirements.

35. GRATUITIES. 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. 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.

36. HEADINGS. The headings of this Agreement are only for reference purposes.

37. 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.

38. INDEPENDENT CONTRACTOR STATUS. 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. Tribe shall not be responsible for withholding or payment of taxes on any funds paid to Contractor. 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.

A. 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.

B. 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.

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

D. See Part 1.

39. JURISDICTION AND SOVEREIGN IMMUNITY. All disputes arising under this Agreement shall be resolved pursuant to the laws of Tribe in the court system of Tribe. This Contract is to be construed strictly according to Pascua Yaqui Tribal law. Contractor, by signature below, consents to the exclusive jurisdiction of the Pascua Yaqui Tribal Court over all disputes arising under this Agreement. By entering into this Agreement, Tribe does not waive any rights held by Tribe under the Constitution of the Pascua Yaqui Tribe, including, but not limited to, Article XXIV, Sovereign Immunity.

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

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

42. NO WAIVER. Tribe's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if Tribe accepts and acquiesces in the nonconforming performance knows of the nature of the performance and fails to object to it.

43. 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.

44. 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.

45. NON-EXCLUSIVE REMEDIES. The rights and remedies of Tribe under this Agreement are not exclusive.

46. OWNERSHIP OF WORK PRODUCT. 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. To the extent that any copyright in the intellectual product of this Agreement may originally vest in Contractor, Contractor hereby transfers all copyright ownership in the product to Tribe. 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. 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.

47. PAYMENT RECOUPMENT. Contractor must reimburse Tribe upon demand or Tribe may deduct from future payments 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.

48. REGULATORY COMPLIANCE INTENT. Contractor agrees to comply with all applicable Tribal, Federal and State laws and regulations governing the provision of Covered Services.

49. REPRESENTATIONS AND WARRANTIES. See Part 1 if additional Representations and Warranties apply.

A. Parties represent and warrant they know of no impediment to the execution of this Agreement and the performance of its provisions.

B. All warranties herein shall survive the execution or termination hereof.

50. RESPONSIBLE ACTS AND OMISSIONS. Contractor shall be responsible for Contractor’s own acts and omissions and claims and damages, and expenses which may result or arise out of acts and omissions caused or alleged to have been caused by such Contractor, Contractor’s employees or representatives.

51. RIGHT OF OFFSET. Tribe may offset against any sums due Contractor, 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. 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 due.

52. RISK OF LOSS. 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. Receipt of conforming materials does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.

53. SEVERABILITY. Provisions of this Agreement are severable. 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.

54. SUBCONTRACTS. Contractor shall not enter into any Subcontract under this Agreement without prior written approval of Tribe. The Subcontract must incorporate by reference the terms and conditions of this Agreement.

55. SUPPORTING DOCUMENTS AND INFORMATION. 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.

56. 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 Transactional Privilege Tax applicable to this Agreement. 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).

C. 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.

57. THIRD PARTY BENEFICIARIES. It is not intended that there are any third-party beneficiaries to this Agreement.

58. TITLE

A. Title to all equipment acquired by funds provided by Tribe shall remain with Tribe. The title shall be acquired in the name of Tribe. Upon termination of this Agreement, the disposition of all such property shall be determined by Tribe.

B. Contractor shall exercise reasonable control over equipment purchased with funds provided by Tribe. All lost, stolen or unusable equipment must be reported immediately to Tribe.

C. Contractor shall conduct a physical inventory of equipment furnished by Tribe or Tribe's funds, upon request by Tribe.

59. WAIVER. 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. 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. In the event a condition is waived, all other terms and provisions shall remain in full force and effect.

60. AUTHORIZATION. 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. The signatory authority authorized to execute this Agreement and Amendments on behalf of Tribe shall be the Chairman of Tribe.

CONTRACTOR

TRIBE

Peter Yucupicio,
Chairman

Date

Date
7474 South Camino de Oeste
Tucson, AZ 85757
(520) 883-5000

TIN:

