

LAW ENFORCEMENT “MUTUAL AID” AGREEMENT
Between
GILA COUNTY
And
SAN CARLOS APACHE TRIBE

I. PURPOSE OF AGREEMENT

Pursuant to Section 25 U.S.C. § 2801 *et seq.*, this Law Enforcement Mutual Aid Agreement (the “Agreement”) permits tribal law enforcement agencies with primary jurisdiction over crimes committed by Indians within the exterior boundaries of the San Carlos Apache Indian Reservation (the “Reservation”) to request such law enforcement assistance as they deem necessary or appropriate from sworn members of the Gila County Sheriff’s Office or the Gila County Attorney’s office, subject resources and personnel as may be made available for such purposes.

II. PARTIES TO THE AGREEMENT

Parties to this Agreement shall include the following: Gila County, by and through the Gila County Board of Supervisors, the offices of the Gila County Sheriff, and Gila County bureaus, divisions and individual members; the San Carlos Apache Indian Tribe; the San Carlos Tribal Council, its Chairman and members; and, the San Carlos Police Department, its members.

III. ACKNOWLEDGMENTS

- A. The parties to this Agreement formally recognize the authority of the San Carlos Apache Tribal Council (including its Chairman and individual members) and the San Carlos Apache Police Department to provide primary law enforcement services on the Reservation. Primary law enforcement services on the Reservation shall include, but are not limited to: the enforcement of Tribal laws and ordinances upon its Tribal members and Indian residents; responding to calls for law enforcement services within the Reservation boundaries; investigating reported violations of Tribal law and ordinances; and providing for the security of persons who reside upon or travel onto the Reservation.
- B. The parties to this Agreement formally recognize the authority of the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Law Enforcement Division, its subdivisions and individual agents, to investigate violations of Federal Law committed on San Carlos Apache lands.
- C. Federal Indian Law dictates the authority of off-reservation Law Enforcement agencies (Gila County Sheriff, Medical Examiners, Gila County Attorney, their bureaus, divisions and individual members) to enforce Arizona State laws over non-

Indians who reside upon, or travel onto, the Reservation. The parties agree to the following in terms of jurisdiction:

1. Crimes by a Non-Indian Against an Indian in Indian Country
State courts cannot have jurisdiction. If the crime in question is defined by a federal enclave statute, prosecution of the non-Indian proceeds under the Indian Country Crimes Act, 18 U.S.C. § 1152. If there is no federal enclave crime, state substantive law is incorporated by reference, through the Assimilative Crime Act, 18 U.S.C. §13. The Major Crimes Act (18 U.S.C. § 1153) does not apply because it covers only crimes by Indians. The Tribal courts may not prosecute under the rule in *Oliphant*. See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
2. Crimes by a Non-Indian against a Non-Indian in Indian Country
The *McBratney* rule holds that crimes by a non-Indian in Indian Country go to state court. Federal courts and tribal courts have no jurisdiction. See *U.S. v. McBratney*, 104 U.S. 621 (1881).
3. Victimless/Consensual Crimes by a Non-Indian in Indian Country
Federal courts have jurisdiction over crimes covered by federal enclave law or state law (via the Assimilative Crimes Act) under the Indian Country Crimes Act. The State courts may have concurrent jurisdiction, although no court has so held. The rationale under *McBratney* would allow state jurisdiction only if no interest of the tribe, its members or property is involved and if federal policy towards Indians is not impacted. Cf. *Oliphant*, supra.
4. Sex Offender Registration and Notification Act. P.L. 109-248 Title I of the Adam Walsh Child Protection and Safety Act of 2006 ("SORNA") requires minimum standards for sex offender registration and notification in the United States, including within Tribal reservation boundaries. The parties agree to collaborate on sharing relevant information on registered sex offenders as may be required by SORNA.

IV. PROCEDURES AND LIMITATIONS

- A. Law Enforcement agencies empowered by the United States Government on the Reservation.
 1. Members of the Offices of the Gila County Sheriff and Gila County Attorney shall not become involved in the investigation of any offense committed on the Reservation unless the perpetrator has been reasonably identified as a non-Indian or unless requested by the San Carlos Police Department.
- B. The Gila County Sheriff and Medical Examiner may assist in the investigation of deaths which occur on San Carlos Apache Tribal lands in the following cases:

1. When the decedent is non-Indian.
 2. When the decedent is an Indian and the death was the result of criminal means or suspected criminal means being investigated by an agency that has primary jurisdiction on the Reservation.
 - a. The authority of the Medical Examiner shall be limited to those instances where he or she is acting in concert with, and in assisting capacity to an investigation being conducted by the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), or the San Carlos Apache Tribal Police Department.
 3. Pursuant to subsection 2(a) above, when the offices of the Gila County Sheriff and the Gila County Attorney have the authority to act in concert with and assist investigations, such authority shall decrease proportionately as the capability of the Tribe increases or shall decrease to the extent that the Chief of San Carlos Apache Tribal Police Department deems appropriate.
- C. Other actions taken by the Offices of the Gila County Sheriff and Gila County Attorney will be limited to providing immediate “back up” assistance when requested by an Agent of the Federal Bureau of Investigations (FBI), the Bureau of Indian Affairs (BIA), or an on-duty member of the San Carlos Apache Tribal Police Department.
1. For the purpose of this Agreement “immediate back up” shall be limited to those instances in which insufficient personnel from an agency of primary jurisdiction, is present at the scene of an “in progress” crime to provide for the safety of uninvolved third parties, or individual law enforcement officers or agents.
 - a. In such instances personnel providing “back up” Office will act as assisting personnel, providing an additional law enforcement presence, in a secondary role, and will take action only at the request of an officer or agent whose department or Agency retains primary jurisdiction. Personnel of the Offices of the Gila County Sheriff or Gila County Attorney shall not initiate independent law enforcement action on the Reservation.
 2. Personnel of the Offices of the Gila County Sheriff and Gila County Attorney may respond to any request for assistance from Apache Gold Casino regarding any disturbance that may occur at Apache Gold Casino.
 - a. Specialized teams or units within the Offices of the Gila County Sheriff or Gila County Attorney, including but not limited to: the Special Operation Response Team (SORT); and the Hostage Negotiation Team (HNT), may only take law enforcement action on Tribal lands when officially requested by a duly authorized agent of the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), or the Chief of the San Carlos Apache Police

Department. Actions will be limited to those incidents involving major crimes that constitute felony violations of the United States.

- b. The party providing mutual aid shall undertake its reasonable 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 and applicable law. 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.
3. Federal or Tribal law enforcement agencies will not request assistance from Gila County where personnel from agencies with primary jurisdiction over crimes committed by Indians on San Carlos Apache lands are available and can provide an appropriate and timely response.
 - a. Federal or Tribal Law enforcement agencies will not request back up assistance during routine calls for services, in cases where off-duty San Carlos Apache Tribal Police Department personnel are available and can provide an appropriate and timely response.
 - b. Personnel of the Gila County Sheriff's Office or the Gila County Attorney's Office will not personally serve, or be otherwise involved in the service of misdemeanor warrants for, the arrest of Indian on Tribal lands.
- D. When deemed necessary and appropriate, the Gila County Sheriff or his designee for the Gila County Sheriff's Office may call upon the San Carlos Police Department for back up or assistance in emergencies or life threatening situations. In such instances the ranking on duty San Carlos Police Department Officer may authorize San Carlos Police Officers to respond as a back up to Gila County Sheriff Deputy(s) as needed. Any San Carlos Police Officer responding to a request for assistance shall maintain a secondary presence and not initiate any law enforcement action unless specifically requested to do so by the ranking Gila County Sheriff Deputy at the scene.
- E. Arrest and Hearing; Transfer to Tribal Police; Tribal Judge's Determination.

Upon crossing into the Reservation, the Non-Tribal law enforcement officer in hot-pursuit shall immediately notify and maintain contact with the San Carlos Police Department until a Tribal Police Officer responds to the scene.

- F. Traffic Stops; Road Blocks.

The parties agree that, in the interest of public safety, the San Carlos Apache Police Department is hereby authorized to conduct roadblocks or otherwise effect traffic stops on State Route 70, a public right-of-way within the Reservation. Any roadblock conducted by the San Carlos Apache Police

Department must be done in consultation, cooperation and coordination with the Gila County Sheriff's Department. In the event that a San Carlos Apache Police Department Officer encounters and finds obvious violations of criminal law under the Arizona Revised Statutes by a non-Indian, the officer may demand a showing of a drivers license and registration, conduct a search for evidence of crime, issue a citation for a hearing in the Arizona Superior Court for Gila County or detain the non-Indian suspect for delivery to state officers; provided that the San Carlos Apache Police Department Officer is certified by the Arizona Peace Officers Standards and Training Board.

- G. The provisions of these procedures shall be interpreted and construed so as to effectuate its general purpose to make uniform the law of the State and the Tribe; provided that under no circumstances shall the provisions of this procedure be interpreted to authorize the extradition, pursuit, or arrest of any person within the exterior boundaries of the Reservation without complying with this Agreement.

V. LIABILITY

Nothing in this Agreement shall be construed to mean that any of the parties hereto have, by executing this Agreement, waived any immunity or subjected themselves to any liabilities to which they would not be otherwise subjected by law. No party to this Agreement shall be held liable for any loss or damage by reason of its failure to effectively respond to any law enforcement problem in the territory or jurisdiction of any other party. This Agreement shall not be construed as, or deemed to be, an agreement for the benefit of any third parties and no third party or parties shall have the right of action hereunder for any cause whatsoever. The parties further agree as follows:

- A. When providing mutual assistance or acting as deputies of another public agency pursuant to this Agreement, the peace officer responding shall not be considered for any purpose to be employees of the deputizing public agency. All employment rights and wage compensation for work regularly employing public agency. All peace officers retain all pension and disability rights, salaries, worker's compensation protection, and all rights of regular employment while acting under authority conferred pursuant to this Agreement.
- B. No employment right, property interest, liberty, civil or personal entitlement of any kind shall be created by the extending, acceptance or holding of a cross-deputation pursuant to this Agreement. No peace officer of any party shall have a cause of action against any other party, its officers or employees, for failure to deliver or for arbitrary revocation of a cross-deputation. Each party agrees to indemnify and hold harmless every other party from all such claims by its own peace officer employees.

- C. Under no circumstances shall any party be held liable for the acts of peace officers of another party performed under the color of this Agreement. Rather, the permanent employer of the deputized officer shall remain liable for any civil liabilities resulting from acts or conduct of such officer, and such deputized officer shall be deemed to be performing regular duties for his permanent employer while performing services pursuant to this Agreement.
- D. Each party agrees to indemnify and save harmless the other parties to this Agreement for all claims and liabilities whatsoever which may arise out of the alleged negligence or misconduct of any peace officer of that party while such peace officer is rendering services or acting pursuant to the Agreement. Each party also agrees to bear all costs for its own defense of any litigation arising out of any incident during which a deputation of another party is used.
- E. All the immunities from liabilities, exemptions from laws, ordinances, and policies and procedures which peace officers employed by the various parties hereto have in their own jurisdictions, shall be effective in the jurisdiction in which they are acting as deputies, to the extent allowed by law.
- F. Each party to this Agreement agrees that it and its contract insurance carrier, if any, shall be liable for all legally determined damages caused by its own peace officers. The Tribe agrees to continue certification necessary to maintain coverage afforded officers of the San Carlos Apache Tribal Police Department under the Federal Tort Claims Act, 28 U.S.C. § 2680. Each party agrees to obtain sufficient insurance coverage, or to adequately self-insure to meet its responsibility hereunder. Such insurance shall include worker's compensation, vehicular comprehensive and collision, bodily injury, property damage, liability insurance, false arrest, and general liability insurance.

VI. WORKERS' COMPENSATION LIABILITY.

- A. For the purposes of Workers' 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, is deemed to be an employee of both the Party under whose jurisdiction or control or within whose jurisdictional boundaries the employee is then working, as provided in A.R.S. § 23-1022(D).
 - 1. The primary employer Party of such employee shall be solely liable for the payment of Workers' Compensation benefits payable as the result of the employee's participation in such activity.
 - 2. Each Party to this Agreement shall comply with the provisions of A.R.S. § 23-1022(E) by posting the required public notice.

VI. COMMENCEMENT, DURATION AND TERMINATION OF AGREEMENT.

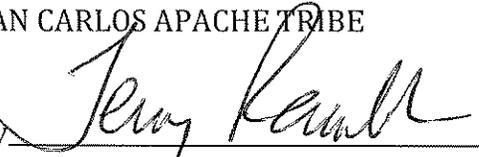
This Agreement shall become effective from and after such time, as it has been executed by the official representative of each party pursuant to resolution of the governing body of such party, and upon approval by the authorized attorney of each party. This Agreement shall be in force of a period of five (5) years from the initial effective date. Any party to this Agreement may cancel, terminate or withdraw from the agreement for good cause stated, upon sixty (60) days written notice to each party's designated representative.

IN WITNESS WHEREOF, the parties have executed this Mutual Aid Agreement dated this _____ day of _____, 2013.

GILA COUNTY BOARD OF SUPERVISORS

By _____

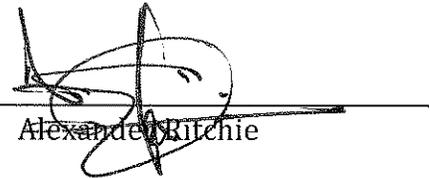
SAN CARLOS APACHE TRIBE

By 
Terry Rambler - Chairman

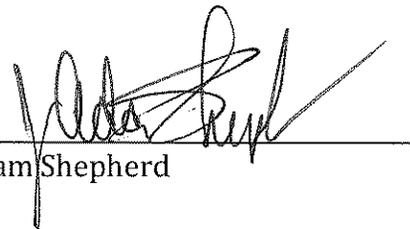
GILA COUNTY ATTORNEY

By 
Bradley D. Beauchamp

TRIBAL ATTORNEY GENERAL

By 
Alexander Ritchie

GILA COUNTY SHERIFF

By 
Adam Shepherd

SAN CARLOS APACHE TRIBAL
POLICE DEPARTMENT

By 
Chief Alejandro Benally