

EXHIBIT 12.1
TUCSON AGREEMENT

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This Special Settlement Agreement is made and entered by and among the plaintiffs the Tohono O'odham Nation, a federally recognized Indian tribe ("Nation"), two classes of San Xavier Allottees and Fee Owners of Allotted Land (collectively "San Xavier Class Members") and the United States and defendant City of Tucson, a municipal corporation ("City"), relates to the San Xavier Reservation and the eastern Schuk Toak District, and is effective on the "Enforceability Date" of the Southern Arizona Water Rights Settlement Amendments Act of 2004 ("SAWRSA Amendments"). This Special Settlement Agreement is to be referred to as the "Tucson Agreement."

RECITALS:

A. The Nation, the San Xavier Class Members, and the United States are plaintiffs in United States et al. v. the City of Tucson et al., CV 75-39 TUC FRZ (consolidated with CV 75-051), consolidated for administrative purposes with Felicia Alvarez et al. v. City of Tucson, et al., CV 93-039 TUC FRZ (the "Consolidated Litigation").

B. The City is one of several defendants in the Consolidated Litigation.

C. In order to reach settlement of the Consolidated Litigation, the defendant City agrees with the plaintiff parties that there are certain issues that can best be resolved between the City and the plaintiffs without reference to the other defendants.

D. As a part of the settlement of the Consolidated Litigation, as against the City, the Nation and the San Xavier Class Members have requested that the City provide funds for the future reparation of Sinkholes. The City denies any responsibility or liability for the Sinkholes on the San Xavier Reservation. However, in order to avoid future claims and to reach full settlement of the Consolidated Litigation, the City is agreeing to provide funds as more fully set forth below.

E. In settlement of the Consolidated Litigation as against the City and in consideration for timely performance of the City's obligations pursuant to this Agreement, the United States, the Nation and the San Xavier Class Members agree to waive and limit certain claims for injuries to land as more fully set forth below.

F. Execution of the Tucson Agreement is a requirement of the Settlement Agreement, is referred to in Paragraph 12 of the Settlement Agreement and a copy of the Tucson Agreement is attached as Exhibit 12.1 of the Settlement Agreement.

G. In the event that the Secretarial statement of findings described in the SAWRSA Amendments is not published as provided in the SAWRSA Amendments and the SAWRSA Amendments do not take effect, the parties agree that this Tucson Agreement shall be void and of no further effect.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and covenants agreed to herein the parties agree as follows:

**ARTICLE 1.
DEFINITIONS**

As used in this Agreement, the terms used shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the following terms have the following respective meanings:

1.1 The term "Land Subsidence" means injury to land, water or other real property, resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling is caused by the pumping of water; land subsidence shall not include "Sinkholes" as defined herein.

1.2 The term "Sinkhole" or "Sinkholes" means sinks, sinkholes or depressions occurring within the San Xavier Reservation and thought to be caused by several types of compaction and erosion of near surface materials. Sinkholes typically range in size and depth from shallow depressions of a few inches to 20 feet with steep sides.

**ARTICLE 2.
SINKHOLE REPARATION**

2.1 Sinkhole Fund. Without admitting responsibility or liability for Sinkholes and as a part of the settlement of the Consolidated Litigation, the City agrees, upon timely adoption by the San Xavier District of the resolution described in Paragraph 2.2, to pay to the San Xavier District, in installments as provided below, the sum of Three Hundred Thousand Dollars (\$300,000), to be held by the San Xavier District in a separate interest bearing account, for the reparation of sinkholes (the "San Xavier Sinkhole Repair Fund"). The money shall be payable by the City to the San Xavier District in five annual installments of \$60,000 each, the first installment of which shall be paid on or before the 180th day after the Enforceability Date, and the remaining four installments shall each be paid on or before the anniversary date of the previous payment. The City shall bear no responsibility or liability whatsoever for the maintenance or management of such funds once paid in accordance with this Paragraph.

2.2 Use of Proceeds from the Sinkhole Fund. The resolution to be adopted by the San Xavier District will specify a procedure for the Nation and beneficial owners of land located on the San Xavier Reservation to obtain repairs of Sinkholes located on their land on the San Xavier Reservation, and will be adopted within ninety (90) days after the Enforceability Date. The District Council resolution shall provide that:

2.2.1 the cost of such repairs shall be paid from the San Xavier Sinkhole Repair Fund;

2.2.2 expenditures shall be made from the San Xavier Sinkhole Repair Fund for no other purpose;

2.2.3 if, at any time after ten (10) Years have elapsed after the Year in which the Enforceability Date occurs, no claims for sinkhole repairs have been received by the San Xavier District for a period of five (5) Years, and no expenditures have been made from the Fund for a period of five (5) Years, the San Xavier District may use any monies remaining in the San Xavier Sinkhole Repair Fund for projects to benefit and protect lands on the San Xavier Reservation, including, but not limited to, recharge, soil conservation, bank protection, erosion control and flood control.

ARTICLE 3. RELEASE AND LIMITATIONS OF CLAIMS

3.1 Releases of Claims by the Nation.

3.1.1 Release of Claims by the Nation Against the City. The Nation waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.1.2 Release of Claims by the Nation Against the United States. The Nation waives and releases any and all claims against the United States (including any agency, officer and employee of the United States) for injuries to land within the Tucson Management Area resulting from Sinkholes caused by the City under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.2 Release of Claims by the San Xavier Class Members.

3.2.1 Release of Claims by the San Xavier Class Members Against the City. The San Xavier Class Members waive and release any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.2.2 Release of Claims by the San Xavier Class Members Against the United States. The San Xavier Class Members waive and release any and all past, present and future claims against the United States (including any agency, officer and employee of the United States) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion caused by or resulting from the actions or inactions of the City under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy. Nothing in this release of claims by the San

Xavier Class Members against the United States shall act to restrict or prohibit San Xavier Class Members, either individually or through the San Xavier Cooperative Association or other other organizations comprised of San Xavier Class Members, from seeking government assistance through available programmatic funds in the study and remediation of Sinkholes, Land Subsidence or erosion.

3.3 Release of Claims by the United States on behalf of the Nation and the Allottees.

3.3.1 Release of Claims by the United States on Behalf of the Nation. The United States on behalf of the Nation waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.4 Release of Claims by the United States on Behalf of the Allottees. The United States on behalf of members of those Allottees who are San Xavier Class Members waives and releases any and all claims against the City (including any agency, officer and employee of the City) for injuries to land within the Tucson Management Area resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other laws which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other remedy arising from time immemorial to the Enforceability Date and thereafter forever.

3.5 Effective Date of Releases. The releases of claims as provided herein shall be effective on the Enforceability Date.

3.6 Preservation of Claims for Land-related Injuries. With the exception of claims for injuries to land resulting from Sinkholes which are waived and released pursuant to Paragraph 3.1, there are preserved to the Nation claims ("Claim") for Land Subsidence, erosion or other injuries to land within the San Xavier Reservation or eastern Schuk Toak District, if any, provided that any such Claim is brought in accordance with the procedures established below.

3.6.1 Administrative Procedure.

3.6.1.1 The Nation will not initiate a suit unless the Nation has filed a Claim with the City Manager and followed the procedures outlined in this Paragraph 3.4.1. The Claim shall contain sufficient facts to enable the City to review the basis for liability, including a written opinion of an expert engaged by the Nation which concludes that there is reasonable basis for the Claim, including causation, in whole or in part, by the City. The opinion shall be filed with the Claim or within one hundred and eighty (180) days after the filing date of the Claim. The opinion shall not be deemed by the City to be a public record or disclosed to the public and may only be used for the purpose of resolving the Claim with the Nation either through the administrative procedure established herein or in a subsequent lawsuit filed by the Nation under this Agreement.

3.6.1.2 The City shall issue a decision on the Claim within Ninety (90) days after the later of the date the Claim is filed or the expert opinion is submitted. If no decision is issued within such period, the Nation may, at its option, deem the Claim denied. Any decision which offers a remedy to the Nation shall be deemed rejected if the Nation fails to respond or rejects the decision in writing within ninety (90) days after receipt.

3.6.1.3 The Nation shall not file suit against the City until the Nation receives a decision denying the Claim or the Claim is deemed denied.

3.6.1.4 During the period from the date a Claim is filed through the date of decision or deemed denial, any applicable statute of limitations shall be tolled.

3.6.2 Remedies. The Nation shall be entitled to seek whatever relief may be available under applicable law as relief for a Claim.

3.6.3 No Intention to Create a Cause of Action. The parties do not intend, by this Agreement, to create any cause of action for any claims by the Nation for Land Subsidence, erosion or other injuries to land. References in this Agreement to the preservation of claims for Land Subsidence, erosion or other injuries to land is not an agreement or recognition by the City that any such claims or causes of action exist under the law.

ARTICLE 4. JURISDICTION; LAW; DEFAULT AND REMEDIES

4.1 Applicable Law and Jurisdiction. The parties recognize and agree that all actions arising under this Agreement, including any Claim by the Nation against the City (a) arises under and is governed by the laws of the United States and (b) personal and subject matter jurisdiction with respect thereto is vested the Gila River Adjudication Court. The United States District Court for the District of Arizona (the "Federal Court") shall have concurrent jurisdiction to the extent otherwise provided by Federal law. Neither the other courts of the State of Arizona nor the courts of the Nation shall have jurisdiction over actions brought pursuant to this Agreement including any action brought for a Claim preserved to the Nation pursuant to Paragraph 3.4 of this Agreement.

4.2 Event of Default; Enforcement. Failure to remedy a breach of this Agreement, after written notice and a ninety (90) calendar day opportunity to cure the breach, shall constitute an event of default. Any action to enforce this Agreement against the City shall be brought and maintained by the Nation or the United States.

4.3 Remedies. Remedies for default shall be limited to termination of this Agreement, injunctive relief or, as against the City, for damages pursuant to Paragraph 3.4.

4.4 Waiver of Immunity. The immunity from suit of the United States, the Nation and the City is hereby waived solely for declaratory judgment or injunctive relief in any action arising under this Agreement. A waiver of immunity under this Agreement shall not extend to any claims for costs, attorneys' fees or other monetary relief, except that the City waives any

immunity it might have for damages in the event that a Claim is made after the requirements of Paragraph 3.4 of this Agreement have been met.

**ARTICLE 5.
MISCELLANEOUS**

5.1 Term. This Agreement is perpetual and commences on the Enforceability Date.

5.2 Notices. Notice required pursuant to the terms of this Agreement shall be in writing, and shall be effective on the earlier of (a) the date when received by such party or (b) the date which is three days after mailing by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties hereto. Notice shall be sent to the respective parties as follows:

Nation:

Chairperson
Tohono O'odham Nation
P.O. Box 837
Sells, AZ 85634

With copies to:

Attorney General
Tohono O'odham Nation
P.O. Box 830
Sells, AZ 85634

Chairperson
San Xavier District
2018 W. San Xavier Road
Tucson, AZ 85746

Barassi & Curl
485 South Main Avenue
Tucson, AZ 85701

Chairperson
Schuk Toak District
P.O. Box 368
Sells, AZ 85634

City:

**City Manager
City of Tucson
P.O. Box 27210
Tucson, AZ 85726-7210**

With copies to:

**Director
Tucson Water
P.O. Box 27210
Tucson, AZ 85726-7210**

**City Attorney
P.O. Box 27210
Tucson, AZ 85726-7210**

San Xavier Class Members:

**President
San Xavier Allottees Association
2018 W. San Xavier Road
Tucson, AZ 85746**

With a copy to:

**Thomas E. Luebben
Luebben, Johnson & Barnhouse LLP
211 12th Street NW
Albuquerque, NM 87102**

United States:

**Secretary of the Interior
Department of the Interior
Washington, D.C. 20240**

With copies to:

Area Director
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

Bureau of Indian Affairs
Papago Indian Agency
Sells, Arizona 85634

5.3 Full Understanding. The parties hereby represent to each other that each has reviewed this Agreement with competent legal counsel, and that no party shall deny the validity of this Agreement on the grounds that it did not understand the nature and consequences of this Agreement or did not have the advice of independent counsel prior to executing it.

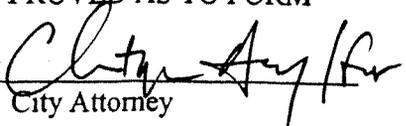
5.4 Neutral Construction. Counsel for the parties have negotiated, read and approved the language of this Agreement, which language shall be construed in its entirety according to its fair meaning and not strictly for or against any of the parties, who have worked together in preparing the final version of this Agreement.

5.5 Binding on Successors. This Agreement is and shall be binding upon the heirs, devisees, executors, assigns and successors in interest of each of the parties.

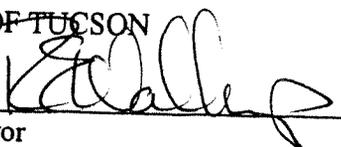
5.6 Multiple Counterparts. This Agreement may be executed in multiple counterparts and when a counterpart has been executed by each of the parties hereto, such counterparts taken together shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized; each of which shall be deemed an original document.

5.7 Further Actions. The parties agree to execute all contracts, agreements and documents, and to take all further actions reasonably necessary, as may be required to comply with the provisions of this Agreement and the intent hereof.

APPROVED AS TO FORM

By 
City Attorney

CITY OF TUCSON

By 
Mayor

ATTEST:

By Kathleen S. Detwiler
City Clerk

APPROVED AS TO FORM

By Dan Frank
Attorney General

TOHONO O'ODHAM NATION

By Miriam Saunders
Chairperson

APPROVED AS TO FORM

UNITED STATES v. TUCSON SAN XAVIER
ALLOTTEE CLASS

LUEBBEN, JOHNSON & BARNHOUSE LLP

By Thomas E. Fuller
Attorney for Certified Class

By [Signature]

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

Its Class Representatives

APPROVED AS TO FORM

ALVAREZ V. TUCSON ALLOTTEE CLASS

LUEBBEN, JOHNSON & BARNHOUSE LLP

By *Thomas E. Lubben*
Attorney for Certified Class

By *AV*

Barbara Colby
Julian Roman Placer
Carmella Smith
R. D. Reddy
Michael L. Hess

Its Class Representatives

THE UNITED STATES OF AMERICA

By *Gale Norton*
Secretary of the Interior

ALVAREZ v. TUCSON ALLOTTEE CLASS

By *Quintin Encinas*
By *Phyllis Carr*
By *Yolanda E. Piquel*
By *Celestine Pablo*
By *Paula [unclear]*
By *Jocelyn Grace Powell*
By *Jessica Nancy*
By *Russell [unclear]*
By *[unclear]*

By _____
By _____

Its Class Representatives