

RESOLUTION NO. 2553

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA STATE PARKS BOARD RELATING TO TONTO NATURAL BRIDGE STATE PARK.

WHEREAS, the Arizona State Parks Board (the "Board") has statewide responsibility for the management, development and operation of State parks; and

WHEREAS, in the face of the current serious economic downturn, it is difficult for the State Parks Board to commit sufficient resources to operate the Tonto Natural Bridge State Park; and

WHEREAS, the Town of Payson (the "Town") is willing to contribute monies to augment the operation of the Tonto Natural Bridge State Park; and

WHEREAS, for such purpose, an Intergovernmental Agreement has been negotiated,

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 Arizona State Parks Board and the Town of Payson, attached hereto as Exhibit "A" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form attached.

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

Section 3. That the Town of Payson be and is hereby authorized to take such other and further actions as may be necessary or appropriate to carry out the purpose and intent of this Resolution Number 2553 and said Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 20th day of May, 2010 by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

Prepared by Town of Payson Legal Department

TMW:drs May 11, 2010 (3:02pm)

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MAY 20 2010 G.3*

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

Prepared by Town of Payson Legal Department

TMW:drs May 5, 2010 (4:10pm)

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INTERGOVERNMENTAL AGREEMENT

Between
Arizona State Parks
and
Town of Payson

ASPB Ref No.: PR10-042

Town Ref No.:

Re: TNBSP IGA

Issued: May 3, 2010

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I. PARTIES TO THIS INTERGOVERNMENTAL AGREEMENT

- A. The participants to this Intergovernmental Agreement (IGA), herein referred to as the "Agreement," are:
1. Arizona State Parks BOARD, acting for and on behalf of Arizona State Parks, hereafter referred to as the "BOARD," and
 2. Town of Payson, hereinafter, the "TOWN."
 3. Individually either of these entities may be referred to as "Party" and collectively they may be referred to as "Parties."

II. AUTHORITY

- A. General:
A.R.S. §11-951, *et seq.* authorizes public agencies to enter into Intergovernmental Agreements for the joint exercise of common powers.
- B. Specific:
1. Arizona State Parks Board:
 - a. A.R.S. §41-511.04(A)(2) authorizes BOARD to manage, develop and operate state parks.
 - b. A.R.S. § 41-511.04 (A)(6) authorizes BOARD to enter into agreements with local governmental units to protect state parks.
 - c. A.R.S. §41-511.05(2) authorizes BOARD to enter into agreements to perform its duties.
 - d. A.R.S. §41-511.10 authorizes BOARD to reject any donation, bequest, or gift or property deemed unsuitable.
 - e. A.R.S. § 41-511.03 authorizes the BOARD to select, acquire, preserve, establish and maintain areas of historical interest for the education, pleasure, recreation, and health of the people.
 2. Town of Payson
 - a. ARS § 9-494 authorizes a city or TOWN to establish and maintain public parks, and acquire, hold and improve real property for that purpose.
 - b. A.R.S. §§ 11-931 through -933 authorizes the TOWN to establish public parks and to enter into cooperative agreements to maintain and administer public parks.
 - c. On August 20, 2009, the Payson Town Council unanimously passed resolution N. 2509 directing the Mayor and the Town Manager to work with the BOARD to develop an Agreement for the purpose of maintaining the Tonto Natural Bridge State Park as a tourist destination.
 - d. On March 4, 2010, the Payson Town Council unanimously passed a council decision request directing the Mayor and/or staff to negotiate with the BOARD to continue the operation of Tonto Natural Bridge State Park through September 27, 2010.

III. PURPOSE

This Agreement is created to permit the BOARD to govern the contribution of monies and other support from the TOWN to be used to augment the operation of Tonto Natural Bridge State Park (PARK).

IV. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

The TOWN and the BOARD recognize the importance of keeping the PARK open to the public at this time, and further recognize that the current budget deficits of the State of Arizona make it difficult for the BOARD to commit sufficient resources to operate the PARK and the TOWN is willing to contribute monies to augment the operation of, and to postpone the closing of the PARK.

EXHIBIT "A"

to Resolution No. 2553



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V. RESPONSIBILITIES

A. The TOWN shall:

1. Contribute \$24,000 to the BOARD to operate the PARK a minimum of five days per week through September 27, 2010.
2. Pay the BOARD's invoice for \$24,000 within 30-calendar days of receipt. The invoice shall be issued after July 1, 2010.

B. The BOARD shall:

1. Accept the contribution of \$24,000 from the TOWN.
2. Submit an invoice to the TOWN after June 30, 2010, with the expectation of receiving the payment **after** July 1, 2010.
3. Place the monies received in a designated account, as established by A.R.S. § 41-511.04(c) to be used at the discretion of the BOARD for the purposes described in this IGA.
4. Operate the PARK a minimum of five days per week through September 27, 2010.

VI. PRINCIPAL NOTIFICATION CONTACTS

Arizona State Parks:
For Project Contact
 Ray Warriner
 Land Acquisition/Planning Mgr
 Arizona State Parks
 1300 West Washington
 Phoenix, AZ 85007
 Phone: 602-542-2146
 FAX: 602-542-4180
 Email: rwarriner@azstateparks.gov

For Contract Administration
 Margaret Fernandez, Contract Officer
 Business Services Unit
 Arizona State Parks
 1300 West Washington
 Phoenix, AZ 85007
 Phone: 602-542-6937
 Email: mfernandez@azstateparks.gov

Town of Payson:
For Project Contact
 Kenny Evans
 Mayor
 Town of Payson
 303 N. Beeline Highway
 Payson, AZ 85541
 Phone: 928-474-5242
 Fax: 928-474-4610
 Email: kevans@paysonaz.us

For Contract Administration
 Debra Galbraith, Town Manager
 Town of Payson
 303 N. Beeline Highway
 Payson, AZ 85541
 Phone: 928-474-5242, Ext. 262
 Email: dgalbraith@ci.payson.az.us

VII. DURATION, TERMINATION AND DISPOSAL OF PROPERTY, IF ANY

- A. Duration: This Agreement is entered into and is effective as of June 4, 2010 and shall continue until September 27, 2010 unless earlier cancelled or terminated. Either Party, prior to expiration, and the written amendment of the Parties, may extend this Agreement upon 60-calendar days written advance notice. This Agreement may be extended for two additional one-year periods, upon written amendment executed by both Parties herein 30-calendar days prior to expiration of the then current term.
- B. Default: In the event that either Party is in default of its obligations and such default continues un-remedied for a period of 30-calendar days after written notice, the other Party may elect, upon not less than 60-calendar days prior written notice, to terminate this IGA. This does not preclude the Party alleging the default from pursuing other remedies existing in law or in equity.
- C. Termination: This Agreement may be terminated at any time by mutual consent of all Parties or can be terminated by either Party by giving 30-calendar days written notice to the other Party.
- D. Disposal of Property: In accordance with A.R.S. §35-148, in the event of termination or expiration, any advanced funds not expended shall be returned to the advancing agency. All data, information, and any



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other work production already complete or uncompleted under the terms of this Agreement for the advancing agency shall be returned within 30-calendar days from receipt of notice to terminate.

VIII. FUNDING

- A. Funds provided under this Agreement will be used at the discretion of the BOARD in a designated account for the PARK and for the purposes described herein.

IX. GENERAL PROVISIONS

- A. Modification: Modifications within the scope of this Agreement shall be made by mutual consent of the Parties, only by the issuance of a written modification, signed and dated by all Parties, prior to any changes being performed.
- B. Equal Opportunity/Non-Discrimination: The Parties shall comply with Executive Order 75-5 as modified by Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.
- C. Records: Pursuant to A.R.S. § 35-214, the TOWN shall retain and shall contractually require each subcontractor to retain all data, books and other records (records) relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the TOWN shall produce the original of any or all such records.
- D. Conflict of Interest: Pursuant to A. R. S. § 38-511, the State its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract, is in effect, an employee or agent of any other Party to the contract in any capacity or a consultant to any other Party of the contract with respect to the subject matter of the contract. A cancellation made pursuant to this provision shall be effective when the TOWN receives written notice of the cancellation unless the notice specifies a later time.
- E. Non-availability of Funds: Every payment obligation of the Parties under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Agreement, this Agreement may be terminated by either Party at the end of the period for which funds are available. No liability shall accrue to either Party in the event this provision is exercised, and neither Party shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- F. No Partnership or Employment: It is not intended by this Agreement to, and nothing contained herein shall, create any employment relationship, partnership, joint venture, or other arrangement between the TOWN and the BOARD. No term or provision of this Agreement is intended to, or shall 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.
- G. Arbitration: The Parties to this Agreement consent to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518, except as may be required by other applicable statutes.
- H. Indemnification: Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of



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any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

- I. Limitations: Nothing in this Agreement shall be construed as limiting or expanding the statutory responsibilities of the Parties.
- J. Other Agreements: This Agreement in no way restricts either Party from participating in similar activities with other public or private agencies, organizations and individuals.
- K. Immigration Compliance: All Parties shall comply with all applicable federal immigration laws, Governor's Executive Order 2005-30, and any successor statutes.

X. SIGNATURE AUTHORITY:

- A. By signing below, the signer certifies the authority to enter into this Agreement and has read the foregoing and agrees to accept the provisions herein.
- B. All Parties to this Agreement acknowledge that signatures by electronic means are acceptable and legally binding.
- C. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

RESERVED FOR ARIZONA STATE PARKS:				RESERVED FOR TOWN OF PAYSON:			
Signature _____ Date _____ Renée E. Bahl, Executive Director <small>Typed Name and Title</small> Arizona State Parks Board <small>Entity Name</small> 1300 W. Washington <small>Address</small> Phoenix, AZ 85007 <small>City State Zip</small>	Signature _____ Date _____ <small>Typed Name and Title</small> <small>Entity Name</small> <small>Address</small> <small>City State Zip</small>						
RESERVED FOR THE ATTORNEY GENERAL:				RESERVED FOR TOWN ATTORNEY:			
Attorney General has been reviewed pursuant to A.R.S. 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General. Dated this <u>3rd</u> day of <u>May</u> , 2010 <p style="text-align: center;">TERRY GODDARD The Attorney General</p> <p style="text-align: center;"><i>Jay Rhode for Louis Hachtel</i> 5/3/10 <small>Assistant Attorney General Signature Date</small></p>				<p style="text-align: center;">Approved as to Form:</p> <small>Town Attorney Signature Date</small>			