

EXHIBIT E

FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF TUCSON AND THE PASCUA YAQUI TRIBE

This Intergovernmental Agreement ("Agreement") is made and entered into by and between the PASCUA YAQUI TRIBE, a federally recognized Indian Tribe pursuant to 25 U.S.C. §1300f, and the Indian Reorganization Act of 1934, 48 Stat 484 *et seq.* (the "Tribe"), and the CITY OF TUCSON ("Tucson"), a municipal corporation of the State of Arizona (singularly "Party" or collectively, the "Parties").

RECITALS

- A. Tucson is empowered by A.R.S. Title 11, Chapter 7, Article 3 to enter into this Agreement.
- B. Tucson and the Tribe recognize that each is a governmental entity with mutual responsibility for the welfare of its people and the right to exercise jurisdictional control and sovereign authority within its jurisdictional limits.
- C. The Tribe owns or is in the process of acquiring approximately 31.79 acres of land in fee simple ("Tribal Property") located near or within the Tribally recognized aboriginal community known as the "Old Pascua Community" in Tucson, Arizona.
- D. The Tribal Property is more fully described and depicted on the map, attached to this Agreement as Attachment I.
- E. The Tribal Property is located wholly within Tucson's City limits.
- F. The Tribe wishes to transfer (in whole or in part) the Tribal Property to the United States of America pursuant to an act or acts of Congress or through the administrative process outlined in 25 C.F.R. 151.11, or as otherwise may be permitted by law, to be held in trust for the benefit of the Tribe (hereinafter, "Trust Lands").
- G. The Tribe anticipates that the approximate 1.7 acre Cultural and Church Grounds, depicted on Attachment I as "Parcel K", will continue to be used primarily for cultural and ceremonial purposes, while the approximate 4.56 acres of land depicted as "Parcel L" on Attachment I will be used for cultural or governmental purposes, and potentially mixed use development. The Tribe anticipates the remaining approximately 25.53 acres will be used for economic or community development purposes to benefit the Tribe and its Tribal members.
- H. Over the years, the Parties have established a cooperative and mutually respectful and beneficial government-to-government relationship that enhances the quality of life for both Tribal members and Tucson City residents throughout the region.

- I. In this same spirit of mutual respect and cooperation, the Parties have negotiated this Agreement to clarify the future relationship of the Parties relative to the Trust Lands and to address certain concerns expressed by Tucson relating to the transfer of the Tribal Property into trust for the benefit of the Tribe.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties covenant and agree as follows:

1. TUCSON CITY SERVICES

- 1.1. Services Generally. Except as expressly provided for herein, Tucson agrees to continue to provide the same City services to the Trust Lands that are usually and customarily provided to residents located within the City of Tucson, including but not limited to, law enforcement, fire protection and emergency services, traffic controls, trash/recycling and transit services (e.g., fixed-route bus service, Sun Tran, and paratransit service, and Sun Van).
- 1.2. Tucson Fully Compensated for City Services Through In Lieu Payments. Unless otherwise expressly provided for herein, Tucson acknowledges and agrees that it is fairly compensated for the costs of providing City services to the Trust Lands through the Tribe's agreement to pay certain "in lieu" payments described in Section 4 of this Agreement, and that no other payment for the City services described herein will be required by the Tribe, except that the Tribe and persons residing on the Trust Lands may be required to pay monthly utility charges and other assessments that would apply to similarly situated residents of Tucson (e.g. monthly water bills, environmental services charges).
- 1.3. Streets and Roads. The Tribe will be responsible for the planning, construction and maintenance of all streets, roads and related infrastructure developed within the exterior boundaries of the Trust Lands. The Tribe will design and construct access to Tucson's existing streets and roads in a manner that is consistent with the most current version of the City of Tucson Transportation Access Management Guidelines (Tucson City Ordinance 9823, *et seq.*).
- 1.4. Water Services. The Tribal Property is currently located within Tucson's existing water service area pursuant to Tucson's water service policy and applicable law. Except as provided for in subsection 1.4.1 and subsection 1.4.2, Tucson agrees to continue to provide potable water service to the Trust Lands and the Tribe agrees to pay or require the payment for such service under the same terms and conditions that are applicable to any other property or developer within Tucson's water service area at the time of connection.
 - 1.4.1. Tribe to Supply Water for a Class II or Class III Gaming Facility. In the event the Tribe develops a Class II or Class III gaming facility within the meaning of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.*, or other law as may be applicable at the time on the Trust Lands, the Parties agree that the water to be delivered to the gaming facility will be provided by the Tribe from

the "Pascua Yaqui Source of Supply" or "PYSS", as this term is defined in the Tribe's Water Service Agreement with the City of Tucson, effective February 22, 2011, or as may be amended by the Parties in the future ("Water Service Agreement"). In such event, Tucson agrees to recover, treat and wheel the PYSS to the gaming facility in accordance with the terms of the Water Service Agreement so that the gaming facility will have a sufficient potable water supply to serve the needs of the facility as determined by the Tribe.

- 1.4.2. Non-Conforming Commercial Developments. In the event the Tribe wishes to construct a commercial development on the Trust Lands that does not conform to Tucson's existing water conservation standards, including, but not limited to, its rainwater collection and distribution requirements or outdoor landscape requirements, the Parties agree that the water to be delivered to the commercial development for these non-conforming uses shall be provided by the Tribe from the PYSS, as this term is defined in the Water Service Agreement. In such event, Tucson agrees to recover, treat and wheel the PYSS to the commercial development in accordance with the terms of the Water Service Agreement so that the commercial development will have sufficient additional water for the non-conforming uses to serve the needs of the development as determined by the Tribe. The Parties agree to work together to determine how to properly account for the water delivered from the PYSS for the development.
- 1.5. Permission to Access Trust Lands. The Tribe hereby grants Tucson and its designees a right of reasonable access to the Trust Lands for purposes of providing the City services contemplated in this Agreement. Tucson agrees to provide 24-hours advanced notice to the Tribe's Attorney General or such other person as may be designated in writing by the Tribe prior to performing any maintenance or servicing any right-of-way, road or traffic control, or any portion of Tucson water or City infrastructure located on the Trust Lands. Tucson agrees to cooperate with the Tribe and use its best efforts to minimize any negative impact or disturbance to Tribal residents, Tribal events or ceremonies or economic activities conducted on the Trust Lands. The parties acknowledge that, due to diurnal use of utilities and roads, the City often performs roadway and water work during the middle of the night.
- 1.6. Service Line Agreements and Rights-of Way. Nothing in this Agreement shall be construed to affect or modify any obligation on the part of the Parties or any third party to comply with the standards and requirements for service line agreements or rights-of-way on Indian trust land as required by 25 C.F.R., Part 169 or applicable law.
- 1.7. Mutual Indemnity. To the fullest extent permitted by law, each party to this Agreement will indemnify, defend and hold the other party, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and

accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement. Each party will notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Article. Each party will keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Article.

1.7.1.1. Negligence: The obligations under this Article do not extend to the negligence of the indemnified party, its agents or employees.

1.8. Tribe Retains the Right to Provide Future Services. Should the Tribe decide during the term of this Agreement that it is in the Tribe's interest to assume the obligation to provide one or more of the City services currently being provided by Tucson on the Trust Lands, the Tribe shall provide ninety (90) days written notice to Tucson to this effect.

1.8.1. Transition of Services. The Parties and their delegated representatives from appropriate City and Tribal departments agree to work closely together to coordinate the transition from City services to Tribal services in order to assure the timely and safe transition of law enforcement, emergency response, sanitation or other services for the Trust Lands and to resolve any other legal or logistical matters related to the transition in services under this Agreement.

1.8.2. Reduction in In Lieu Payments. The Parties agree to work in good faith to determine the appropriate reduction in the Tribe's in lieu payments (tax or impact fees) required under Section 4 of this Agreement in order to reflect the decreased costs to Tucson resulting from the Tribe's assumption of City services, whether in whole or in part, for the Trust Lands. If the Parties are unable to reach agreement as to the appropriate amount of reduction to the Tribe's in lieu payments, the matter may be resolved pursuant to the dispute resolution provisions of this Agreement.

1.8.3. City's Resumption of Services. Nothing herein is intended to preclude the City from re-assuming the responsibility to provide City services to the Trust Lands upon the Tribe's request and upon the mutual agreement by the Parties as to the scope, terms, and costs of such services.

2. JOINT COOPERATION AND REGIONAL PLANNING/OVERSIGHT GROUP

2.1. Commitment to Continued Joint Cooperation. The Parties agree that it is in their best interest to maintain an ongoing and cooperative government-to-government dialogue upon the implementation of this Agreement, including, but not limited to, on matters related to (a) economic development and regional planning; (b) transportation

infrastructure planning; and (c) the possible construction of civic buildings or other large scale recreational facilities, both on the Trust Lands and within the City of Tucson, in an effort to avoid the construction of potentially redundant facilities in the region.

2.2. Oversight Group. There is hereby established an “Oversight Group” for the purposes of implementing the terms of the Agreement, including the requirements of subsection 2.1, above, and serving as a forum for the Parties to meet and confer or engage in any of the communications or negotiations required by this Agreement. In addition, the Oversight Group shall consider and make recommendations to the Parties on future amendments to this Agreement, including for the purposes of outlining the terms and conditions under which the City will support future applications of the Tribe to take additional lands into trust that are generally contiguous to the Trust Lands pursuant to an act or acts of Congress, under the administrative process outlined in 25 C.F.R., Part 151, or as otherwise may permitted by law. The Tribal Chairperson for the Tribe or the Mayor or City Manager for Tucson shall be entitled to call a meeting of the Oversight Group, at a time and location mutually agreed upon by the Parties. The Oversight Group shall consist of the following participants:

2.2.1. For the Tribe. Participants for the Tribe shall consist of the Tribal Chairperson and the Tribal Attorney General or their designees, and such other persons as they may appoint in writing who have specific authority or expertise in matters relevant to the administration of this Agreement.

2.2.2. For the City. Participants for the City shall consist of the Mayor, the City Manager, and the City Attorney or their designees, and such other persons as they may appoint in writing who have specific authority or expertise in matters relevant to the administration of this Agreement.

3. JURISDICTION AND LAW ENFORCEMENT

3.1. Jurisdiction. The Parties acknowledge that Tribal law shall apply to the Trust Lands once taken into trust by the United States for the benefit of the Tribe. The Parties also acknowledge that whether or not tribal law or, in some cases, federal or state law, will apply in any given circumstance may depend on whether the suspect or victim is an “Indian.” The Parties agree that nothing in this Agreement shall make any laws applicable to a certain person or their conduct where it would not otherwise be applicable.

3.2. Tucson Police Department to Provide Law Enforcement. Except as provided for herein, the Tucson Police Department (“TPD”) agrees to provide law enforcement services to the Trust Lands in the same manner as it provides elsewhere within the City of Tucson. Nothing in this subsection is intended to preclude the Tribe, in its sole discretion, from using its Tribal Police Department to provide additional police

services to the Trust Lands or from conducting joint police operations with the Tucson Police Department upon the mutual agreement of the Parties.

3.3. Establishment of Law Enforcement Work Group. The Tribe and Tucson agree it is in the best interest of both Parties to fully cooperate with one another to ensure that comprehensive police protection is available on the Trust Lands and in the surrounding area. In order to ensure continued and meaningful cooperation between the Parties' law enforcement agencies, the Parties hereby establish a Law Enforcement Work Group to be composed of at least two (2) representatives from the Tribe and/or its Tribal Police Department and at least two (2) representatives from Tucson and/or Tucson Police Department to be appointed by their respective jurisdictions. The Law Enforcement Work Group shall coordinate its meetings and activities so that the members of the Oversight Group are fully informed and able to attend/participate in the Law Enforcement Work Groups meetings and activities should they wish.

3.3.1. Scope of Duties. The Law Enforcement Work Group shall work together to (a) modify existing agreements and/or develop the terms of additional law enforcement intergovernmental agreements between the Tribe and Tucson as needed to coordinate law enforcement and police protection activities for the Trust Lands between Parties; and (b) jointly resolve any day-to-day jurisdictional or law enforcement matters that may arise in the future related to the Trust Lands that cannot be resolved at the staff level.

3.3.2. The Law Enforcement Intergovernmental Agreement. The Law Enforcement Work Group shall promptly meet and confer after the Effective Date of this Agreement to, as may be necessary, modify and/or develop the agreement or agreements required by subsection 3.3.1, which shall, at the minimum, address the following:

3.3.2.1. Extradition. Whether and under what terms the Tribe will permit the formal extradition of anyone arrested on the Trust Lands and the manner and means they will be turned over to the appropriate jurisdiction.

3.3.2.2. Cross-Deputization. The requirements under which qualified TPD officers shall be cross-deputized by the Pascua Yaqui Tribe so that TPD officers will have the power and authority to issue citations, make arrests and enforce all applicable Tribal laws on the Trust Lands. The intergovernmental agreement should also address (a) the requirements and qualifications necessary for cross-deputization of TPD officers by the Tribe; and (b) the scope of powers granted to TPD officers under Tribal law once cross-deputized. Nothing in this Agreement is intended to prohibit reciprocal cross-deputization for qualified Pascua Yaqui police officers by Tucson to the extent the Parties determine that such cross-deputization is appropriate.

- 3.3.2.3. Custody of Persons. The terms under which Tribal members arrested by TPD on the Trust Lands shall be held by TPD or transported to the appropriate Tribal or federal detention facility or jail for further booking and detention pending an initial appearance or bond setting.
- 3.3.2.4. Citations. The manner and form of citations to be issued by TPD for traffic violations and for other crimes and offenses committed on the Trust Lands under applicable Tribal law. The Tribe shall bear the cost of producing Tribal citations books for use by TPD.
- 3.3.2.5. Authority or Control of TPD Officers. The understanding between the Parties as to the limits of authority or control that the Tribe will be entitled to exercise over the discharge of the duties of cross-deputized TPD officers providing law enforcement services on the Trust Lands.
- 3.3.2.6. Communication between Jurisdictions. The standard operating procedures for communication and information sharing that will be implemented between the Parties' respective law enforcement agencies in the performance of their law enforcement functions on or related to the Trust Lands including, but not limited to, investigations, securing and the presentation of arrest warrants and search and seizure warrants, criminal prosecutions and post-conviction supervision and monitoring.
- 3.3.2.7. Special Events. The manner in which the health, safety and welfare of residents and visitors to the Trust Lands and surrounding area will be protected during special events through appropriate law enforcement services and cost sharing arrangements.
- 3.3.2.8. Hot Pursuit. The terms under which TPD shall be entitled to pursue an offender who is observed to have committed an offense off the Trust Lands onto the Trust Lands while in "hot pursuit."
- 3.3.2.9. Joint operations. The terms under which TPD and the Pascua Yaqui Police Department may conduct joint operations on the Trust Lands.
- 3.3.2.10. Tribal Orientation. The requirements under which TPD officers will complete an orientation on Pascua Yaqui Tribal culture and laws and federal jurisdiction in Indian Country prior to providing law enforcement services on the Trust Lands. The Tribe shall bear the costs of hosting and providing the Tribal orientation required by this Section, while Tucson shall bear the costs of its officers' participation in the orientation.

3.3.2.11. Bureau of Indian Affairs (“BIA”) Special Law Enforcement Commission. The terms under which the Parties may choose to request from the BIA the issuance of special law enforcement commissions for TPD officers for purposes of enforcing federal laws applicable within Indian Country, including, but not limited to, the General Crimes Act, 18 U.S.C. § 1152 and the Major Crimes Act, 18 U.S.C. § 1153.

3.3.2.12. Other Law Enforcement Matters. All other matters recommended by the Law Enforcement Work Group and approved by the Parties.

3.3.3. Meetings. After the implementation of the intergovernmental agreement(s) called for by this Section, the Law Enforcement Work Group shall meet as needed at a mutually convenient time and location agreed upon by the Law Enforcement Work Group in order to address new issues that may arise in the law enforcement context related to the existence of the Trust Lands within Tucson City limits.

3.3.4. Recommendations. The Law Enforcement Work Group may make recommendations to the Parties, including recommendations for additional intergovernmental agreements or amendments thereto, which both Parties shall consider before taking action on the recommendation.

4. PAYMENTS IN LIEU OF TAXES AND IMPACT FEES.

4.1. Except as provided for in Section 9 of this Agreement related to the development of a Class II or Class III Gaming Facility on the Trust Lands or as specifically provided in this Section 4, Tucson and the Tribe agree to be guided by the City financial models to structure the in lieu of tax payments and impact fees (“in lieu payments”) to compensate the City for services provided to the Trust Lands or other material impacts to Tucson under the terms outlined in this Section. Subject to the limitations and conditions provided for in this Agreement, if the Tribe engages or permits others to engage in activities on the Trust Lands that would normally be subject to taxation or the imposition of impact fees if undertaken within the City of Tucson, the Tribe shall make or cause to be made annual payments to the City in lieu of taxes and impact fees at the same rates as if the Trust Lands were located within the City, as set forth in this Section 4.

4.2. Payments in Lieu of Transaction Privilege Taxes. Except as provided in subsections 4.4 and 4.5, the Tribe agrees to pay or cause to be paid to Tucson only those Transaction Privilege Taxes specifically listed below, less the allowable exemptions, deductions, and exclusions for the business activity applicable to any other business or entity located within the City of Tucson, as follows:

4.2.1 Retail, including the sale of tangible items, including liquor: 2.6%.

- 4.2.2 Sale of prepared food and drink including liquor: 2 %.
 - 4.2.3 Transient Rental (Hotel): Rental of lodging rooms for less than 30 days: 6% plus \$4 per room per 24-hour period.
 - 4.2.4 Amusements: 2% (e.g., movie theaters, video games, concert tickets, fitness centers).
 - 4.2.5 Contracting, Construction of new buildings: 2% of Gross Proceeds less standard deduction.
 - 4.2.6 Rental of Real Property Rental of land and buildings to unrelated Parties: 2%.
 - 4.2.7 Utility Tax (pursuant to subsection 4.5.1, would not apply to governmental functions and residential housing owned by the Tribe): 2%.
- 4.3. Changes to Transaction Privilege Tax Rates. At the time of this Agreement the difference between the “usual” City Tax Rate of 2% and the current rate of 2.6% are recent (since 2017) tax increases for the City parks and its zoo and for City transportation infrastructure. For all but retail in Section 4.2.1, above, the reduced rates reflect that the Tribe will maintain the Neighborhood Center and will also be responsible for transportation improvements on the Trust Lands. In the event Tucson increases or decreases the Transaction Privilege Tax Rates listed in subsection 4.2, above, as part of a normal City wide rate adjustment process, the Tribe agrees to pay or cause to be paid payments in lieu of taxes at the newly established rates, calculated with any deductions or exemptions that would otherwise apply to such activities as if they were undertaken within the City of Tucson.
- 4.4. New Transaction Privilege Taxes. In the event Tucson implements any new form of tax within the City that would normally be applicable to activities on the Trust Lands, if these lands were not held in trust by the United States for the Tribe, the Tribe agrees to meet with the City upon request to discuss whether and to what extent the Tribe may pay, or cause to be paid, the new tax for those businesses operating on the Trust Lands.
- 4.5. Limitation On In Lieu Payments.
- 4.5.1. Tribal Public Functions. The Parties agree the Tribe shall not be required to pay or cause to be paid in lieu payments related to the construction, rental or operation of any Tribally funded or federally funded housing, government or administrative facilities constructed, developed or improved on the Trust Lands or any other governmental activity or function that would not otherwise be taxable under applicable laws or authorities if performed within the City of Tucson.

- 4.5.2. Micro Business Exception. Tucson agrees those very small vendors that traditionally operate during ceremonial events shall not be required to pay any of the Transaction Privilege Taxes required by this Agreement.
- 4.6. Property Taxes. The Tribe is not required to make payments in lieu of property taxes for any tribally-owned real property or buildings within the Trust Lands except that for any commercial establishment constructed on the Trust Lands that derives more than 50% of its gross income from the retail sale of tobacco or liquor, Tribe agrees to make payments in lieu of property tax at the City's established rate. In the event of any dispute over valuation, the City and Tribe agree to the dispute resolution mechanisms established in this Agreement to establish the value of the commercial property.
- 4.7. Payment of in Lieu of Impact Fees. Prior to the construction of a new development on the Trust Lands for any non-governmental purpose, such as amusements, retail sales, commercial activities, manufacturing, or the other similar activities, but not for gaming which is subject to the separate requirements of Section 9 of this Agreement, the Tribe will make or cause to be made those payments in lieu of impact fees for the new development required by Section 4 in accordance with the then applicable City of Tucson impact fee schedule, as established pursuant to the Tucson City Code, that would apply at the time of commencement of construction if the project was developed within the City of Tucson, except that the Parties agree that the Tribe is entitled to the following offset against such impact fees:
- 4.7.1. The "transportation" portion of any payment in lieu of impact fee may be offset by any improvements constructed by the Tribe pursuant to subsection 5.4, that are located outside the Trust Lands and within the Tucson City limits;
- 4.7.2. The "parks" portion of any payment in lieu of impact fee shall be offset by any improvements on those Trust Lands depicted as "Parcel K" and "Parcel L" on Attachment 1 used for cultural and ceremonial purposes as more fully described in Section 10 of this Agreement; and
- 4.7.3. Any other portion of any other payment in lieu of impact fee that would be offset in accordance with the then applicable City of Tucson impact fee schedule if the development was located within the City of Tucson.
- 4.8. Payments in Lieu of State Shared Revenue. At present, the State of Arizona provides State Shared Revenue to the City of Tucson for each resident of the City. The Parties acknowledge that it is an undecided legal question as to whether or not the State of Arizona could withhold State Shared Revenue from Tucson due to the future migration of Tucson residents onto the Trust Lands that are located within the exterior boundaries of Tucson City limits. Therefore, in the event the Tribe constructs residential single-family or multi-family housing on the Trust Lands during the term of this Agreement that will house in excess of 100 persons, the Parties agree to meet and confer to determine whether or not the Tribe should compensate Tucson

for any material loss of State Shared Revenue resulting from the construction of the housing development on the Trust Lands and any corresponding movement of Tucson residents to the Trust Lands. If the Parties are unable to reach agreement as to the appropriate amount of payments to be made by the Tribe to Tucson in lieu of State Shared Revenue, the matter may be resolved pursuant to the dispute resolution provisions of this Agreement.

- 4.9. Tribal Eligibility for City Economic Development and other Incentive Programs. If the Tribe or any developer on the Trust Lands would be eligible for any City Economic Development Incentives or other incentives that apply at the time of construction or renovation for projects that would otherwise be located within the City of Tucson, including but not limited to the City's Government Property Lease Excise Tax (GPLET) Incentive, the Site-Specific Sales Tax Incentive, the Primary Jobs Incentive, or any other economic development or other incentive of any kind, the Tribe or any developer on the Trust Lands, shall also be eligible to apply to offset any in lieu payment or other eligible fee that would normally be offset under these incentives. For example, if the Tribe constructs a project on Tribal Lands that would be exempt from Construction Sales Tax (2%) if located within the City, the Tribe would not be obligated to make a 2% payment in lieu of tax under Section 4 for this activity.
- 4.10. Eligibility to Apply for Grants under the City's Green Stormwater Infrastructure Program. The Tribe shall be eligible to apply for grants to install stormwater harvesting and related features on the Trust Lands under the City of Tucson's Green Stormwater Infrastructure Program on the same terms and conditions as any other neighborhood or community group located within the City of Tucson.
- 4.10.1. Audit. Except as provided for in Section 9 of this Agreement related to the development of a Class II or Class III Gaming Facility on the Trust Lands, no more than annually, Tucson shall be entitled to request that the Tribe provide or cause to provide (if the business is not owned or operated by the Tribe), the signed statement of a Certified Public Accountant licensed in the State of Arizona, certifying that accountant has reviewed the most recent annual outside audit for the proceeding 12 month period for those businesses operated on the Trust Lands that are required to pay the in lieu payments required by this Section and confirming that the appropriate amount of in lieu payments have been paid to the City under this Agreement. If the review reveals that all of the in lieu payments required by this Agreement have not been paid to the City, the accountant shall determine the total amount of delinquent in lieu payments that remain due and owing to Tucson.
- 4.10.2. For Those Business Owned or Operated by the Tribe. If the review required by subsection 4.9.1 reveals that the in lieu payments paid by the Tribe for its Tribally owned or operated businesses on the Trust Lands were insufficient as calculated in conformance with Section 4 of the Agreement, the Tribe shall

promptly pay or cause to be paid any outstanding amount of unpaid in lieu payments to Tucson.

4.10.3. For Those Businesses Not Owned or Operated by the Tribe. If the review required by subsection 4.9.1 reveals that a person or entity (other than the Tribe) doing business on the Trust Lands has failed to pay the in lieu payments required by Section 4 of this Agreement, Tucson shall provide written notice of the outstanding amount of unpaid in lieu payments to the business or entity, with a copy to the Tribe, along with a request for payment. If prompt payment is not made, the Tribe will work jointly with Tucson to seek the full remittance of the outstanding in lieu payments; however, in no event will the Tribe be responsible for the payment of in lieu payments owed by a person or entity, other than the Tribe.

4.10.4. Overpayment of In Lieu Payments. If the Audit required by subsection 4.9.1 reveals that the amount of in lieu payments made to Tucson materially exceeded the amount due under this Agreement, the Parties shall promptly meet and confer to determine how a system for crediting such an overpayment back to the Tribe or business under terms mutually acceptable to the Parties.

5. FUTURE DEVELOPMENT ON THE TRUST LANDS

5.1. Current Status of Development Plans for Trust Lands. The Parties acknowledge that as of the Effective Date of this Agreement, the Tribe has neither developed nor approved any specific development plan for the proposed uses of the Trust Lands, though it is intended by the Tribe that any development on the Trust Lands will provide economic, employment, community or other benefits for its Tribal members and for the Tribe as a whole.

5.2. Future Developments; Tribe to Share Future Development Plans with Tucson. Because the Trust Lands will be owned by the United States for the benefit of the Tribe, Tucson acknowledges that the future development on the Trust Lands will not be governed by Tucson's Unified Development Code (UDC), Land Use Code, Zoning requirements or any other related City regulations or law, except as expressly provided for herein. Notwithstanding the foregoing and without waiving any sovereign rights, the Tribe agrees to share or require the sharing of development plans for the Trust Lands with Tucson prior to finalizing such plans for Tucson's review and comment.

5.3. Tribe to Meet and Confer Upon Request. Upon the request of Tucson, the Parties and any designated participants from Tucson's and the Tribe's relevant departments shall promptly meet and confer to jointly review Tucson's comments to any development plans shared under subsection 5.2, and to discuss ways in which the proposed development might better:

- Protect and promote the general health, safety, and welfare of present and future residents in the area;
- Comport with the policies of Tucson's General Plan;
- Meet lighting standards consistent with Dark Sky practices in Tucson and Pima County;
- Encourage the most efficient use of land through site sensitive design;
- Reduce potential hazards to the public resulting from incompatible land uses or from the development of environmentally hazardous or sensitive lands;
- Protect and enhance the areas natural, cultural, historical, and scenic resources; and
- Promote the economic stability of both the Tribal community and the Tucson region as a whole.

5.4. Traffic Impact Analysis Performed Upon Request. Upon the request of Tucson, the Tribe agrees to prepare or cause to be prepared a Traffic Impact Analysis (TIA) for any development on the Trust Lands consistent with Tucson's Uniform Development Code and Section 6.0 of Tucson's Traffic Access Management Guidelines, as may be amended from time-to-time by Tucson. The Parties and their designated participants shall meet and confer in conformance with subsection 5.3 to jointly review the TIA and fairly allocate the cost of any mitigation measures identified in the study between the Tribe and Tucson.

5.5. Applicability of International Codes to Developments on the Trust Lands. The Tribe agrees to impose minimum building standards for developments on the Trust Lands that are no less restrictive than those standards established by the following International Codes, as amended and adopted by Tucson as of the Effective Date of this Agreement, or any nationally-recognized updates thereto:

- International Building Code
- National Electrical Code
- International Energy Conservation Code
- International Existing Building Code
- International Fuel Gas Code
- International Mechanical Code
- International Plumbing Code
- International Residential Code
- International Fire Code

5.5.1. Inspectors. The Tribe agrees to engage a state certified inspector to conduct building inspections on the Trust Lands prior to occupancy in order to verify the buildings' consistency with the International Codes required by subsection 5.5.

5.5.2. Tucson Entitled to Inspection Reports. Tucson shall be entitled to receive copies of the inspection reports required by subsection 5.5.1 upon request. In

the event the Tribe's development plans meaningfully deviate from the minimum standards established by the International Codes listed in subsection 5.5, the Tribe agrees to meet and confer with Tucson, upon request, as provided for in subsection 5.3.

5.6. Zoning. As of the Effective Date of the Agreement, Tucson has zoned the approximate 1.7 acre Cultural and Church Grounds, depicted as "Parcel K" on Attachment 1, as both R-2 (medium density residential) and C-1 (low-intensity commercial), while the remaining property is zoned I-1 (light industrial). As provided in subsection 5.2, because the Trust Lands will be owned by the United States for the benefit of the Tribe, future development on the Trust Lands will not be governed by Tucson's zoning requirements. Notwithstanding the foregoing, the Tribe acknowledges the important role that zoning plays in Tucson's ability to maintain orderly growth, control population density, and assure property owners and residents that the characteristics of nearby areas will remain stable and compatible with Tucson's General Plan.

5.6.1. Future Developments on Trust Lands Anticipated to be Compatible with Existing Zoning. The Tribe anticipates that future developments on the Trust Lands will be generally compatible with Tucson's current zoning and permitted Land Uses for the Tribal Property. In the event a future development on the Trust Lands would be in variance with Tucson's then existing zoning and permitted Land Uses, the Tribe agrees, upon Tucson's request, to meet and confer as provided for in subsection 5.3.

5.6.2. No Heavy Industrial Zone Developments on the Trust Lands. In no event will the Tribe develop or permit a development on the Trust Lands without Tucson's approval that would be considered only compatible with a "Heavy Industrial Zone" or "I-2" designation under Tucson's Land Use Code because of the development's potential to (a) create air pollutants, excessive noise, traffic, glare, or vibration; (b) produce noxious odors; (c) use of hazardous materials; or (d) present unsightly appearances.

5.7. If the Parties, after meeting and conferring, are unable to agree to the appropriate zoning, building code standards, mitigation measures or cost allocations called for under this Section 5, the issues shall be resolved pursuant to the dispute resolution provisions found in this Agreement.

6. NO PERMITS OR APPROVALS REQUIRED FROM TUCSON

Unless expressly provided for herein, nothing in this Agreement shall be interpreted to provide Tucson with authority to require the Tribe or any person, or entity doing business on the Trust Lands in accordance with applicable Tribal law, to pay a fee or secure any form of zoning determination, variance, permit, plan approval, certificate, license or other permission from Tucson for businesses or developments on the Trust Lands.

7. CITY OF TUCSON FIRE DEPARTMENT

The Tribe agrees to cooperate with the City of Tucson Fire Department as follows:

- 7.1. The Tribe agrees that, prior to construction, the Tribe shall provide or cause to be provided to the City of Tucson Fire Department a copy of any development plans for the new construction or significant remodeling of any building on the Trust Lands in order to ensure compliance with the Fire Code that applies within the City limits at the time of construction. Upon the request of the Tucson Fire Department, the Tribe agrees to promptly meet and confer with the Fire Department and its designees, to jointly review any Fire Department comments to the development plans and to work in good faith to resolve any safety concerns that the Fire Department may have regarding the plans.
- 7.2. The Tribe shall provide or cause to be provided to the Fire Department with an opportunity to perform a pre-planned walk through or similar activities for any building constructed or significantly remodeled on the Trust Lands.
- 7.3. Any dispute over the applicability of Fire Code provisions shall be resolved pursuant to the dispute resolution provisions found in this Agreement.

8. TUCSON'S SUPPORT FOR FEE-TO-TRUST

In consideration for the benefits received by Tucson under this Agreement and in the spirit of government-to-government cooperation, Tucson agrees to support the transfer of the Tribal Property to the United States to be held in trust for the benefit of the Tribe through both oral and written communications to the United States Congress, the Department of the Interior, the BIA, the State of Arizona, Pima County, and any other participating federal or state agency or government, and further agrees to work closely with the Tribe to respond to comments received by any of the above referenced entities to support the transfer of the Tribal Property into trust for the benefit of the Tribe. Tucson further agrees that it will not object or appeal or support any other person or entity's objection or appeal, whether in the media, before any legislative or public body or before the Interior Board of Indian Appeals or any other legal forum, regarding the decision by United States to accept the Tribal Property into trust for the benefit of the Tribe.

9. PROTOCOL FOR FUTURE DISCUSSIONS FOR GAMING ON THE TRUST LANDS

- 9.1. Class II and III Gaming. On May 24, 2021, the Amended and Restated Gaming Compact between the Tribe and the State of Arizona ("Compact") became effective. The Compact provides for the development of a Class III gaming facility on the Trust Lands when the Tribal Lands are acquired in trust for the benefit of the Pascua Yaqui Tribe, and made eligible for gaming by an act of Congress under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721. Nothing in this Section 9 precludes the Tribe from operating a Class II Gaming Facility on the Trust Lands under applicable law.

9.2. Additional Good Faith Negotiations Required for Potential Gaming Development.

The Parties agree that additional good faith negotiations may be needed prior to the development of a Class III Gaming Facility on the Trust Lands. Such negotiations would likely explore the measures needed to mitigate for the impacts and costs to Tucson (if any) resulting from the development and operation of a gaming facility on the Trust Lands, among other things. Based on the foregoing, consistent with the spirit of government-to-government cooperation expressed in this Agreement, and except as provided for in subsection 9.3, should the Tribe be permitted to engage in gaming on the Trust Lands, the Tribe agrees to meet and confer with Tucson as required by subsection 9.2.1 to discuss the Tribe's gaming facility development plans and to work with Tucson to consider ways to mitigate any additional impacts or costs to Tucson that are not already mitigated under this Agreement, through any requisite NEPA process or under the terms of the Tribe's Compact with the State of Arizona. The Tribe and Tucson shall abide by the following negotiation process to effectuate the goals expressed in this subsection 9.2:

- 9.2.1. The Tribe will notify the City of Tucson, through its City Attorney (and no other person or department), at least thirty (30) days prior to any formal action on the part of the Tribe, including the introduction of Congressional legislation, needed for the Tribe to conduct gaming on the Trust Lands. Tucson agrees that any discussion within the Tucson City Council related to the notifications received from the Tribe under subsection 9.2.1 shall be in Executive Session.
- 9.2.2. Following the Tribe's initial thirty (30) day notice to Tucson required by subsection 9.2.1, the Oversight Group and its designated participants shall promptly meet and confer to discuss the general parameters under which Tucson could agree to publicly support gaming on the Trust Lands, subject to the additional negotiation requirements found in subsections 9.2.4 and 9.2.5. Tucson acknowledges that the Tribe is unlikely to have detailed development plans for a gaming facility at the time it initially seeks to move forward with any required legal or regulatory requirements for gaming, and therefore, only general terms and parameters for the gaming facility could be discussed and agreed upon at this stage in the process.
- 9.2.3. The Tribe shall not be precluded from moving forward with Congressional action or any required federal or state legal or regulatory requirements, if the Parties are unable to agree on the general parameters needed to secure Tucson's support for the Tribe's request pursuant to subsection 9.2.2. In such event, Tucson shall be entitled to participate in the full consultation and public objection process afforded to it under any applicable federal or state regulatory process, NEPA or other applicable law.
- 9.2.4. In addition to the notice requirements outlined in subsection 9.2.2, and except as provided for in subsection 9.3, the Tribe agrees to notify Tucson, through its City Attorney (and no other person or department), at least one (1) calendar

year prior to opening a gaming facility for business on the Trust Lands in order to provide the Parties with an opportunity to negotiate the terms under which the Tribe might compensate Tucson for any losses or costs to Tucson (if any) stemming from the presence of the gaming facility on the Trust Lands. To facilitate the negotiations contemplated by this Section, the Tribe agrees to provide Tucson with access to its current development plans and designs for the gaming facility upon request. The Tribe may condition such access on such terms and conditions as it reasonably determines are necessary to protect the confidential and proprietary nature of the development plans.

9.2.5. If, after engaging in the good faith negotiations required by subsection 9.2.4, the Parties are able to mutually agree on a set of terms to fully mitigate for any material impacts to Tucson stemming from the development of a gaming facility on the Trust Lands, Tucson agrees to support the development and operation of the gaming facility under those terms set forth in an intergovernmental agreement between the Parties. If, however, after engaging in the good faith negotiations required by subsection 9.2.4, the Parties are unable to reach mutual agreement on a mitigation package for the development of a gaming facility on the Trust Lands, then each Party may agree to submit any outstanding issues to a mutually-agreeable third party for non-binding mediation. If the Parties cannot agree on a third-party mediation process and remain unable to reach mutual agreement on a mitigation package for the development of a gaming facility on the Trust lands, the Tribe shall nevertheless be entitled to develop the gaming facility as proposed or as may be reasonably modified by the Tribe, but either Party shall be entitled to trigger the independent study and dispute resolution process required by subsection 9.2.6, below.

9.2.6. After one year of the gaming facility being fully operational (which shall be certified by mutual agreement of the Parties at the time of its full operation), a neutral qualified consultant shall be selected by the Parties, or if the Parties cannot agree on the identity of a neutral qualified consultant, each party will submit the name of a neutral qualified consult to their respective authorized attorneys, who will confer and select one of the nominated consultants by a single coin flip; the Tribe's legal counsel to elect "heads or tails." The selected consultant will be engaged to prepare a confidential study examining the financial impacts to Tucson (if any) stemming from the presence of the gaming facility on the Trust Lands, which shall be provided solely to the Parties' authorized attorneys. The Parties will share the cost of the study equally. If the Parties, having examined the study required by this subsection, cannot agree on the form of mitigation (if any) to be undertaken by the Tribe under this Section 9, these issues shall be resolved pursuant to the dispute resolution provisions found this Agreement. Injunctive relief shall not be an available remedy. Any study prepared under this subsection 9.2.6 shall remain the sole and exclusive property of the Tribe and not the City of Tucson or any other third party.

9.2.7. Confidentiality. All studies, communications or materials of any kind, nature or description made or disclosed by or to any Party, attorney, or non-Party participant during the course of the communications or negotiations required by Section 9 are confidential and not admissible in any court or administrative procedure except as provided for by law or pursuant to applicable court rule and may not be disclosed by any Party, attorney, or other non-Party participant unless all of the Parties and/or the Party's representative agree in writing.

9.2.7.1. All communications made during the course of these negotiations are conditioned upon the promise and agreement of confidentiality and non-admissibility.

9.2.7.2. No admission, representation, statement or other confidential communication made in the process of setting up or conducting the communications or negotiations required by this Section 9 shall be admissible as evidence or subject to discovery, except that no fact independently discoverable shall be immune from discovery by virtue of having been disclosed in such confidential communication.

9.2.7.3. The Parties agree to take reasonable steps and precautions as may be available to them to preserve the confidentiality of the information shared pursuant to this Section 9, including through the use of Executive Session authority, the attorney client privilege, common interest privilege or any other authority or privilege available to them under the law. Should Tucson receive a public records request for any shared information, it shall notify the Tribe within sufficient time for the Tribe to seek any legal remedies regarding disclosure of the information.

9.3. Impact Of Changes Pursuant To Tribal Gaming Compact. In the event Paragraph 3(h) of the Compact is triggered by the actions of the State of Arizona at any time during the term of this Agreement, in order to preserve the competitive position of the Tribe vis-à-vis other tribes, the Parties agree that the Tribe shall not be required to follow the advanced notice and negotiation requirements set forth in subsections 9.2.1 through 9.2.5, prior to constructing or operating any form of Class II or Class III gaming facility on the Trust Lands. In lieu of meeting the notice and negotiation requirements found in subsections 9.2.1 through 9.2.5 of the Agreement, in the event Paragraph 3(h) of the Gaming Compact is triggered, the Tribe agrees:

9.3.1. To promptly engage in good faith negotiations with Tucson related to the Tribe's plans for gaming on the Trust Lands; and

9.3.2. If, after engaging in the good faith negotiations required by this subsection 9.3, the Parties are unable to agree on an appropriate way to mitigate for any material financial or other impacts to Tucson (if any) stemming from the

conduct of gaming on the Trust Lands, either Party shall be entitled to trigger the independent study and dispute resolution process required by subsection 9.2.6 of the Agreement. Injunctive relief shall not be an available remedy.

10. THE PASCUA YAQUI NEIGHBORHOOD CENTER

On November 22, 2011, the Parties entered into the *Intergovernmental Agreement Between the City of Tucson and the Pascua Yaqui Tribe Regarding Transfer of the Pascua Yaqui Neighborhood Center to the Pascua Yaqui Tribe* (“Neighborhood Center IGA”). As part of the Neighborhood Center IGA, Tucson consented to the transfer of the Pascua Yaqui Neighborhood Center located in the Old Pascua Community to the Tribe and the Tribe agreed to maintain the Neighborhood Center under certain terms and conditions.

- 10.1. Public Access. The Neighborhood Center is located within the 1.7 acres of culturally significant Tribal Property (“Parcel K”) that the Tribe wishes to transfer to the United States for the benefit of the Tribe pursuant to an act or acts of Congress, through the administrative process outlined in 25 C.F.R. 151.11, or as otherwise may be permitted by law. The Tribe agrees to continue to provide “Public Access” to the Neighborhood Center subject to the time limitations and other requirements of the Neighborhood Center IGA, once the Tribal Property is placed into trust.
- 10.2. Right of First Refusal Declined by Tucson. Subsection 4.7 of the Neighborhood Center IGA provides Tucson with a “right of first refusal” to reacquire the Neighborhood Center IGA at no cost from the Tribe, in the event the Tribe proposes to transfer “any rights or interest in the Center to a third Party.” Notwithstanding any applicability of subsection 4.7 to the Tribe’s current proposal to transfer the 1.7 acres (“Parcel K”) into trust, and in consideration of the mutual promises and covenants contained herein, Tucson hereby declines to exercise any right of first refusal it may have under subsection 4.7 of the Neighborhood Center IGA and consents to the transfer of the Center to the United States to be held in trust for the benefit of the Tribe.

11. MISCELLANEOUS PROVISIONS

- 11.1. Term. The term of this Agreement shall be twenty-five (25) years from the Effective Date of this Agreement. Six months prior to the end of this term, Tucson and the Tribe will meet to discuss the necessity to extend, amend or terminate this Agreement.
- 11.2. Force Majeure. In the event any Party is rendered unable, wholly or in part, by force majeure reasons to carry out its obligations under this Agreement, the obligations of both the Tribe and Tucson so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused, but for no longer period; and such cause shall be so far as possible remedied with the best efforts of the disabled Party and with all reasonable dispatch. The term “force majeure” as employed in this Agreement shall mean acts of God, strikes, lockouts or other industrial or labor disturbances, acts of the public enemy, wars, blockades,

insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, storms, floods, washouts, droughts, unavoidable interruptions in electric power to drive pumps, interruptions by government not due to the fault of Parties, including injunctions, civil disturbances, explosions, well collapses, breakage or accident to machinery or transmission facilities, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the Parties. Nothing herein contained shall be construed as requiring either Party to settle a strike or labor dispute against its will. Nothing herein shall prohibit either Party at its own expense from using whatever self-help remedies which may be available to it.

- 11.3. Dispute Resolution. Except as otherwise expressly provided for herein, in the event of any dispute, claim, question, or disagreement (“Dispute”) arising from or relating to this Agreement or the breach thereof, the Parties hereto agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Rules before resorting to binding arbitration or bringing suit in any Federal, state or tribal court.

11.3.1. Arbitration. If a Party in good faith concludes that a Dispute is not likely to be resolved by mediation, then, upon notice by that Party to the other, all Disputes shall be finally and exclusively settled by arbitration administered by the AAA in accordance with the provisions of its Commercial Arbitration Rules. Within ten days after the commencement of arbitration, the Parties shall attempt in good faith to agree to one arbitrator. In the event the Parties fail to agree to one arbitrator, then each Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten days of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. The third arbitrator shall be a practicing attorney, actively engaged in the practice of law for at least ten years and a member in good standing with the State Bar of Arizona. Alternatively, the third arbitrator may be a retired judge of the federal court or the trial court for the Arizona. The third arbitrator shall have the AAA-acknowledged expertise in the appropriate subject matter. The place of arbitration shall be in Pima County, Arizona. The award shall be made within nine months of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding shall be final and binding.

- 11.3.2. Enforcement. Judgment upon the award rendered by the arbitrators against Pascua Yaqui Tribe shall, upon request of the prevailing Party, be enforced in the Pascua Yaqui tribal court system (“Tribal Court”) and such proceeding shall be conducted subject to the rules and procedures thereof; provided, however, that the Parties agree that the Tribal Court shall have the power to

enforce, but not review or modify, the arbitrators' award. Pascua Yaqui Tribe, for itself and its authorities and instrumentalities, agrees that it shall accept and be bound by the award of the arbitrators or a judgment, ruling or order which is final (because either the time for appeal has expired or the judgment or order is issued by the court having final appellate jurisdiction over the matter and is not subject to collateral attack). Notwithstanding anything to the contrary in this Agreement, the Parties agree that such agreement constitutes a limited waiver of sovereign immunity solely for the purposes of enforcing the provisions of this Agreement and not a general or complete waiver of sovereign immunity.

11.4. Choice of Law.

11.4.1. The laws of the State of Arizona shall govern interpretation of this Agreement.

11.4.2. To the extent state law does not address the relevant issues, the laws of the Pascua Yaqui Tribe and the United States shall apply.

11.5. Assignment of Agreement: The Parties shall have no right to assign this Agreement or any interest herein except to their respective successors,

11.6. Notices. Except as expressly provided for herein, all notices, demands, consents, approvals, requests or other communications which either Party to this Agreement may desire or be required to give hereunder (collectively, "Notices") shall be in writing and shall be given by (a) personal delivery, (b) e-mail or facsimile transmission, or (c) a nationally recognized overnight courier service, fees prepaid, addressed as follows:

If to the Tribe, to:

Chairperson
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, Arizona 85757
Telephone: 520-879-6319
Facsimile: 520-879-6308

With a copy to:

Attorney General
Pascua Yaqui Tribe
7777 S. Camino Huivisim, Bldg. C
Tucson AZ 85757-9264
Telephone: 520-883-5106
Facsimile: 520-883-5084

If Tucson, to: City Manager
City of Tucson
310 W. Alameda
P.O. Box 27210
Tucson, Arizona 85726
Telephone: 520-791-2666
Facsimile: 520-791-3293

With a copy to: City Attorney
Tucson City Attorney's Office
255 W. Alameda
P.O. Box 27210
Tucson, Arizona 85726
Telephone: 520-791-4221
Facsimile: 520-623-9803

Any Party may designate another addressee (and/or change its address) for Notices hereunder by a Notice given pursuant to this Section. A Notice sent in compliance with the provisions of this Section shall be deemed given on the date of receipt (or attempted delivery if delivery is refused). E-mail is the preferred method of notice. Notice sent via e-mail shall be acknowledged as received no later than the next succeeding Business Day of being sent and deemed given on the date sent once acknowledged; if receipt is not so acknowledged, notice may be sent by one of the other methods identified in this Section.


- 11.7. Waiver. Waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 11.8. No Third Party Beneficiaries. No term or provision of this Agreement is intended to, or shall be (or construed to be) for the benefit of any person, firm, organization, or corporation not a Party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 11.9. Anti-Contra Proferentem. The Parties and their respective legal counsel have actively negotiated and drafted the provisions of this Agreement. Notwithstanding any rule to the contrary, no provision of this Agreement shall be interpreted or construed against any Party because such Party or its legal counsel was the drafter thereof.
- 11.10. Section Headings. The subject headings of sections and subsections in this Agreement are included for the purpose of convenience only, and shall not affect the construction or interpretation of this Agreement in any manner.
- 11.11. Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the Parties.

- 11.12. Entire Agreement. This Agreement and its recitals constitute the entire agreement between the Parties, and includes all prior oral and written agreements of the Parties. All warranties and guarantees and representations shall survive during the life of this Agreement.
- 11.13. Construction and Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the Parties expressed in the recitals hereof.
- 11.14. Authority. The Tribe represents and warrants that it has legal authority and capacity to enter into this Agreement upon the terms and conditions provided within this Agreement, and has properly and legally authorized and executed this Agreement. Tucson represents and warrants that it has the legal authority and capacity to enter into this Agreement upon the terms and conditions provided within this Agreement, and has properly and legally authorized and executed this Agreement. The Tribe's and Tucson's council resolutions or other written authorizations allowing for the execution of this Agreement will be transmitted to the respective parties along with the executed copies of this Agreement, and thereafter be considered as attachments to this Agreement.
- 11.15. Legal Jurisdiction. Nothing in this Agreement shall be considered as either limiting or extending the legal jurisdiction of either the Tribe or Tucson.
- 11.16. Severability. In the event that any provision of this Agreement or the application thereof is held invalid, such invalidity shall have no effect on other provisions and their application that can be given effect without the invalid provision, or application, and to this extent the provisions of the Agreement are severable.
- 11.17. Assignment. This Agreement shall be binding on the successors and assigns of the Parties hereto.
- 11.18. Effective Date. This Agreement shall be effective upon filing of the original fully executed Agreement with the office of the Pima County Recorder.

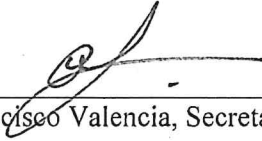
[Signatures on following pages]

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first above written.


PASCUA YAQUI TRIBE

By: 
Peter Yucupicio, Chairman

ATTEST:

By: 
Francisco Valencia, Secretary

APPROVED AS TO FORM:

By: 
Alfred Urbina, Attorney General

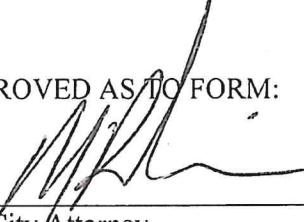
CITY OF TUCSON

By:  August 10, 2021
Mayor, Regina Romero

ATTEST:

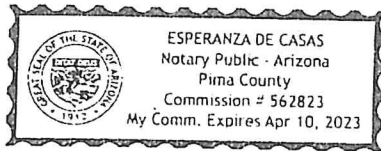
By:  August 10, 2021
City Clerk, Roger W. Randolph

APPROVED AS TO FORM:

By: 
City Attorney

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 25th day of August, 2021, by Peter S. Yucupicio in his capacity of Chairman of the Pascua Yaqui Tribe, a federally recognized Indian Tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, on behalf of such Tribe.



Esperanza De Casas
Notary Public

My Commission Expires:

Apr. 10, 2023

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 10th day of August, 2021, by Regina Romero in her capacity as Mayor of the City of Tucson, Arizona, a municipal corporation, on behalf of such municipal corporation.

Notary Public

My Commission Expires:



ATTACHMENT 1
to the First Amended and Restated Intergovernmental Agreement
Between the City of Tucson and the Pascua Yaqui Tribe

Final August 2, 2021