

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is executed this 2<sup>nd</sup> day of February, 2002, by and between the SHOSHONE-BANNOCK TRIBES, hereinafter "TRIBES," acting by and through the Chairman of the Fort Hall Business Council, and the POWER COUNTY SHERIFF'S OFFICE, consisting of the Sheriff and his deputy officers, and the POWER COUNTY PROSECUTING ATTORNEY, hereinafter "POWER COUNTY."

WHEREAS, the State of Idaho, acting pursuant to a federal law known as Public Law 280 (Public Law 83-280, 67 Stat. 589), enacted Idaho Code Sections 67-5101 through 67-5103 in 1963, by which the State acquired jurisdiction to enforce State civil and criminal laws on the Fort Hall Indian Reservation, hereinafter "Reservation," concerning the operation and management of motor vehicles, by Indians, upon highways and roads maintained by the county or State or political subdivisions thereof; and

WHEREAS, POWER COUNTY and the TRIBES by execution of this agreement designate that the highways and roads maintained by the County or State for purposes of this agreement are those highways and roads that are currently being maintained by the County or State; and

WHEREAS, by virtue of Idaho Code Section 67-5102 the State's assumption of traffic jurisdiction within the Reservation was expressly declared to be "concurrent (and not exclusive) with jurisdiction in the same matters existing in tribes or the federal government;" and

WHEREAS, the Idaho State-Tribal Relations Act, Idaho Code Sections 67-4001 through 67-4003, enacted in 1984, authorizes the State and its political subdivisions and public agencies as defined by Idaho Code Section 67-2327, including POWER COUNTY, to execute

intergovernmental agreements with designated Indian tribes, including the TRIBES, to provide for joint or concurrent exercise of jurisdictional powers consistent with Idaho Code Sections 67-5101 and 67-5102; and

WHEREAS, by virtue of inherent, retained sovereign powers of the TRIBES and by virtue of Article VI, Section 1(a) of the TRIBES' 1936 Constitution, the Fort Hall Business Council, acting on behalf of the TRIBES, is empowered to execute intergovernmental agreements with the state and its political subdivisions, including POWER COUNTY; and

WHEREAS, POWER COUNTY'S jurisdiction to enforce State traffic laws against Indians and non-Indians upon Reservation highways and roads maintained by the State or County is concurrent with the TRIBES' jurisdiction to enforce civil Tribal traffic laws against Indians and non-Indians upon such Reservation highways and roads; and

WHEREAS, POWER COUNTY and the TRIBES possess independent authority to execute an intergovernmental agreement concerning the exercise of concurrent traffic law jurisdiction on the Reservation; and

WHEREAS, in order to coordinate traffic law enforcement involving Indians on the Fort Hall Indian Reservation and to provide enrolled members of the Shoshone-Bannock Tribes and other Indians with the option of proceeding through the Shoshone-Bannock Tribal Court system when cited by POWER COUNTY law enforcement officers for on-Reservation traffic infractions or misdemeanors; and

WHEREAS, POWER COUNTY expressly states that nothing stated in this agreement is to be construed as a waiver of any of POWER COUNTY'S concurrent traffic-related jurisdiction in accordance with Idaho Code §§ 67-5102 through 67-5103 over persons who travel on state and

county maintained roads within Power County, and that this agreement is entered into solely for the purpose of achieving a temporary solution to jurisdictional conflicts on Fort Hall Indian Reservation roads until a permanent solution can be achieved; and

WHEREAS, the TRIBES expressly state that nothing stated in this agreement is to be construed as a waiver of any of the TRIBES' inherent powers as a sovereign tribal government under the 1868 Fort Bridger Treaty or any other provision of law or a consent to jurisdiction greater than provided by existing law, and that this agreement is entered into solely for the purpose of achieving a temporary solution to jurisdictional conflicts on Fort Hall Indian Reservation roads until a permanent solution can be achieved.

THEREFORE, the POWER COUNTY SHERIFF the POWER COUNTY PROSECUTING ATTORNEY (together "POWER COUNTY"), and the TRIBES hereby mutually agree as follows:

1. Whenever a POWER COUNTY SHERIFF'S OFFICE officer intends to issue an infraction notice or misdemeanor citation to a member of the Shoshone-Bannock Tribes or other Indian for violation of a State traffic law upon highways and roads maintained by the County or State within the Fort Hall Indian Reservation, the POWER COUNTY SHERIFF'S OFFICE officer shall advise the affected person, at the time of issuing the infraction notice or misdemeanor citation, of that person's option to elect to have the infraction or misdemeanor processed through the Shoshone-Bannock Tribal Court, hereinafter "Tribal Court."

2. This option to proceed in Tribal Court upon an infraction notice or misdemeanor citation shall be made available by a POWER COUNTY SHERIFF'S OFFICE officer to any person who is an enrolled member of the TRIBES or who is able to establish status as a federally-recognized Indian. Any enrolled member of the TRIBES shall be required to produce in the field a current Tribal enrollment card upon request of a POWER COUNTY SHERIFF'S OFFICE officer if such member indicates a desire to exercise the option to proceed through the Tribal Court. An individual claiming to be a federally-recognized Indian shall be required to produce in the field current and valid Tribal identification if such person indicates a desire to exercise the option to proceed through the Tribal Court.
3. The option to proceed through the Tribal Court upon an infraction notice or misdemeanor citation shall be made available whenever the traffic infraction or misdemeanor under State law also constitutes a violation of any applicable Tribal traffic law or whenever Tribal law permits the assimilation or incorporation of State traffic infractions or misdemeanors as Tribal traffic violations. The POWER COUNTY SHERIFF'S OFFICE and POWER COUNTY PROSECUTING ATTORNEY and the TRIBES shall cooperate to prepare an appropriate list of applicable State and Tribal laws for ready and convenient use by POWER COUNTY SHERIFF'S OFFICE officers in the field.
4. The POWER COUNTY SHERIFF'S OFFICE and POWER COUNTY PROSECUTING ATTORNEY and the TRIBES shall cooperatively develop a

brief form for use in the field by POWER COUNTY SHERIFF'S OFFICE officers that clearly explains the option to proceed through the Tribal Court upon a traffic infraction notice or misdemeanor citation issued by POWER COUNTY SHERIFF'S OFFICE officers within the Fort Hall Indian Reservation. This notification form shall be signed by the affected Tribal member or other Indian, and it shall indicate whether the affected person desires to proceed on the infraction or misdemeanor through the Tribal Court. A copy of this notification form shall be given to the concerned Tribal member or other Indian in the field by a POWER COUNTY SHERIFF'S OFFICE officer at the time an infraction notice or misdemeanor citation is issued.

5. If an enrolled member of the TRIBES or other Indian elects to proceed through the Tribal Court, then the POWER COUNTY SHERIFF'S OFFICE shall promptly thereafter forward to the Clerk of the Tribal Court both a copy of the infraction notice or misdemeanor citation and a copy of the signed notification form evidencing exercise of the option to proceed through the Tribal Court. A police report shall not be required to be filed with the Tribal Court until such time as the tribal member or other Indian pleads not guilty and a trial is scheduled.
6. If an enrolled member of the TRIBES or other Indian does not produce an enrollment card or other proof of Indian identity at the time of a traffic stop and the POWER COUNTY SHERIFF'S OFFICE officer may cite the Indian into state court. Thereafter, the Indian may request that the Prosecuting Attorney transfer the infraction or misdemeanor case to the Tribal Court. The POWER COUNTY

SHERIFF'S OFFICE and POWER COUNTY PROSECUTING ATTORNEY shall not oppose a timely request for transfer to the Tribal Court where sufficient proof of Indian identity is established.

7. Promptly upon receipt of an infraction notice or misdemeanor citation and a signed notification form, the Clerk of the Tribal court shall set a date and time for appearance by the Indian defendant in the Tribal Court on the traffic infraction or misdemeanor. POWER COUNTY SHERIFF'S OFFICE officers shall cooperate, as necessary, in the hearing or trial on any contested infraction or misdemeanor including appearance as witnesses in the Tribal Court.
8. The TRIBES shall make a special effort to see that POWER COUNTY SHERIFF'S OFFICE officers do not have to unnecessarily spend time in making appearances in Tribal Court in support of infraction or misdemeanor cases referred to Tribal Court.
9. Upon final disposition of an infraction or misdemeanor filed in the Tribal Court by a POWER COUNTY SHERIFF'S OFFICE officer the Clerk of the Tribal Court shall give prompt written notification to the POWER COUNTY SHERIFF'S OFFICE officer who issued the infraction notice or misdemeanor citation of the final disposition ordered by the Tribal Court.
10. The Clerk of the Tribal Court shall also send written notification of the final disposition to the Idaho Department of Transportation so that the infraction or misdemeanor violation may be included in the official driver records maintained by the State of Idaho.

11. All fines and penalties assessed in infraction and misdemeanor cases referred to Tribal Court by POWER COUNTY SHERIFF'S OFFICE officers shall remain in the Tribal Court system, unless specifically ordered to be otherwise disbursed by a Tribal Court Judge.
12. In any case where an POWER COUNTY SHERIFF'S OFFICE officer is involved in investigating or apprehending an Indian for a traffic offense, occurring on a state or county maintained road or highway on the Fort Hall Indian Reservation, which involves a serious injury, a fatality, or other aggravating circumstances, the case shall be referred to federal authorities for prosecution under the Indian Major Crimes Act or the Indian Country Crimes Act (including the Assimilative Crimes Act). The case shall also be referred to the prosecutor for the Shoshone-Bannock Tribes since prosecution by both federal and tribal authorities does not constitute a violation of constitutional protections against Double Jeopardy according to *United States v. Wheeler*, 435 U.S. 313 (1978). If federal authorities decline prosecution of the case, then the POWER COUNTY SHERIFF'S OFFICE officer may refer the case to prosecuting authorities for the State of Idaho.
13. The TRIBES agree that the Power County Sheriff's Office and the Idaho State Police shall have the primary responsibility for traffic patrol on I-86. The POWER COUNTY SHERIFF'S OFFICE, the Idaho State Police, and the FORT HALL POLICE DEPARTMENT shall have concurrent responsibility for patrolling the Arbon Highway and Big Sky Subdivision and the roads contained therein. However, in the event of a non-Tribal member is stopped by a Tribal

officer on these roads, the officer will either contact a Power County Sheriff's Deputy immediately to handle the traffic stop or cite the individual into the Power County Court.

14. The TRIBES agree to compensate POWER COUNTY SHERIFF'S OFFICE deputies for mileage at the then- current State-approved rate, regular hourly wage, and overtime when applicable. Likewise, in the event a TRIBAL officer is required to testify in a matter brought before the State courts in POWER COUNTY, the Prosecuting Attorney's office shall pay like expenses and compensation for witness fees.
15. The TRIBES pledge to immediately undertake a thorough review of all Tribal laws relating to traffic infractions and offenses for the purpose of identifying ways of improving and updating traffic law enforcement. Additionally, the TRIBES agree to make reasonable efforts to establish an effective manual or computer reporting system for communicating with the State of Idaho's traffic citation reporting system. The TRIBES furthermore agree to record and report all traffic citation dispositions of TRIBAL members referred under this Agreement on their internal computer system and the State of Idaho's system to facilitate consistent treatment of traffic law offenders between and among agencies and entities.
16. The TRIBES and POWER COUNTY agree that they will facilitate communication between law enforcement authorities and agencies to better facilitate appropriate and consistent prosecution of criminal offenders.

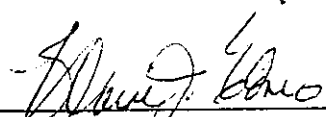
Specifically, the TRIBES agree that in the case of violation of a felony DUI



statute or other provisions of traffic-related law serious enough to warrant punishment in excess of that authorized by the Shoshone-Bannock Law and Order Code, Tribal law enforcement authorities will consult with Federal authorities and the Power County Prosecuting Attorney's office to determine fair and appropriate prosecution of such violations under applicable law.

17. The parties to this Memorandum of Agreement shall only be liable for the actions of their own employees. Nothing contained herein shall be construed as creating an agency relationship between the parties as a basis for establishing liability.
18. The parties to this Memorandum of Agreement will administer this agreement and no separate entity is created to administer the agreement.
19. The parties to this Memorandum of Agreement will finance the administration of this agreement through their respective regular budgets, and no additional or separate budget is established.
20. This agreement shall not be construed to prevent prosecutions consistent with *United States v. Wheeler*, 435 U.S. 313 (1978).
21. This Memorandum of Agreement shall be in effect for a period of one (1) year from the date of its execution, and it may be extended thereafter by written mutual consent of the parties. The POWER COUNTY SHERIFF'S OFFICE, the POWER COUNTY PROSECUTING ATTORNEY, and the TRIBES may at any time revise or amend the Memorandum of by written mutual consent.
22. This Memorandum of Agreement shall be executed in duplicate originals, with one original to be retained by each party hereto.

TRIBES  
by

  
\_\_\_\_\_  
CHAIRMAN  
Fort Hall Business Council

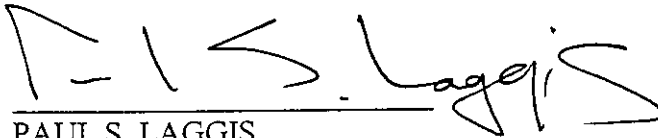
POWER COUNTY SHERIFF'S DEPT.  
by

  
\_\_\_\_\_  
HOWARD A. SPRAGUE, Sheriff

Date signed: February 1<sup>st</sup>, 2002

Date signed: Feb. 2-02

POWER COUNTY  
PROSECUTING ATTORNEY

  
\_\_\_\_\_  
PAUL S. LAGGIS

Date signed: 2/2/2

H:\WDOX\CLIENTS\0001\0055\00000089.DOC