

LIBRARY SERVICE AGREEMENT
BETWEEN
GILA COUNTY LIBRARY DISTRICT
AND
SAN CARLOS APACHE TRIBE

JULY 1, 2016 TO JUNE 30, 2017

This Library Service Agreement (the "Agreement") is entered into between the GILA COUNTY BOARD OF SUPERVISORS acting as the GILA COUNTY LIBRARY DISTRICT, hereinafter referred to as the "District," and the SAN CARLOS APACHE TRIBE, hereinafter referred to as the "Tribe," and shall be for a period commencing July 1, 2016 to June 30, 2017.

WHEREAS, the San Carlos Apache Tribe is a federally recognized tribe organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378);

WHEREAS, the Gila County Board of Supervisors has established a County Library District, pursuant to A.R.S. 11-901 et seq. and 48-3901 et seq.; and

WHEREAS, the District and the Tribe recognize the need to cooperate in the provision of library services to the citizens of the District; and

WHEREAS, the Tribe operates and maintains a public library (the "Tribe's Library") and it is the desire of the Tribe to continue as a participating member of the District; and

WHEREAS, the parties wish to establish terms and conditions prior to distribution of District tax levied funds to participating Tribes.

NOW, THEREFORE, IT IS AGREED by and between the District and the Tribe as follows:

1. In consideration of District funds received by the Tribe, all citizens of the District shall have full use of the Tribe's library facilities and services.
2. All library materials purchased with District funds by the Tribe shall be the property of the Tribe.

3. It is understood by both parties that officials, employees and agents of the District remain the sole responsibility of the District. It is further understood that the officials, employees and agents of the Tribe remain the sole responsibility of the Tribe.
4. 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 other expenses including reasonable attorney's fees (hereinafter collectively referred to as "claims") arising out of bodily injury of 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, official agents, employees or volunteers.
5. The Tribe agrees to the following conditions:
 - A. The Tribe shall use the District's funds to insure the payments of salaries, routine maintenance and upkeep and other necessary expenses of the Tribe's library, pursuant to A.R.S. §48 - 3901 *et seq.* Tribe agrees not to use District's funds for capital improvement projects or major building repairs without prior approval from the Board of Directors of the Gila County Library District. The Tribe shall submit the annual FY17 Library budget to the District at the time of submission of this agreement. The Library will provide a year-to-date expenditure report to the District prior to the second payment by the District to the Tribe.
 - B. The Tribe, by and through its Library Program, shall annually submit to the Arizona State Library, the Arizona Public Library Statistical Report as required by the State Library.
 - C. The Tribe shall support resource sharing among libraries by participating in intra-library and inter-library as a borrower and lender of library materials.
 - D. The Tribe shall comply with any reasonable conditions or restrictions that the District or another participating library imposes with respect to loans of books, materials, or equipment to the Tribe's Library.
 - E. The Tribe agrees to reimburse any other participating library for any losses and/or damage to books, materials, or equipment belonging to another participating library or the District, which occur while these items are in the possession and control of the Tribe.
 - F. The Tribe's decision to participate in the countywide online system is evidenced by the authorized signature(s) on this Agreement and the resolution of the Tribal Council of the Tribe providing such authorization, as attached and incorporated by this reference. This Agreement shall not be

valid without the authorization of the Tribal Council in the form of its resolution. The Tribe gives the District permission to apply for E-Rate on the Tribe's behalf. The Tribe agrees to utilize the online system for: cataloging, circulation, online shared public access catalog, long-term loan of supplementary Library District materials, if applicable, and other online functions as may be implemented.

G. The Tribe shall ensure that the Tribe's Library Manager (Librarian) and staff understand and are proficient in all functions of the online system that they are responsible for by providing reasonable time for staff to attend training on the online system at the District's recommendation. Training will be provided by, and coordinated through the District.

H. Tribe agrees that its library staff shall attend and participate in at least three of the four quarterly countywide librarians meetings each year.

I. **Arizona Workers Act Compliance**

The Tribe hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws if applicable to Tribe's employment of its employees, and with the requirements of A.R.S. 23-214 (A), if applicable (together the "State and Federal Immigration Laws"). The Tribe further agrees not to subcontract any of the services provided by the Tribe's Library.

6. The District will provide the following benefits and support services to the Tribe's library:

A. The Tribe may participate in the countywide online system, subject to conditions specified in this Agreement. Operation of the countywide online system is a Library District function subject to oversight by the Board of Directors of the Library District, who will make final decisions regarding this system.

B. The District shall ensure continuous operation of and access to the online system, notifying the Tribe's library in advance of any scheduled shutdowns, should any be necessary for maintenance and backup routines.

C. The District shall further provide the Tribe's library with:

(1) Coordination of countywide library development;

(2) Continuing education opportunities for staff and volunteers;

- (3) Regular orientation training on the online system for all new staff at the affiliate libraries, as well as coordinate and oversee special update training for veteran staff; and
 - (4) Professional assistance and consultation services.
7. The Tribe and the District acknowledge that the library services performed have a value to the District and the Tribe. In consideration of that value, the District agrees to:
 - A. Fund library services, in the amount of **\$33,600.00** for Fiscal Year 2017;
 - B. Distribute this amount to the Tribe in two installments, in November 2016 and May 2017;
8. This Agreement may be renewed from year to year by mutual agreement of the parties involved.
9. Upon reasonable notice, the District shall have the right at any time to inspect the books and records of Tribe' and any subcontractor.
10. Any breach of Tribe's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Agreement subjecting Tribe to penalties up to and including suspension or termination of this Agreement.
11. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of the Tribe.
12. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and, it may be amended, modified or waived only by an instrument in writing signed by both parties.
13. This Agreement may be canceled pursuant to A.R.S. §38-511, the pertinent provisions of which are fully incorporated herein by reference.
14. Either party may terminate this Agreement by giving 30 days' notice to the other. Upon termination of this Agreement by either party, the Tribe agrees to return to the owner, by the date of termination, any books, materials and equipment belonging to the Library District or other participating library, which had been entrusted to the possession or control of the Tribe. Conversely, the Library District agrees to deliver to the Tribe's Library, by the date of termination, any books, materials, and equipment belonging to the Tribe's Library which had been entrusted to the possession or control of the Library District and to make reasonable, good faith efforts to return to the Tribe library

any books, materials and equipment belonging to the Tribe's Library which had been entrusted to the possession or control of another participating library.

15. In the event of a dispute under this Agreement, the parties agree to make a good faith attempt to resolve the dispute prior to taking formal. In the event that such dispute, controversy, claim, or cause of action ("Dispute") arising out of or related to this Agreement cannot be settled, the Dispute may, but in no event need, be settled by submission with the consent of both parties to binding arbitration. Judgment upon any award rendered by the arbitrators may be entered in any court of competent jurisdiction. Neither party shall be entitled to recover any of its attorneys' fees or other costs from the other party incurred in any such dispute, controversy, claim or cause of action, but each party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise. The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to this Agreement, nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.
16. The provisions of this section shall govern and control this Agreement where such provisions are in conflict with any other provision of the Agreement.
17. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by the San Carlos Apache Tribe, its consent to be sued, or its consent to the jurisdiction of any federal or state court.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized representatives.

SAN CARLOS APACHE TRIBE

GILA COUNTY BOARD OF SUPERVISORS
As the: GILA COUNTY LIBRARY
DISTRICT



Terry Rambler
Chairman

Chairman, Board of Directors

ATTEST:

ATTEST:



Tribal Council Secretary

Clerk of the Board

Date

Date

The foregoing Agreement has been reviewed by the undersigned attorney for the Tribe, who has determined that the agreement is in proper form and is within the powers and authority of the Tribe.



Attorney for San Carlos Apache Tribe

Pursuant to A.R.S. 11-952(D) the foregoing agreement has been reviewed by the undersigned attorney for the Gila County Library District, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of the State to Gila County.

Deputy County Attorney/Civil Bureau Chief