

# Staff Summary Report

REVISED



Council Meeting Date: 04/23/09

Agenda Item Number: 42

**SUBJECT:** Request approval of a resolution which authorizes the Mayor to execute an Amended Intergovernmental Agreement between the City of Tempe and Salt River Pima-Maricopa Indian Community ("SRPMIC") for the disbursement of a portion of its gaming proceeds for services which benefit the public and authorizes the Mayor to execute the necessary funding agreements.

**DOCUMENT NAME:** 20090423graw01 STATE LEGISLATURE (0107-06) Resolution No. 2009.29

**SUPPORTING DOCS:** No.

**COMMENTS:** N/A

**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. 2009.29 authorizing the execution of the Amended Intergovernmental Agreement between the City of Tempe and SRPMIC and the necessary funding agreements.

**ADDITIONAL INFO:** This amendment increases the total amount of this Intergovernmental Agreement to \$563,083.75 from \$560,000 and adds an additional recipient, the Native Nations Institute, to the current recipients, the Rio Salado Foundation, Salt River/Papago Park, Community Outreach & Advocacy for Refugees and Arizona State University-Indian Legal Program.

**RESOLUTION NO. 2009.29**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED INTERGOVERNMENTAL AGREEMENT BETWEEN THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY AND THE CITY OF TEMPE FOR THE DISBURSEMENT OF A PORTION OF ITS ANNUAL 12% MONIES FROM GAMING PROCEEDS.**

WHEREAS, Arizona Revised Statutes (A.R.S.), § 11-951 through § 11-954, provide that public agencies may enter into intergovernmental agreements for the provision of services or for joint or cooperative action.

WHEREAS, the City of Tempe (“Tempe”) is empowered by Tempe City Charter Section 1.03 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

WHEREAS, the Salt River Pima-Maricopa Indian Community (“SRPMIC”) is authorized to enter into and execute this Agreement.

WHEREAS, the Community Outreach & Advocacy for Refugees (“COAR”), located in the City of Tempe, is a non-profit organization that helps refugees in their efforts to rebuild positive, self-sufficient lives by mobilizing community networks and resources.

WHEREAS, the Arizona State University – Indian Legal Program (“ASU-ILP”), located in the City of Tempe, is a nationally known program training Native American students to become future leaders and professionals in Indian Country.

WHEREAS, the Rio Salado Foundation (“Foundation”) located in the City of Tempe, is a non-profit organization that is assisting the Papago Park area with several programs including the Boathouse and Welcoming Center and the Carl Hayden Campus for Sustainability.

WHEREAS, the Native Nations Institute at the University of Arizona (“NNI”) located in Tucson, Arizona, is a self-determination, self-governance, and development resource for Native nations.

WHEREAS, the SRPMIC 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 pursuant to Section 12(d) of the Compact between the State of Arizona and the SRPMIC, and pursuant to A.R.S. § 41-1505.12, for various projects detailed herein and to support programs of Community Outreach & Advocacy for Refugees, the Arizona State University – Indian Legal Program; the Rio Salado Foundation, Salt River/Papago Park, and the Native Nations Institute.

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 the Amended Intergovernmental Agreement between SRPMIC and Tempe, 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 Amended 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

**WHEN RECORDED RETURN TO:**

City of Tempe  
31 E. Fifth Street  
Tempe, AZ 85281  
Attn: City Clerk

**AMENDED  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY  
AND  
CITY OF TEMPE**

This Amended Intergovernmental Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009 (“Effective Date”), by and between the Salt River Pima-Maricopa Indian Community (“SRPMIC”), a Federally-recognized Indian Tribe, and the City of Tempe (“Tempe” or “City of Tempe”), a municipal corporation duly organized and existing under the laws of the State of Arizona, located at 31 East Fifth Street, Tempe, Arizona. 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**

- A. Arizona Revised Statutes (A.R.S.), § 11-951 through § 11-954, provides that public agencies may enter into intergovernmental agreements for the provisions of services or for joint and cooperative action.
- B. Tempe is empowered by Tempe City Charter Section 1.03 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
- C. 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.
- D. The Community Outreach & Advocacy for Refugees (“COAR”) located in the City of Tempe, is a non-profit organization that helps refugees in their efforts to rebuild positive, self-sufficient lives by mobilizing community networks and resources.
- E. Arizona State University – Indian Legal Program (“ASU-ILP”) located in the City of Tempe, is a nationally known program training Native American students to become future leaders and professionals in Indian country.

- F. The Rio Salado Foundation is a non-profit organization that is assisting the Papago Park area with several programs including the Boathouse and Welcoming Center and the Carl Hayden Campus for Sustainability.
- G. Native Nations Institute at the University of Arizona (“NNI-UA”) is located in the City of Tucson and serves as a self-determination, self-governance, and development resource to Native nations and organizations in the United States and elsewhere.
- H. SRPMIC 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 pursuant to Section 12(d) of the compact between the State of Arizona and SRPMIC, and for use by Tempe for work as detailed herein and for support of programs, of the Rio Salado Foundation, Salt River/Papago Park, ASU-ILP, COAR and NNI-UA.
- H. This Agreement shall supersede and replace the original Intergovernmental Agreement No. C2008-223, approved by the Salt River Pima-Maricopa Indian Community on October 15, 2008 and by the Tempe City Council on October 16, 2008.

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 Tempe 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 Contributions(s), as hereinafter defined. Tempe shall enter into separate Funding Agreements with the Rio Salado Foundation, ASU-ILP, COAR and NNI-UA describing the uses each entity will make of its portion of the Contribution.

2. **Contribution.** SRPMIC shall make a one-time payment to Tempe in the amount of \$563,083.75 (the “Contributions”) to be distributed as follows:

\$250,000.00	Rio Salado Foundation for the Boathouse & Welcoming Center at Papago Park
\$200,000.00	Carl Hayden Campus for Sustainability in Tempe Rio Salado Foundation
\$50,000.00	Salt River/Papago Park Environmental Enhancement Programs

\$25,000.00	Community Outreach & Advocacy for Refugees (Program Support, Refugee Resource Map, Youth Leadership Intern Training Program)
\$35,000.00	ASU – Indian Legal Program (ASU-ILP)
\$3,083.75	UA-Native Nations Institute (NNI-UA))
\$563,083.75	<b>TOTAL CONTRIBUTION</b>

3. **Payment and Use of Funds.**

a. Use of Funds for Purposes Other Than to Fulfill Agreement and Funding Agreement. Tempe’s portion of the Contribution shall be used only for the express purpose contained herein. Tempe further agrees to disburse to the Rio Salado Foundation, ASU-ILP, COAR and NNI-UA portion for purposes listed in the separate Funding Agreements.

b. Inspection and Audit. To ensure compliance with this Agreement and the Funding Agreements, SRPMIC hereby reserves the right to inspect any and all records maintained by Tempe with respect to this transaction upon seven (7) days prior, written notice to Tempe. Tempe 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. **Consideration and Reliance.** It is acknowledged that Tempe’s promise to accept and disburse all funds received by Tempe pursuant to this Agreement is full and adequate consideration and shall render this promise to provide funding irrevocable, and this Agreement shall constitute a binding obligation of SRPMIC.

5. **Term of Agreement.** The term of this Agreement shall begin on the date of execution by the Parties and shall terminate as of Tempe’s final disbursement of any last remaining Contribution set forth in this Agreement.

6. **Transactional Conflict of Interest.** The Parties acknowledge that this Agreement is subject to cancellation by the City of Tempe pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

7. **Indemnification.**

a. Indemnification. Tempe shall indemnify, defend, and hold harmless SRPMIC, 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, resulting from or arising out of the negligence or willful misconduct of the City of Tempe, its 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.

## **8. 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. 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.

e. Relationship of the Parties. Neither Party shall be deemed to be an employee or agent of the other Party to this Agreement.

f. Days. Days shall mean calendar days.

g. 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 valid 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.

9. **Authority.** SRPMIC and Tempe each represent, warrant and covenant to the other that they have the right to enter into and make this Agreement.

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

11. **Notices.** Any notice, consent or other communication or modification (“Notice”) required or permitted under this Agreement shall be 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 East Osborn Road  
Scottsdale, Arizona 85256

For the City of Tempe: Tempe City Council  
  
Mayor Hugh Hallman  
City of Tempe  
31 East 5<sup>th</sup> Street  
Tempe, Arizona 85281

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

SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY, a  
Federally recognized tribe

CITY OF TEMPE, a  
municipal corporation

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 with 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.

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SRPMIC Attorney

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Date

**APPROVAL OF CITY ATTORNEY**

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

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City Attorney

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Date