Contract No. 2016-218

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY
AND
THE TOWN OF FOUNTAIN HILLS

#25260

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 Town of Fountain Hills (the "Town"), pursuant to Section 12 Payment of Regulatory Costs; Tribal Contributions ("Section 12") of the 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

1. The SRPMIC and the Town 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 pursuant to A.R.S. §5-601.02.

2. The 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.

3. The Town is authorized by A.R.S. § 11-951 through § 11-954 to enter into intergovernmental agreements with other governmental agencies including Indian Tribes.

4. The SRPMIC desires to convey to the Town 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, the SRPMIC and the Town 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.

TOURAD-4430-G520

2. **Contribution**: The SRPMIC shall provide the Contribution to the Town, in the amount of $25,000, following execution of this Agreement. The Contribution shall be used solely for the Town's tourism program.

Total Disbursement: $25,000

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

a. Use of Funds for Purposes Other Than to Fulfill Agreement. The Town shall use the Contribution only for the express purpose contained herein.

b. Inspection and Audit. To ensure compliance with this Agreement, the SRPMIC hereby reserves the right to inspect any and all records maintained by the Town with respect to this transaction upon seven (7) days prior, written notice to the Town. The Town shall allow the 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. Use of Contributions and Recordkeeping. The Town 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 the SRPMIC, the Town shall use the Contributions in accordance with applicable Town policies and procedures governing the use of funds. The Town shall keep and maintain records relating to this Agreement.

b. [INTENTIONALLY LEFT BLANK.]

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:

Delbert W. Ray Sr., President
Salt River Pima Maricopa Indian Community
10005 E. Osborn Road
Scottsdale, Arizona 85256

For the Town:

Grady E. Miller, Town Manager
Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

6. **Transactional Conflict of Interest**. All parties hereto acknowledge that this Agreement is subject to cancellation by the Town 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 used by the Town, as specified in Section 2 of this Agreement.

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"), but only to the extent that such Claims which result in vicarious/derivative liability to the other party resulting from or arising out of the negligence or willful misconduct of 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.

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, each party agrees 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 shall be construed to waive the Sovereign Immunity of the SRPMIC.

IN WITNESS WHEREOF, the Town has caused this Intergovernmental Agreement to be approved by the Town Council, executed by its Mayor and attested to by its Town Clerk, pursuant to the above stated powers and authority, and the 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.

SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY,
A Federally Recognized Indian Tribe:

By: _____

Name: DELBERT W. RAY, SR.

Its: PRESIDENT

Date: 11/9/15

TOWN OF FOUNTAIN HILLS,
an Arizona Municipal Corporation:

By: _____

Name: Linda M. Kavanagh

Its: Mayor

Date: 10-15-15

ATTEST:

_____
Bevelyn J. Bender, Town Clerk

2475916.2

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

10/26/15
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 Town of Fountain Hills and (ii) as to the Town of Fountain Hills 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.

By: _____
Town Attorney

10.15.15
Date

2475916.2

RESOLUTION 2015-52

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY RELATING TO PROPOSITION 202 FUNDING.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Intergovernmental Agreement between the Town of Fountain Hills and the Salt River Pima-Maricopa Indian Community relating to Proposition 202 funding for promotion of tourism (the "Agreement") is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, October 15, 2015.

FOR THE TOWN OF FOUNTAIN HILLS:

Linda M. Kavanagh, Mayor

ATTESTED TO:

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

Grady E. Miller, Town Manager

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION 2015-52

[Intergovernmental Agreement]

See following pages.