

## NAVAJO COUNTY AGENDA ITEM REQUEST FORM

|   |   |
|---|---|
| <b>Meeting Date:</b> 7-12-16  | <b>Time Needed:</b> 5 minutes           |
| <b>Requesting Department:</b> Sheriff's Office  | <b>Presenter(s) Name:</b> Sheriff Clark |
| <b>Motion before the Board:</b> Consideration and approval of intergovernmental agreement with White Mountain Apache Tribe for cross deputization of NCSO deputies  |   |
| <b>Recommendation:</b> (who, what, where, when, how, etc.) Approval of intergovernmental agreement with White Mountain Apache Tribe for cross deputization of NCSO deputies   |   |
| <p><b>Background:</b> (why should it be done, what will happen if not approved, etc. include resolution)</p> <p>The Sheriff's Office is desirous of renewing their agreement with the White Mountain Apache Tribe for cross certification of Sheriff's Office deputies. The current agreement expires in September 2016.</p> <p>This agreement will provide for continued cooperative law enforcement efforts between the White Mountain Apache Tribe and the Sheriff's Office. It is in effect for three (3) years from the date of signing.</p> |   |
| <b>Fiscal Impact:</b> (what will it cost, where funds will come from, is it budgeted, etc.)   |   |
| <p><b>Reviewed and approved by:</b> County Manager _____</p> <p>County Attorney _____ Human Resources _____ Finance _____ IT _____</p>  |   |
| <p><b>Board Action Taken:</b></p> <p>Approved <input type="checkbox"/> Denied <input type="checkbox"/> No Action <input type="checkbox"/> Continued <input type="checkbox"/> Continued to: _____</p> <p>Approved with changes as follows <input type="checkbox"/></p>   |   |
| <p><b>Clerk's Notes:</b></p><br><br><p>Date: _____ Initial: _____</p>   |   |

**REMINDER:** Email this coversheet and all backup documentation to **BOS.Clerk** by **4:00 p.m. the Thursday prior to the Managers' meeting. Please be present at the Agenda Meeting to ensure placement on the agenda.**

**LAW ENFORCEMENT AGREEMENT BETWEEN  
THE WHITE MOUNTAIN APACHE TRIBE AND  
THE NAVAJO COUNTY SHERIFF'S OFFICE**

**Section I                    Parties**

This law enforcement agreement (hereinafter "AGREEMENT") is entered into by and between the White Mountain Apache Division of Public Safety, White Mountain Apache Police Department (hereinafter "TRIBE") and the Navajo County Sheriff's Office (COUNTY) may also be referenced as Parties or Agencies.

**Section II                   Purpose**

This AGREEMENT is entered into to provide for the orderly and effective enforcement of the criminal and traffic laws of the White Mountain Apache Tribe and Navajo County, State of Arizona, within the Fort Apache Indian Reservation, Indian Country as defined in 18 U.S.C. § 1151; to prevent any jurisdiction from becoming a sanctuary for violators of the law of another jurisdiction; to prevent inter-jurisdictional flight; and to foster greater respect for the laws of each jurisdiction by the more certain application thereof. This AGREEMENT is based on mutual respect for and recognition of the inherent sovereignty of the White Mountain Apache Tribe and the State of Arizona and the laws enacted by each sovereign.

**Section III                 Authorities**

The TRIBE is duly authorized to enter into this AGREEMENT pursuant to the Constitution of the White Mountain Apache Tribe Article 4 §§ 1 (a),(b),(t),and (u), as amended. COUNTY is authorized to enter into this AGREEMENT pursuant to A.R.S. §11-951, *et seq.*, A.R.S. § 13-3872.

**Section IV                 Creation of Third Party Rights or Benefits; Use of Agreement as Evidence**

This AGREEMENT does not create any substantive or procedural right or benefit, civil or criminal, in favor of any person or entity not a party hereto; nor does it create a duty to respond not otherwise imposed by applicable law. No part of this AGREEMENT may be used as evidence in any court proceeding by any party hereto or any successor, assignee, or subrogee of any party hereto unless the entire AGREEMENT is also received into evidence. Failure to follow the provisions of the AGREEMENT shall not, of itself, constitute a defense, ground for suppression of evidence, or basis for dismissal of any criminal action.

**Section V                   Territorial Application**

The geographical area covered by this AGREEMENT is co-extensive with the boundaries of the TRIBE and Navajo County, provided nothing herein shall limit the application of the laws of fresh pursuit to any action undertaken pursuant to this AGREEMENT and each party acting under the authority of this AGREEMENT may engage in fresh pursuit as allowed by law.

**Section VI                 Scope of Powers**

- A. Pursuant to this AGREEMENT, the TRIBE hereby grants COUNTY deputies those powers necessary to enforce the criminal and traffic laws of the TRIBE, including the

powers to conduct searches or make arrests for any violations thereof to the full extent as allowed by applicable law, hereinafter referred to as “mutual aid law enforcement certification.”

- B. The Parties to this AGREEMENT recognize and acknowledge that White Mountain Apache Tribal officers are certified through Arizona Peace Officer Standards and Training (AZPOST), and thereby independently “possess and exercise all law enforcement powers of peace officers” in the State of Arizona, *see* A.R.S. §13-3874. Nothing in this AGREEMENT diminishes such authority.

## **Section VII                      Application for Certification**

- A. The Navajo County Sheriff, or his or her designee, shall complete and submit the TRIBE’s Peace Office Commission Card form (Exhibit 1) for each COUNTY deputy who is qualified for a mutual aid law enforcement certification. A COUNTY deputy is qualified if he or she completes the required training pursuant to Subsection B, satisfactorily meets all requirements of the Peace Officer Commission Card form, and the Navajo County Sheriff, or his or her designee, submits a statement of qualifications that includes certification of a satisfactory background check conducted within the last five years of the date of the application and copies of a current valid State of Arizona driver’s license and a valid Navajo County law enforcement certification card for each applicant.
- B. COUNTY deputies shall complete the Criminal Justice in Indian Country training course offered by the Department Of Justice at such location agreed upon the Parties, prior to receiving a mutual aid law enforcement certification by the TRIBE.
- C. The TRIBE shall, without undue delay, certify each applicant upon determining that the applicant is qualified for mutual aid law enforcement certification. No applicant shall be denied a mutual aid law enforcement certification on the basis of race, creed, sex, or color.
- D. A COUNTY deputy shall remain commissioned under this AGREEMENT unless and until he or she resigns his or her employment as a COUNTY deputy. The COUNTY shall timely notify the TRIBE of such resignation, and the COUNTY shall return the COUNTY deputy’s mutual law enforcement certification card within ten (10) calendar days of the date of resignation of the official and address shown in Section XXI.
- E. The COUNTY agrees to timely notify the TRIBE if a COUNTY deputy who holds a Tribal mutual aid law enforcement certification under this AGREEMENT is being considered for termination from COUNTY employment or has been charged with or convicted of a felony or misdemeanor.
- F. The TRIBE may, at any time, suspend or revoke any mutual aid law enforcement certification issued pursuant to this AGREEMENT for reasons solely within the TRIBE’s discretion. The TRIBE shall notify, in writing, the official and address shown in section XXI of the suspension of revocation of any certified COUNTY deputy. The COUNTY

shall return the officer's Tribal mutual aid law enforcement certification card within ten (10) calendar days of the date of the suspension or revocation to the official and address shown in Section XXI.

## **Section VIII                      Arrest and Custody Procedures**

- A. Indian suspects arrested within the TRIBE's territorial jurisdiction by any certified COUNTY deputy pursuant to this AGREEMENT shall be immediately taken to the appropriate and nearest Tribal detention facility for booking.
- B. Non-Indian suspects arrested by Tribal officers pursuant to this AGREEMENT shall be taken to the appropriate COUNTY detention facility for booking.
- C. A Tribal officer who arrests any non-Indian shall inform the arrestee of his or her rights as required by federal law.
- D. A certified COUNTY deputy who arrests an Indian within the TRIBE's territorial jurisdiction under any provision of the TRIBE's criminal laws shall inform the arrestee of his or her rights relating to criminal law under the WMAT Criminal Procedure Code
- E. A certified COUNTY deputy who, only if authorized by the Bureau of Indian Affairs ("BIA") to enforce federal law, arrests any Indian within the TRIBE's territorial jurisdiction for any offense under 18 U.S.C. § 1152 or 1153, or any other applicable federal criminal law, shall inform the arrestee of his or her rights as required by federal law. If the certified COUNTY deputy is not federally commissioned by the BIA, he or she shall hold the suspect until a federally commissioned Tribal officer or other federally commissioned officer may inform the suspect of his or her rights as required by federal law.
- F. In the event an arrest is made, or could be made, under 18 U.S.C. § 1152 or 1153 or for any federal felony within the TRIBE's territorial jurisdiction:
  - 1. By a federally commissioned Tribal officer, that officer shall immediately notify a Tribal Criminal Investigator or FBI Agent who will then proceed with the case; or
  - 2. By a certified COUNTY deputy only if federally commissioned, he or she shall immediately notify a Tribal Criminal Investigator or FBI Agent who will then proceed with the case.
- G.** A certified COUNTY deputy who makes an arrest within the TRIBE's territorial jurisdiction shall notify the TRIBE's police dispatcher, via police radio, of the arrest, obtain a report number, and then if Indian, prepare and submit a complete and accurate Tribal arrest/booking report, submit the arrest report to the Tribal Police Department immediately for processing, forward said information and documents to the Tribal Prosecutor's Office, and shall honor any Tribal court subpoena and summons relating to the arrest.
- H. A Tribal officer who arrests a non-Indian, off of the Fort Apache Indian Reservation, pursuant to this AGREEMENT shall notify the nearest sheriff's dispatcher, via police

radio, of the arrest, obtain a report number, prepare and submit a complete and accurate sheriff's arrest/booking report, submit the arrest report to the nearest sheriff's facility immediately for processing, forward said information and documents to that county's district attorney, and shall honor any county or magistrate court subpoena and summons relating to the arrest.

### **Section IX                    Investigations**

All investigations, including searches and seizures, conducted within the applicable territory of this AGREEMENT shall be conducted pursuant to applicable Tribal, Arizona and/or Federal law.

### **Section X                    Forfeitures**

If, as a result of any investigation within the TRIBE's territorial jurisdiction, or within the County in which the TRIBE and COUNTY participate together and any tangible items of contraband, including money, are seized from an Indian or non-Indian pursuant to the criminal laws of the TRIBE or the State of Arizona, the TRIBE and COUNTY shall share in the distribution of any and all items not otherwise legally destroyed or money forfeited as a result of said investigation. Shares and proceeds from the sale of any and all items, including money, will be distributed based on applicable law and the relative contributions of the participating Agencies. Relative contributions will be cooperatively evaluated and determined by participating Agency heads or their authorized delegates.

### **Section XI                    Crime Statistics**

The Parties agree that crime statistics arising from arrests and investigations conducted pursuant to this AGREEMENT shall be accounted for and maintained by the Agency in whose jurisdiction the offense was committed.

### **Section XII                    Extradition**

Any Indian located within the TRIBE's territorial jurisdiction who has violated Arizona criminal law and who seeks asylum from prosecution by the State of Arizona shall be extradited pursuant to White Mountain Apache Criminal Code § 3.1 *et seq.*, as may be amended, except if the arrest is as a result of fresh pursuit pursuant to section V of this AGREEMENT.

### **Section XIII                    Citations for Traffic Offenses**

- A. A certified COUNTY deputy who effects a stop for a traffic offense within the TRIBE's territorial jurisdiction on any Indian may issue a written warning or issue a citation into the Tribal court or effect an arrest where permitted by Tribal law.
- B. A Tribal officer who effects a stop for a traffic offense within Navajo County, State of Arizona, but outside the TRIBE's territorial jurisdiction on any non-Indian may issue a verbal or written warning or issue a State of Arizona traffic citation or effect an arrest where permitted by Arizona law.

### **Section XIV                    Supervision and Control of TRIBE's Officers and COUNTY Deputies**

Tribal officers remain under the ultimate supervision and control of the TRIBE, but shall take direction from the ranking COUNTY deputy when Tribal officers are exercising authority

granted pursuant to this AGREEMENT in assistance of COUNTY deputies outside the TRIBE's territorial jurisdiction. Certified COUNTY deputies shall remain under the ultimate supervision and control of the COUNTY, but shall take direction from the ranking Tribal officer when exercising authority granted pursuant to this AGREEMENT in assistance of the Tribe's officers.

**Section XV Compensation and Benefits of Tribal Officers and COUNTY Deputies**

All Tribal officers remain employees of the TRIBE. The TRIBE shall remain liable for Tribal officers' salaries, workers' compensation, and civil liabilities. Each Tribal officer shall be deemed to be performing regular duties for the TRIBE while performing public safety services pursuant to this AGREEMENT. All certified COUNTY deputies remain employees of the COUNTY. The COUNTY shall remain liable for all certified COUNTY deputies' salaries, workers' compensation, and civil liabilities. Each certified COUNTY deputy shall be deemed to be performing regular duties for the COUNTY while performing public safety services pursuant to this AGREEMENT.

**Section XVI Dispute Resolution**

In the event of a dispute, claim or controversy ("dispute") arising out of or related to this AGREEMENT, the Parties agree to meet as promptly as possible to informally resolve the dispute in good faith. In the event the Parties are unable to reach an informal resolution, either Party, or both, may notify the other in writing of intent to terminate the AGREEMENT in accordance with Section XVIII of this AGREEMENT.

**Section XVII Indemnification**

The TRIBE shall be liable for all acts or failures to act of its Officers acting within the scope of the TRIBE's employment. The COUNTY shall be liable for any and all acts or failures to act of certified COUNTY deputies acting within the scope of the COUNTY's employment.

**Section XVIII Duration, Modification and Termination of Agreement**

This AGREEMENT is in effect for a period of three (3) years from the date of signing unless modified or terminated as described below. Renewals of this AGREEMENT may be made, each for a three-year period, with each renewal being completed and approved at least thirty (30) calendar days prior to the expiration of the preceding three-year period. Any amendment to this AGREEMENT may be adopted by an instrument in writing signed by all Parties to this AGREEMENT subject to approval by the appropriate authorities. The TRIBE or the COUNTY may terminate this agreement upon written notice of at least thirty (30) calendar days prior to the termination date, by certified, return receipt, postal mail. Such written notice shall be forwarded to the Sheriff of Navajo County and to the Chief of Police for the Tribe. All parties are hereby on notice that this contract is subject to cancellation for Conflicts of Interest pursuant to A.R.S. § 38-511.

**Section XIX Provisions Required in Contracts with Agencies of the State of Arizona**

Notwithstanding any provision of the AGREEMENT to the contrary, the TRIBE agrees to abide by the following terms and provisions that are required for contracts with the COUNTY, a constituent department of the State of Arizona:

- A. The TRIBE shall retain all data and other records relating to the performance of the AGREEMENT for a period of five years after the completion of the AGREEMENT. All such records shall be subject to inspection and audit by the COUNTY at reasonable times. Upon request, the TRIBE shall produce a legible copy of any or all such records.
- B. The Parties agree to comply with all applicable State and federal statutes and regulations concerning anti-discrimination process practices. This contract is governed by Arizona Executive Order 2009-09.

**Section XX Sovereign Immunity**

Nothing in this AGREEMENT, or in any future amendments, shall be interpreted, either expressly or impliedly, as constituting a waiver of the sovereign immunity of the White Mountain Apache Tribe or of the State of Arizona.

**Section XXI Notices**

All notices and communications required or permitted under this AGREEMENT shall be in writing and shall either be delivered in person or sent by certified mail, return receipt requested, to the intended recipient at the addresses set forth below (or such address as a Party may hereafter specify in writing):

**TRIBE:** Chief of Police  
White Mountain Apache Police Department  
P.O. Box 889  
Whiteriver, AZ 85941

**COUNTY:** Navajo County Sheriff  
Navajo County Sheriff's Office  
P.O. Box 668  
Holbrook, AZ 86025

**Section XXII Savings Clause**

If any provision of this AGREEMENT is held invalid or unenforceable by any court of competent jurisdiction, the remainder shall remain in effect unless terminated as provided herein.

**Section XXIII Entire Agreement**

This AGREEMENT, including any exhibits or other attachments, constitutes the entire terms, conditions and understandings of the Parties hereto. There are no representations or provisions other than those contained herein.

**Section XXIV Effective Date of Agreement**

This AGREEMENT shall become effective on the date the last signature of the appropriate authorities is affixed below. This AGREEMENT may be executed up to four counterparts; each to be treated as the original.

**THE WHITE MOUNTAIN APACHE TRIBE:**

\_\_\_\_\_  
Ronnie Lupe, Chairman  
White Mountain Apache Tribe

\_\_\_\_\_  
Date

\_\_\_\_\_  
Timothy Webster, Chief  
White Mountain Apache Police Department

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Jim Palmer, White Mountain Apache Tribal Attorney General

\_\_\_\_\_  
Date

**STATE OF ARIZONA:**

\_\_\_\_\_  
Jason Whiting, Chairman  
Navajo County Board of Supervisors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheriff Kelly Clark, Navajo County

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Brad Carlyon, Navajo County Attorney

\_\_\_\_\_  
Date