

RESOLUTION 2747

A RESOLUTION OF THE TOWN COUNCIL APPROVING A FIRE SERVICES AGREEMENT BETWEEN THE TOWN AND THE TONTO APACHE TRIBE FOR FISCAL YEARS 2014, 2015, AND 2016.

WHEREAS, on November 11, 2011, the Town Council approved a Fire Services Agreement between the Town of Payson and the Tonto Apache Tribe for Fiscal Years 2011, 2012 and 2013; and

WHEREAS, the Town and the Tribe have agreed to a new Fire Services Agreement for Fiscal Years 2014, 2015, and 2016; and

WHEREAS, the Council desires to adopt such new Fire Services Agreement,

NOW, THEREFORE, THE MAYOR AND COUNCIL DO RESOLVE AS FOLLOWS:

Section 1. The Fire Services Agreement between the Town of Payson and the Tonto Apache Tribe is approved in substantially the form attached as Exhibit A.

Section 2. Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute the Fire Services Agreement in substantially the form attached.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of December, 2013, by the following vote:

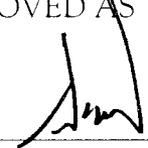
AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

DEC 12 2013 *DL**

Exhibit A
To
Resolution 2747

**FIRE SERVICES AGREEMENT BETWEEN
THE TOWN OF PAYSON
AND
THE TONTO APACHE TRIBE**

THIS AGREEMENT is made and entered into as of this _____ day of _____ 20____, 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 ("Town") (collectively the "Parties" or singularly a "Party").

RECITALS

WHEREAS, it is the desire of the TAT to receive routine fire department services; and

WHEREAS, the Town operates a fire department which provides fire suppression and emergency medical services for the residents of the Town; and

WHEREAS, the Town can extend these fire department services to the TAT without causing any significantly increased service demands for the fire department or jeopardizing the services presently being offered to the citizens of the Town; and

WHEREAS, in December of 2011, the Parties entered into a Fire Services Agreement that expires at the end of June of 2014; and

WHEREAS, the Parties desire to enter into an Agreement that will take effect following the expiration of the December 2011 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.** The term of this Agreement shall be from July 1, 2014 through June 30, 2017.
- 2.0 **Renewal.** By mutual agreement, the Parties may renew this Agreement for subsequent three year terms. Such renewal shall be in writing and shall identify the Payment amounts pursuant to Paragraph 3.2

3.0 **Payment.**

3.1 The TAT shall pay the Town the following amounts during the initial term of this Agreement:

2014 Fiscal Year, July 1, 2014 – June 30, 2015	\$112,000.
2015 Fiscal Year, July 1, 2015 – June 30, 2016	\$114,500.
2016 Fiscal year, July 1, 2016 – June 30, 2017	\$117,000.

3.2 If this Agreement is renewed pursuant to Paragraph 2.0, the Parties shall mutually agree upon the Payment amount for such renewal period.

3.3 The TAT shall pay one half of the annual payment amount for each fiscal year on or before January 15 of such fiscal year. The TAT shall pay the remaining one half of the annual payment amount on or before July 15 following the end of such fiscal year.

4.0 **Fire Suppression and Emergency Medical Services.** The Town, through its Fire Department, will provide fire suppression and emergency medical services to the TAT in a manner similar to the services provided to the citizens of the Town. The Town does not provide routine medical transport service.

4.1 The Town will use its normal procedures for dispatching fire units to the incidents at the TAT. The Parties understand that during periods of high fire department activity, i.e., simultaneous incident situations, normal dispatch procedures may be modified.

4.2 The Town will not maintain or place any facilities, vehicles, or equipment with the TAT.

4.3 The Town and TAT acknowledge and understand that there may be instances where an emergency occurs within the TAT and Town fire units may not be able to reach the scene due to snow, mud, washed out roads, or high water. Should this occur it will be considered by the Parties to be an Act of God, and will not constitute a failure by the Town to perform to the terms of this agreement, nor will it be considered to constitute negligence on the part of the Town.

4.4 The Town reserves the right to enter into mutual aid agreements with other Fire Departments and Districts. The TAT acknowledges and understands that there may be instances when an emergency occurs and another department with whom the Town has a mutual aid agreement will assist the Town Fire Department or will respond to such emergency as the first responder pursuant to a mutual aid agreement.

- 4.5 The TAT shall designate an individual to serve as the contact person of the TAT in any fire suppression or emergency medical services situation. The TAT shall notify the Payson Fire Department Chief of such contact person.
- 5.0 **Reserved.**
- 6.0 **Fire Hydrants.**
- 6.1 The Town shall conduct routine testing and maintenance of the TAT fire hydrants.
- 6.2 The Town will coordinate and schedule in advance with the TAT Maintenance Department such testing and maintenance.
- 6.3 Any fire hydrant repair shall be the responsibility of the TAT.
- 7.0 **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 the 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 to contribute against the other to the extent of the liability caused by the other Party's employees in activities creating joint liability under this Agreement.
- 8.0 **Equipment, Materials, and Supplies.** Each Party shall be responsible for the provision and maintenance of its own buildings, equipment, materials and supplies under this Agreement.
- 9.0 **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.
- 10.0 **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
- 11.0 **Termination of Agreement.** This Agreement may be cancelled or terminated by either Party upon thirty (30) days written notice by registered or certified mail. Notices shall be mailed to the persons identified in Paragraph 21.0 within 30 days of any cancellation or termination. The TAT shall pay to the Town on a pro rata basis all outstanding amounts due.

- 12.0 **Conflict of Interest.** The Parties acknowledge and agree that this contract is subject to cancellation for Conflict of Interest pursuant to A.R.S. § 38-511, the terms of which are incorporated herein.
- 13.0 **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).
- 14.0 **Dispute Resolution.** In the event any dispute arises between the Parties under this Agreement, the procedures set forth in this section 14.0 shall apply and control the resolution of such dispute.
- 14.1 **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.
- 14.2 **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 14.0, 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.
- 14.3 **Costs of Dispute Resolution.** The Parties further agree that, except as provided for in Section 7.0 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 dispute is resolved through mediation, agreement, litigation in a court, or in any other manner.
- 15.0 **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.
- 16.0 **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 similar written instrument executed with the same formalities as this instrument.

- 17.0 **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.
- 18.0 **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.
- 19.0 **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.
- 20.0 **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.
- 21.0 **Notices.** All notices, communications, and reports shall be in writing and shall be provided to the following:

Tonto Apache Tribe

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

Town of Payson

Town Manager
303 N. Beeline Highway
Payson, AZ 85541

And

Fire Chief
303 N. Beeline Highway
Payson, Arizona 85541

- 22.0 **Section Heading.** The subject headings in this Agreement are included for purpose of convenience only, and shall not affect the construction or interpretation of any its provisions.

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

Dated this ____ day of _____, 20____

Dated this ____ day of _____, 20____

TONTO APACHE TRIBE

TOWN OF PAYSON

BY _____
Wally Davis Jr., Acting Chairperson

BY _____
KENNY J. EVANS, Mayor

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Timothy M. Wright, Town Attorney