

**RESOLUTION NO. 2511**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A LAW ENFORCEMENT MUTUAL AID AGREEMENT BETWEEN THE TOWN OF PAYSON AND THE TONTO APACHE TRIBE.**

**WHEREAS**, it is to the mutual benefit of the Town of Payson and the Tonto Apache Tribe (the "Parties") to provide for law enforcement assistance, mutual aid, and back up; and

**WHEREAS**, the Parties believe that the health, safety, and welfare of the citizens of Payson and the members of the Tonto Apache Tribe, and the safety of the respective law enforcement officers of the Parties will be enhanced by the entry into a Law Enforcement Mutual Aid Agreement (the "Agreement"); and

**WHEREAS**, the Parties have drafted the Agreement for such purposes; and

**WHEREAS**, the Town of Payson wishes to enter into the Agreement,

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

Section 1. That the Law Enforcement Mutual Aid Agreement Between the Town of Payson and the Tonto Apache Tribe, 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 said 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 Agreement.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Resolution Number 2511 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:**

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

*Prepared by Town of Payson Legal Department*

*SIS:drs August 13, 2009 (11:10am)*

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Kenny J. Evans, Mayor

APPROVED AS TO FORM:

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Samuel I. Streichman, Town Attorney

ATTEST:

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Silvia Smith, Town Clerk

# EXHIBIT "A"

to Resolution No. 2511

## LAW ENFORCEMENT MUTUAL AID AGREEMENT BETWEEN THE TOWN OF PAYSON AND THE TONTO APACHE TRIBE

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2009, between 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 ("TAT"), and the Town of Payson, an Arizona Municipal Corporation ("TOP") (collectively the "Parties" or singularly the "Party").

### RECITALS

WHEREAS, it is to the mutual benefit of the Parties to enter into this Agreement for law enforcement assistance, mutual aid and back up ("Assistance"); and

WHEREAS, the TAT and TOP recognize that the protection of the health, safety and welfare of the members of the TAT and the citizens of Payson, and the safety of TAT and TOP law enforcement officers, will be enhanced under the terms of this Agreement; and

WHEREAS, the Parties recognize that this Agreement does not constitute a waiver of State or Tribal sovereignty,

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

**1.0 Term of Agreement and Automatic Renewal.** That commencing on August 20, 2009, for a period of three (3) years, TOP and the TAT agree to cooperate and provide Assistance to one another under the terms and conditions of this Agreement in order to better protect the health, safety, and welfare of members of the TAT and the citizens of Payson. Upon expiration of this three (3) year term, this Agreement shall be automatically renewed for a period of one (1) year, and from year to year thereafter, unless either Party provides the thirty (30) days notice of termination as required by Section 16.0 of this Agreement.

**2.0 Assistance.** Except as provided in Sections 2.1 and 2.2, below, pursuant to A.R.S. §11-951, *et seq.*, and A.R.S. §13-3872, and applicable law, TOP agrees through its designated and employed peace officers, to provide prompt Assistance to designated and employed peace officers of the TAT when requested by TAT; and pursuant to Article VII of the Constitution of the Tonto Apache Tribe, as amended, TAT agrees through its duly designated and employed peace officers, to provide prompt Assistance to designated and employed peace officers of the TOP when requested.

2.1. **Conflicting Duties.** Nothing in this Agreement requires TOP or TAT to provide Assistance to the requesting Party where such Assistance would conflict with the then present duties of the responding Party's officers.

2.2. **Requests for Assistance.** Requests for Assistance under this Agreement shall be limited to circumstances in which, in the judgment of the requesting Party, the Assistance of the responding Party is necessary to preserve the peace, ensure law enforcement officer safety or to protect the health, safety and welfare of the public. Nothing in this Agreement is intended to be a substitute for adequate staffing and appropriate scheduling within the law enforcement departments of either Party.

3.0 **P.O.S.T. Certification.** The Parties agree that all requesting or responding TOP and TAT officers shall be certified by and in good standing with the Peace Officers Standards and Training ("P.O.S.T.") Board.

4.0 **Officers in Charge.** The Parties agree that TAT officers will be the officers in charge when TOP officers are asked to provide Assistance within the exterior boundaries of the Tonto Apache Indian Reservation ("Reservation"), and TOP officers will be the officers in charge when TAT officers are asked to provide Assistance off Reservation and within the jurisdiction of the Town of Payson.

5.0. **Detention and Removal of Criminal Suspects.**

5.1. **Detention of Native American Suspects.** In the event TOP officers are requested by a TAT officer to render assistance on the Reservation, TOP officers may temporarily detain for criminal investigative purposes, but shall not remove, a Native American from the Reservation. Detained Native American individuals will be turned over to the responding officers of the TAT.

5.2. **Hot Pursuit.** Nothing in Section 5.0 prohibits TOP officers from detaining and removing a Native American from the Reservation in the event TOP officers lawfully enter the Reservation while engaged in the "HOT PURSUIT" of a fleeing Native American suspect.

6.0 **Tribal Orientation Course.** Within thirty (30) days of the execution of this Agreement, TAT agrees to conduct an orientation course or courses for TOP officers on TAT culture and laws and jurisdiction in Indian Country.

7.0 **No Employment Relationship Created.** Officers of the assisting Party shall not be considered employees of the requesting Party. The TAT agrees to hire and pay the entire salary and benefits of the respective duly commissioned officers of the TAT Police Department without compensation from TOP, and TOP agrees to hire and pay the salary and benefits of the respective duly

commissioned officers of the TOP without compensation from the TAT, in the exercise of any and all of the provisions of this Agreement. Nothing contained in this Agreement shall be construed or constructed as an employment contract of or for individual peace officers of the TAT or the TOP.

**8.0. 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.

**9.0. Equipment, Materials, and Supplies.** In rendering Assistance under this Agreement, each Party shall be responsible for the provision and maintenance of its own equipment, materials and supplies, except in cases of emergency wherein it appears to the officers involved that the sharing or use of equipment, materials or supplies is necessary or proper.

**10.0 Reports.** After occurrences in which Assistance was given under this Agreement, each Party shall exchange with the other Party all reports arising out of such occurrence when requested by the other Party; provided that nothing in this Section 10.0 shall be construed to waive, limit, or remove the duty of confidentiality imposed or allowed by law as to such reports or the contents thereof. Reports generated as a result of Assistance rendered under this Agreement, unless otherwise provided by law, shall remain the records of the respective agencies and any public records requests shall be the responsibility of the Party creating the record.

**11.0 Payment of Costs and Expenses.** Each Party shall, within its lawful methods of financing, establish and provide for payment of the costs and expenses of performance of its obligations undertaken pursuant to this Agreement and no taxable event shall arise from this Agreement. Each Party will pay its own incurred overtime and expenses associated with officers working an occurrence or traveling to testify or testifying. It is also contemplated that the Chief Law Enforcement Officer for each Party shall direct and require his/her officers to travel and testify, under subpoena, to the court with jurisdiction over the occurrence.

**12.0 Worker's Compensation.** For the purposes of worker's compensation, an employee of a Party to this Agreement who works under the jurisdiction or control of such Party, notwithstanding that such employee works within the

jurisdictional boundaries of another Party pursuant to this particular Agreement, shall be deemed for all purposes to be and remain an employee of the Party who is his primary employer. As provided in A.R.S. § 23-1022(D), the primary employer Party of such an employee shall be solely liable for payment of worker's compensation benefits for the purpose of this Section 12.0, and the employee rendering Assistance shall remain an employee solely of that employee's primary employer.

**13.0 Inapplicability of State Law to Native Americans in Indian Country.** The Parties to this Agreement acknowledge and agree that the applicability of federal and tribal laws in "Indian Country" may depend on whether or not the subject or the victim is Native American, and that state law has been held generally to be inapplicable to Native Americans in Indian Country; and the Parties agree that nothing in this Agreement makes any law applicable to a certain person or certain conduct where it would not otherwise be applicable under the laws of the United States or the State of Arizona.

**14.0 Special Law Enforcement Commission.** The TAT agrees to support TOP's efforts to obtain Special Law Enforcement Commission ("SLEC") from the United States Department of the Interior, Bureau of Indian Affairs, subject to those officers meeting all requirements of the Bureau of Indian Affairs for issuance of the SLEC, including applicants' background investigations and required training. Any exercise of federal authority by a TOP officer on the Tonto Apache Reservation pursuant to the SLEC must be reported to the Chief Law Enforcement Officer of the Tonto Apache Tribe, or to his or her designee, as soon as practical following such exercise of authority.

**15.0 Sovereign 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.

**16.0 Termination of Agreement.** This Agreement may be canceled or terminated by either Party at the time upon thirty (30) days written notice by registered or certified mail. Notices are to be mailed to the Police Chief of TOP for the Town of Payson, and to the Chairman of the Tonto Apache Tribe and Chief of Police as set forth in Section 27.0 of this Agreement.

**17.0 Effective Date.** This Agreement shall become effective ten (10) days after the filing of this Agreement with the Gila County Recorder, pursuant to A.R.S. § 11-952 (G).

**18.0 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.

**19.0 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).

**20.0 Dispute Resolution.** In the event any dispute arises between the Parties under this Agreement, the procedures set forth in this Section 20.0 shall apply and control the resolution of such dispute.

**20.1. 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.

**20.2. Process.** 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 20.0, 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.

**20.3. Costs of Dispute Resolution.** The Parties further agree that, except as provided for in Section 8.0 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.

**21.0 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.

**22.0 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.

**23.0 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.

**24.0 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.

**25.0 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.

**26.0 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.

**27.0 Notices.** Except with regard to immediate requests for Assistance under Section 2.0 of this Agreement, all notices, communications, and reports shall be in writing and shall be provided to the following:

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

AND

Chief of Police  
Tonto Apache Tribe Police Department  
Tonto Apache Reservation #30  
Payson, Arizona 85541

Town of Payson  
Chief of Police  
Town of Payson  
303 N. Beeline Highway  
Payson, Arizona 85541

28.0 **Section Headings.** The subject headings in this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

**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 J. EVANS, MAYOR

ATTEST:

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

APPROVED AS TO FORM:

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