

INTERGOVERNMENTAL SERVICE AGREEMENT FOR HOUSING DETAINEES

This Intergovernmental Services Agreement ("IGSA" or "Agreement") is made and entered into by and among the Gila County Sheriff's Office ("Gila County") and the Tonto Apache Tribe ("Tribe"), a federally recognized Indian Tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, Pub. L. No. 92-47, 86 Stat. 783 (1972); and the Apache Treaty, 10 Stat. 979 (1852) (collectively "the Parties" or singularly "the Party").

Article I. Purpose

The purpose of this Agreement is to provide for the detention and care of detainees detained under the authority of a Tribal Court order of the Tonto Apache Tribe at the Gila County Detention Facility ("Tribal Detainees").

Article II. General

- A. Funding. The obligation of the Tribe to make payments to Gila County is contingent upon the availability of federal and/or Tribal funds. However, the Tribe will neither present Tribal Detainees to Gila County nor direct performance of any other services unless the Tribe has the appropriate funding to compensate Gila County for its services under this Agreement.
- B. Consistent with Law. Any provision of this Agreement contrary to applicable statutes, regulations, or judicial mandates is null and void, but shall not necessarily affect the remaining provisions of the Agreement.
- C. Waiver of Immunity. For the limited purpose of enforcing the terms of this Agreement, the Tribe and Gila County hereby agree to a limited waiver of sovereign immunity to suit in a federal, state, or tribal court of appropriate jurisdiction.
- D. Temporary Detention. Gila County's Detention Facility is designed for temporary detention both pre-and post-adjudication. Facilities and program services are consistent with temporary detention and are not designed or intended to be used for detainees requiring long-term treatment or detention. The Tribe agrees to periodically review the status of Tribal Detainees to determine that the length of detention is consistent with these purposes.

Article III. Covered Services

- A. Bed Space. Gila County shall provide secure detention for Tribal Detainees, both male and female, at the Gila County Detention Facility on a space available basis. Gila County shall house detainees as to gender. The Tribe will be financially responsible only for the actual detainee days as defined in Paragraph C of this Article.
- B. Basic Needs. Gila County shall provide secure detention for Tribal Detainees with safekeeping, housing, subsistence, medical and other services in accordance with all applicable

state and federal laws, regulations, fire and safety codes, policies and procedures. The types and levels of service are those that Gila County routinely affords to other detainees.

C. Unit of Service and Financial Responsibility. The unit of service will be a “detainee day”. The detainee day begins at midnight and ends at 11:59 p.m. Gila County may bill the Tribe for the detainee days each Tribal Detainee spends in detention, including the date of arrival and the date of departure. For example: if a Tribal Detainee is brought in at 7:00 p.m. Sunday and is released at 1:00 a.m. Monday, Gila County may bill for two (2) detainee days. If a Tribal Detainee is brought in at 1:00 a.m. Sunday and is released at 11:59 p.m. Sunday, Gila County may bill for only one (1) detainee day. The Tribe shall be responsible to pay for only those beds actually occupied.

The Tribe shall reimburse Gila County at the daily rate of \$54.63. The parties may mutually agree to adjust the rate twelve (12) months after the date of signing, and every twelve (12) months thereafter. Such adjustments shall be effective on the first day of the month following execution of a written modification to this Agreement.

D. Translation Services. Gila County shall make special provisions for non-English speaking, handicapped or illiterate Tribal Detainees. The Tribe will reimburse Gila County for any costs associated with providing commercial written or telephone language translation services, and upon request, will assist Gila County in obtaining translation services. Gila County shall provide all instructions verbally (in English or the detainee’s native language, as appropriate) to Tribal Detainees who cannot read. Gila County shall include the amount that Gila County paid for such services on their regular monthly invoice. Gila County shall not use Tribal Detainees for translation services, except in emergency situations. If Gila County uses a Tribal Detainee for translation service, it shall notify the Tribe within twenty-four (24) hours.

Article IV. Receiving and Discharging Tribal Detainees

A. Required Activity. Gila County shall receive and discharge Tribal Detainees only from and to either properly identified tribal personnel or other properly identified tribal law enforcement officials with prior authorization from the Tribe. Presentation of U.S. Government or tribal identification shall constitute proper identification. Gila County shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days a week. Because this Agreement is for detention services dependent upon space availability, the Tribe shall furnish Gila County with reasonable notice of receiving or discharging Tribal Detainee(s). Gila County shall ensure positive identification and recording of Tribal Detainees and tribal officers. Gila County shall not permit medical or emergency discharges except through coordination with on-duty tribal officers.

B. Restricted Release of Detainees. Gila County shall not release Tribal Detainees from its physical custody to any persons other than those described in Paragraph A of this Article for any reason, except for medical, other emergent situations, or in response to federal or tribal writ of

habeas corpus. If a Tribal Detainee is sought for federal, state or local court proceedings, only the Tribe may authorize release of the detainee for such purposes. Gila County shall contact the Tribe immediately regarding any such requests.

C. Gila County's Right of Refusal. Gila County retains a final and absolute right either to refuse acceptance, or request removal of any Tribal Detainee exhibiting behavior which threatens the secure operation of the facility, or of any Tribal Detainee found to have a medical condition that requires medical care beyond the scope of Gila County's health provider, the Tonto Apache Tribe's health provider or the Indian Health Service ("IHS"). In the case of a Tribal Detainee already in custody, Gila County shall notify the Tribe and request such removal, and shall allow the Tribe reasonable time to make alternative arrangements for the Tribal Detainee.

D. Emergency Evacuation. In the event of an emergency requiring evacuation of the detention facility, Gila County shall evacuate Tribal Detainees in the same manner, and with the same safeguards, as it employs for persons detained under Gila County's authority. Gila County shall notify the Tribe within two (2) hours of such evacuation.

Article V. Minimum Service Standards

Gila County shall:

A. House Tribal Detainees in a facility that complies with all applicable fire and safety codes as well as ensures continued compliance with those codes throughout the duration of the Agreement.

B. Provide guard personnel to ensure that there is twenty-four (24) hour visual supervision of detainees when housed in a dormitory type setting. Gila County shall visually and physically check detainees in individual cells at least hourly.

C. Segregate detainees in custody by gender and by risk of violence to other detainees.

D. Provide a mattress, with a mattress cover, and a blanket to each detainee held overnight.

E. Provide a minimum of three nutritionally balanced meals in each twenty-four (24) hour period for each detainee. These meals shall provide a total of at least 2900 calories per twenty-four (24) hours. There will be no more than fourteen (14) hours or fewer than four (4) hours between meals. Gila County will provide a minimum of two hot meals in this twenty-four (24) hour period.

F. Provide medical services as described in Article VI below.

G. Provide a mechanism for confidential communication between Tribal Detainees and Tribal officials regarding their case status and custody issues. The mechanism may be through electronic, telephonic, or written means, and shall ensure the confidentiality of the communication and the individual Tribal Detainee.

H. Afford Tribal Detainees, indigent or not, reasonable access to public telephones for contact with attorneys, the courts, family members and representatives of pro bono organizations.

I. Permit Tribal Detainees reasonable access to presentations by legal rights groups and groups recognized by the Tribe consistent with good security and order.

J. Afford each Tribal Detainee reasonable access to legal materials provided by the Tribe for his or her case. Gila County will provide space to accommodate legal materials at no additional cost to the Tribe. (Note: The Tribe may waive this requirement where the average length of detention is thirty (30) days or less).

K. Afford Tribal Detainees reasonable visitation with legal counsel, family members, and representatives of pro bono organizations.

L. Provide Tribal Detainees with access to recreational programs and activities under appropriate conditions of security and supervision to protect their safety and welfare.

Article VI. Medical Services

A. On-Site Health Care. Gila County shall ensure that Tribal Detainees receive no lower level of on-site medical care and services than those it provides to persons detained under Gila County's authority.

B. Unacceptable Medical Conditions. If Gila County determines that a Tribal Detainee has a medical condition which renders that person unacceptable for detention under this Agreement, (for example, contagious disease, condition needing life support, or uncontrolled behavioral health condition) Gila County shall notify the Tribe. Upon such notification, Gila County shall allow the Tribe reasonable time to make the proper arrangements for further disposition of that Tribal Detainee.

C. Pre- Approval for non Emergency Off Site Care. Gila County shall solicit Tribal Health Benefits Coordinator ("THBC") approval before proceeding with non-emergency, off site medical care (e.g. off site lab testing, eyeglasses, dental prosthetics, and dental care). Gila County is to notify all medical providers approved to furnish off site health care of detainees to submit their bills in accordance with instructions from the Tribe.

D. Emergency Medical Care. Gila County shall furnish twenty – four (24) hour emergency medical care and emergency evacuation procedures. In an emergency, Gila County shall obtain the medical treatment required to preserve the detainee's health. Gila County shall have access to an off- site emergency medical provider at all times. The Health Authority of Gila County shall notify the THBC by calling the telephone numbers as listed in paragraph C as soon as possible and in no case more than seventy two (72) hours after detainees receipt of such care.

The Health Authority of Gila County will obtain pre- authorization from the THBC Health Coordinator for service(s) beyond the initial situation.

E. Off- Site Guards. Gila County shall, without any additional charge to the Tribe, provide guards during the initial eight (8) hours detainees are admitted to an outside medical facility. Gila County shall promptly notify the Tribe of the admission of a detainee to an outside medical facility. If negotiated with the Tribe, Gila County shall provide guards beyond the initial (8) - hour period, at the regular hourly rate of those guards. Absent such an arrangement, the Tribe will be responsible for providing the guards at the end of the initial (8) hour period. Gila County shall not, however, remove its guards until the Tribe personal relieve them. Gila County shall submit a separate invoice for guard services beyond the initial (8) eight hours with its regular monthly billing. Gila County shall obtain authorization for outside guard services directly from the Tribe.

Article VII. Period of Performance

This Agreement shall remain in effect indefinitely, or until terminated by either Party upon sixty (60) days written notice, unless an emergency situation requires the immediate relocation of detainees, or the parties agree to a shorter period.

Article VIII. Inspection

A. Jail Agreement Inspection Report. Gila County shall allow the Tribe to conduct inspections of the facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as determined by the Tribe. No notice to Gila County is required prior to an inspection; however, such inspection shall not unreasonably interfere with the normal operations of the detention facility. The Tribe will share findings of the inspection with Gila County's facility administrator to promote improvements to facility operation, conditions of confinement, and level of service.

B. Possible Termination. If Gila County fails to remedy any deficient areas identified by the Tribe within a reasonable amount of time, the Tribe may terminate this Agreement.

Article IX. Modifications and Disputes

A. Modifications. Either Party may request a modification to this Agreement by submitting a written request to the other. A modification will become part of this Agreement only after the Tribe and the authorized signatory of Gila County have approved it in writing.

B. Disputes. The Tribe and the authorized signatory of Gila County are the parties authorized to settle disputes, questions, and concerns arising from this Agreement. Settlement of disputes shall be memorialized in a written modification between the Tribe and the authorized signatory of Gila County.

Article X. Invoicing and Payment

A. Invoicing. Gila County shall submit an original itemized invoice containing the following information: the name and address of the detention facility, the name of each Tribal Detainee and his or her specific dates of detention, the total number of detainee days, the daily rate, the total detainee days multiplied by the daily rate, an itemized listing of all other charges, and the name, title, address and phone number of the County employee official responsible for invoice preparation. Gila County shall submit monthly invoices within the first ten (10) working days of the month following the calendar month when it provided the services to:

Tribal Court Administrator
TONTO APACHE TRIBE
#30 Tonto Apache Reservation
Payson, Arizona 85547

B. Payment. The Tribe will make payments under this Agreement on the 30th calendar day after the Tribal Court receives a complete invoice. The date on the Tribe's check shall constitute the payment date. The Tribe shall pay interest on overdue payments in excess of sixty (60) days to Gila County, at the interest rate which would be applicable under the Federal Prompt Payment Act, 31 U.S.C. 3903, and the OMB, Prompt Payment Regulations, 5 C.F.R. Part 1315.

Article XI. Hold Harmless and Indemnification Provisions

A. Gila County Held Harmless. The Tribe Shall, subject to the availability of funds, save and hold Gila County harmless and indemnify Gila County to the extent allowed by law against any and all liability claims and costs of whatever kind and nature, for injury to or death of any person(s), or loss or damage of any property, which occurs in connection with or incident to performance of services under the terms of this Agreement, and which results from negligent acts or omissions of the Tribe, tribal officers, or the Tribe's employees or agents to the extent the Tribe would otherwise be liable for such negligent acts or omissions. In so agreeing, the Tribe does not waive any defenses, immunities or limits of liability available to it under applicable law.

B. Tribal Government Held Harmless. Gila County shall, subject to the availability of funds, save and hold harmless and indemnify the Tribe to the extent allowed by law against any and all liability claims and costs of whatsoever kind and nature for injury to or death of any person(s) and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of occupancy, use, service, operation or performance of services under the terms of this Agreement, resulting from the negligent acts or omissions of Gila County, County officers, or the County's employees or agents to the extent the County would otherwise be liable for such negligent acts or omissions. In so agreeing, Gila County does not waive any defenses, immunities or limits of liability available to it under state or federal law.

C. Defense of Suit. In the event a Tribal Detainee files suit against Gila County contesting the legality of the Tribal Detainee's incarceration, the Tribe shall request that the U.S. Attorney's Office, or other appropriate Tribal attorney, move either to have Gila County dismissed from each suit, to have the Tribe substituted as the proper party defendant, or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, the Tribe shall request that the U.S. Attorney's Office, or other tribal attorney, be responsible for the defense of any suit on these grounds.

Article XII. Financial Records

A. Retention of Records. All financial records, documents, books, and other records pertinent to contracts ("Records") under this Agreement shall be retained by Gila County for at least three (3) years for purposes of federal and tribal examinations and audit. The three year retention period begins at the end of the first year of the completion of service under the Agreement. If any litigation, claim, negotiation, audit or other action involving the Records arises before the expiration of the three year period, the Records must be retained until the action is completed and all issues are resolved or until the end of the regular three year period, whichever is later.

B. Access to Records. The Tribe or its authorized representatives shall have the right of access to any Records of Gila County or its sub-recipients (i.e., providers of services to detainees) which are pertinent to this Agreement in order to make audits, examinations, excerpts and transcripts. The right of access is not limited to the required retention period, but shall last as long as the Records are retained.

Article XIII. Miscellaneous

A. No Third Party Beneficiaries. Nothing in this Agreement is intended to create duties, obligations to, rights or remedies in third parties not a Party to this Agreement.

B. Non-Discrimination. The Parties to this Agreement shall not discriminate against any detainee, employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out the Party's duties and responsibilities pursuant to this Agreement.

C. Compliance with Laws. Each Party Shall comply with all applicable federal, tribal, state and local laws, rules, regulations, standards and Executive Orders, when acting under this Agreement. Any changes in applicable governing laws, rules and regulations during the terms of this Agreement shall apply but do not require an amendment to the Agreement.

D. Notice and Contact List. All notices, communications, and reports under this Agreement shall be provided as specifically set forth in this Agreement, and to the following:

Tonto Apache Tribe

Chairperson or Acting Chairperson
TONTO APACHE TRIBE
#30 Tonto Apache Reservation
Payson, Arizona 85541

Tribal Court Administrator
TONTO APACHE TRIBE
#30 Tonto Apache Reservation
Payson, Arizona 85541
Phone: 928-474-5000
Fax: 928474-9125

Gila County Sheriff's Office

Gila County Sheriff's Office
P.O. Box 311
Globe, Arizona 85502
Phone: 928-402-4374
Fax: 928-425-2737

- E. Standard of Care: Nothing in this Agreement is intended to affect the legal liability of either Party to the Agreement by imposing any standard of care different from the standard of care imposed by applicable law.

- F. Jurisdiction. Nothing in this Agreement shall be construed as otherwise limiting or extending the legal jurisdiction of any Party.

- G. Conflict of Interest. This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. 38-511, the pertinent provisions of which are incorporated herein by reference.

- H. Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the full extent permitted by law.

- I. Assignment. It is hereby agreed by the Parties that there will be no assignment or transfer of responsibilities or services under this Agreement.

- J. Entire Agreement. This document constitutes the entire Agreement between the Parties pertaining to the subject matter hereof. This Agreement shall not be modified, amended, or altered, except through a written amendment signed by the Parties under the same authority and direction under which this Agreement has been executed.

Article XIV. Effective Date of Agreement and Term

Initial Term. This Agreement shall become effective when adopted by resolution and fully executed by and under the authority of the governing body of each Party's jurisdiction and the initial term shall be for a period beginning on the date of Gila County's approval of this Agreement, and ending 11:59 p.m. on May 1, 2017.

GILA COUNTY SHERIFF'S OFFICE

TONTO APACHE TRIBE,

a Federally Recognized Indian Tribe

J. Adam Shepherd, Sheriff Date

V. Burdette *1/6/15*
Vivian L. Burdette, Date
Chairwoman

GILA COUNTY BOARD OF SUPERVISORS

Approved as to Form:

Michael Pastor, Chairman Date

[Signature]
Joe P. Sparks
The Sparks Law Firm, P.C.
General Counsel to the Tonto Apache Tribe

Attest:

Marian Sheppard, Clerk Date

12/30/2014
Date

Approved as to form:

Bryan B. Chambers Date
County Attorney