

**RESOLUTION NO. 2510**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PAYSON AND THE TONTO APACHE TRIBE FOR MUTUAL AID IN THE EVENT OF EMERGENCY OR DISASTER.**

**WHEREAS**, from time to time, emergencies and disasters occur in the Rim Country; and

**WHEREAS**, such emergencies and disasters can transcend jurisdictional boundaries and threaten the health, safety, and welfare of persons in the greater Rim Country area; and

**WHEREAS**, it is mutually beneficial for jurisdictions to combine resources so as to adequately respond to emergencies and disasters threatening the various jurisdictions; and

**WHEREAS**, the Town of Payson and the Tonto Apache Tribe have drafted a written agreement to provide mutual aid to each other in the event of emergency and disaster situations; and

**WHEREAS**, the Town of Payson desires to enter into such written agreement,

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

Section 1. That the Intergovernmental Agreement Between the Town of Payson and the Tonto Apache Tribe for Mutual Aid in the Event of Emergency or Disaster (the "Mutual Aid Agreement"), attached hereto marked Exhibit "A" and made a part hereof by this reference, 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 Mutual Aid Agreement in substantially the form as attached.

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

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Resolution Number 2510 is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution.

**PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 20<sup>th</sup> day of August, 2009, by the following vote:**

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AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Samuel I. Streichman, Town Attorney

# EXHIBIT "A"

to Resolution No. 2510

## INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PAYSON AND THE TONTO APACHE TRIBE FOR MUTUAL AID IN THE EVENT OF EMERGENCY OR DISASTER

This Intergovernmental Agreement ("Agreement") is made and entered into on this \_\_\_ day of \_\_\_\_\_, 2009, between the Town of Payson, Arizona, a municipal corporation ("Town"), and the Tonto Apache Tribe, a federally recognized Indian Tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, Pub. Law 92-47, October 6, 1972, 86 Stat. 783 ("Tribe") (collectively "the Parties" or singularly "the Party").

WHEREAS, the Parties understand and agree that emergencies and disasters often transcend jurisdictional boundaries and threaten the health, safety, and welfare of persons within both Jurisdictions.

WHEREAS, it is to the mutual benefit of both Parties to provide each other with such resources as may be available and needed to adequately respond to emergencies and disasters, including, but not limited to, fire, police, medical and health, mass vaccination, environmental, communication, and transportation services to address the challenges of an Emergency response; and

WHEREAS, the Parties desire to enter into this Agreement for Mutual Aid to provide the authority and procedures for the exchange of Mutual Aid between the Parties under the emergency circumstances described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

### 1. Term

This Agreement shall become effective when adopted by resolution and fully executed by and under the authority of the governing body of each Party's Jurisdiction. This Agreement shall remain in effect for five (5) years after the effective date. Upon mutual written consent of the Parties, the term of this Agreement may be extended for a subsequent period of time not to exceed five (5) years. Any modification or time extension of this Agreement shall be by formal written amendment and executed by the Parties hereto.

### 2. Purpose

The purpose of this Agreement is to provide the authority for and define the emergency management terms and procedures that will be used by the Parties for dispatching Mutual Aid to any affected area in accordance with this Agreement.

### 3. Authority

The Town is authorized to negotiate and enter into this Agreement pursuant to A.R.S. § 26-308, which provides that each county and incorporated city and town of the state may appropriate and expend funds, make contracts and obtain and distribute equipment, materials and supplies for emergency management purposes. The Tribe's power and authority to negotiate and execute this Agreement is confirmed by Federal law and Article VII of the Constitution of the Tonto Apache Tribe, July 21, 1980, as amended.

### 4. Definitions

**Agreement** means this document, the Intergovernmental Agreement Between the Town of Payson and the Tonto Apache Tribe for Mutual Aid in the Event of Emergency or Disaster.

**Emergency** or **Emergencies** means any disaster, emergency, disease outbreak, or contingency situation that calls for a collaborative effort between the Town and the Tribe as described in this Agreement.

**Jurisdiction** means the applicable Town or Tribal government having authority and responsibility to act within a defined geographical area in times of Emergency.

**Mutual Aid** means the dispatch of requested resources or the providing of other assistance to the Requesting Party in response to an Emergency as outlined in this Agreement.

**Providing Party** means the Jurisdiction providing Mutual Aid in the event of an emergency.

**Requesting Party** means the Jurisdiction requesting Mutual Aid in the event of an Emergency.

**Tonto Apache Tribe** means the federally recognized Indian Tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, Pub. Law 92-47, October 6, 1972, 86 Stat. 783.

**Town of Payson** means the Arizona Municipal Corporation located in Payson, Arizona.

**Tribal Land** means those lands that are held in trust by the United States for the benefit of the Tonto Apache Tribe, and those lands that may be acquired from or by the United States for the Tribe in the future, located in Gila County, Arizona.

## **5. Procedures for Requesting Mutual Aid**

The Parties mutually covenant and agree that a Requesting Party requiring assistance in excess of its own resources due to an Emergency, may request Mutual Aid from the other Party to this Agreement. Nothing in this Agreement is intended to be a substitute for adequate staffing and appropriate scheduling within either Parties' Jurisdiction.

Requests for Mutual Aid shall be made by the Chairperson or Acting Chairperson of the Tribe, if the Tribe is the Requesting Party, and by the Town Manager for the Town of Payson or the Town Manager's delegated representative as set forth in the contact list developed under Section 8 of this Agreement, if the Requesting Party is the Town.

All requests for Mutual Aid shall be in writing whenever possible, with notice to the appropriate persons listed at Section 8 of this Agreement, and shall specify at a minimum (i) what the Emergency is; (ii) what resources are needed; and (iii) the estimated period of time during which such Mutual Aid will be required, if known.

The Tribe agrees to the entry upon Tribal Lands to the extent the entry is requested and is necessary to provide or receive the Mutual Aid contemplated under this Agreement, subject to Article VII, Sec. 2(f) of the Tribe's Constitution.

## **6. Providing Party's Assessment of Availability of Resources and Ability to Render Mutual Aid**

The Providing Party shall undertake its best efforts to render such Mutual Aid as it is able to provide consistent with its own service needs at the time, taking into consideration the Providing Party's existing commitments within its own Jurisdiction. The Providing Party shall be the sole judge of what Mutual Aid it has available to furnish to the Requesting Party pursuant to this Agreement.

## **7. Implementation Plan**

Each Party agrees to develop an emergency operations plan that includes a process to provide for the effective mobilization of its resources, both public and private, including acceptance of Mutual Aid, in order to provide or receive assistance under this Agreement.

## **8. Notices and Contact List**

All notices, communications, and reports under this Agreement shall, to the extent practicable, be provided to the following:

Tonto Apache Tribe

Chairperson or Acting Chairperson  
Tonto Apache Reservation #30  
Payson, Arizona 85541

Work: 928-474-5000  
Fax: 928-474-9125

AND

Bio-terrorism/Public Health Preparedness Coordinator  
Tonto Apache Reservation #30  
Payson, Arizona 85541

Work: 928-474-5000  
Fax: 928-474-9125

Town of Payson

Town Manager  
303 N. Beeline Highway  
Payson, Arizona 85541  
928-474-5242, ext. 262

In addition to the authorities and contacts listed above, the Parties shall develop, maintain, and promptly exchange a complete contact list that provides the most current names, titles, and contact information of those persons to whom Mutual Aid requests and additional communications and notices shall be copied under this Agreement.

**9. Supervision and Control**

Management of an Emergency shall remain with the Jurisdiction in which the Emergency occurred.

Supervision and control of Providing Party's personnel and equipment shall be in accordance with the National Incident Management System as provided by the United States Federal Emergency Management Agency.

**10. Supplies and Services**

The Requesting Party will be responsible for providing supplies and services, such as food, shelter, gasoline and oil, for on-site use of equipment and for the personnel providing Mutual Aid under this Agreement, to the extent the Requesting Party is able to do so under the circumstances. All equipment and personnel used pursuant to this Agreement shall be returned to the Providing Party upon being released

by the Requesting Party or on written demand of the Providing Party for such return.

#### **11. Reimbursement**

Subject to the specific provisions of this Section 10, if the Providing Party desires to be reimbursed for all or part of the costs associated with the provision of Mutual Aid, the Requesting Party shall reimburse the Providing Party for the costs incurred as a result of any Mutual Aid provided, whether an incident has been declared an emergency or not.

In order to obtain reimbursement, the Providing Party must provide written advanced notice to the Requesting Party of the Providing Party's intent to seek reimbursement. For purposes of this Agreement, "advanced notice" shall mean the submission of written notice within forty-eight (48) hours of the initial dispatch of Mutual Aid assistance and resources by the Responding Party.

Whenever possible, the Providing Party and the Requesting Party shall agree upon allowable costs for Mutual Aid prior to the dispatch of any assistance or resources for Mutual Aid. Unless otherwise negotiated in writing by the Parties involved at the time of the Emergency, the Parties shall apply the state allowable costs as defined in Title 8 of the Arizona Administrative Code, as may be amended from time to time.

The Requesting Party, which was provided advanced notice of the Providing Party's intent to request reimbursement and which subsequently authorizes the Providing Party to respond, shall reimburse the Providing Party within thirty (30) calendar days after receipt of an itemized voucher and documentation of all allowable costs of labor, equipment, and materials that have actually been expended in providing the Mutual Aid.

#### **12. No Employment Relationship Created**

In no event shall officers, agents, or employees of the Responding Party be considered employees of the Requesting Party or *vice versa*, and each Party shall be solely responsible for all compensation, benefits, and insurance for their respective officers, agents and employees acting under this Agreement.

#### **13. Liability and Insurance**

Each Party shall bear the risk of its own actions, as it does with its day-to-day operations, and shall be solely responsible for any injuries to its employees and/or for claims of injury or legal harm asserted by others, from the performance of any obligation under this Agreement. Both Parties agree to maintain a policy of general liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and in the aggregate that insures for the activities under this Agreement. Each Party shall have the right of contribution against the other to the extent of the liability caused by the others Party's employees in activities creating joint liability under

this Agreement.

**14. Immunity**

Nothing in this Agreement shall be construed as a waiver of any government's sovereign immunity, and is not intended to impair, limit, or affect the status of any Party or its sovereignty.

**15. Conflict of Interest**

The Parties acknowledge and agree that this contract is subject to cancellation for Conflicts of Interest pursuant to A.R.S. § 38-511, the terms of which are incorporated herein.

**16. Applicability of Executive Order 99-4**

The Parties agree that the State of Arizona Executive Order 99-4 is incorporated by reference and is applicable, unless exempted or superseded by other applicable law(s).

**17. Dispute Resolution**

In the event any dispute arises between the Parties under this Agreement, the procedures set forth in this Section 17 shall apply and control the resolution of such dispute.

17.1. Notification of Dispute. The Party disputing, protesting, asserting non-compliance or seeking an interpretation ("dispute") shall serve written notice on the other Party. The notice shall identify the applicable provision of the Agreement and shall specify in detail the factual and legal basis for the alleged dispute.

17.2. Process. The Parties shall attempt to resolve such dispute through: first, negotiation, second, mediation, and as a last measure, litigation. The Parties agree for the limited purposes of this Agreement and the enforcement of any mediation agreement and/or judgment rendered by a court of competent jurisdiction under this Section 17, that neither Party will 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.

17.3. Costs of Dispute Resolution. The Parties further agree that, except as provided for in Section 13 of this Agreement, in the event of any dispute arising under or related to this Agreement, neither Party shall be entitled to recover from the other Party any of its attorneys' fees, costs, expert witness fees, or expenses, but each Party shall bear its own attorneys' fees, expert witness fees, costs and expenses, whether the same is resolved through mediation, agreement, litigation in a court, or in any other manner.

**18. 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 not affect the remaining portions hereof.

**19. 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. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. Compliance with Laws**

Each Party shall comply with all applicable federal, tribal, state and local laws, rules, regulations, standards and Executive Orders, when acting under this Agreement. Any changes in applicable governing laws, rules and regulations during the terms of this Agreement shall apply but do not require an amendment.

**25. Termination**

This Agreement may be terminated by any Party after thirty (30) days written notice to the other Party, *via* hand-delivery or certified mail, return receipt requested.

Notwithstanding any other provision in this Agreement, the Providing Party may immediately terminate this Agreement by written notice to the Requesting Party, if for any reason the Requesting Party fails within thirty (30) calendar days to reimburse the Providing Party in conformance with Section 11 of this Agreement.

Termination of the Agreement does not relieve either Party of their obligation to provide reimbursement of all allowable costs of labor, equipment, and materials that have actually been expended in providing any Mutual Aid contemplated by this Agreement.

**26. Jurisdiction**

Nothing in this Agreement shall be construed as otherwise limiting or extending the legal Jurisdiction of any Party.

**27. Effect on Other Agreements**

It is expressly understood that this Agreement shall not supplant existing agreements between the Parties, which provide for the exchange or furnishing of certain types of services on a compensated basis.

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

Dated this \_\_\_ day of \_\_\_\_\_, 2009

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

**TONTO APACHE TRIBE**

**TOWN OF PAYSON**

BY \_\_\_\_\_  
IVAN SMITH, CHAIRMAN

BY \_\_\_\_\_  
KENNY EVANS

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Samuel I. Streichman, Town Attorney