

MUTUAL AID AGREEMENT  
BETWEEN THE ARIZONA DEPARTMENT OF PUBLIC SAFETY  
AND  
THE FORT McDOWELL YAVAPAI NATION

CONTRACT NO. 2009-399

THIS AGREEMENT, entered into as of the December 15, 2009, between the Fort McDowell Yavapai Nation, hereinafter referred to as the "Nation" and the Arizona Department of Public Safety, a political subdivision of the State of Arizona, hereinafter referred to as "DPS".

WHEREAS, it is to the mutual benefit of the parties hereto that they enter into an Agreement of mutual protection and assistance in the field of law enforcement, and recognizing that this Agreement does not constitute a waiver of State of Arizona or the Nation's sovereignty, and

NOW, THEREFORE, DPS pursuant to A.R.S. §11-951, et seq., and A.R.S. § 13-3872, and the Nation, by virtue of and pursuant to the authority contained under Article V, Section A (3), (4) and (15) of the Constitution of the Fort McDowell Yavapai Nation, do hereby enter into this Agreement to more efficiently and economically facilitate and provide for the protection of the citizens of the State of Arizona and the Nation, and for the protection of the law enforcement officers subject to this Agreement.

NOW, THEREFORE, it is mutually agreed by the parties hereto:

1. Commencing on December 26, 2009, for a period of five (5) years, DPS and the Nation agree to cooperate and assist each other when designated law enforcement officers employed by either Party request assistance, when said call does not conflict with the requested officers' duties.
2. DPS, through its duly designated and employed officers, agrees to assist and aid the designated and employed officers of the Nation when called upon, and the Nation, through its duly designated and employed officers, agrees to assist and aid DPS designated and employed officers. Such assistance will be provided unless such call conflicts with then present duties.
3. Upon a duly authorized request of a Nation's officer for assistance, the DPS officer or officers will assist the Nation's officer or officers in enforcement of the Law and Order Code of the Fort McDowell Yavapai Nation. Responding DPS officers recognize that the Nation's officers will be the officers in charge when they respond to provide aid and assistance within the confines of the Fort McDowell Indian Reservation (Reservation). DPS officers requested by a Nation's officer to render assistance, or who enter on to the Fort McDowell Indian Reservation while engaged in the "HOT PURSUIT" of a fleeing suspect may detain, but shall not remove a Native American from the reservation. Detained Native American individuals will be turned over to the responding officers of the Nation.

4. Upon a duly authorized request of a DPS officer for assistance, the Nation's officer or officers will assist the DPS officer or officers in enforcement of the law relating to all crimes of the State of Arizona as set out in Arizona Revised Statutes, 1956, as amended. Responding Tribal police officers recognize that DPS officers will be the officers in charge when they respond to provide aid and assistance outside the borders of the Reservation.

5. DPS officers and the Nation's officers will provide assistance to the other Party when there is a duly authorized request in non-criminal incidents and accidents where a response does not conflict with their present duties.

6. The Nation agrees to hire and pay the entire salary of the duly commissioned officers of the Nation's Police Department without compensation from DPS, and DPS agrees to hire and pay the salaries of the duly commissioned officers of the DPS without compensation from the Nation, in the exercise of any of the provisions of this Agreement. Nothing contained in this Agreement shall be construed or constructed as an employment contract of individual officers of the Nation or DPS.

7. Each Party shall be responsible and liable for damages caused by its employees under this Agreement when said employees are acting within the scope of their employment. Each Party shall hold the other Party harmless for liability caused by its employees. Each Party shall have the right of contribution against the other to the extent of liability caused by the others' employees in activities creating joint liability. Officers of the assisting Party shall not be considered employees of the requesting Party.

8. In rendering mutual law enforcement assistance, 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 is necessary or proper.

9. After occurrences in which mutual assistance was given, 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 shall be interpreted to waive, limit, or remove the duty of confidentiality imposed or allowed by applicable law(s) as to such reports or the contents thereof. Reports generated pursuant to mutual aid between the agencies remain the records of the respective agencies and any public records requests may be governed by applicable law(s).

10. 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 officers to travel and testify, with subpoena, to the court with jurisdiction over the occurrence.

11. For the purposes of worker's compensation, an employee of a Party to this Agreement who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this Agreement, shall be deemed to be an employee of the Party who is his/her primary employer and of the Party under whose jurisdiction and control he/she is then working as provided in A.R.S. 23-1022(D) and 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. Each Party herein shall comply with provisions of A.R.S. 23-1022 (E) by posting public notice if required.

12. The Parties to this Agreement agree that the applicability of Federal and Tribal laws in Indian Country may depend on whether 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. The Parties agree that nothing in this Agreement shall make any law applicable to a certain person or certain conduct where it would not otherwise be applicable.

13. The Parties may impose other requirements including, but not limited to, an orientation course on BIA, Tribal or State criminal procedures.

14. 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 sovereignty.

15. This Agreement may be canceled or terminated by either Party at any time upon thirty (30) days written notice by registered or certified mail. Notices are to be addressed to the Director of DPS for the State of Arizona, and to the General Manager of the Fort McDowell Yavapai Nation for the Nation.

16. This Agreement shall become effective ten (10) calendar days after the filing of this Agreement with the Secretary of State Arizona.

17. All Parties are hereby on notice that this Agreement is subject to cancellation for Conflicts of Interest pursuant to A.R.S. § 38-511.

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

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FORT McDOWELL YAVAPAI NATION

STATE OF ARIZONA

By



Clinton Pattea  
President, Tribal Council  
Fort McDowell Yavapai Nation

By



Roger Vanderpool, Director  
Arizona Department of Public Safety


By



Jan Brewer  
Governor, State of Arizona

APPROVED as to form this 30<sup>th</sup> day  
of November, 2009

By



Arizona Attorney General's Office



# ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*"Courteous Vigilance"*

JANICE K. BREWER  
Governor

ROGER VANDERPOOL  
Director

Tuesday, December 22, 2009

Chief Jesse Delmar  
Fort McDowell Yavapai Nation Police Department  
10755 N. Fort McDowell Road  
Fort McDowell, Arizona 85264

Dear Chief Delmar:

At the time the Mutual Aid Agreement was drafted, we were unaware that the Arizona Legislature had passed and the Governor had signed House Bill 2011, which removed the requirement that such agreements be filed with the Secretary of State. In fact, the Office of the Secretary of State will no longer accept such filings. Please refer to the attached notice from the Office of the Secretary of State. Per the Arizona Attorney General's Office, agreements which indicate, as does ours, that the effective date of the agreement is on or after filing with the Secretary of State are now effective on the date that the final signature is obtained. In this case, our agreement was signed by Governor Janice Brewer on December 15, 2009, and became effective on that date.

I will take steps to assure that the wording is updated to reflect current law when our agreement is next up for renewal. Thank you for your assistance and cooperation in obtaining the current agreement.

Sincerely,

A handwritten signature in cursive script that reads "Larry D. Scarber".

Larry D. Scarber, Commander  
Southern Patrol Bureau  
DPS Tribal Liaison



**KEN BENNETT**  
**SECRETARY OF STATE**  
**STATE OF ARIZONA**



November 25, 2009

Dear Sir or Madam:

Recently the legislature passed and the governor signed House Bill 2011, which, among other things, amended A.R.S. § 11-952 removing the requirement that intergovernmental agreements be filed with the Secretary of State. As such, our office will no longer accept filings pertaining to intergovernmental agreements.

Enclosed you will find the documents you submitted to our office.

Should you have any additional questions, please do not hesitate to contact us at (602) 364-3229.

Sincerely,

The Office of the Secretary of State  
Business Services Division

1700 W. Washington Street, 7th Floor  
Phoenix, Arizona 85007-2888  
Telephone (602) 542-4285 Fax (602) 542-1575  
[www.azsos.gov](http://www.azsos.gov)



STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION  
MEMORANDUM

Anni L. Foster  
Assistant Attorney General

Direct: 602-542-8859  
Fax: 602-542-3646

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**


A.G. Contract No. P001-2009-004641 (**DPS 2009-399**), an Agreement between public agencies, i.e., Arizona Department of Public Safety and The Fort McDowell Yavapai Nation, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

The undersigned Assistant Attorney General provides this determination based on information provided by the Arizona Department of Public Safety that the effective dates determined by paragraph 16 of the agreement will be filled in after all necessary approvals and filing with the Secretary of the State.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED November 30, 2009.

TERRY GODDARD  
Attorney General

  
\_\_\_\_\_  
ANNI L. FOSTER  
Assistant Attorney General

ALF:cpo  
Attachment  
#630585