

EXHIBIT C

COOPERATIVE AGREEMENT TO REFER
TRIBAL MEMBERS CHARGED WITH MISDEMEANOR OFFENSES
TO TRIBAL COURT FOR PROSECUTION

This Agreement is made and entered into by and between those Utah public agencies listed hereafter as signatories to this Agreement and the Ute Indian Tribe of the Uintah and Ouray Reservation.

WITNESSETH:

WHEREAS, under the Utah Inter-Local Cooperation Act, Chapter 13 of Title 11, Utah Code Annotated (1953, as amended), the political subdivisions of the State of Utah which are signatories to this Agreement are public agencies duly authorized to enter into agreements with and among each other and with Indian tribes for the purpose of undertaking joint and cooperative action to provide and further prosecutorial services; and

WHEREAS, the Ute Indian Tribe of the Uintah and Ouray Reservation possesses the authority to provide for the maintenance of law and order within said Reservation and to enter into agreements with State and local governments pursuant to Article VI of the Constitution of the Ute Indian Tribe; and

WHEREAS, the Ute Indian Tribe is a federally recognized Indian Tribe and, as such, is a public agency duly authorized to enter into agreements with and among the political subdivisions of the State of Utah pursuant to Chapter 13 of Title 11 of the Utah Code Annotated, (1953, as amended), for the purpose of undertaking joint and cooperative action to provide and further prosecutorial services; and

WHEREAS, pursuant to its status as a sovereign Indian nation, the Ute Indian Tribe possesses the inherent authority to provide for the maintenance of law and order within the Uintah and Ouray Reservation and to enter into agreements with State and local governments, which authorities are recognized in Article VI of the Constitution of the Ute Indian Tribe; and

WHEREAS, through Article I of the Constitution of the Ute Indian Tribe and Section 1-2-2 of the Ute Law and Order Code, the Ute Indian Tribe asserts civil and criminal jurisdiction over tribal members on all lands within the exterior boundaries of the Uintah and Ouray Reservation; and

WHEREAS, recent decisions of the Supreme Court of the United States and the United States Court of Appeals for the Tenth Circuit have defined the present extent of the Uintah and Ouray Reservation in such a manner that results in a checkerboard pattern of Reservation and non-Reservation lands within the original boundaries of the Reservation; and

WHEREAS, the signatory parties find that the protection of public health, safety and welfare and the interest of prompt and efficient prosecutorial services makes desirable and beneficial the establishment of a cooperative agreement pursuant to which misdemeanor violations of the law are prosecuted without regard to the locus of the offense.

NOW, THEREFORE, it is the purpose of this Agreement to provide a framework for prosecuting, in the Tribal Court of the Ute Indian Tribe, tribal members who have been charged with committing a

misdemeanor offense on lands subject to the jurisdiction of the State of Utah, or its political subdivisions, that are located within the original boundaries of the Uintah and Ouray Reservation.

THE PARTIES TO THIS AGREEMENT FIND that the purpose and intent of this Agreement can best be accomplished by the State and Counties declining to exercise the misdemeanor jurisdiction which they possess over tribal members on lands within the original boundaries of the Uintah and Ouray Reservation which are no longer "Indian country" and deferring to the Tribe the prosecution of tribal members as provided in the Ute Tribe Law and Order Code, while providing that tribal members who object to being subjected to tribal authority for misdemeanors arising on non-Reservation lands retain their right to be prosecuted in the Courts of the State of Utah.

1. Prosecutorial Deferral

In order to further the purposes set forth above, the prosecutors of each of the political subdivisions of the State of Utah that are signatories to this Agreement shall refer Tribal members who are charged with committing a misdemeanor offense on non-Reservation lands to the Tribal prosecutor for prosecution under the terms and provisions of this Agreement.

2. Definitions

a. "County facility" shall mean any structure owned or operated by the State of Utah or a political subdivision of the State in which any person charged with a criminal offense is detained.

b. "County prosecutor" shall mean the criminal prosecutor of any political subdivision of the State that is a signatory to this Agreement.

c. "Misdemeanor offense" shall mean any violation of the penal code of the State of Utah that is classified as a misdemeanor or infraction in the Utah Code or in any ordinance or code enacted by a subdivision of the State of Utah that is a signatory to this Agreement. "Misdemeanor offense" shall not include an offense, otherwise categorized as a misdemeanor or infraction, when the offense arises in the same criminal episode as an offense classified as a felony under State law.

d. "Non-tribal lands" or "Non-Reservation lands" shall mean those lands within the original boundaries of the Uintah and Ouray Reservation over which the Ute Indian Tribe does not possess civil or criminal jurisdiction, as set forth in Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

e. "State" shall mean the State of Utah.

f. "State law" shall mean the Utah Code Annotated (1953, as amended) and any ordinance or code enacted by a political subdivision of the State that is a signatory to this Agreement.

g. "Tribe" shall mean the Ute Indian Tribe of the Uintah and Ouray Reservation.

h. "Tribal Court" shall mean the Reservation Indian Court, established pursuant to Article VI, Section 1(k) of the Tribe's Constitution, and shall include the general tribal court and tribal juvenile court.

i. "Tribal lands" or "Reservation lands" shall mean those lands within the original boundaries of the Uintah and Ouray Reservation over which the Tribe possesses civil and criminal jurisdiction, as set forth in Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997), provided, that such term(s) shall not mean lands withdrawn for the Strawberry Reclamation Project or lands known as the "Gilsonite Strip."

j. "Tribal member" shall mean a person who is an enrolled member of the Tribe at the time he or she is arrested or formal charges are filed, whichever occurs earlier. All determinations of tribal membership shall be made by the Tribe and shall be final and conclusive for purposes of implementing this Agreement.

k. "Tribal prosecutor" shall mean the chief prosecutor employed by the Tribe. During the term of this Agreement, the Tribal prosecutor shall have earned a Juris Doctorate degree, or its equivalent, and shall possess a valid license, issued by one of the 50 States, to practice law before the highest court in the issuing state.

3. Policies and Procedures

a. The County prosecutor(s) shall direct the law enforcement officers in their respective jurisdictions to cite into Tribal Court for prosecution any tribal member who is charged with committing a misdemeanor offense on non-Reservation lands; provided, that the County prosecutor(s) may decline to refer to

the Tribal Court any person who previously declined to be prosecuted in Tribal Court pursuant to paragraph 3(b), below.

b. On a form to be agreed upon by the County prosecutor(s) and Tribal prosecutor, the Tribal prosecutor shall refer back to the County prosecutor(s) for prosecution under State law any tribal member who has been charged with committing a misdemeanor offense on non-Reservation lands, when the person so charged refuses to accept referral to the Tribal Court or refuses to submit to the Tribal Court's authority.

c. Should any Tribal member be detained or arrested for a misdemeanor offense and be taken to a County facility, the County prosecutor(s) shall notify, or cause to be notified, the Bureau of Indian Affairs of such detention or arrest as soon as is practical. Thereafter, the Bureau of Indian Affairs shall arrange transportation of such person to its holding facility.

d. No less than once each calendar quarter (that is, on January 15, April 15, July 15 and October 15 of each year), the Tribal prosecutor shall prepare a written report which, at a minimum, describes the disposition of each case referred to the Tribal Court for prosecution pursuant to this Agreement during the preceding calendar quarter. This report shall be submitted to the County prosecutor(s) and by the County prosecutor(s) and Tribal prosecutor to their respective governing bodies. If further information regarding disposition of a case, or of all of the cases, referred to the Tribal Court for prosecution is requested by a governing body, the responsible prosecutor shall promptly supply

such information to the governing body of each signatory party to this Agreement.

4. Revision of Tribal Law and Order Code

a. Within 120 days after the effective date of this Agreement, the Tribe shall revise the Ute Law and Order Code as follows:

i. The Law and Order Code shall define as a misdemeanor offense those offenses which are classified as misdemeanors pursuant to State law; provided, that the Tribe shall not be required to, nor shall it, define as a misdemeanor offense any State-defined misdemeanor that is not an offense in Ute custom or culture.

ii. The Law and Order Code shall impose penalties that are similar to those imposed under State law, ordinance or code depending upon the degree (i.e. Class A, B, or C or infraction) of the offense; provided, that in lieu of fines and/or incarceration the Tribe may substitute penalties of restitution, community service, or other punishment consistent with Ute Custom and culture.

iii. Pending the revision of the Ute Law and Order Code, the Tribal Court and Tribal prosecutor shall be directed, by resolution of the Tribal Business Committee, to prosecute any Tribal member who has been referred for prosecution under this Agreement pursuant to State law, when the misdemeanor offense with which said person has been charged is not defined as an offense under Tribal law.

iv. No less than bi-annually, the Tribe shall review the Law and Order Code to ensure that it remains consistent with State law and Tribal custom and culture and shall communicate its findings, in writing, to the County prosecutor(s).

5. Reporting of Criminal Offenses

The Tribal Court shall enter into the National Crime Information databases and its incorporated criminal history databases, including the Interstate Identification Index and the Utah Bureau of Criminal Identification, information on all arrests, criminal citations, warrants, domestic violence orders and the disposition of all criminal cases. Such information shall also be made available, upon request, directly to the prosecutor(s) of the signatory parties to this Agreement.

6. Training and Qualifications

At all times during which this Agreement is in effect, the Tribe shall employ a law-trained prosecutor and law-trained judge, each of whom shall be responsible, respectively, for prosecuting and trying and sentencing any Tribal member who is referred to the Tribe for prosecution pursuant to this Agreement.

7. Individual Rights Not Affected

Nothing in this Agreement shall be construed to mean that any of the parties hereto has, by executing this Agreement, waived any immunities or subjected themselves to any liabilities for which they would not otherwise be subjected by law. No party to this Agreement, nor its officers, agents or employees, shall be held liable for any loss or damage by reason of failure to perform

duties pursuant to this Agreement. This Agreement shall not be construed as, or deemed to be, an agreement for the benefit of any private person or third party, and no private person or third party shall have any right of action hereunder for any cause whatsoever.

8. Commencement, Duration and Termination

a. This Agreement shall become effective on November 1, 1998, and shall remain in effect for a period of ten years, unless sooner terminated pursuant to subparagraph b, below.

b. This Agreement may be terminated prior to November 1, 2008, by any one, or all, of the political subdivisions of the State that are signatories to this Agreement or by the Tribe by giving 60 calendar days notice, in writing, to the other signatory parties.

9. Sovereignty

Nothing in this Agreement is intended to, nor shall it be construed by any court of competent jurisdiction, to alter or affect the sovereign authority of the State of Utah, any political subdivision of the State, or of the Ute Indian Tribe.

10. Severability

Wherever possible, each and every provision of this Agreement shall be interpreted as being consistent with Federal, State and Tribal law. If a particular provision of this Agreement shall be found to be inconsistent with Federal, State or Tribal law, rule or regulation, such provision shall be deemed to be severable, and the remaining provisions of the Agreement shall remain in force, unless terminated according to the provisions of this Agreement.

11. Manner of Financing and Administration

It is understood that each party to this Agreement shall bear its own costs and is not entitled to reimbursement from any other signatory party or parties. It is not contemplated that the parties shall jointly acquire any property pursuant to this Agreement. The chief prosecutors of each of the signatory parties shall meet together periodically, as needed, as a joint board, for the purpose of administering and evaluating the operations of the joint undertaking established pursuant to this Agreement.

12. Prosecutorial Determination

Should the chief prosecutor of any of the signatory parties determine that the interests of justice and/or proper performance of said prosecutor's constitutional or statutory duties require that said prosecutor must exercise his/her discretion to refer tribal members to Tribal Court on a case-by-case basis, said prosecutor shall so notify, in writing, the governing bodies and the chief prosecutors of the other signatory parties to this Agreement. Thereafter, the provisions of this Agreement shall become advisory as to that party, and any referral of a tribal member to the Tribal prosecutor shall proceed on a case-by-case basis, consistent with the interests of justice and the duties of the prosecutor.

13. Jurisdiction to Interpret and Enforce this Agreement

Original jurisdiction to hear and decide any dispute or litigation arising under or as a result of this Agreement shall be in the United States District Court of the District of Utah.

IN WITNESS WHEREOF, this Cooperative Agreement to Refer Tribal

Members Charged with Misdemeanor Offenses to Tribal Court for Prosecution is duly made and executed by and on behalf of the Ute Indian Tribe of the Uintah and Ouray Reservation; the County of Duchesne, Utah; the County of Uintah, Utah; and the State of Utah (which acknowledgements are affixed on the following pages attached hereto) by authority, where necessary, of a valid Resolution enacted by the governing body of each such party.

APPROVAL BY THE UTE INDIAN TRIBE
OF THE UINTAH AND OURAY RESERVATION

Ute Indian Tribe

By: O. Paul White Sr
Chairman/Vice Chairman, Uintah
and Ouray Tribal Business Committee

DATE: 10/14/98

APPROVED:

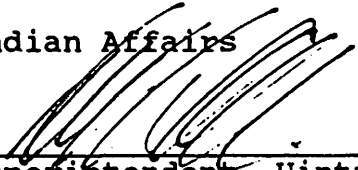
Robert Ferguson (w)
Attorney

DATE: 10/14/98

APPROVAL BY THE UNITED STATES
BUREAU OF INDIAN AFFAIRS

Bureau of Indian Affairs

By:



Superintendent, Uintah and Ouray
Agency

Date:

10/19/98

APPROVAL BY DUCHESNE COUNTY, UTAH

County of Duchesne, Utah

By *[Signature]*
Chairman,
Board of County Commissioners

DATE: 10/13/98

ATTEST:

[Signature]
Duchesne County Clerk

DATE: 10/19/98

APPROVED:

[Signature]
Duchesne County Attorney

DATE: 10/19/98

[Faint signature]

APPROVED BY UINTAH COUNTY, UTAH

County of Uintah, Utah

BY: Justin M. Wainwright
Chairman
Board of County Commissioners

Date: 10-20-98

ATTEST:

D. H. Deise
Uintah County Clerk

Date: Oct 20, 1998

APPROVED:

Alan B. O'D
Uintah County Attorney

Date: October 19, 1998

Paul J. Spentz
Uintah County Sheriff

Date: 10/19/98

APPROVAL BY ATTORNEY GENERAL, STATE OF UTAH

The forgoing COOPERATIVE AGREEMENT TO REFER TRIBAL MEMBERS
CHARGED WITH MISDEMEANOR OFFENSES TO TRIBAL COURT FOR PROSECUTION
is approved this 15th day of October, 1998.

JAN GRAHAM
Attorney General,
State of Utah

By: Cheryl C. Pungel

APPROVAL BY STATE OF UTAH

State of Utah

By: Michael O. Leavitt
Governor

DATE: October 26, 1998