

REVISED

AGENDA
ITEM 6l
DATE 10-19-09



City Council Report

Date: October 19, 2009
To: City Council
Through: Christopher J. Brady, City Manager
From: Scott J Butler, Government Relations Director
Subject: Resolution authorizing City Manager to enter into an Intergovernmental Agreement (IGA) with the Salt River Pima-Maricopa Indian Community (SRP-MIC) for the distribution of four grants: \$75,000 to Mesa Public Schools, \$50,000 for Beverly Park Improvements, \$50,000 to Mesa's Main Library for development of a Job Center for the public and \$62,191.29 for heart monitors for Mesa Fire Department

Purpose and Recommendation

This request is seeking a City Council resolution authorizing the City Manager to enter into an Intergovernmental Agreement with the SRP-MIC for the distribution of four grants to: Mesa Public Schools, \$75,000 to continue their Native American Education Program; City of Mesa Parks and Recreation, \$50,000 for playfield improvements at Beverly Park; Mesa Library, \$50,000 for the development of a public job search and preparation center at the Main Branch and Mesa Fire Department, \$62,191.29 for heart monitors.

Background

The City of Mesa was invited to apply for grant funding from the SRP-MIC, 12% Indian Gaming Grant Program in July 2009. Six (6) projects were submitted for consideration including a request from Mesa Public Schools. The City sponsored project requests were from Fire, Police, Parks, Library and the Arizona Museum for Youth. The award proposed in the IGA would award three (4) grants, one pass through to Mesa Public Schools and three (3) to the City of Mesa Parks and Recreation, Library and the Fire Department.

SRP-MIC, including this award, has shared \$2,513,520 with the City of Mesa and non-profit organizations serving Mesa, since they began providing these grants in 2003.

Discussion

Once awarded, the City will transfer the \$75,000 to Mesa Public Schools so they can continue their Native American Education Program. The Beverly Park improvements will provide a much needed turf area surrounding the recently developed playground. With flood irrigation and a neighborhood agreement to provide mowing, this improvement should not increase the maintenance budget for this park. At the main

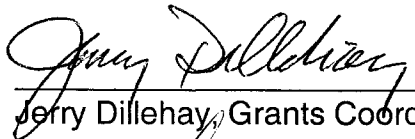
branch of the Mesa Library, an existing room will be developed in partnership with Goodwill Industries to create a Career Center with computers, printers, furniture, fax machine, career materials and databases for job searches. Goodwill will staff the Center and provide resume design and job search workshops and tutorials. The grants will also fund heart monitors for the Fire Department.

Alternatives

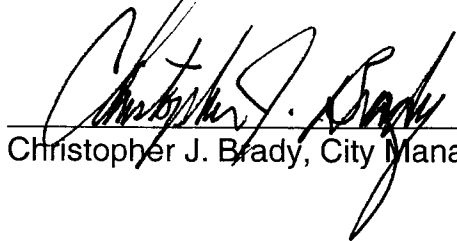
The only alternative to adopting this resolution would be to not adopt. Such an action would deny Mesa's receipt of the \$237,191.29 grant. The three City projects would have to be canceled and Mesa Public Schools would either cancel, or severely reduce their Native American Education program.

Fiscal Impact

The fiscal impact on the City of Mesa should these grants be awarded would be a minimum administration cost of receiving and transferring the funding to Mesa Public Schools. For the three City projects: a maintenance agreement with the surrounding neighborhood and available flood irrigation at Beverly Park will defray any fiscal impact; the operational agreement with Goodwill Industries to staff the Career Center at the Main Library will leave only the additional costs of utilities and maintenance of the equipment. There will be no fiscal impact for the Fire Department.


Jerry Dillehay, Grants Coordinator


Scott J. Butler
Government Relations Director


Christopher J. Brady, City Manager

**Intergovernmental Agreement
Between
The Salt River Pima-Maricopa Indian Community
and
The City of Mesa**

This Intergovernmental Agreement (“Agreement”) is entered into by and between the Salt River Pima-Maricopa Indian Community (“SRPMIC”), a Federally-Recognized Indian Tribe, and the City of Mesa (“Mesa” or “City of Mesa”), a political subdivision of the State of Arizona, pursuant to Section 12 Payment of Regulatory Costs; Tribal Contributions (“Section 12”) of SRPMIC and State of Arizona Gaming Compact 2002 (“Compact”) and Article VII, § 1(h) of the SRPMIC Constitution and A.R.S. §5-601.02.

Recitals

- A. SRPMIC and the City of Mesa may enter into an agreement with one another for the distribution of a portion of 12% of the SRPMIC annual contribution (“Contribution”) under Section 12 of the Compact to cities, towns, or counties that benefit the general public or promote commerce and economic development and pursuant to A.R.S. §5-601.02.
- B. SRPMIC is authorized by Article VII, Section 1 (h) of the Constitution of SRPMIC to consult, negotiate, contract and conclude and perform agreements with Federal, state, local governments and Indian Tribes, as well as any person, association, partnership, corporation, government or other private entity.
- C. The City of Mesa is authorized by A.R.S. § 11-951 through § 11-954, and the City of Mesa Charter , to enter into agreements for the purpose of accepting distributions to cities for governmental services that benefit the general public.
- D. SRPMIC desires to convey to the City of Mesa a portion of its annual 12% local revenue-sharing contribution (“Contribution”) required to be paid to local governments.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, SRPMIC and the City of Mesa hereby mutually agree as follows:

Agreement

1.Purpose. The purpose of this Agreement is to set forth the rights and responsibilities of the parties with respect to the payment and distribution of the Contribution(s), as hereinafter defined.

2. Contribution.:

\$50,000	For City of Mesa Beverly Park Improvements
\$50,000	For Mesa Public Library (Main Branch) Job Center
\$-75,000	Mesa Public Schools Native American Education Program
<u>\$62,191.29</u>	<u>For Mesa Fire Department (for Heart Monitors)</u>

Total Disbursement: ~~\$175,000.00~~237,191.29

3. Payment and Use of Funds.

A. *Use of Funds for Purposes Other Than to Fulfill Agreement and Funding Agreement.*

City of Mesa shall use the Contribution only for the express purpose contained herein.

B. *Inspection and Audit.* To ensure compliance with this Agreement and the Funding Agreement; SRPMIC hereby reserves the right to inspect any and all records maintained by City of Mesa with respect to this transaction upon seven (7) days prior, written notice to City of Mesa. City of Mesa shall allow SRPMIC reasonable access to the records pertaining thereto. This section shall survive termination, cancellation, or revocations, whether whole or in part, of this Agreement for a period of one (1) year following the date of such termination, cancellation, or revocation.

4. Management of the Project.

A. *Disbursing Contributions and Recordkeeping.* City of Mesa shall have responsibility for disbursing the Contributions to the recipients in amounts consistent with this Agreement. Within a reasonable time following receipt of the Contributions from SRPMIC, City of Mesa shall distribute the Contributions in accordance with applicable City of Mesa policies and procedures governing the disbursement of funds. City of Mesa shall keep and maintain records relating to the disbursements and this Agreement.

B. *Responsibilities of City of Mesa Following Disbursement of Contributions.* The parties agree that Mesa is merely acting as a conduit for distribution of funds to the recipients that are not departments, agencies or offices of the City of Mesa ("non-City recipients"). The City of Mesa is the direct recipient of

the Contribution related to the two projects totaling \$100,000 in Section 2. Upon distribution of the Contributions to the non-City recipients as specified in Section 2 of this Agreement, City of Mesa shall have no further responsibility to SRPMIC with respect to such funds or the use thereof by the non-City recipients. Therefore, upon City of Mesa's payment of the Contributions to the non-City recipients as provided in Section 2, SRPMIC shall release City of Mesa from any and all claims, demands, debts, liabilities, or obligations that may arise in the event that the non-City recipients fail for any reason to expend the Contributions in accordance with Section 2. SRPMIC further agrees that City of Mesa shall have no obligation to reimburse SRPMIC the amount of the Contributions for any reason after Mesa disburses the Contributions to the non-City recipients and that SRPMIC shall look solely to the non-City recipients for repayment of the Contributions in the event the Contributions are not used for the intended purposes.

5. Notices. Any notice, communication or modification shall be given in writing and shall be given by registered or certified mail or in person to the following individuals. The date of receipt of such notices shall be the date the notice shall be deemed to have been given.

For the SRPMIC:

DIANE ENOS, President
Salt River Pima Maricopa Indian Community
10005 E. Osborn Road
Scottsdale, Arizona 85256

For the City of Mesa:

Scott Smith, Mayor
20 E. Main St., Ste. 750
Mesa, AZ 85201

6. Transactional Conflict of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Mesa pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

7. Term and Termination of Agreement.

- A. *Effective Date.* This Agreement shall be effective on the date it is signed by the SRPMIC authorized representative.
- B. *Term.* This Agreement shall commence upon the Effective Date and shall terminate when the Contribution has been received and fully disbursed by City of Mesa as specified in Section 2 of this Agreement.

C. *Termination.* SRPMIC may terminate this Agreement with or without cause at Any time by providing the City of Mesa five (5) days advance notice in writing. In the event SRPMIC terminates this Agreement after Mesa receives the Contribution but before the City of Mesa has disbursed the Contribution to the recipients, SRPMIC shall include in the notice of termination specific instructions regarding disposition of the Contributions.

8. Indemnification.

A. *Indemnification.* Each party (as “Indemnitor”) shall indemnify, defend, and hold harmless the other party (as “Indemnitee”), its governing body, officers, 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, attorneys, consultants and accountant fees or costs and expenses of whatsoever kind and nature (collectively referred to as “Claims”), to the extent that such Claims result in vicarious/derivative liability to the Indemnitee resulting from or arising out of the negligence or willful misconduct of Indemnitor’s employees or agents in performing the duties set forth in this Agreement.

B. *Severability.* This section shall survive termination, cancellation, or revocation whether whole or in part, of this Agreement for a period of one (1) year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. § 12-821.01, in which case this paragraph shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this paragraph survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.

9. Interpretation of Agreement.

A. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

B. *Amendment.* This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by both parties.

C. *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 contained herein.

D. *Relationship of the Parties.* Neither party shall be deemed to be an employee or agent of the other party to this Agreement.

E. *Days.* Days shall mean calendar days.

F. *Severability*. In the event that any provisions of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

10. Non-Waiver of Sovereign Immunity – Nothing in this Intergovernmental Agreement or Funding Agreements shall be construed to waive the Sovereign Immunity of SRPMIC.

IN WITNESS WHEREOF, the City of Mesa has caused this Intergovernmental Agreement to be approved by the City of Mesa Council and executed by its City Manager or the City Manager's designee, pursuant to the above state powers and authority, and SRPMIC has caused this Intergovernmental Agreement to be executed by the SRPMIC Council and attested to by its President.

This Agreement is effective upon signature of a duly appointed representative of the Salt River Pima Maricopa Indian Community.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

COMMUNITY:
SALT RIVER
PIMA MARICOPA INDIAN COMMUNITY
a Federally Recognized Indian Tribe

CITY:
CITY OF MESA, a Municipal Corp.
Christopher J. Brady, City Manager

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Approval of SRPMIC Attorney

The undersigned attorney acknowledges that s/he has reviewed the above Agreement on behalf of the Salt River Pima-Maricopa Indian Community, and has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the Constitution of the Salt River Pima-Maricopa Indian Community, Article VII, §1(h). This acknowledgement shall not constitute nor be construed as a waiver of the Sovereign Immunity of the Salt River Pima-Maricopa Indian Community.

General Counsel

Date

Approval of City Attorney

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges that (i) he has reviewed the above Agreement on behalf of the City of Mesa and (ii) as to the City of Mesa only, has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the laws of the State of Arizona.

City Attorney

Date

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA AUTHORIZING THE CITY MANAGER TO ENTER IN TO AN INTERGOVERNMENTAL AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY FOR THE RECEIPT AND DISTRIBUTION OF PROPOSITION 202 FUNDS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA AS FOLLOWS:

Section 1: Arizona's Indian Gaming Compact provides that a Tribe makes twelve percent (12%) of its net annual State contribution to cities, towns or counties for government services that benefit the general public.

Section 2: The Salt River Pima-Maricopa Indian Community wishes to enter into an Intergovernmental Agreement with the City of Mesa to receive and distribute \$237,191.29 from its 2009 12% revenues for grants as follows:

- \$75,000 to Mesa Public Schools for Native American Education Programs
- \$50,000 to City of Mesa for Playfield Improvements at Beverly Park
- \$50,000 to City of Mesa for Development of a Job Preparation and Search Center at Mesa's Main Library location.
- \$62,191.29 to City of Mesa for heart monitors for the Fire Department

Section 3: The City Council supports these grants and authorizes the City Manager to enter into the proposed Intergovernmental Agreement with the Salt River Pima-Maricopa Indian Community for the receipt and distribution of this funding.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona this 19th day of October, 2009.

APPROVED:

Mayor

ATTEST:

City Clerk