

## Staff Summary Report



**Council Meeting Date:** 06/11/09

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Request approval of a Resolution which authorizes the Mayor to execute five Intergovernmental Agreements between the City and the Pascua Yaqui Tribe for disbursement pursuant to Arizona law of a portion of the Tribe's gaming revenues and authorizes the Mayor to execute the necessary funding agreements.

**DOCUMENT NAME:** 20090611graw01 **STATE LEGISLATURE (0107-06)** Resolution No. 2009.56.

**COMMENTS:** Resolution No. 2009.56 authorizes the execution of five Intergovernmental Agreements disbursing a total of \$210,000.00 which represents a portion of the Pascua Yaqui Tribe's gaming revenues.

**PREPARED BY:** Amber Wakeman, Government Relations Director, (480) 350-8824

**REVIEWED BY:** Shelley Hearn, Community Relations Manager, (480) 350-8906

**LEGAL REVIEW BY:** Teresa Voss, Assistant City Attorney, (480) 350-8814

**FISCAL NOTE:** None.

**RECOMMENDATION:** Recommend approval of Resolution No. 2009.56 authorizing the execution of the Intergovernmental Agreement between the City of Tempe and the Pascua Yaqui Tribe and the necessary funding agreements.

**ADDITIONAL INFO:** Pursuant to the Intergovernmental Agreements, Tempe will disburse \$55,000 to the City of Tempe Public Library's Veterans History Project. This project will collect and preserve the memories of Veterans who served in World Wars I and II, Korea, Vietnam, Persian Gulf, Iraq and Afghanistan. \$25,000 will be disbursed to the City of Tempe Experience Corp Program. This program will improve early literacy skills for 80 children in grades Kindergarten through Third who are below grade level. \$15,000 will be disbursed to the City of Tempe Historical Museum. This money will be used to completely redesign an existing program targeted toward Tempe Fifth grade students to meet current curriculum standards, education methods and renovate museum exhibits. Further, \$15,000 will be disbursed to Jobs for Arizona's Graduates (JAG) to help young people stay in school and \$100,000 to the Tempe Union High School District - Marcos de Niza High School Band Program for new instruments. We anticipate receiving these funds by July 1, 2009, and using these funds in fiscal year 2009/2010.

**RESOLUTION NO. 2009.56**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE FIVE INTERGOVERNMENTAL AGREEMENTS BETWEEN THE CITY AND THE PASCUA YAQUI TRIBE FOR DISBURSEMENT PURSUANT TO ARIZONA LAW OF A PORTION OF THE TRIBE'S GAMING REVENUES.**

WHEREAS, A.R.S. § 11-952 *et seq.* provides for the ability for the City to enter into an Intergovernmental Agreement for the cooperation of the parties; and

WHEREAS, Article VI, §1(s) of the Constitution of the Pascua Yaqui Tribe vests the Tribal Council with the authority to enter into agreements with federal, state, and local governments for governmental purposes serving the general welfare of the Tribe; and

WHEREAS, the Tribe, in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2002 authorizes the Tribe to expend a certain portion of its gaming revenues directly to local governments for governmental purposes; and

WHEREAS, the City and Tribe have reached an agreement, whereby the Tribe will provide funding through the City of Tempe for the Tempe Union High School District - Marcos de Niza High School Band Program, the Jobs for Arizona's Graduates education programs, the City of Tempe Experience Corp Program, the City of Tempe Public Library's Veterans History Project and the City of Tempe Historical Museum's education programs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

The City Council authorizes the Mayor to execute five Intergovernmental Agreements between the City of Tempe and the Pascua Yaqui Tribe for disbursement of a portion of its gaming proceeds to the Tempe Union High School District - Marcos de Niza High School Band Program, the Jobs for Arizona's Graduates, the City of Tempe Experience Corp Program, the City of Tempe Public Library's Veterans History Project and educational programs at the City of Tempe Historical Museum, on file with the City Clerk's office, and authorizes the Mayor to execute the funding agreements necessary to carry out the purpose of the Intergovernmental Agreement.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF  
TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**FUNDING AGREEMENT  
BETWEEN  
THE CITY OF TEMPE  
AND  
TEMPE UNION HIGH SCHOOL DISTRICT**

THIS FUNDING AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 (“Effective Date”), by and between the City of Tempe, a municipal corporation duly organized and existing under the laws of the State of Arizona, located at 31 E. Fifth Street Tempe, Arizona (“Tempe”) and the Tempe Union High School District (“TUHSD”). The entities are referred to jointly herein as “Parties” and individually as “Party”. This Agreement constitutes the entire understanding and agreement of the Parties.

**RECITALS**

WHEREAS, TUHSD, located in Tempe, is a school district within the Arizona Department of Education and serves over 13,000 students.

WHEREAS, the Pascua Yaqui Tribe (“Tribe”) desires to convey to Tempe a portion of its annual 12% local revenue-sharing contribution required to be paid to local governments for the benefit of the general public in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2003, and pursuant to A.R.S. § 41-1505.12, for disbursement by Tempe to TUHSD.

WHEREAS, Tempe desires to disburse the aforementioned contribution to the TUHSD and to set forth the mutual understandings between Tempe and TUHSD.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follow:

**A G R E E M E N T**

1. Purpose. The purpose of this Agreement is to set forth the rights and responsibilities of the Parties with respect to the acceptance and distribution of the Contribution to TUHSD.

2. Funding Schedule. The Tribe shall deliver a one-time contribution payment of \$100,000.00 to Tempe for disbursement to the TUHSD for the Marcos de Niza High School Band program (“Contribution”) after execution of the Intergovernmental Agreement between Tempe and the Tribe.

3. Term. The term of this Agreement shall begin on the date of execution and shall terminate when Tempe has disbursed the Contribution to the TUHSD.

4. Indemnification and Hold Harmless. TUHSD shall indemnify, defend and hold harmless Tempe its governing body, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, fees for attorneys, consultants and accountants or costs and expenses of any kind and nature, resulting from or arising out of the negligence or willful misconduct of Tempe, its governing body, departments, employees and agents in performing the duties set forth in this Agreement.

5. Transactional Conflicts of Interest. Each Party acknowledges that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

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

7. Severability. If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall remain in effect and be valid and enforceable to the fullest extent permitted by law.

8. Notice. Any notice, consent or other communication (“Notice”) required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the Notice is deposited in the United States mail addressed as follows:

If intended for Tempe:

City of Tempe  
City Manager  
P. O. Box 5002  
Tempe, AZ 85281  
Telephone: 480-350-8221  
Facsimile: 480-350-8930

If intended for Tempe Union High School District:

Tempe Union High School District  
c/o Mary Lou Taylor, President  
500 W. Guadalupe Road  
Tempe, AZ 85283  
Phone: 480-345-3713  
Fax: 480-345-3441

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

TEMPE UNION HIGH SCHOOL DISTRICT

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

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

ATTEST:

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

CITY OF TEMPE, a municipal corporation

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

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

\_\_\_\_\_  
City Attorney

**FUNDING AGREEMENT  
BETWEEN  
THE CITY OF TEMPE  
AND  
JOBS FOR ARIZONA'S GRADUATES**

THIS FUNDING AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 ("Effective Date"), by and between the City of Tempe, a municipal corporation duly organized and existing under the laws of the State of Arizona, located at 31 E. Fifth Street Tempe, Arizona ("Tempe") and the Jobs for Arizona's Graduates ("JAG"). The entities are referred to jointly herein as "Parties" and individually as "Party". This Agreement constitutes the entire understanding and agreement of the Parties.

**RECITALS**

WHEREAS, JAG, located in Tempe, is a nonprofit organization which provides a school-to-career and dropout prevention program to students in Arizona and other states.

WHEREAS, the Pascua Yaqui Tribe ("Tribe") desires to convey to Tempe a portion of its annual 12% local revenue-sharing contribution required to be paid to local governments for the benefit of the general public in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2003, and pursuant to A.R.S. § 41-1505.12, for disbursement by Tempe to JAG.

WHEREAS, Tempe desires to disburse the aforementioned contribution to the JAG and to set forth the mutual understandings between Tempe and JAG.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follow:

**A G R E E M E N T**

1. Purpose. The purpose of this Agreement is to set forth the rights and responsibilities of the Parties with respect to the acceptance and distribution of the Contribution to JAG.

2. Funding Schedule. The Tribe shall deliver a one-time contribution payment of \$15,000.00 to Tempe for disbursement to the JAG for education programs ("Contribution") after execution of the Intergovernmental Agreement between Tempe and the Tribe.

3. Term. The term of this Agreement shall begin on the date of execution and shall terminate when Tempe has disbursed the Contribution to the JAG.

4. Indemnification and Hold Harmless. JAG shall indemnify, defend and hold harmless Tempe its governing body, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, fees for attorneys, consultants and accountants or costs and expenses of any kind and nature, resulting from or arising out of the negligence or willful misconduct of Tempe, its governing body, departments, employees and agents in performing the duties set forth in this Agreement.

5. Transactional Conflicts of Interest. Each Party acknowledges that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

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

7. Severability. If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall remain in effect and be valid and enforceable to the fullest extent permitted by law.

8. Notice. Any notice, consent or other communication (“Notice”) required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the Notice is deposited in the United States mail addressed as follows:

If intended for Tempe:  
City of Tempe  
City Manager  
P. O. Box 5002  
Tempe, AZ 85281  
Telephone: 480-350-8221  
Facsimile: 480-350-8930

If intended for Jobs for Arizona's Graduates:

Jobs for Arizona's Graduates (JAG)  
c/o Graciela Garcia Candia, President  
PO Box 10937  
Scottsdale, AZ 85271  
Phone: 480-441-6411  
Fax: 480-441-2317

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

JOBS FOR ARIZONA'S GRADUATES

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

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

ATTEST:

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

CITY OF TEMPE, a municipal corporation

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

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

\_\_\_\_\_  
City Attorney

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

This *Intergovernmental Agreement* is entered into this \_\_\_\_ day of February, 2009, by and between the Pascua Yaqui Tribe, a federally recognized Indian Tribe ("Tribe") and the City of Tempe, Arizona, ("City").

**RECITALS**

- A. WHEREAS, A.R.S. § 11-952 *et seq.* provides for the ability for the City to enter into an Intergovernmental Agreement for the cooperation of the parties; and
- B. WHEREAS, Article VI, §1(a) of the Constitution of the Pascua Yaqui Tribe vests the Tribal Council with the authority to enter into agreements with federal, state, and local governments for governmental purposes serving the general welfare of the Tribe; and; and
- C. WHEREAS, the Tribe, in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2003 authorizes the Tribe to expend a certain portion of its gaming revenues directly to local governments for governmental purposes; and
- D. WHEREAS, the City and Tribe have reached an agreement, memorialized in this document, whereby the Tribe will provide funding to the City of Tempe for the Tempe Public Library.

NOW, THEREFORE, Tribe and City, in consideration of the mutual representations and covenants set forth herein, and for other good and valuable consideration, do mutually agree as follows.

**AGREEMENT**

- 1 Purpose. The purpose of this intergovernmental agreement is to provide funding to the City for the Tempe Public Library's Veterans History Project.
- 2 Effective Date; Term. This Agreement shall become effective upon filing the original executed Agreement with the office of the Maricopa County Recorder, and shall continue in effect until performance required by the agreement is completed.
- 3. Amount of Funding. The Tribe hereby gives over to the City the sum of \$55,000 to be expended in the manner set forth herein, particularly as detailed in paragraph 4 below.
- 4. Specific Goals. The City may only expend the funds identified in Paragraph 3 in the following manner and for the following purposes:

- (a) To implement the Veterans History Project, a project which will provide a multigenerational learning opportunity by collecting, preserving, and sharing the experiences of U.S. wartime veterans.
  - (b) Funds will be used to present training, pay speaker stipends, hire a part-time coordinator, and evaluation consultant; purchase laptop computers, AV equipment, furnishings, and program materials and supplies.
5. Unauthorized Use of Funds Prohibited. Due to the nature of the Tribal State Gaming Compact referenced herein, the use of the funds provided under this Agreement is restricted solely for the intended uses described in paragraph 4 above. Any use of these funds outside the scope of paragraph 4 may subject the City or Tribe to sanction by the State of Arizona, and therefore must be strictly prohibited to the maximum extent possible by either Party. However, nothing in this Agreement shall be interpreted to prevent City from supplementing, or re-prioritizing, the specific amounts set forth in paragraph 4(a), so long as City receives prior written approval from the Tribe.
6. Status of Tribe as Sovereign Nation. The Tribe is a recognized sovereign nation, and nothing in this Agreement is intended to supersede that status.
7. Status of Officers & Employees. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between any Tribe employee or City employee. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for any of its employees.
8. Hold Harmless; Indemnification. Each party shall, to the extent permitted by Arizona and Tribal law, indemnify, defend and hold harmless each other party, its officers, departments, employees and agents from, for and against any and all suits, actions, legal or administrative proceedings, claims, demands liens, losses, fines or damages of any kind or nature, including consequential damages, liability, interest, attorneys' and accountants' fees or costs, and expenses of whatsoever kind and nature, which are in any manner directly or indirectly caused, occasioned or contributed to, by reason of any act, omission, fault, negligence, violation or alleged violation of any law, whether active or passive, of any other party hereto, its agents, employees, or anyone acting under its direction, control, or on his behalf, in connection with or incident to the performance of this Agreement. The mutual indemnifications set forth herein are not intended to, and do not, preclude any party from claiming against another party for breach of this Agreement.
9. Notices. All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made to:

City: City of Tempe  
Hugh Hallman, Mayor  
31 E. Fifth St.  
Tempe, AZ 85281

COPY TO: Andrew B. Ching  
Tempe City Attorney  
21 E. Fifth Street, Suite 201  
Tempe, AZ 85281

TRIBE: Peter Yucupicio, Chairman  
Pascua Yaqui Tribe  
7474 Camino de Oeste  
Tucson, AZ 85757

COPY TO: Attn: Attorney General  
Pascua Yaqui Tribe  
4725 W. Calle Tetakusim Bldg B  
Tucson, AZ 85757

- 10 Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.
- 11 Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the parties.
- 12 Entire Agreement. This Agreement, including its exhibits and recitals, constitutes the entire agreement between the parties, and includes all prior oral and written agreements of the parties.
- 13 Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of City or Tribe.
- 14 No Joint Venture. It is not intended by this Agreement, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties. No party hereto shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including without limitation the other party's obligation to withhold social security and income taxes for itself or any of its employees.
- 15 Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns.
- 16 Timeliness. Each of the parties to this Agreement agrees to take such actions as may be necessary to carry out the terms of this Agreement, and to cause such documents as may be necessary to be executed with reasonable promptness.
- 17 Non-waiver. The failure of any party to insist, on any one or more instances, upon the full and complete performance of any of the terms and provisions of the Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in full or in part in the future. The acceptance by any party of sums of less than may be due and owing it at any time shall not be construed as accord and satisfaction.
- 18 Severability. In the event that any provision, or any portion of any provision, of this Agreement or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application, which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be deemed to be severable.

19 Termination.

- 19.1 For Cause. Any party hereto may terminate this Agreement for material breach of the Agreement by another party. Prior to any termination under this section, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.
- 19.2 Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purposes of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, 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 negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove any such inability with all reasonable dispatch.
- 19.3 Funding Sources; Budget; Non-appropriation. This Agreement and all obligations upon the parties arising therefrom shall be subject to any limitation imposed by budget law. The parties affirm that they have within their respective budgets sufficient funds to discharge the obligations and duties assumed under this Agreement. If for any reason any party does not appropriate sufficient monies for the purpose of maintaining this Agreement, this Agreement shall be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, the parties hereto shall have no further obligation to the other party other than for payment for services rendered prior to cancellation.
- 19.4 Conflict of Interest. This Agreement may be canceled without penalty or further obligation pursuant to A.R.S. § 38-511, and applicable provisions under the Constitution of the Pascua Yaqui Tribe, the pertinent provisions are incorporated into this Agreement by reference.
- 19.5 Ownership of Property Upon Termination. Any termination of this Agreement shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the project constructed pursuant to this Agreement.

20. Reporting. City will report on its spending of the funds received under this agreement within 90 days after completion of the project for which funds were granted, including providing an expense report of expenditure of funds and a closing presentation by the City to the Tribe's Tribal Council regarding the project.

*In witness whereof*, the parties hereto have hereunto set their hands the day and year first above written.

**PASCUA YAQUI TRIBE**

  
\_\_\_\_\_  
Peter Yucupicio,  
Chairman of the Pascua Yaqui Tribe

ATTEST:

  
\_\_\_\_\_  
Secretary of the Pascua Yaqui Tribe

**City of Tempe**

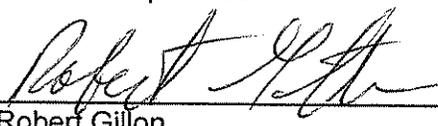
\_\_\_\_\_  
Hugh Hallman  
Mayor, City of Tempe

ATTEST:

\_\_\_\_\_  
Jan Hort  
City Clerk

**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

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

Pascua Yaqui Tribe  
  
\_\_\_\_\_  
Robert Gillon  
Interim Attorney General for the  
Pascua Yaqui Tribe

City of Tempe  
  
\_\_\_\_\_  
Andrew B. Ching  
As City Attorney and not personally

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

This *Intergovernmental Agreement* is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Pascua Yaqui Tribe, a federally recognized Indian Tribe ("Tribe") and the City of Tempe, Arizona, ("City").

**RECITALS**

- A. WHEREAS, A.R.S. § 11-952 *et seq.* provides for the ability for the City to enter into an Intergovernmental Agreement for the cooperation of the parties; and
- B. WHEREAS, Article VI, §1(a) of the Constitution of the Pascua Yaqui Tribe vests the Tribal Council with the authority to enter into agreements with federal, state, and local governments for governmental purposes serving the general welfare of the Tribe; and; and
- C. WHEREAS, the Tribe, in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2003 authorizes the Tribe to expend a certain portion of its gaming revenues directly to local governments for governmental purposes; and
- D. WHEREAS, the City and Tribe have reached an agreement, memorialized in this document, whereby the Tribe will provide funding to the City of Tempe for the Jobs for Arizona's Graduates Program at the Tempe Union High School District.

NOW, THEREFORE, Tribe and City, in consideration of the mutual representations and covenants set forth herein, and for other good and valuable consideration, do mutually agree as follows.

**AGREEMENT**

- 1 Purpose. The purpose of this intergovernmental agreement is to provide funding to the City for the Jobs for Arizona's Graduates ("JAG") education programs.
- 2 Effective Date; Term. This Agreement shall become effective upon filing the original executed Agreement with the office of the Maricopa County Recorder, and shall continue in effect until performance required by the agreement is completed.
- 3. Amount of Funding. The Tribe hereby gives over to the City the sum of \$15,000 to be expended in the manner set forth herein, particularly as detailed in paragraph 4 below.
- 4. Specific Goals. The City may only expend the funds identified in Paragraph 3 in the following manner and for the following purposes:
  - (a) The City may only expend the funds identified in Paragraph 3 by transferring said funds to the JAG Program.

5. Status of Tribe as Sovereign Nation. The Tribe is a recognized sovereign nation, and nothing in this Agreement is intended to supersede that status.
6. Status of Officers & Employees. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between any Tribe employee or City employee. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for any of its employees.
7. Hold Harmless; Indemnification. Each party shall, to the extent permitted by Arizona and Tribal law, indemnify, defend and hold harmless each other party, its officers, departments, employees and agents from, for and against any and all suits, actions, legal or administrative proceedings, claims, demands liens, losses, fines or damages of any kind or nature, including consequential damages, liability, interest, attorneys' and accountants' fees or costs, and expenses of whatsoever kind and nature, which are in any manner directly or indirectly caused, occasioned or contributed to, by reason of any act, omission, fault, negligence, violation or alleged violation of any law, whether active or passive, of any other party hereto, its agents, employees, or anyone acting under its direction, control, or on his behalf, in connection with or incident to the performance of this Agreement. The mutual indemnifications set forth herein are not intended to, and do not, preclude any party from claiming against another party for breach of this Agreement.
8. Notices. All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made to:
 

City:	City of Tempe Hugh Hallman, Mayor 31 E. Fifth St. Tempe, AZ 85281	COPY TO:	Andrew B. Ching Tempe City Attorney 21 E. Fifth Street, Suite 201 Tempe, AZ 85281
TRIBE:	Peter Yucupicio, Chairman Pascua Yaqui Tribe 7474 Camino de Oeste Tucson, AZ 85757	COPY TO:	Attn: Attorney General Pascua Yaqui Tribe 4725 W. Calle Tetakusim Bldg B Tucson, AZ 85757
9. Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.
10. Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the parties.
11. Entire Agreement. This Agreement, including its exhibits and recitals, constitutes the entire agreement between the parties, and includes all prior oral and written agreements of the parties.
12. Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting

or extending the legal jurisdiction of City or Tribe.

13. No Joint Venture. It is not intended by this Agreement, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties. No party hereto shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including without limitation the other party's obligation to withhold social security and income taxes for itself or any of its employees.
14. Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns.
15. Timeliness. Each of the parties to this Agreement agrees to take such actions as may be necessary to carry out the terms of this Agreement, and to cause such documents as may be necessary to be executed with reasonable promptness.
16. Non-waiver. The failure of any party to insist, on any one or more instances, upon the full and complete performance of any of the terms and provisions of the Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in full or in part in the future. The acceptance by any party of sums of less than may be due and owing it at any time shall not be construed as accord and satisfaction.
17. Severability. In the event that any provision, or any portion of any provision, of this Agreement or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application, which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be deemed to be severable.
18. Termination.
  - 18.1 For Cause. Any party hereto may terminate this Agreement for material breach of the Agreement by another party. Prior to any termination under this section, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.
  - 18.2 Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purposes of this Agreement, any cause beyond the control of the party affected, including but not limited to

failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, 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 negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove any such inability with all reasonable dispatch.

- 18.3 Funding Sources; Budget; Non-appropriation. This Agreement and all obligations upon the parties arising therefrom shall be subject to any limitation imposed by budget law. The parties affirm that they have within their respective budgets sufficient funds to discharge the obligations and duties assumed under this Agreement. If for any reason any party does not appropriate sufficient monies for the purpose of maintaining this Agreement, this Agreement shall be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, the parties hereto shall have no further obligation to the other party other than for payment for services rendered prior to cancellation.
- 18.4 Conflict of Interest. This Agreement may be canceled without penalty or further obligation pursuant to A.R.S. § 38-511, and applicable provisions under the Constitution of the Pascua Yaqui Tribe, the pertinent provisions are incorporated into this Agreement by reference.
- 18.5 Ownership of Property Upon Termination. Any termination of this Agreement shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the project constructed pursuant to this Agreement.

*In witness whereof*, the parties hereto have hereunto set their hands the day and year first above written.

**PASCUA YAQUI TRIBE**

  
\_\_\_\_\_  
Peter Yucupicio,  
Chairman of the Pascua Yaqui Tribe

ATTEST:

  
\_\_\_\_\_  
Francisco Valencia, Secretary of the  
Pascua Yaqui Tribe

City of Tempe

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Hugh Hallman  
Mayor, City of Tempe

ATTEST:

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Jan Hort  
City Clerk

**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

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

Pascua Yaqui Tribe

City of Tempe



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Robert Gillon  
Interim Attorney General for the  
Pascua Yaqui Tribe

---

Andrew B. Ching  
As City Attorney and not personally

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE PASCUA YAQUI TRIBE  
THE CITY OF TEMPE  
AND TEMPE UNION HIGH SCHOOL DISTRICT**

This *Intergovernmental Agreement* is entered into this \_\_\_\_ day of May, 2009, by and between the Pascua Yaqui Tribe, a federally recognized Indian Tribe ("Tribe"), the City of Tempe, Arizona, ("City") and Tempe Union High School District ("TUHSD").

**RECITALS**

- A. WHEREAS, A.R.S. § 11-952 *et seq.* provides for the ability for the City to enter into an Intergovernmental Agreement for the cooperation of the parties; and
- B. WHEREAS, Article VI, §1(a) of the Constitution of the Pascua Yaqui Tribe vests the Tribal Council with the authority to enter into agreements with federal, state, and local governments for governmental purposes serving the general welfare of the Tribe; and
- C. WHEREAS, the Tribe, in accordance with the Tribal-State Gaming Compact executed by and between the Tribe and the State of Arizona in 2003 authorizes the Tribe to expend a certain portion of its gaming revenues directly to local governments for governmental purposes; and
- D. WHEREAS, the City and Tribe have reached an agreement, memorialized in this document, whereby the Tribe will provide funding to the City of Tempe for use by TUHSD for the Marcos de Niza High School Band.

NOW, THEREFORE, Tribe and City, in consideration of the mutual representations and covenants set forth herein, and for other good and valuable consideration, do mutually agree as follows.

**AGREEMENT**

- 1 Purpose. The purpose of this intergovernmental agreement is to provide funding to the City for use by the TUHSD for the Marcos de Niza High School Band.
- 2 Effective Date; Term. This Agreement shall become effective upon filing the original executed Agreement with the office of the Maricopa County Recorder, and shall continue in effect until performance required by the agreement is completed.
- 3. Amount of Funding. The Tribe hereby gives over to the City the sum of \$100,000.00 for the TUHSD to be expended in the manner set forth herein, particularly as detailed in paragraph 4 below.
- 4. Specific Goals:
  - (a) The City may only expend the funds identified in Paragraph 3 by transferring said funds to the TUHSD

- (a) The TUHSD may only expend the funds identified in Paragraph 3 for its Marcos de Niza Band program.
5. Status of Tribe as Sovereign Nation. The Tribe is a recognized sovereign nation, and nothing in this Agreement is intended to supersede that status.
  6. Status of Officers & Employees. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between any Tribe employee or City employee. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for any of its employees.
  7. Hold Harmless; Indemnification. Each party shall, to the extent permitted by Arizona and Tribal law, indemnify, defend and hold harmless each other party, its officers, departments, employees and agents from, for and against any and all suits, actions, legal or administrative proceedings, claims, demands liens, losses, fines or damages of any kind or nature, including consequential damages, liability, interest, attorneys' and accountants' fees or costs, and expenses of whatsoever kind and nature, which are in any manner directly or indirectly caused, occasioned or contributed to, by reason of any act, omission, fault, negligence, violation or alleged violation of any law, whether active or passive, of any other party hereto, its agents, employees, or anyone acting under its direction, control, or on his behalf, in connection with or incident to the performance of this Agreement. The mutual indemnifications set forth herein are not intended to, and do not, preclude any party from claiming against another party for breach of this Agreement.
  8. Notices. All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made to:

City: \_\_\_\_\_  
 Hugh Hallman, Mayor  
 31 E. Fifth St.  
 Tempe, AZ 85281

COPY TO: Andrew B. Ching  
 Tempe City Attorney  
 21 E. Fifth Street, Suite 201  
 Tempe, AZ 85281

TRIBE: Peter Yucupicio, Chairman  
 Pascua Yaqui Tribe  
 7474 Camino de Oeste  
 Tucson, AZ 85757

COPY TO: Attn: Attorney General  
 Pascua Yaqui Tribe  
 4725 W. Calle Tetakusim Bldg B  
 Tucson, AZ 85757

SCHOOLS:  
 Tempe Union High School District  
 Mary Lou Taylor, President  
 500 W. Guadalupe Rd.  
 Tempe, AZ 85283

COPY TO: Janis Merrill  
 In House Legal Counsel  
 500 W. Guadalupe Rd.  
 Tempe, AZ 85283

- 9     Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.
- 10    Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the parties.
- 11    Entire Agreement. This Agreement, including its exhibits and recitals, constitutes the entire agreement between the parties, and includes all prior oral and written agreements of the parties.
- 12    Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of City or Tribe.
- 13    No Joint Venture. It is not intended by this Agreement, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties. No party hereto shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including without limitation the other party's obligation to withhold social security and income taxes for itself or any of its employees.
- 14    Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns.
- 15    Timeliness. Each of the parties to this Agreement agrees to take such actions as may be necessary to carry out the terms of this Agreement, and to cause such documents as may be necessary to be executed with reasonable promptness.
- 16    Non-waiver. The failure of any party to insist, on any one or more instances, upon the full and complete performance of any of the terms and provisions of the Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in full or in part in the future. The acceptance by any party of sums of less than may be due and owing it at any time shall not be construed as accord and satisfaction.
- 17    Severability. In the event that any provision, or any portion of any provision, of this Agreement or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application, which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be deemed to be severable.
- 18    Termination.
- 18.1   For Cause. Any party hereto may terminate this Agreement for material breach of the Agreement by another party. Prior to any termination under this section, the party allegedly in default shall be given written notice by the other

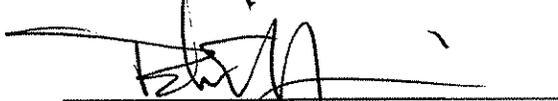
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19. Reporting. TUHSD will report on its spending of the funds received under this agreement within 90 days after completion of the project for which funds were granted, including providing an expense report of expenditure of funds and a closing presentation by the City to the Tribe's Tribal Council regarding the project.

*In witness whereof*, the parties hereto have hereunto set their hands the day and year first above written.

**PASCUA YAQUI TRIBE**

  
\_\_\_\_\_  
Peter Yucupicio,  
Chairman of the Pascua Yaqui Tribe

ATTEST:

  
\_\_\_\_\_  
Francisco Valencia  
Secretary of the Pascua Yaqui Tribe

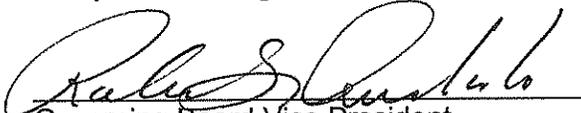
**City of Tempe**

\_\_\_\_\_  
Hugh Hallman  
Mayor, City of Tempe

ATTEST:

\_\_\_\_\_  
Jan Hort  
City Clerk

**Tempe Union High School District #213**

  
\_\_\_\_\_  
Governing Board Vice President  
Robin Arredondo-Savage

ATTEST:

  
\_\_\_\_\_  
Tempe Union High School District  
Steve Adolph, Superintendent

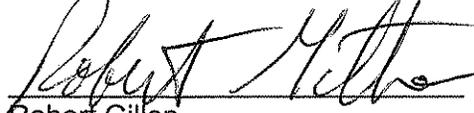
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Pascua Yaqui Tribe

City of Tempe



Robert Gillon  
Interim Attorney General for the  
Pascua Yaqui Tribe

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Andrew B. Ching  
As City Attorney and not personally

Tempe Union High School District



Janis Merrill  
Tri-District In House Legal Counsel