

DPS CONTRACT NO. 2003-213A
AG CONTRACT NO. KR3-1056-TR

INTERGOVERNMENTAL AGREEMENT
BETWEEN
HUALAPAI TRIBE
AND THE ARIZONA DEPARTMENT OF PUBLIC SAFETY

This intergovernmental Agreement hereinafter referred to as "Agreement," entered into on the 29th day of July, 2008, between the Hualapai Tribe, hereafter referred to as the "TRIBE," and the Arizona Department of Public Safety, a political subdivision of the State of Arizona, hereafter referred to as "DPS."

WITNESTH

WHEREAS, it is the desire of the TRIBE and DPS to continue to improve the nature and coordination of mutual aid and assistance to incidents that threaten the loss of life or property within the geographic boundaries of their respective jurisdiction;

WHEREAS, it is further the determination of each of the parties hereto that the decision to enter into this Agreement constitutes a fundamental governmental policy of the parties hereto which is discretionary in nature, and includes the determination of the proper use of resources available to each of the parties hereto with respect to the providing of governmental services and the utilization of existing resources of each of the parties hereto, including the use of equipment and personnel;

WHEREAS, it is 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

WHEREAS, it is the desire of the TRIBE and DPS to enter into this Agreement for mutual aid and assistance.

NOW, THEREFORE, by the virtue and pursuant to Laws of 1968 Chapter 94, § Two, entered by the Twenty-eighth Legislated and Codified as A.R.S. § 13-3872 and the TRIBE, by virtue of and pursuant to the authority contained under the Constitution of the TRIBE, approved by the Secretary of the Interior on March 13, 1991, do hereby enter into this Agreement in order to more efficiently and economically facilitate their capabilities to provide for the maximum amount of protection for the public health, safety, and welfare of all citizens;

NOW, THEREFORE, by virtue and pursuant to the laws of 1968 Chapter 94, §Two, enacted by the Twenty-eight Legislated and Codified as A.R.S. § 11-951, et seq., A.R.S. § 13-3872 and the TRIBE, by virtue of and pursuant to the authority contained under the Constitution of the TRIBE, approved by the Secretary of the Interior on March 13, 1991, do hereby enter into this Agreement in order to more efficiently and economically facilitate their capabilities to provide for the maximum amount of protection for the public health, safety, and welfare of al citizens;

NOW, THEREFORE, the parties hereby mutually agree to the following:

1. That commencing upon all signatures to this Agreement for a period of five years, DPS and the TRIBE agree to cooperate and assist each other to their mutual benefit in the field of law enforcement.

2. The TRIBE and DPS may request reasonable mutual aid and assistance from the other agency when reasonably necessary for the efficient and effective enforcement of applicable tribal, state or federal laws within respective jurisdictions. Requests may be made officer-to-officer, in person, telephone or other communication. Responses to such requests shall be subject to the approval of existing supervisory controls of the agencies.
3. Upon receiving a request for assistance from the other agency, the law enforcement officer-in-charge of the responding agency shall be authorized to furnish authorized personnel and equipment as may be determined appropriate and available.
4. In the event that a law enforcement officer, who is authorized to respond to requests for assistance, observes any emergency or incident occurring during routine patrol, the law enforcement officer may respond to the emergency or incident. Responding officer may respond by providing initial assessment, stabilization, scene security, and where violation of tribal, state or federal laws, as applicable, has occurred or is suspected, detain witnesses and/or suspects. In such circumstances it will be implied that the other jurisdiction is in need of assistance and that the law enforcement officer is authorized through his/her issued commission to provide immediate aid or services without further request for assistance.
5. The TRIBE agrees to have all its law enforcement officers certified through the State of Arizona Peace Officer Standards and Training.
6. The TRIBE agrees to issue Hualapai law enforcement commissions to duly authorized DPS deputies who are assigned to work on or near the Hualapai Indian Reservation.
7. The TRIBE agrees to deputation of DPS officers so the DPS may be authorized to enforce applicable Tribal laws, and Federal laws on the Hualapai Indian Reservation.
8. Mutual aide and assistance includes, but is not limited to officer back up, traffic accident investigations, DUI/DWI enforcement, drug enforcement investigations, air support, radio communication and training.
9. The TRIBE and DPS agree nothing in this Agreement alters or conveys any judicial jurisdiction, including the authority to issue warrants for arrest or search and seizure, or to issue service of process. Similarly, nothing in this Agreement is intended to impair, limit, or affect the status of the TRIBE or the DPS or the sovereignty of tribal or state government.
10. It is understood and agreed that each government which is a party to this Agreement, its agents, employees and insurers do not, by virtue of this Agreement, assume any responsibility or liability for the actions of officers commissioned pursuant to this Agreement which are performed outside the scope of their duties.
11. The TRIBE and DPS agree that they shall be responsible for any and all liability for their respective employee's actions arising from this Agreement and each agency shall bear all legal fee and litigation costs.
12. Nothing in this Agreement shall be read as waiving or limiting any defenses to claims of liability otherwise available to law enforcement officers, such as the defense of qualified immunity.

13. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by the Federal government, the TRIBE'S government, the State of Arizona or entities thereof; or as consent to be sued, or as submission to the jurisdiction of any court.
14. It is understood and agreed by the TRIBE and DPS that their respective law enforcement officers, agents and employees, have no authority nor any right whatsoever to control in any manner the day-to-day discharge of the duties of the other agency's law enforcement officers.
15. All law enforcement officers will remain under the control of the parent agency.
16. No fees or costs shall be charged by either party of any work performed under this Agreement.
17. Law enforcement officers responding to a request for assistance pursuant to this Agreement are not employees of the requesting agency. Respective agencies shall remain liable for their employee's salaries, workers compensation and civil liabilities. Each officer shall be deemed to be performing regular duties and for their own law enforcement agency while performing duties pursuant to the Agreement.
18. The provisions of this Agreement may be amended only upon a mutual written agreement of both parties.
19. This Agreement may be cancelled or terminated by either party at any time upon prior written notice of at least 30 calendar days by certified mail. Notices to Arizona Department of Public Safety shall be addressed to: Arizona Department of Public Safety, Directors Office, P.O. Box 6638, Phoenix, AZ 85005-6638. Notice to the TRIBE shall be addressed to: Chief of Police, P.O. Box 490, Peach Springs, Arizona 86434.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day first written above.

HUALAPAI TRIBE

Wilfred Whatoname
Wilfred Whatoname, Chairman

STATE OF ARIZONA

Janet Napolitano
Janet Napolitano, Governor

**ARIZONA DEPARTMENT OF
OF PUBLIC SAFETY**

Roger Vanderpool
Roger Vanderpool, Director
9/2/08

N/A
Terry Goddard, Attorney General

APPROVED as to form this 29th day
of July, 2008

BJ 9/29/08
Assistant Attorney General
Approved as to Form



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A.G. Contract No. KR3-1056-TRN, an agreement between public agencies, 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.

No opinion is expressed as to the authority of any parties, other than the State or its agencies, to enter into this agreement.

DATED this 29th day of July, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in dark ink, appearing to read "D. Carpenter", written over a horizontal line.

DENNIS D. CARPENTER, JR.
Assistant Attorney General
Transportation Section

[802239]



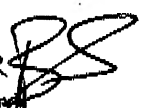
Contract # ~~2003-213~~ ^{2003-213 A1}
supposed to be
2003-213 A1

ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION

MEMORANDUM

Attorney-Client Privileged

TO: DPS

FROM: BRIAN D. SCHNEIDER 
Assistant Attorney General

DATE: August 29, 2008

RE: DPS Contract No. 2008-265

I have been asked to approve as to form the above-mentioned IGA between DPS and the Hualapai Tribe. Paragraphs 9 and 13 of the IGA make reference to the Tribe's sovereign immunity. Paragraph 9 states nothing in the IGA is intended to impair, limit, or affect the status and sovereignty of tribal government. Paragraph 13 states nothing in the IGA shall be construed as a waiver of the Tribe's sovereign immunity. Please be advised that, in the event of a breach of the agreement by the Tribe, such clauses asserting that the Tribe's sovereign immunity is not waived render the agreement unenforceable against the Tribe. I would recommend deleting these clauses that address sovereign immunity to better ensure the agreement is enforceable. Ultimately, this is a business decision for DPS to make, and since IGAs, as a matter of law, need to be approved as to form by the Attorney General's Office, I could do so if negotiations to remove these clauses fail. However, my advice concerning the problems with enforcing the agreement would remain in spite of my approval as to form.

Secondly, I noticed in the "Witnesth" section, that the 5th and 6th paragraphs are almost identical. The only differences are that Paragraph 5 uses the word "entered" instead of "enacted" and that Paragraph 6 adds ARS 11-951 as authority. In reviewing the IGA signed 5 years ago (DPS Contract #2003-213), only Paragraph 6 was included in the IGA. Since Paragraph 6 includes the IGA statute, ARS 11-951, I would advise deleting Paragraph 5 from the IGA.

If you have questions, please feel free to contact me at 542-8863.
#281825

CONFIDENTIAL LEGAL ADVICE