



CITY OF BULLHEAD CITY

#8

COUNCIL COMMUNICATION

MEETING DATE: October 5, 2010

SUBJECT: IGA with Fort Mojave Indian Tribe for Use of Detention Facility

DEPT OF ORIGIN: Office of the City Manager

DATE SUBMITTED: September 29, 2010

SUBMITTED BY: Toby Cotter, City Manager

SUMMARY:

The City of Bullhead City desires to enter into an intergovernmental agreement with the Fort Mojave Indian Tribe to house inmates within the Tribe's federally certified detention facility. The detention facility is located south of Bullhead City on tribal lands.

The City started this process in June with an inspection of the facility by police personnel and Chief Prosecutor. The inspection revealed no concerns. There were discussions during July and August with legal staffs to finalize an agreement. The City's Police Chief, Magistrate, Chief Prosecutor, City Attorney and City Manager were involved in discussions throughout this process regarding utilization and planning to allow city inmates to serve time at the Tribe's detention facility. These city staff members are supportive of this optional confinement facility.

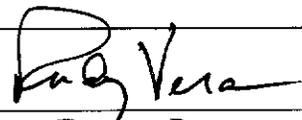
This Fort Mojave facility will not replace the Mohave County Jail. The tribal facility is a small jail that may only be able to house a few prisoners on any given day. Yet, it is another option for the City's Judicial System. The Bullhead City Police Department will not book prisoners into the Tribal Detention Facility. All prisoners will be booked at the city facility and county jail. Upon final sentencing and/or plea agreements, inmates may be sentenced to the Tribal facility to serve their confinement as long as space is available. The cost for confinement will be \$58 per day. There is also a booking fee of \$50. (The new Mohave County rate is \$79.46 per day with a booking fee of \$65.)

The City is anticipating 9,000 confinement days over the next 12 months. The Fort Mojave Detention Facility has the capacity to house several inmates per day. The City will save some jail costs while providing inmates to the Tribal Detention Facility. This is a partnership that presents a great opportunity for the City to work directly with the Fort Mojave Indian Tribe.

The Fort Mojave Council discussed and approved the IGA at its meeting on Tuesday, September 28 by unanimous vote. The City Manager attended the meeting.

FISCAL IMPACT:

REVIEWED BY:



Finance Department

Initial Project Costs: Cost per day per prisoner of \$58 with booking fee of \$50

Future Ongoing Costs: Per agreement and number of inmates

Physical Impact (on people/space): None

Residual or Support/Overhead/Fringe Costs: Financial accounting and oversight provided by staff



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ATTACHMENTS:

1. IGA
2. Memo from Captain Appleby regarding facility

LEGAL REVIEW:

APPROVED AS TO FORM:

Jam Evers
City Attorney

RECOMMENDATION:

MOTION TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE FORT MOJAVE INDIAN TRIBE AND THE CITY OF BULLHEAD CITY FOR THE USE OF THE DETENTION FACILITY; AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT; AND DIRECT THE CITY MANAGER TO SIGN ANY RESULTING DOCUMENTATION AND ISSUE PAYMENTS FOR SERVICES RENDERED.

APPROVED FOR SUBMITTAL BY:

CITY CLERK'S USE ONLY
COUNCIL ACTION TAKEN

Department Director

Toby Cotter
City Manager

Resolution No. _____

Continued To: _____

Ordinance No. _____

Referred To: _____

Approved _____

Denied _____

Other _____

File No. _____

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE FORT MOJAVE INDIAN TRIBE AND THE CITY OF BULLHEAD CITY
FOR THE USE OF DETENTION FACILITY**

THIS INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE FORT MOJAVE INDIAN TRIBE AND THE CITY OF BULLHEAD CITY FOR THE USE OF DETENTION FACILITY ("Agreement") is made and entered into by and between the FORT MOJAVE INDIAN TRIBE, a federally recognized Indian Tribe ("Tribe") and the CITY OF BULLHEAD CITY, an Arizona municipal corporation ("City"). Hereinafter, the Tribe and the City will be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the Tribe is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 476). The Tribe has the authority to enter into this Agreement pursuant to Article IV, Section 1.B., of the Fort Mojave Indian Tribe Constitution and Bylaws; and

WHEREAS, the City is a municipal corporation organized under Title 9 of Arizona Revised Statutes. The City has the authority to enter into this Agreement pursuant to §§11-951 et. seq., of Arizona Revised Statutes; and

WHEREAS, the Tribe operates a detention facility ("Facility") which meets the correction facility standards of the United States Bureau of Indian Affairs and is located at 8494 S. Highway 95, Mohave Valley, Arizona; and

WHEREAS, the Tribe and the City desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Tribe may provide space within its Facility to house certain post-disposition City adult inmates ("Inmates").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants, the Tribe and the City agree as follows:

I. TERM OF AGREEMENT

- A. The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date, unless earlier terminated as provided in Part VIII hereinbelow. The Effective Date of this Agreement shall be the date on which the last authorized signature is affixed below.
- B. This Agreement shall automatically renew on the same terms and conditions hereof for additional periods of one (1) year each unless either Tribe or City provides written notice of nonrenewal at least thirty (30) days prior to the expiration of the then-existing one (1) year period. However, this Agreement shall not extend beyond the date which is three (3) years from the Effective Date unless otherwise agreed to in writing by the Parties.

C. City shall cause the removal of its Inmates from the Facility prior to the expiration of this Agreement.

II. PAYMENT

- A. City agrees to pay Tribe the sum of Fifty Eight Dollars (\$58.00) per Inmate per day, to be computed on a calendar day basis. The full sum of Fifty Eight Dollars (\$58.00) per Inmate per day shall be paid by City to Tribe for (i) each calendar day during which a City Inmate is housed at the Facility for the full 24-hour calendar day period, and (ii) the calendar day on which a City Inmate is first housed at the Facility, regardless of the duration for which the City Inmate is actually housed on that calendar day.
- B. In addition to the Fifty Eight Dollar (\$58.00) per Inmate per day sum provided for in Paragraph A. immediately above, City shall pay Tribe a booking fee equal to Fifty Dollars (\$50.00) each time that a City Inmate is booked into the Facility.
- C. The Tribe shall submit monthly invoices to the City documenting amounts due in accordance with Paragraphs A and B immediately above. The City shall make payment to the Tribe for the amount due within forty-five (45) days from the date of the invoice. Amounts not paid when due shall accrue interest at the rate of eight percent (8%) per annum from the due date until paid.

III. ACCEPTANCE, CONFINEMENT, RELEASE AND REMOVAL OF INMATES

A. Acceptance of City Inmates.

1. The Tribe agrees to house adult City Inmates in the Facility if adequate space exists to do so. Whether or not such adequate space exists shall be determined in the sole and absolute discretion of the Tribe.
2. Inmates to be housed in the Facility shall be adults who have been sentenced and arrive at the Facility for confinement in accordance with a City court order. Prior to having an Inmate arrive at the Facility for confinement the City shall provide at least twenty-four (24) hours advance notice to Facility staff of its desire to have the Inmate housed at the Facility, including the desired time period of the confinement. Subsequent to receipt of the notice, Facility staff shall advise the City as to whether or not the Inmate will be accepted for confinement for the desired period of time. City is entitled to rely upon the verbal, or other, assertion of Facility staff in making plans for City court orders of confinement.
3. For each City Inmate accepted at the Facility, the booking forms required by the Facility shall be completed by Facility staff. Pertinent records for each Inmate shall be provided to Facility staff, including, but not limited to, verification of non-juvenile status, the current sentencing order and the scheduled time of release.
4. The Facility will not accept any Inmate who (i) is under the influence of alcohol or controlled substances and has not received a medical clearance from a medical professional or (ii) is in apparent need of immediate medical, dental or mental health services.
5. Tribe shall not provide transportation of City Inmates to or from the Facility, except as provided in Part IV, Paragraph B.2., hereinbelow.

B. Confinement in the Facility.

1. The Tribe shall provide confinement for each Inmate in the Facility in accordance with laws, regulations and standards applicable to the Facility.
2. Inmates shall be classified and confined at the Facility in accordance with the Tribe's classification criteria.
3. Each of the City's Inmates confined at the Facility shall receive, as applicable, three (3) meals per day.
4. City Inmates are subject to the same detention rules and discipline as others confined in the Facility.

C. Release and Removal of City Inmates.

1. The City shall notify the Facility at or before the time of booking when a City Inmate is to be released from the Facility. Notwithstanding the foregoing, the City may, at any time and in its sole discretion, request that any City Inmate be released from the Facility, whereupon the City Inmate shall be released without undue delay.
2. The Facility reserves the right to require the removal of any City Inmate from the Facility at any time because of disciplinary problems, health-related issues or other circumstances warranting removal. In such event, City shall provide for the removal of the Inmate, if necessary, within twenty-four (24) hours of notification from Facility staff.

IV. MEDICAL SERVICES

A. In-House Medical Services. City Inmates will not receive in-house medical services at the Facility.

B. Medical Procedures and Protocol.

1. Any prescription medication needed for Inmates will be delivered to appropriate Facility staff at the time of booking. Prescription medications will be packaged for administration and dispensed only in accordance with the established policy of the Facility.
2. If a City Inmate is in apparent need of non-emergency medical care Facility staff shall notify the City, whereupon the City shall either (i) direct the Facility staff to release the Inmate from the Facility or (ii) arrange for transportation of the Inmate to a medical facility selected by City for the non-emergency medical care. At the request of City, transport for non-emergency medical care may be provided by the Fort Mojave Tribal Police Department. Any costs incurred by the Tribe for non-emergency medical care transport shall be invoiced to and reimbursed by City on a mileage and man-hour basis. The City shall make payment to the Tribe for the amount due within forty-five (45) days from the date of the invoice. Amounts not paid when due shall accrue interest at the rate of eight percent (8%) per annum from the due date until paid.

Transport of City Inmates for emergency medical care will be provided by local ambulance service. The Tribe will notify the City of any emergency medical care for which a City Inmate is transported within two (2) hours of the occurrence.

V. JAIL STANDARDS

The Tribe shall maintain the Facility in substantial conformance with the minimum jail standards of the United States Bureau of Indian Affairs. Upon reasonable notice the Tribe agrees to cooperate with inquiries or inspections considered necessary by the City to determine compliance with the above.

VI. INDEMNIFICATION

- A. **City's Indemnification.** City shall indemnify and hold harmless the Tribe, its officers, agents, and employees, from any and all liability in damages, claims, suits and causes of action of any nature, at law or in equity, including any costs and attorney's fees incurred, arising from the confinement of any of City's Inmates in the Facility, as well as any actions or omissions related thereto. The obligation of City to indemnify and hold harmless the Tribe shall not extend to the grossly negligent or intentionally tortious conduct of the Tribe, its officers, agents and employees. Notwithstanding the foregoing, any liability incurred by City under or in connection with this Agreement shall be limited in amount to that actually recoverable from the City's insurance so that City's insurer, and not City, actually pays, directly or indirectly, any and all liability amounts.
- B. **Tribe's Indemnification.** The Tribe shall indemnify and hold harmless City, its officers, agents, and employees, from any and all liability in damages, claims, suits and causes of action of any nature, at law or in equity, including any costs and attorney's fees incurred, arising from the confinement of City's Inmates in the Facility, as well as any actions or omissions related thereto. The obligation of the Tribe to indemnify and hold harmless City shall not extend to liability caused by the grossly negligent or intentionally tortious conduct of City, its officers, agents and employees. Notwithstanding the foregoing, any liability incurred by Tribe under or in connection with this Agreement shall be limited in amount to that actually recoverable from the Tribe's insurance so that Tribe's insurer, and not Tribe, actually pays, directly or indirectly, any and all liability amounts.

VII. INSURANCE

- A. During the term of this Agreement the Tribe will maintain the following insurance:
1. A commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 2. A business auto policy providing a liability limit of at least \$1,000,000 per accident for the Tribe.
 3. A workers' compensation and employer's liability policy providing at least the minimum benefits provided by the terms of Arizona law.
- B. The Tribe's policies must provide for not less than thirty (30) days' advance written notice to City of cancellation or termination of the Tribe's policies; reduction of the coverage limits of any of the policies; and any other material modification of Tribe's policies related to this Agreement.

- C. Within thirty (30) business days after the execution of the Agreement, the Tribe must deliver to City certificates of insurance for each of Tribe's policies, which will confirm the existence or issuance of policies in accordance with this Agreement and copies of the endorsements.
- D. City is under no obligation either to ascertain or confirm the existence or issuance of Tribe's policies, or to examine the policies or to inform the Tribe in the event that any coverage does not comply with the requirements of this section.
- E. Insurance coverages must comply with the requirements set forth above and, except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as an additional insured on all liability policies herein.
- F. Coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
- G. All insurance policies obtained pursuant to this Agreement must be with companies legally authorized to do business in the State of Arizona and acceptable to the City.

VIII. TERMINATION

This Agreement may be unilaterally terminated, with or without cause, upon thirty (30) days prior written notice given by one Party to the other Party. The Tribe shall be paid all amounts owing under the terms of this Agreement through the date of termination. City shall cause the removal of its Inmates from the Facility prior to the termination date.

IX. NOTICE

Except as the context may otherwise require, notice, as provided for herein, shall be sent by U.S. Mail, postage prepaid, or fax transmission to the addresses set forth below, or to other addresses as the Parties may provide in writing:

FOR TRIBE: Timothy Williams, Chairman
Fort Mojave Indian Tribe
500 Merriman Avenue
Needles, CA 92363
Fax: (760) 629-5767

WITH COPIES TO: David A. Wolff, General Counsel
Fort Mojave Indian Tribe Legal Department
8490 S. Highway 95, Suite 105
Mohave Valley, Arizona 86440
Fax: (928) 346-2405

Raymond Limon, Chief of Police
Fort Mojave Indian Tribe Police Department
8494 S. Highway 95
Mohave Valley, Arizona 86440
Fax: (928) 346-1302

FOR CITY: Mayor
City of Bullhead City
2355 Trane Road
Bullhead City, Arizona 86442
Fax: (928) 763-4417

WITH COPIES TO: City Manager
City of Bullhead City
2355 Trane Road
Bullhead City, Arizona 86442
Fax: (928) 763-4417

City Attorney
City of Bullhead City
2355 Trane Road
Bullhead City, Arizona 86442
Fax: (928) 763-4417

Chief of Police
Bullhead City Police Department
1255 Marina Blvd.
Bullhead City, Arizona 86442
Fax: (928) 763-1999

X. MISCELLANEOUS

- A. Integration and Merger. This Agreement constitutes the full, complete and final understanding of the Parties hereto, and no amendment, revision, or addition to this Agreement shall be effective unless mutually agreed to by the Parties in writing in accordance with the same formalities as the execution of this Agreement. The Parties agree that this Agreement supersedes any and all previous agreements made by and between the Parties hereto.
- B. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Tribe and the City. As such, it is not intended and shall not be construed to create any benefit, obligation or cause of action, whether direct or indirect, for any party not a signatory to this Agreement.
- C. Severability. If any provisions of this Agreement are authoritatively determined to be invalid, those provisions shall be ineffective only to the extent of such invalidity and shall not affect the validity of the remaining provisions of this Agreement.
- D. Independent Contractor Status. This Agreement does not create an employee/employer relationship or a joint employment relationship between the Parties. Rather, it is understood and agreed that the Parties at all times shall be deemed independent contractors of each other for all purposes, and that no Party to this Agreement, nor its employees or agents, shall be considered employees or agents of any other Party under this Agreement.
- E. Jurisdiction; Immunities. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement is intended nor shall be construed to modify, limit, enlarge or otherwise affect the jurisdictional authority of the Tribe or the City. Notwithstanding anything to the contrary in this

Agreement, nothing in this Agreement is intended nor shall be construed as a waiver of the sovereign immunity of the Tribe, its officers, agents and employees, nor of the immunities of the City, its officers, agents and employees.

- F. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- G. Authorship. This Agreement's final form resulted from review and negotiation among the Parties. This Agreement shall not be construed against any Party on the basis of authorship.
- H. Conflicts of Interest. This Agreement is subject to cancellation for conflicts of interests as outlined under A.R.S. § 38-511.

NOW, THEREFORE, THE PARTIES AGREE TO THESE TERMS AND EXECUTE THIS AGREEMENT ON THE DATE(S) BELOW WRITTEN:

CITY OF BULLHEAD CITY

FORT MOJAVE INDIAN TRIBE

By: _____
Jack Hakim, Mayor

By: _____
Timothy Williams, Chairman

Date: _____

Date: _____

Approved as to form and within the legal authority and power of the Fort Mojave Indian Tribe:

By: _____
David A. Wolff, General Counsel

Approved as to form and within the legal authority and power of the City of Bullhead City:

By: _____
Garnet K. Emery, City Attorney