

Deputation Agreement

This Agreement is entered into pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C. 2801, *et seq* and Little Traverse Bay Bands of Odawa Indians Resolution 06279902 which provide for cooperative agreements to promote better law enforcement services, authorizes the Tribal Chairman to enter into this Agreement on the Tribe's behalf and which also authorizes the Secretary of the Interior to enforce tribal laws [if any].

The intent of this Agreement is to provide for the deputation of law enforcement officers employed by the various agencies which are parties to this Agreement so that each agency's officers will be authorized to provide law enforcement services and to make lawful arrests in Indian country within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians. It is the express desire and intent of all parties to this Agreement to allow law enforcement officers to react immediately to observed violations of the law and other emergency situations without regard to whether they occur on or off Indian lands.

All the parties to this Agreement recognize that when law enforcement officers arrest a criminal suspect, the officers may not know if the suspect or the victim is an 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 the proper jurisdiction for the filing of charges. It is further recognized that the official jurisdictional determination will be made by a prosecutor from one of the various jurisdictions, not be cross-deputized arresting officers who may deliver the arrestees to the detention facilities of the various agencies which are parties to this Agreement.

The parties further expressly recognize the manifest intent of the Indian Law Enforcement Reform Act to eliminate the uncertainties which previously resulted in the reluctance of various law enforcement agencies to provide services in Indian country for fear of being subject to tort and civil rights suits as a consequence of the good-faith errors of officers making arrests or quelling disturbances in Indian country. To eliminate such concerns, the Bureau of Indian Affairs (BIA), to the maximum extent possible under applicable law, commits that if a state, local, or tribal officer holding a BIA Special Law Enforcement Commission (SLEC) makes a good-faith arrest of an Indian and delivers the arrestee to a detention facility or a prosecutor of the wrong jurisdiction through good-faith error, and is later sued in his/her personal capacity in an action sounding either in tort or in a civil rights violation, predicated upon the plaintiff's Indian descent, his/her arrest in Indian country, and his/her delivery to the wrong jurisdiction, it will be the policy of the BIA to provide such an officer with the same protections that would have been made available to a BIA law enforcement officer acting under like circumstances. Those protections shall include those provided by the Federal Tort Claims Act, 28 U.S.C. 2401, 2671-2680, as amended, and by 43 CFR Part 22. The parties to this Agreement (BIA and Little Traverse Bay Bands of Odawa Indians) therefore agree as follows:

1. Purpose

The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in and around Indian country in the State of Michigan and its terms should be interpreted in that spirit. Accordingly, all 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 other law enforcement officers, performing investigations, providing technical and other assistance, dispatching, and detention.

2. Commissions

- A. Each agency which is 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 commissioning agency (unless specifically, limited by the terms of the commission), as more specifically described in Section 3 of this Agreement. When an agency issues such a commission, it shall provide notice of that commission, including the name of the officer receiving the commission, to each of the other agencies which is party to this Agreement.
- 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 the 25 CFR Part 12 and with the specific requirements of the commissioning agency. Those prerequisites must include the following:
 - i. United States citizenship.
 - ii. A high school diploma or equivalent.
 - iii. No conviction for a felony, a misdemeanor which restricts the ability to carry firearms, or other crime involving moral turpitude.
 - iv. Documentation of semi-annual weapons qualifications.
 - v. A finding that the applicant is free of any physical, emotional, or mental condition which might adversely affect his or her performance as a police officer.
- C. The commissioning agency may impose any other requirements, including, but not limited to, an orientation course on BIA, tribal, or state criminal procedures.
- D. If requested by the commissioning agency, the applicant's agency shall provide a Federal Bureau Investigation criminal history background check on the applicant.
- E. If an agency denies an officer a commission, it shall disclose the grounds for such denial in writing to the agency which employs the applicant.
- F. The BIA may, at any time, suspend or revoke an officer's commission for reasons solely within its discretion. 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 officer's agency possesses any information on the officer, which provides grounds for the suspension or revocation of the commission, it shall immediately notify the BIA.

3. Scope of Powers Granted

A. Officers carrying SLEC commissions issued by the Bureau of Indian Affairs pursuant to this Agreement are given the power to enforce:

- i. All Federal criminal laws applicable to Indian country, including the Major Crimes Act, 18 U.S.C. 1153, and the Code of Indian Tribal Offenses in 25 CFR Part II where applicable, and
- ii. LTBB Criminal Code (Waganakising Odawak Statue 1997014)

Officers carrying commissions issued by the Little Traverse Bay Bands of Odawa Indians are given the power to enforce the Waganakising Okawak Tribal Criminal Code, copies of which code will be provided to each officer issued such a commission.

B. The 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 that state laws have been held generally to be an applicable to Indians in Indian country; 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. Accordingly, the purpose of this Agreement is to provide commissioned officers the authority to enforce all applicable law in Indian country.

D. 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 any agency or the sovereignty of any government.

4. Disposition and Custody

A. Any person arrested by an officer commissioned pursuant to this Agreement shall be taken immediately to a responsible official of the apparent prosecuting jurisdiction. In order to ascertain the proper prosecuting jurisdiction, the officer shall ask the arrestee, where practicable, whether he or she is Indian or non-Indian, and shall rely on that representation. The official determination of proper jurisdiction, however, will be made by a prosecutor, not a law enforcement officer commissioned under this Agreement.

B. The jailer or penal institution administrator to whom the custody of the arrestee is entrusted shall cause the arrestee to appear within a reasonable amount of time, not to exceed twenty-four (24) hours, before a judge of the appropriate jurisdiction for initial appearance and bond setting, unless the governing jurisdiction requires a shorter period of time.

C. In the event an Indian detainee or prisoner under the jurisdiction of Little Traverse Bay Bands of Odawa Indians requires medical treatment, the law enforcement agency with custody may, to the extent prudent and feasible transport the detainee or prisoner to the nearest Indian Health Service or Little Traverse Bay Bands of Odawa Indians Tribal health care facility in order to avoid significant medical expense. 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.

5. Supervision

It is understood and agreed by the parties to this Agreement that the BIA, its agents, employees, and insurers, has no authority nor any right whatsoever to control in any manner the day-to-day discharge of the duties of officers whom they have commissioned pursuant to this Agreement. However, it is understood to be a basic purpose of this Agreement that officers commissioned hereunder to provide law enforcement services in Indian country shall respond to calls for assistance therein as they would in any other jurisdiction in which they exercise authority.

6. 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 officer carrying a SLEC issued by the BIA will be treated as a Federal employee under the Federal Tort Claims Act and under 43 CFR Part 22 in connection with any exercise of law enforcement responsibility in Indian country.

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.

7. Interagency Committee

The parties to this Agreement each agree to appoint a responsible person with a professional background in law enforcement to sit on an interagency committee charged with implementation of this Agreement and consideration of disputes concerning its interpretation. Such committee may, for example, distribute guidelines or require periodic orientation or training sessions for officers commissioned pursuant to the Agreement. The committee shall operate by consensus rather than by a vote of the participating agencies, with its objective to always provide effective law enforcement and peace in the community.

8. Additional Parties

It is understood by the parties to this Agreement that additional agencies with law enforcement responsibilities may choose to join as parties hereto, but that no amendment will be made to the terms of this Agreement without the agreement of all the parties signatory to it.

Signatures:

Director/District Commander

Date

Tribal Official

Date