

Staff Summary Report



Council Meeting Date: November 8, 2007

Agenda Item Number: _____

SUBJECT: Request approval of Resolution No. 2007.95 authorizing the Mayor to execute an Amended Intergovernmental Agreement between the City of Tempe and Salt River Pima-Maricopa Indian Community ("SRPMIC").

DOCUMENT NAME: 20071108graw01 **STATE LEGISLATURE (0107-06)** Resolution No. 2007.95

SUPPORTING DOCS: No.

COMMENTS: Resolution No. 2007.95 authorizes the execution of an Amended Intergovernmental Agreement between the City of Tempe and the Salt River Pima-Maricopa Indian Community for the disbursement of a portion of its annual 12% monies from gaming proceeds.

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

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

LEGAL REVIEW BY: Rosemary H. Rosales, Deputy City Attorney, (480) 350-8698

FISCAL NOTE: None.

RECOMMENDATION: Recommend approval of Resolution No. 2007.95 authorizing the execution of the Amended Intergovernmental Agreement between the City of Tempe and the Community.

ADDITIONAL INFO: Proposition 202 was passed by the voters in November, 2002. This legislation required Indian Tribes to distribute 12% of their gaming proceeds to cities, towns and counties for government services that benefit the general public, including public safety, mitigation of gaming impacts and promotion of commerce and economic development. The SRPMIC has decided to grant the City of Tempe a total contribution of \$825,000.00 (the contribution will be distributed as follows: \$100,000 City of Tempe Papago Park Study, \$50,000 City of Tempe Opportunities for Youth and \$500,000 City of Tempe Papago Park project (former recipient Hayden Butte & Flour Mill Archeological Project). The SRPMIC is also providing an additional \$50,000 for Community Outreach & Advocacy for Refugees (COAR) and \$35,000 to Arizona State University-Indian Legal Program (for a multi year distribution-2007-2009) and \$20,000 to the NAU-Nizhoni Academy.

RESOLUTION NO. 2007.95

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; and

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; and

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

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; and

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; and

WHEREAS, the NAU-Nizhoni Academy (“NAU-Nizhoni”) is a pre-college bridge program designed to prepare Native American high school students to become successful college students; and

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 use by Tempe for various projects detailed herein and to support costs for Community Outreach & Advocacy for Refugees, the Arizona State University – Indian Legal Program; and the NAU-Nizhoni Academy.

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 the Community and Tempe, on file with the City Clerk’s office.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA**, this _____ day of _____, 2007.

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 _____ 2007, ("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 E. Fifth Street, Tempe, Arizona ("Tempe"). 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 (ARS), § 11-951 through § 11-954, provide 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 (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. NAU-Nizhoni Academy (“**NAU-Nizhoni**”), is a pre-college bridge program designed to prepare Native American high school students to become successful college students.

G. 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 pursuant to A.R.S. §41-1505.12, for use by Tempe for work as detailed herein and for support of programs within ASU-ILP, COAR, and NAU-Nizhoni.

H. This Agreement shall supersede and replace the original Intergovernmental Agreement No. C2007-189, approved by the Tempe City Council on October 25, 2007.

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 Contribution(s), as hereinafter defined. Tempe shall enter into separate Funding Agreements with ASU-ILP, COAR, and NAU-Nizhoni 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 \$755,000 for year one funding of a three-year distribution; and \$35,000 for years two and three of funding, for a total of \$825,000 (“Contribution”) to be distributed as follows:

a. In year one the following amounts will be distributed:

\$100,000	Tempe Papago Park Study
\$ 50,000	Opportunities for Youth (Arts & Culture Program)
\$ 50,000	Community Outreach & Advocacy for Refugees (COAR) Support Resettled Refugees
\$ 35,000	ASU – Indian Legal Program (ASU-ILP)

\$500,000 Papago Park Project (former recipient Hayden Butte & Flour Mill Archeological Project) (final year of a prior three year disbursement)

\$ 20,000. NAU-Nizhoni Academy

TOTAL: \$755,000

b. In year two and three of a multi year disbursement (2007-2009) the following amount will be distributed:

\$35,000 ASU-Indian Legal Program (ASU-ILP)

TOTAL CONTRIBUTION: \$825,000

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 ASU-ILP, COAR and NAU-Nizhoni's 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 SRPMIC's final disbursement of any last remaining Contribution Amount.

6. **Transactional Conflict of Interest.** All parties hereto 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 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 and 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 E. Osborn Road
Scottsdale, Arizona 85256

For the City of Tempe: Tempe City Council

Mayor Hugh Hallman
City of Tempe
31 E. 5th Street
Tempe, Arizona 85281

IN WITNESS WHEREOF, the parties have executed this 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 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 TEMPE and (ii) as to the City of Tempe 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