



**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, "Approval of the BIA Special Law Enforcement Commission Agreement"

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By- laws under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, The Three Affiliated Tribes places enormous value on the welfare, and well being of its membership; and

WHEREAS, Proper law enforcement is critical to such interests; and

WHEREAS, The Three Affiliated Tribes Tribal Business Council feels that dramatic improvements must be made for said law enforcement services to properly protect the tribal membership; and

WHEREAS, The Tribal Business Council is convinced that the people would be better served by law enforcement if it was administered and managed by the Three Affiliated Tribes and encourages and promotes tribal efforts to directly manage its own services;

WHEREAS, Pursuant to the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801, et seq., the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA), is responsible for providing, or assisting in providing law enforcement in Indian Country; and

WHEREAS, The Secretary has delegated this authority to the Assistant Secretary – Indian Affairs and the Assistant Secretary – Indian Affairs has delegated this authority to the Director of the BIA, who has delegated it to the Deputy Bureau Director, Office of Justice Services (OJS), BIA; and who has delegated it to the Special Agent in Charge, Office of Justice Services (OJS), and

WHEREAS, the Assistant Secretary – Indian Affairs is committed to working with tribal governments and tribal law enforcement to strengthen law enforcement in Indian country; and



WHEREAS, On February 10, 2004, the Assistant Secretary – Indian Affairs articulated policy guidance to the BIA – as published at 69 Fed. Reg. 6,321 – to govern the implementation of Special Law Enforcement Commission Deputation Agreement; and

WHEREAS, this policy expressly lays out issues regarding good faith efforts on behalf of all parties involved in the aforementioned agreements, including as they relate to liability;

NOW THEREFORE BE IT RESOLVED, that the BIA, Office of Justice Services (OJS) and the Three Affiliated Tribes (Tribe) enter into this Deputation Agreement to govern the BIA OJS's issuance of Special Law Enforcement Commissions, pursuant to the Assistant Secretary – Indian Affairs' Cross-Deputation Agreements, Memoranda of Understanding, Memoranda of Agreement, and Special Law Enforcement Commission Deputation Agreements, FR Doc. 04-2842, policy guidance.

NOW THEREFORE BE IT FURTHER RESOLVED, That the Tribal Business Council hereby authorizes the Executive and Judicial Committees along with the appropriate tribal staff to work with the Bureau of Indian Affairs to take whatever steps are necessary to ensure that the Deputation Agreement between the Three Affiliated Tribes Law Enforcement and the Bureau of Indian Affairs Office of Justice Services is renewed at the earliest possible opportunity.



CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 30th day of March, 2016, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 2 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. Not Voting.

Dated this 30th day of March, 2016.

ATTEST:

Tribal Secretary L. Kenneth Hall
Tribal Business Council
Three Affiliated Tribes

Tribal Chairman Mark N. Fox
Tribal Business Council
Three Affiliated Tribes



BIA SPECIAL LAW ENFORCEMENT COMMISSION AGREEMENT

This Deputation Agreements entered into this _____ day of _____ in the year of _____, by and between the Three Affiliated Tribes, a federally recognized Indian tribe and the BIA, OJS, Department of Interior, pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801, *et seq.*, and related Tribal ordinances, which provide for cooperative agreements to promote better law enforcement services. The Tribe has enacted Tribal Resolution No. _____, which authorizes the Tribal Chairman to enter into this Agreement on the Tribe's behalf and also authorizes the Tribe's Law Enforcement Officers, under a BIA Special Law Enforcement Commission (SLEC) issued through the Secretary of the Interior, to enforce federal laws in Indian country.

The intent of this agreement is to provide for the deputation of law enforcement officers employed by the Tribes, which is a party to this Agreement, so that the Tribe's Law Enforcement officers will be authorized to assist the BIA in its duties to provide law enforcement services and to make lawful arrests in Indian country within the jurisdiction of the Tribe or as described in section 5. It is the express desire and intent of both parties to this Agreement to allow law enforcement officers to react immediately to observed violations of the law and other emergency situations.

Both parties to this Agreement recognize that when law enforcement officers arrest a criminal suspect, the officers may not know whether the suspect or the victim is an Indian or non-Indian, or whether the arrest or the suspected crime has occurred in Indian country, as defined by 18 U.S.C. § 1151, and that therefore there is great difficulty in determining immediately the proper jurisdiction for the filing of charges. It is further recognized that the official jurisdictional determination will be made by the prosecutor from one of the various jurisdictions, not by cross-deputized arresting officers who may deliver the offender to the appropriate detention facility. The parties further expressly recognize the manifest intent of the Indian Law Enforcement Reform Act to eliminate the uncertainties that previously resulted in the reluctance of various law enforcement agencies to provide services in Indian country for fear of being subjected to tort and civil rights suits as a consequence of the enforcement or carrying out in Indian country of certain federal law. To eliminate such concerns, pursuant to the authority granted by 25 U.S.C. § 2804(a) and (f), a Tribal Law Enforcement Officer who is deputized by the Bureau of Indian Affairs Special Law Enforcement Commission will be deemed an employee of Department of the Interior for purposes of the Federal Tort Claims Act while enforcing or carrying out laws of the United States covered by this deputation agreement, to the extent outlined in this agreement. Both parties to this Agreement (BIA, Tribe) therefore agree as follows:

1. Purpose

The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in Indian country in the State of North Dakota, and its terms should be interpreted in that spirit. Accordingly, both parties to this Agreement shall cooperate with each other to provide comprehensive and thorough law enforcement protection, including but not



limited to effecting arrests, responding to calls for assistance from all citizens and also from law enforcement officers, performing investigation, providing technical and other

assistance, dispatching, and detention. This Agreement is not entered into pursuant to the Indian Self Determination Act and Education Assistance Act, P.L. 93-638, as amended.

2. Commissions

- A. The BIA as a party to this Agreement may, in its discretion, issue special law enforcement commissions to law enforcement officers of another agency, upon the application of such officers. Such commissions shall grant the officers the same law enforcement authority as that of officers of the BIA (unless specifically limited by the terms of the commission), as more specifically described in Section 3 of this Agreement. When the BIA issues such a commission, it shall provide notice of that commission, including the name of the officer receiving the commission, to any other agencies that are parties to this Agreement or that should be aware of this Agreement. The BIA further has the authority to evaluate the effectiveness of the commissions and to investigate any allegations of misuse of authority (25 C.F.R. § 12.21). Pursuant to such evaluation the BIA has the authority to revoke a deputation agreement with a law enforcement agency or to revoke an individual officer's SLEC and such decision is non-appealable.
- B. A commission shall not be granted unless the applicant has complied with all the prerequisites for appointment as a police officer as set forth in 25 C.F.R. Part 12 and with the specific requirements of the commissioning agency. Those prerequisites must include the following:
1. United States citizenship;
 2. A high school diploma or equivalent;
 3. No conviction for a felony, a misdemeanor which restricts the ability to carry firearms, or other crime involving moral turpitude (including any convictions expunges from an individual's record);
 4. Documentation of semi-annual weapons qualifications; and
 5. A finding that the applicant is free of any physical, emotional, or mental condition that might adversely affect his or her performance as a police officer.

Further, an officer seeking an SLEC must not have been found guilty of, or entered a plea or *nolo contendere* or its equivalent (such as an *Alford* plea), guilty to any felonious offense, or any certain misdemeanor offenses under Federal, State, or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact, or prosecution, or crimes against persons, or offenses committed against children.

- C. The BIA may further impose any other requirements, including, but not limited to, an orientation course on Federal, tribal, or state criminal procedures.
- D. If requested by the BIA, the applicant's agency shall provide a Federal Bureau of Investigation criminal history background check on the applicant.



- E. If BIA denies an officer a commission, it shall disclose the grounds for such denial in writing to the agency which employs the applicant and such decision is non-appealable.
- F. The BIA may, at any time, suspend or revoke an officer's commission for reasons solely within its discretion and such decision is non-appealable. The BIA shall notify the officer's agency in writing of the suspension or revocation and the reasons therein. Within ten (10) days after such notification, that agency shall cause the commission card and any other evidence of the commission to be returned to the BIA.
- G. If the commissioned officer's agency possesses or comes to possess any information on the officer, which provides the grounds for the suspension or revocation of the commission, it shall immediately notify the BIA.
- H. A commission issued by the BIA under this agreement shall not be sued to invoke any State of North Dakota authority. Officers holding SLECs who are responding to a call, conducting an investigation, or otherwise exercising their authority shall, in their discretion and in the exercise of sound police judgment, address any potential violations of Federal or Tribal Law.

3. Scope of Powers Granted

- A. Tribal Law Enforcement Officers carrying SLECs issued by the BIA pursuant to this Agreement are given the power to enforce:

All Federal Laws applicable within Indian country, and specifically the Three Affiliated Tribes' Indian country, including the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act 18 U.S.C. § 1153, consistent with the authority conveyed pursuant to Federal law through the issuance of commissions or other delegations of authority. See Appendix A, which includes an **illustrative** list of Federal statutes that officers may be called upon to enforce; this list is **not exhaustive**.

- B. Both parties to this Agreement note that the applicability of Federal and tribal laws in Indian country may depend on whether the suspect or the victim is Indian, and the parties agree that nothing in this Agreement makes any law applicable to a certain person or certain conduct where it would not otherwise be applicable. (A qualified immunity defense may still be available in appropriate circumstances notwithstanding this limitation.) Accordingly, the purpose of this Agreement is to provide commissioned Tribal Law Enforcement officers the authority to enforce applicable laws. This includes statutes set forth in the local U.S. Attorney Guidelines as well as all laws and statutes applicable in Indian country as described in Section 3.A and Appendix A.
- C. Nothing in this Agreement limits, 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 any agency or the sovereignty of any government. Lawful actions pursuant to this federal

Agreement and a commission issued under it supersede any contrary Tribal, State, or local law, ordinance, or practice.

- D. This Agreement does not create any rights in third parties. Issuance and revocation of SLECs pursuant to this agreement are at the sole discretion of the BIA. Nothing in this deputation agreement is intended to create or does create an enforceable legal right or private right of action by a law enforcement officer or any other person.

4. Uniform, Vehicles and Weapons

- A. BIA policy requires that BIA police officers will as a rule be in uniform, carry a weapon where required by their duties and, when stationed in vehicles, will operate marked police vehicles equipped with light bars. This policy is standard for police forces nationwide, and is necessary for the safety of the officer and to communicate the officer's status and authority to members of the public and to those suspected of criminal activities.
- B. Police officers that are temporarily off duty or whose duty is temporarily interrupted for any reason are expected to remain in uniform, in a marked vehicle, and otherwise prepared for duty so that they are available to respond to emergency calls.
- C. Police officers and their supervisors may make exceptions to this requirement for undercover operations or otherwise on a case-by-case basis, but deviations from this rule are expected to be infrequent and will usually occur for the most compelling law-enforcement reasons.

5. Travel Outside of Indian Country

- A. The ordinary duty stations of BIA police officers are located within the boundaries of Indian country. In some situations, however, BIA police officers will be required to leave Indian country as a part of or incidental to their duties. This may occur, for example, where they are responding to an incident in another area of Indian country; where they are transporting evidence or suspects to or from locations in Indian country or to or from other police, court, or prison facilities; when they reside off-reservation and are traveling to their duty station or responding to an emergency call; or when they must obtain products or services located off-reservation while on duty or in the normal course of their business day.
- B. When traveling outside of Indian country, BIA police officers retain their status as Federal law enforcement officials. They are therefore expected as a rule to be in uniform and to operate marked police vehicles as set forth in paragraph 4. They may also be armed; may transport evidence; and may exercise the authority of law enforcement officers to maintain control of suspects in such situations. They may also perform comparable incidental Federal police activities outside of Indian country, but will not as a rule conduct investigations or make arrests outside of Indian country, absent exigent circumstances or: (1) a nexus to a



committed in Indian country, and (2) communicating and coordinating with the appropriate local or Federal authorities over procedures and methods.

6. Officers Holding SLECs

- A. Officers holding SLECs are treated as BIA police officers for enforcing Federal laws. They therefore will conform to all requirements and limitations set forth in this Agreement and in particular in paragraphs 4 and 5.
- B. In any situation in which an officer holding an SLEC might receive a call related to a potential Federal offense, that officer will as a rule be in uniform and in a vehicle equipped as set forth in paragraph 4. Such an officer may undertake off-reservation travel as set forth in paragraph 5.
- C. In any situation in which an officer holding an SLEC is responding to a call that may involve a Federal offense, or undertaking any other duties that relate to or may potentially relate to their Federal functions, he or she will conform to the provisions of this agreement, and in particular those in paragraph 5, irrespective of the boundaries of the Tribe's reservation or the location of Indian country.
- D. When an officer holding an SLEC receives an emergency call in circumstances where a Federal offense may exist, he or she will respond in emergency mode and will travel to the site of the call as rapidly as it is possible to do without compromising safety, irrespective of the boundaries of Indian country or his or her present location. He or she will observe the restrictions on the activation of emergency mode and the precautions for the safety of bystanders required in the BIA, OLES Law Enforcement Handbook and otherwise respond as appropriate and prudent. In instances where the State has criminal jurisdiction in Indian country, and where there is no significant reason to anticipate that a Federal offense may exist with respect to a particular emergency call, Tribal law enforcement officers will respond in accordance with the policies and practices set forth under State and local law, but may, in certain circumstances, retain their Federal status.
- E. When located outside of Indian country, officers holding SLECs may respond to observed violations of Federal law in a public safety emergency as appropriate and prudent. Irrespective of their location, officers holding SLECs may only respond to violations of exclusively State law to the extent consistent with the State's law. Officers carrying SLECs may respond to concurrent violations of State and Tribal or Federal laws to the extent consistent with Tribal or Federal law.

7. Disposition and Custody

- A. Any person arrested by an officer commissioned pursuant to this Agreement shall immediately be brought to the attention of a responsible official of the apparent prosecuting jurisdiction. In order to ascertain the proper prosecuting jurisdiction, the officer shall attempt to determine, where practicable, whether the arrestee is Indian or non-Indian.



official determination of proper jurisdiction, however, will be made by a prosecutor, not a law enforcement officer commissioned under this Agreement.

- B. The agency with whom the arresting officer is employed shall ensure the arrestee appears before a judge of the appropriate jurisdiction for initial appearance and bond setting within the time guidelines of the Tribal, State, and Federal law as may be appropriate.
- C. In the event an Indian detainee or prisoner under the jurisdiction of the Tribe requires medical treatment, the law enforcement agency with custody may transport the detainee or prisoner to the nearest Indian Health Service or the appropriate Tribal health care facility. In such event, Tribal or BIA law enforcement officers shall be notified so that necessary protective services may be provided while the detainee or prisoner is admitted at such health facility.

8. Liabilities and immunities

- A. It is understood and agreed that each agency 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.
- B. Notwithstanding subsection A, any Tribal Law Enforcement Officer who is deputized by the Bureau of Indian Affairs Special Law Enforcement Commission will only be deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act (FTCA) while carrying out those laws applicable in Indian country as described in Section 3.A and Appendix A. Therefore, such officer will not be deemed a federal employee under 25 U.S.C. § 2804(f)(1), or for purposes of the Federal Tort Claims Act with respect to the enforcement of any other law except those applicable in Indian country as described in Section 3.A and Appendix A.
- C. 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.
- D. Nothing in this Agreement shall be construed as a waiver of any government's sovereign immunity, not otherwise expressly waived by legislative act.
- E. The Tribe specifically agrees to hold the United States harmless under this Agreement for any civil claim brought against an officer carrying an SLEC arising out of law enforcement activity, except for actions within the scope of authority delegated by this agreement, provided, however, that this hold harmless provision shall not be applicable to any obligation of the United States arising out of a relationship between the United States and the Tribe not created under this Agreement.



Tribes agrees that the United States has no obligation under this Agreement to provide legal representation for any constitutional claim for any officer carrying a SLEC except as provided by 28 C.F.R. 50.15(a), such that (1) providing representation would otherwise be in

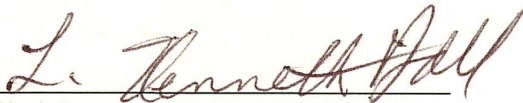
the interest of the United States, and (2) the event from which the claim arises is within the scope of authority delegated by this agreement.

G. Final determination for FTCA related matters will be made by the United States Department of Justice.


9. Additional Parties

It is understood by the parties to this Agreement that additional agencies with law enforcement responsibilities may join as parties hereto, and that amendment may be made to the terms of this Agreement only with the express agreement of all the parties signatory to this Agreement.

ATTEST:



Tribal Secretary, L. Kenneth Hall
Tribal Business Council



Chairman, Mark N. Fox
Tribal Business Council

BIA