C2019-032

Intergovernmental Agreement

Between

The Town of Fountain Hills and The Fort McDowell Yavapai Nation

To

Provide Funds for Promoting Public Programs

In the Town of Fountain Hills

And

Surrounding Communities

Pursuant To A Tribal Revenue Sharing Agreement

Authorized By

Section 12 Payment of Regulatory Costs; Tribal Contributions

Fort McDowell Yavapai Nation and State of Arizona

Gaming Compact 2002,

And

A.R.S. § 5-601.02

Fort McDowell, Arizona

Intergovernmental Agreement
Between
The Town of Fountain Hills and The Fort McDowell Yavapai Nation to
Provide Funds for Promoting Public Programs
in the Town of Fountain Hills and Surrounding Communities

This Intergovernmental Agreement (this "Agreement") is entered into by and between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and the Fort McDowell Yavapai Nation (the "Nation"), a Federally-Recognized Indian Tribe, pursuant to Section 12 Payment of Regulatory Costs; Tribal Contributions ("Section 12") of the Fort McDowell Yavapai Nation and State of Arizona Gaming Compact 2002 (the "Compact") and A.R.S. § 5-601.02.

Recitals

A. The Town and Nation may enter into an agreement with one another for the distribution of 12% of the Nation's annual contribution under Section 12(b)(1) 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. The Nation is authorized by Section 13(A)(15) of Article V, Legislative Branch, of the Constitution of the Fort McDowell Yavapai Nation 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 Town is authorized by A.R.S. §§ 5-601.02 and 11-952 to enter into agreements with Indian Tribes for the purpose of accepting distributions to cities, towns or counties for governmental services that benefit the general public, including public safety, mitigation of impacts of gaming, or promotion of commerce and economic development.

D. The Town and Nation desire to enter into this Agreement to provide funds for the purpose of promoting tourism and other public programs in the State of Arizona and specifically the Town of Fountain Hills and surrounding communities, as designated by the Nation, hereinafter referred to as the "Designated Entity", as more particularly described in Exhibit A attached hereto and incorporated herein by reference.

E. The Town and Nation desire to enter into this Agreement to define the terms and conditions of the Nations' funding of the Designated Entity.

F. The amount of $10,000.00 is hereby made available for the Designated Entity from revenue generated by the Nation's Gaming Enterprise also known as the Fort McDowell Casino.

G. The Nation intends to provide $10,000.00 (the "Funds"), which represents a portion of its contribution pursuant to a Tribal Revenue Sharing Agreement authorized by Section 12 of the Compact and A.R.S. § 5-601.02.

Agreement

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

1. **Designated Entity**. The Designated Entity(s) is the Town and/or a non-profit entity within the Town of Fountain Hills which operates for the public benefit in the Town of Fountain Hills and surrounding areas, as identified in the attached Exhibit A.

2. **Disbursement of Funds**. After receipt of the Funds from the Nation, the Town shall send a payment to such Designated Entity(s) in the amount of the payment received from the Nation as expeditiously as possible.

3. **Consideration and Reliance**. The Nation expressly acknowledges that the Town's promise to accept and disburse to the Designated Entity all Funds received by the Town 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 the Nation under applicable law.

4. **Limited Duties of Town**. The Nation further expressly agrees that, except as specifically set forth in this Agreement, the Town has no duties under or related to this Agreement other than to receive the Funds and deliver same to the Designated Entity; selection of Designated Entity and determination as to the amount of funding are solely at the discretion of the Nation. The Parties agree that there are no third-party beneficiaries to this Agreement.

5. **Financing; Verification of Payment**.

   A. *Nation Deposit*. The Nation shall deposit with the Town the amount of $10,000.00 within thirty (30) days of the Effective Date of this Agreement to be disbursed according the Designated Project amounts in Exhibit A.

   B. *Verification of Payment*. At the request of the Nation, the Town shall provide a verification of payment to the Designated Entity. The Town's responsibility is limited to disbursement to each Designated Entity and the Town has no further duty with regard to third party, provided that the disbursement is complete.

6. **Inspection and Audit**. To ensure compliance with the Town's limited duties herein, the Nation may inspect any and all records maintained by the Town with respect to the Project upon seven (7) days prior, written notice to the Town. This Section 6 shall survive termination, cancellation, or revocation, whether whole or in part, of this Agreement for a period of one (1) year following the date of such termination, cancellation, or revocation.

7. **Term and Termination of Agreement**.

   A. *Effective Date*. This Agreement shall be effective on the date it is signed by the Nation's authorized representative.

   B. *Term*. This Agreement shall commence upon the Effective Date and shall terminate when the funds have been received by the Town and disbursed to the Designated Entity.

C. *Termination*. The Nation may terminate this Agreement with or without cause at any time prior to providing payment to the Town, provided that such notice shall be in writing and delivered to the parties' designated representatives, as set forth in the Notice section.

D. *Cancellation.* Each party acknowledges that the Town has the statutory right for three (3) years to cancel this Agreement if, while this Agreement or any extension is in effect, any person significantly involved in negotiating, drafting or securing this Agreement on behalf of any party is (i) an employee or agent of the other party in any capacity, or (ii) a consultant to the other party with respect to the subject matter of this Agreement, as provided pursuant to AR.S. § 38-511.

8. **Indemnification**.

A. *Indemnification*. Each party shall indemnify, defend, and hold harmless the other party, 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, attorney's, consultant's, and account's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees or agents in performing the duties set forth in this Agreement.

B. *No Liability for Other Party's Debts and Obligations*. Neither party shall be liable for any debts, accounts, obligations, nor other liabilities whatsoever of the other, including and without limitation the other party's obligation to withhold employment and income taxes for itself or any of its employees.

C. *Severability*. This Section 8 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 Section 8 shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this Section 8 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 provision 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. **Waiver**. Waiver or delay in enforcement by either party of any breach of a term, covenant, or condition contained herein shall not be deemed a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition contained herein.

11. **Notification**. 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 Fort McDowell Yavapai Nation:

Bernadine Burnette, President
Fort McDowell Yavapai Nation
P.O. Box 17779
Fountain Hills, AZ 85269

Diandra Benally, General Counsel
Fort McDowell Yavapai Nation
P.O. Box 17779
Fountain Hills, AZ 85269

For the Town of Fountain Hills:

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

Mitesh V. Patel
Town Attorney
Dickinson Wright
1850 N. Central Avenue, Suite 1400
Phoenix, AZ 85004

12. **Assignment and Delegation**. Neither party shall assign nor delegate any of its rights, interest, obligations, covenants, or performance under this Agreement. Any termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

13. **Non-Waiver of Sovereign Immunity**. Nothing in this Agreement, Exhibit A or the Funding Agreements shall be construed to waive the Sovereign Immunity of the Nation.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town of Fountain Hills has caused this Intergovernmental Agreement to be executed by the Mayor, upon resolution of the Town Council and attested by the Clerk of the Town, and the Fort McDowell Yavapai Nation has caused this Intergovernmental Agreement to be executed by the Nation's Tribal Council and attested to by its Secretary.

This Agreement is effective upon signature of a duly appointed representative of the Fort McDowell Yavapai Nation.

ATTEST:

Verlene Enos, Secretary
Fort McDowell Yavapai Nation

9/13/18
Date

FORT MCDOWELL YAVAPAI NATION

Bernadine Burnette
President, Tribal Council
Fort McDowell Yavapai Nation

9/13/2018
Date

ATTEST:

Elizabeth A. Burke, Town Clerk
Town of Fountain Hills

9.6.18
Date

TOWN OF FOUNTAIN HILLS

Linda M. Kavanagh, Mayor
Town of Fountain Hills

9.6.18
Date

The undersigned attorney acknowledges that he has reviewed the above Agreement on behalf of the FORT MCDOWELL YAVAPAI NATION, 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 Fort McDowell Yavapai Nation, Section 13(A)(15), Article V Legislative Branch, as adopted October 19, 1999 and approved by the U.S. Deputy Commissioner of Indian Affairs November 12, 1999. This acknowledgement shall not constitute nor be construed as a waiver of the Sovereign Immunity of the Fort McDowell Yavapai Nation.

9.13.18
Diandra Benally, General Counsel Date
Fort McDowell Yavapai Nation

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 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.

9/4/18
Mitesh V. Patel, Town Attorney Date
Town of Fountain Hills

RESOLUTION 2018-54

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING INTERGOVERNMENTAL AGREEMENTS WITH THE FORT MCDOWELL YAVAPAI NATION RELATING TO PROPOSITION 202 FUNDING

ENACTMENTS:

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

SECTION 1. The Intergovernmental Agreements between the Town of Fountain Hills and the Fort McDowell Yavapai Nation relating to Proposition 202 funding for promotion of tourism and other public programs (the "Agreements") are hereby approved in substantially the form and substance attached hereto as Exhibits A, B, C, D, and E, 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 Agreements 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, on September 11, 2018.

FOR THE TOWN OF FOUNTAIN HILLS:

Linda M. Kavanagh, Mayor

ATTESTED TO:

Elizabeth A. Burke, Town Clerk

REVIEWED BY:

Grady E. Miller, Town Manager

APPROVED AS TO FORM:

Mitesh V. Patel, Interim Town Attorney
Dickinson Wright, PLLC

EXHIBIT A
DESIGNATED ENTITY

Entity(s)	Purpose	Award	Contact
Town of Fountain Hills	Tourism	$10,000.00	Grace Rodman-Guetter
Tourism Division – New advertising project to promote golf destination			
TOTAL		**$10,000.00**	