

RESOLUTION NO. 2462

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR DISPATCH SERVICES AND PRIMARY LAW ENFORCEMENT SERVICES BETWEEN THE TOWN OF PAYSON AND THE TONTO APACHE TRIBE.

WHEREAS, the Town of Payson ("Town") desires to provide primary law enforcement services and police dispatch services to the Tonto Apache Tribe ("Tribe") and the Tribe desires to obtain such police services from the Town; and

WHEREAS, the Town and the Tribe have negotiated an Agreement For Dispatch Services and Primary Law Enforcement Services,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Agreement For Dispatch Services and Primary Law Enforcement Services Between the Town of Payson and the Tonto Apache Tribe (the "Agreement") attached hereto and made a part hereof as Exhibit "A", be and is hereby approved in substantially the form as attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute the Agreement in substantially the form attached as Exhibit "A".

Section 3. That the Town of Payson be and hereby is authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes of such Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 11th day of December, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

APPROVED AS TO FORM:

ATTEST:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

EXHIBIT "A"

to Resolution No. 2462

11/26/08

AGREEMENT FOR DISPATCH SERVICES AND PRIMARY LAW ENFORCEMENT SERVICES BETWEEN THE TOWN OF PAYSON AND THE TONTO APACHE TRIBE

THIS AGREEMENT is made this _____ day of _____, 2008, by and between the Town of Payson, an Arizona municipal corporation ("Town") and the Tonto Apache Tribe ("Tribe"), a federally recognized Indian Tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, Pub. L. No. 92-47, October 6, 1972, 86 Stat. 783, and the Apache Treaty, July 1, 1852, 10 Stat. 979 (collectively, "the Parties").

RECITALS

- A. The Town is incorporated under the laws of the State of Arizona, and the Payson Police Department ("Department") is a department of the Town of Payson.
- B. The Tribe is beneficial owner of those lands which comprise the Tonto Apache Indian Reservation ("Reservation"), and its power and authority to negotiate and execute this Agreement is confirmed by Federal law and Article VII of the Tribal Constitution.
- C. The Tribe desires to procure the services of the Town and the Department to provide primary law enforcement services on the Reservation.
- D. The Tribe also desires to procure the services of the Town and the Department, to provide law enforcement and emergency dispatch services to the Tribe.

NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations herein contained, and pursuant to the terms and provisions herein, the parties agree on a government to government basis as follows:

1. Initial Term. This Agreement shall be retroactively effective beginning October 1, 2007, for dispatch services and shall take effect on January 1, 2009, for primary law enforcement services and shall remain in effect through December 31, 2009, unless it is terminated as provided for in this Agreement.
2. Automatic Renewal of Term. Upon the expiration of the Initial Term, this Agreement shall be automatically renewed for a period of one (1) year thereafter, unless, 60 days prior to the expiration date of the first year, either Party provides written notice to the

other Party stating its intent not to renew this Agreement upon the expiration of the initial term.

3. Dispatch Services to be Provided by Town. The Town will provide dispatch services (as described in Exhibit A attached hereto and incorporated by reference) to the Tribe during the term of this Agreement. The dispatch services to be provided to the Tribe shall be in substantial conformance with Payson Police Department Policies and Procedures, except that dispatch services shall also be provided to the Tribe for the enforcement of Tribal laws on the Reservation, as well as the enforcement of federal and state laws, where and when applicable on the Reservation.
4. Primary Law Enforcement Services to be Provided by Town. The Town will provide primary law enforcement services (as described in Exhibit B attached hereto and incorporated by reference) to the Tribe during the term of this Agreement. The primary law enforcement services to be provided to the Tribe shall be in substantial conformance with Payson Police Department Policies and Procedures, except that primary law enforcement services shall also be provided to the Tribe for enforcement of Tribal laws on the Reservation, as well as the enforcement of federal and state laws, where and when applicable on the Reservation.
5. Compensation.

A. In consideration of the Town providing the agreed upon dispatch services, the Tribe agrees to pay the Town the sum of Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) each year payable in twelve equal payments on the first day of each month during each year of the term or extended term of this Agreement.

B. In consideration of the Town providing the agreed upon primary law enforcement services, the Tribe agrees to pay the Town the sum of Two Hundred Two Thousand Three Hundred Dollars (\$202,300.00) each year payable in twelve equal payments on the first day of each month during each year of the term or extended term of this Agreement.

C. At the end of twelve (12) months of the initial term of this Agreement, and every twelve (12) months thereafter that this Agreement remains in effect, the amounts listed in paragraphs 5 (A) and 5 (B), above, shall be adjusted up based upon the Consumer Price Index ("CPI"). For purposes of this Agreement, the CPI is defined as: The annual average percentage change in the Consumer Price Index for all Urban Consumers ("CPI-U") for the immediate prior year as published by the U.S. Department of Labor's Bureau of Labor Statistics in the monthly Summary Date from the Consumer Price Index News Release, Table 1A, or similar publication, as adjusted for the Town of Payson area. Should the CPI-U be a negative factor, the amounts listed in Paragraphs 5(A) and 5 (B) will remain the

same. If the Index is subsequently discontinued or the Index base changes, the Tribe and the Town shall agree upon a comparable index formula or table generally accepted and employed by the real estate profession or adjust the index to the new base. The adjustment, if any, shall be compared to the Index for the last available twelve month period.

6. Obligations. The Town shall have no obligation to provide dispatch services or primary law enforcement services pursuant to this Agreement after its expiration, termination or non-renewal. In such event, the Tribe shall have no further obligation to the Town, except for the payment to the Town of any amounts then owing.
7. Payment When Due. In the event the Tribe fails to pay any payment required hereunder, the Town may cease to provide dispatch and primary law enforcement services to the Tribe or terminate this Agreement after giving thirty (30) days written notice of its intention to terminate or cease providing services for non-payment and the Tribe's failure to cure under within such thirty (30) day notice period under this Paragraph 7.
8. Mutual Cooperation of the Parties. The Tribe agrees to cooperate with the Department in the performance of the Town's obligations under this Agreement. The Department agrees to cooperate with the Tribe in respecting the jurisdictional and territorial sovereignty of the Tribe within the exterior boundaries of the Reservation.
9. Dispute Resolution. In the event any dispute arises between the Parties under this Agreement, the procedures set forth in this Paragraph 9 shall apply and control the resolution of such dispute by mediation.
 - A. Notice. The Party disputing, protesting, asserting noncompliance or seeking an interpretation ("Dispute") shall serve written notice upon the other Party. The notice shall identify the applicable Agreement provision and shall specify in detail the factual basis for the alleged Dispute.
 - B. Voluntary Resolution. Representatives of the Town and of the Tribe shall meet within ten (10) days following receipt of the notice in an effort to resolve the dispute.
 - C. Mediation Procedures. If the Dispute is not resolved to the satisfaction of the Parties within thirty (30) days after service of the notice set forth above, the Dispute shall be mediated. Notice of the demand for mediation shall be filed in writing with the other Party within sixty (60) days of the date of service of the written notice described in Paragraph 9 (A) above. Within fifteen (15) days of filing the demand for mediation the Parties shall confer and select a mediator acceptable to both Parties (the "Mediator"), and obtain the Mediator's acceptance of the appointment. If the Parties are unable to select a mediator, each Party,

within such time, shall appoint a mediator and obtain its appointee's acceptance of such appointment. The two mediators shall, within ten (10) days, jointly appoint a third mediator and obtain their appointee's acceptance of such appointment. The jointly appointed mediator shall be the chairperson of the mediation panel ("Panel"). The Panel shall meet with the Parties within thirty (30) days after the completion of the Panel.

- D. Mediation Costs. The cost of mediation shall be borne equally by the Parties, with one-half of the expenses charged to the Town and one-half of the expenses charged to the Tribe. Each Party shall bear its own costs and attorneys' fees associated with their participation in the mediation, without contribution from the other Party.
 - E. Mediation Agreement. The Parties shall endeavor to reach a mediation agreement. If the Parties are unable to reach a mediation agreement, the Mediator or the Panel shall issue a mediation decision. Any mediation agreement or mediation decision shall be binding upon the Parties.
 - F. Federal Funding. The Town understands that the Tribe may obtain funds from the United States to pay for or reimburse the Tribe for all or part of the payments to the Town under this Agreement.
10. Consent to Mediation and Construction. The Parties agree for the limited purposes of this Agreement and the enforcement of any mediation agreement or mediation decision that the Parties will not assert sovereign immunity as a defense. The Parties agree that this Agreement shall be construed in accordance with the internal laws applicable to contracts in the State of Arizona, without reference to the principles of conflicts of laws or to federal law.
11. Attorneys' Fees and Costs. In the event of any dispute arising under or related to the Agreement, neither Party shall be entitled to recover from the other Party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, but each Party shall bear its own attorneys' fees, costs and expenses without contribution from the other Party, whether the same is resolved through mediation, litigation in a court or otherwise.
12. Indemnification and Waiver of Claims. The Parties shall hold each other harmless as follows:
- A. The Tribe shall hold and save the Town, its elected officials, attorneys, agents, officers and employees harmless from and against and indemnify the Town against any and all liability arising in any manner from the providing of dispatch and primary law enforcement services pursuant to this Agreement, including but not limited to, claims by third parties arising from the dispatch and primary law

enforcement services provided to the Tribe, except for liability arising from the negligent and/or willful acts or omissions of the Town, its elected officials, attorneys, agents, officers and employees directly relating to the provision of dispatch or primary law enforcement services under this Agreement. The Tribe will use its best efforts to include the Town as an “additional insured” under its insurance coverage for purposes of this Agreement.

B. The Town shall hold and save the Tribe, its elected officials, attorneys, agents, officers and employees harmless from and against and indemnify the Tribe against any and all liability arising in any manner from the Town’s actions or inactions related to the providing of dispatch and primary law enforcement services pursuant to this Agreement, except for liability arising from the negligent and/or willful acts or omissions of the Tribe, its elected officials, attorneys, agents, officers and employees directly relating to the provision of dispatch and primary law enforcement services under this Agreement.

13. Severability. In the event any provision in this Agreement is found by a court of competent jurisdiction to be invalid, the invalidity of such portion shall affect the remaining portions, which shall be deemed voided and unenforceable and this Agreement shall be terminated. The obligation to pay amounts then owing to the Town for dispatch and primary law enforcement services prior to such termination shall survive such termination.
14. Entire Agreement. This written instrument constitutes the entire agreement between the Parties hereto and all prior agreements related to the same subject matter, written or oral, are merged with this Agreement, except as otherwise herein provided. This Agreement shall not be altered, modified or amended in whole or in part except by a similar written instrument executed with the same formalities as this instrument.
15. Counterparts. This instrument may be executed in counterpart originals, each having the same effect as the other, but all constituting one and the same instrument.
16. Paragraph Headings. The subject headings of paragraphs are included for the purpose of convenience only, and shall not affect the construction or interpretation of any of its provisions.
17. Other Acts. The Parties shall execute, acknowledge and deliver such other documents and instruments and perform such other acts as may be reasonably necessary or appropriate to carry out the full intent and purpose of this Agreement.
18. Interpretation. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the Party drafting it. The Parties acknowledge and agree that each has had an opportunity to seek

and utilize legal counsel in the review, drafting of, and entry into this Agreement.

19. Conflict of Interest. This Agreement may be terminated without penalty or further obligation if any person significantly involved in negotiating, securing, drafting or creating this Agreement on behalf of the Town is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of the other Party to the Agreement with respect to its subject matter, as provided for in A.R.S. § 38-511, the terms of which are applicable to this Agreement. The Parties presently believe that no such circumstances exist.
20. Officials Not to Benefit. No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Agreement or to any benefit that may arise from such Agreement. This paragraph may not be construed to apply to any contract with a third party entered into under this Agreement if such contract is made with a corporation for the general benefit of the corporation.
21. Authority to Execute. The Parties to this Agreement hereby warrant and represent that each has taken all action and received all authorizations necessary to empower that Party to enter into and bind itself to the terms of this Agreement. The individuals executing this Agreement individually warrant and represent that each is duly authorized to execute and deliver this Agreement on behalf of such Party and that this Agreement is binding upon and enforceable against such Party according to its terms. Copies of all necessary resolutions and authorizations are attached hereto and incorporated by reference as Exhibits "C" and "D".
22. No Third Party Beneficiary. No term or provision of this Agreement is intended to, or shall be (or construed to be) for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
23. Covenant Not to Assign. It is hereby agreed by the Parties that there will be no assignment or transfer of this Agreement, nor of any interest in this Agreement.
24. Notices: Mailing Addresses. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing, addressed and mailed by United States Mail, or delivered to the Party for which the same is intended, as follows:

Town of Payson
303 North Beeline Highway
Payson, Arizona 85541
Attention: Town Manager

Tonto Apache Tribe
#30 Tonto Apache Reservation
Payson, Arizona 85541
Attention: Chairperson

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first above written.

TONTO APACHE TRIBE
a federally recognized Indian Tribe

TOWN OF PAYSON
an Arizona municipal corporation

By _____
Chairperson, Tonto Apache Tribal Council

By _____
Mayor

APPROVED AS TO FORM:

ATTEST:

General Counsel, Tonto Apache Tribe

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Samuel I. Streichman
Town Attorney

EXHIBIT "A"

The following dispatch services will be provided to the Tribe by the Town:

1. The Town will provide dispatch services in a manner substantially consistent with Payson Police Department policies and procedures.
2. The Town will provide dispatch services to the Tribe which include law enforcement information for the enforcement of Tonto Apache Tribal law, pursuant to the Tonto Apache Tribe Civil and Criminal Law and Order Code and the Tonto Apache Tribe and State of Arizona Gaming Compact of 1992.
3. The Town will provide 911 dispatch services to the Tribe for the Reservation.
4. The Town agrees to receive and record Tonto Apache Court warrant information, only as reported to the Town by the Tonto Apache Tribal Court and the Town agrees to keep a record of such warrant information within the dispatch system.
5. The Tribe agrees to use its best efforts to keep the Tonto Apache Tribe's warrant information current and the Tonto Apache Tribal Court will report regularly to the Town regarding updates to the warrant information.
6. The Town shall not be obligated under this Agreement to provide a mobile data computer system to the Tribe.
7. The Tribe will maintain current MSAG/911 addresses and the Town will establish GEO file addressing and mapping for the Reservation, if not already established.

EXHIBIT "B"

The following primary law enforcement services will be provided to the Tribe by the Town:

1. Basic police services to include: directed and preventative patrols, investigations services and traffic enforcement services.
2. Officers or administrative officers to attend Tribal Council meetings as requested.
3. Animal control services only if there is information to indicate a threat to human life and that there is criminal activity under way.

Primary law enforcement services shall not include:

1. Prosecution services.
2. Jail costs.
3. Any services which must be rendered in connection with cases which will be prosecuted in Tribal Court or Federal Court.
4. Service of civil documents.
5. Zoning and code enforcement.

EXHIBIT "C"

RESOLUTION OF THE TONTO APACHE TRIBAL COUNCIL

EXHIBIT "D"

RESOLUTION OF THE PAYSON TOWN COUNCIL