

**GOODS AND PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE PASCUA YAQUI TRIBE
AND**

[Click here to enter text.](#)

This Goods and Professional Services Agreement is entered into by and between the Pascua Yaqui Tribe (“Tribe”) and [Click here to enter text.](#) (“Contractor”), with offices located at [Click here to enter text.](#).

In consideration of the mutual promises set forth herein, the parties agree as follows:

1.0 SCOPE OF WORK.

[Click here to enter text.](#)

- ☐ Contractor’s proposal (describing the proposed scope of work) is attached and incorporated into this Agreement as Attachment A.

2.0 TRIBAL REPRESENTATIVES.

2.1 **CONTRACT REPRESENTATIVE:** Department Employee is Tribe’s Representative responsible for the management and supervision of this Agreement. Their contact information is Phone number, Email address.

2.2 **ACCOUNTS PAYABLE SPECIALIST:** AP employee is the Tribe’s Representative responsible for the payment of this Agreement. Their contact information is Phone number, Finance.ap@pascuayaqui-nsn.gov.

3.0 **TERM.** The term of this Agreement shall be effective as of the last date executed by the parties and shall continue through the completion of the work or [Click here to enter text.](#), whichever comes first.

4.0 FEES; EXPENSES; LIMITATIONS, BILLING.

4.1 *Fees.* As compensation for services performed under this Agreement, Contractor shall be paid a fee as follows: [Click here to enter text.](#)

4.2 *Expenses.* Unless specifically set forth herein, Tribe shall not have any obligation or liability to Contractor for any expenses incurred by Contractor in connection with this Agreement. Contractor shall bear the costs of performance of its obligations hereunder, including any applicable taxes, licenses, and fees unless agreed upon by the parties in writing.

- 4.3 *Limitations.* The total amount of this Agreement shall not exceed \$[Click here to enter text.](#). Tribe shall have no liability for fees that exceed the total amount of this Agreement.
- 4.4 *Billing.* Contractor shall invoice Tribe consistent with the fee agreement described in Section 4.1. Invoice shall be sent to the Tribe's Accounts Payable Specialist identified in Section 2.2 at the email address specified therein. Tribe shall pay Contractor pursuant to Tribe's normal processes and procedures for all undisputed amounts within thirty (30) days of receipt of a valid invoice. If any time period hereunder expires on a day which is a Saturday, Sunday or Tribe holiday, the time period shall be automatically extended to the business day immediately following such Saturday, Sunday or holiday, and no additional interest, if any, shall be due as a result.
- 4.5 *Waiver.* Tribe's payment of Contractor's invoice shall not constitute a waiver of Tribe's right to recover overpayments or make adjustments. Tribe retains the right to audit all present and past invoices. Audits will require Contractor to produce supporting documentation of services performed, and Contractor agrees to provide such documentation.
- 4.6 *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 this 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 from Contractor.
- 4.7 *Appropriations.* All payments made pursuant to this Agreement are contingent upon Tribe's appropriation of sufficient funds. Tribe will use reasonable efforts to ensure appropriated funds are available and sufficient.

5.0 **TERMINATION.**

- 5.1 This Agreement may be terminated by Tribe with or without cause. To the extent that there has not been full performance under the Agreement, Tribe's sole and only obligation to Contractor shall be to pay for services received by Tribe prior to termination.
- 5.2 Contractor may terminate this Agreement with cause with thirty (30) days written notice to Tribe if Tribe performs a material breach of this Agreement. However, Tribe may cure the breach any time prior to the expiration of the required notice period.
- 5.3 Contractor may terminate this Agreement without cause with sixty (60) days written notice to Tribe.

5.4 This Agreement will terminate automatically and without notice upon the occurrence of any of the following events:

5.4.1 The cancellation, termination, reduction or limitation of Contractor's insurance required by this Agreement;

5.4.2 Contractor's suspension by a state or federal entity;

5.4.3 If Tribe determines in its reasonable judgment that Contractor's continued participation may jeopardize the health or safety of individuals receiving or contemplated to receive services from Contractor pursuant to this Agreement;

5.4.4 The indictment, arrest, charge or conviction of any felony or criminal charge against Contractor related to moral turpitude or to Contractor's provision of services the same as or similar to those outlined in the Scope of Work.

6.0 THE CONTRACTOR

6.1 *Contractor's Representative.* Contractor's Representative is Click here to enter text.. Their contact information is Click here to enter text..

6.2 *Certificates and Licenses.* Contractor warrants and represents that Contractor possess the required education, training, knowledge, skills, experience, and licenses or certificates necessary to perform the scope of work; and will maintain throughout the term of this Agreement all appropriate licenses, accreditation and certifications for Contractor to perform the services outlined in the Scope of Work.

6.3 *Industry and Regulatory Standards.* Contractor shall perform his or her work in conformance with all applicable industry or regulatory standards.

6.4 *Fit for Intended Use.* Contractor warrants and represents that if the subject matter of this Agreement is or includes a product, including intellectual property, the product is, and shall remain, free of any liens and fit for its intended purpose; and shall conform to all product performance parameters as shown in demonstrations and described in its product materials for a period of _____ from the date of Choose an item..

6.5 *Risk of Loss.* Contractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated by Tribe. Receipt of conforming materials does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.

6.6 *Laws, Policies, and Procedures.* Contractor warrants and represents that it shall comply with all applicable laws, policies and procedures of the Pascua Yaqui Tribe

the State of Arizona, and the Federal Government. Contractor agrees to cooperate with any administrative procedures which may be adopted by Tribe regarding the performance of the Scope of Work pursuant to this Agreement.

- 6.7 *Insurance.* Contractor warrants and represents that it will maintain, at Contractor's own expense, adequate professional liability insurance coverage during the term of this Agreement for the type of services being providing under the Scope of Work. "Adequate" shall be no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate. The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in this Agreement. Tribe does not warrant that the minimum limits contained herein are sufficient to protect Tribe or Contractor from liabilities that might arise out of the performance of the Scope of Work. All insurance policies shall contain a waiver of subrogation against Tribe for losses arising from work performed by or on behalf of Contractor.
- 6.8 *Independent Contractor.* This Agreement does not create an employment relationship between Tribe and Contractor. Neither party will be deemed an employee, agent, partner, joint venturer, or legal representative of the other for any purpose. Neither party will have any right, power, or authority to create any obligation or responsibility on behalf of the other. Contractor and Contractor's employees will not be entitled to any employee benefits accorded to Tribe's employees, including but not limited to workers' compensation benefits, disability insurance, and vacation and sick pay.
- 6.9 *Tribal Business License.* Contractor warrants and represents that it will abide by 8 PYTC § 3-1-10 *et seq.*, if applicable. Pursuant to the Pascua Yaqui Tribal Code, Contractor may be required to obtain a business license to perform work on the Pascua Yaqui Indian Reservation. An application for a business license can be obtained from the Tribal Employment Rights Office.
- 6.10 *Transaction Privilege Tax.* Contractor warrants and represents that it will abide by 7 PYTC § 4-1-40, if applicable. Pursuant to the Pascua Yaqui Tribal Code, Contractor may be subject to a 5% transaction privilege tax on the amount of the gross proceeds of the contract. If the tax applies, payment must be made to the Pascua Yaqui Finance Department. Contractor is responsible for making timely payment of the tax and complying with the terms of the *Transaction Privilege Tax Code*.
- 6.11 *TERO.* Contractor warrants and represents that it will abide by 8 PYTC § 8-1-10 *et seq.*, if applicable. Pursuant to the Pascua Yaqui Tribal Code, Contractor may be required to comply with Tribe's TERO law, which requires Indian preference in hiring, notification of open positions, and language in any contract Contractor enters into with any subcontractor.

- 6.12 *Conflict of Interest.* Contractor warrants and represents that, during the term of this Agreement, Contractor will not engage in any activity or employment, or enter into any business arrangement, which, in the sole discretion of Tribe, conflicts with Tribe's interests 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 conflicting with the interests of Tribe.

GENERAL TERMS

- 7.0 *Assignment.* Neither this Agreement nor any obligation of the parties hereunder may be assigned in whole or part without the prior written consent of the other party.
- 8.0 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 9.0 *Entire Agreement.* This Agreement which includes any attachments, contains the entire agreement of the parties and cannot be changed except by a writing signed by the parties. This Agreement supersedes all previous communications, representations, understandings, and agreements, either written or oral, between the parties with respect to the subject matter hereof. No terms, provisions or conditions of any purchase order, acknowledgment or other business form that either party may use in connection with the transaction contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify this Agreement, regardless of any failure of a receiving party to object to such terms, provision or conditions. In the event of a conflict between this Agreement and any Attachment, the terms of this Agreement shall prevail.
- 10.0 *Construction.* If there is any conflict or inconsistency between the provisions of this Agreement and any attachment, this Agreement shall control. This Agreement was arrived at by the mutual negotiations of the parties and no rule of construction that a document shall be interpreted or construed against the drafter shall apply.
- 11.0 *Headings.* The section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement.
- 12.0 *Waiver.* Waiver of any provisions of this Agreement or of a party's rights or remedies under this Agreement shall be in writing. No waiver shall constitute a waiver of subsequent breach. Tribe's acceptance of partial performance under this Agreement shall not be deemed to be a waiver of any preceding breach by Contractor, nor shall it constitute a waiver of Contractor's duties to comply with any covenant, term or condition of this Agreement. Contractor shall be and remain liable to Tribe in accordance with the applicable law for all damages to Tribe caused by Contractor's negligent performance of any services under this Agreement.

- 13.0 *Severability.* If for any reason any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, unenforceable, illegal, or inoperable, its invalidity shall not affect the validity and effect of the other provisions hereof.
- 14.0 *Indemnification.* Contractor agrees to defend, hold harmless, and indemnify Tribe against any and all losses, including but not limited to attorney fees, costs, damages, claims, expenses, or other liability whatsoever, including, but not limited to, accident or injury to persons or property, to the extent caused directly by Contractor's negligent or intentional misconduct in the performance of the agreement.
- 15.0 *Confidentiality.* Any information or records provided to or obtained by Contractor from Tribe in the performance of services under this Agreement shall be deemed confidential and shall be used solely for the purposes of providing such services. Confidential Information includes Pascua Yaqui Tribe cultural information whether the information is received by Contractor as written communication, oral communication or visually observed. Contractor agrees that no marking or designation is needed for any such information to be designated as Confidential Information. Contractor shall not disclose such information or records to any third party, during or after the term of this Agreement without the prior written consent of Tribe. Contractor agrees to strictly comply with Tribe's research protection policy (8 PYTC § 7-1-10 *et seq.*).
- 16.0 *Ownership of Work Product.* All data, reports, and all other tangible work product produced by Contractor in the performance of this Agreement is "work-made-for-hire" and is the exclusive and unrestricted property of Tribe. All intellectual property created for use of Tribe, or at the direction of Tribe, is the property of Tribe, and Tribe holds all rights to such property. 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.
- 17.0 *Notice.*
- 17.1 Except as set forth in Section 4.4, all notices required under this Agreement, including payments, requests, and demands, shall be in writing, and delivered to the other party by certified mail, express mail or personal delivery. All notices will be addressed to:

Tribe:

Department
Pascua Yaqui Tribe
Address

Contractor:

[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

Tucson, AZ 85757

[Click here to enter text.](#)

With a copy, which does not constitute service, to:

Office of the Attorney General
7777 S Camino Huivisim, Bldg.C
Tucson, AZ 85757

- 17.2 Contractor shall provide immediate written notification to Tribe in the event of:
- 17.2.1 Any changes in the status of Contractor's insurance coverage.
 - 17.2.2 Any change in composition or legal or beneficial ownership of Contractor.
 - 17.2.3 Any investigation or disciplinary proceeding against Contractor by any credentialing or licensing entity, by any governmental organization, or by any law enforcement agency.
 - 17.2.4 Any voluntary or involuntary sanction, restriction, suspension, withdrawal, or non-renewal of Contractor's license by any government agency or any licensing or accreditation organization.
- 18.0 *Association Marks.* 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 by Contractor will cease.
- 19.0 *Validity.* This Agreement will not be valid or enforceable unless approved and executed in accordance with the requirements of the Constitution and laws of the Pascua Yaqui Tribe, as they may exist from time to time.
- 20.0 *Consensual Relationship.* This Agreement establishes a consensual relationship between Tribe and Contractor, and is deemed to have been entered into, executed, and performed on the Pascua Yaqui Reservation.
- 21.0 *Governing Law, Jurisdiction, and Sovereign Immunity.* The validity, interpretation and effect of this Agreement, and the resolution of 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, and shall be resolved in the court system or applicable administrative forum of Tribe. This Agreement 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 the Agreement. Nothing herein shall be interpreted as an express or implied waiver of Tribe's immunity from suit in any forum or in any jurisdiction.

22.0 *Amendments.* Any amendments to this Agreement shall be in writing and signed by both parties.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused their proper and duly authorized officers to execute this Agreement by affixing their signatures on the dates set forth below.

PASCUA YAQUI TRIBE

CONTRACTOR

Julian Hernandez, Chairman

[Click here to enter text.](#)

Date

Date

SAMPLE