



City Council Report

Date: October 22, 2009
To: City Council
Through: Christopher J. Brady, City Manager
From: Scott J. Butler, Governmental Relations Director
Subject: Resolution authorizing the City Manager to enter into an Intergovernmental Agreement with the Salt River Pima-Maricopa Indian Community for the receipt and administration of grants to the United Food Bank and Hacienda Healthcare.

Strategic Initiatives



Purpose and Recommendation

Council is requested to approve a Resolution to authorize the execution of an Intergovernmental Agreement with the Salt River Pima-Maricopa Indian Community (SRP-MIC) for disbursement of pass-thru grants to the United Food Bank in the amount of \$175,000 and to Hacienda Healthcare for \$300,000.

Background

The SRP-MIC contacted the City of Mesa and requested that an intergovernmental agreement be approved to assist them in awarding 12% Indian Gaming Grants to the United Food Bank and Hacienda Healthcare. Under requirements of the compact which established this funding source, tribes may only distribute grants to local governments in Arizona. A legal arrangement was made to allow pass-thru grants to non-profits organizations if a local government would receive the grant on their behalf and pass through the funding.

Discussion

Due to the requirements placed upon the tribes in allocating these grants, their quarterly revenues allocated to this pool must be completely disbursed within a short timeframe. The City of Mesa would be providing this service as an accommodation to SRP-MIC, the United Food Bank and Hacienda Healthcare.

Alternatives

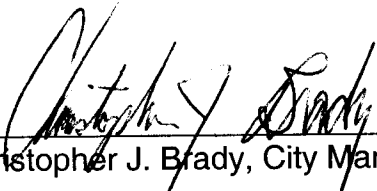
The only viable alternative would be to not authorize the City Manager to enter into this agreement. Because of the short timeframe, it would be impossible for the United Food Bank and Hacienda Healthcare to find another local government sponsor and would, most likely forfeit their grants.

Fiscal Impact

The only fiscal impact of this action is the administrative overhead in processing this agreement and the staff accounting cost of receiving and reissuing the one time funding from the SRP-MIC to the United Food Bank and Hacienda Healthcare.


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.:

\$175,000	United Food Bank (to replace four trucks and maintenance)
\$300,000	Hacienda Healthcare

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”). 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 INTO 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 \$475,000 from its 2009 12% revenues for grants as follows:

\$175,000 to United Food Bank
\$300,000 to Hacienda Healthcare

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 22nd day of October, 2009.

APPROVED:

Mayor

ATTEST:

City Clerk