

**COOPERATIVE LAW ENFORCEMENT AGREEMENT****between and among****UNITED STATES BUREAU OF INDIAN AFFAIRS  
and  
THREE AFFILIATED TRIBES  
and  
COUNTY OF MOUNTRAIL**

This Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2000, by and between and among the United States Bureau of Indian Affairs, the Three Affiliated Tribes, and the County of Mountrail, a duly organized county in the State of North Dakota.

**IT IS HEREBY AGREED THAT:****SECTION 1. PARTIES AND AUTHORITY FOR AGREEMENT**

The parties to this Agreement are:

- (1) The Bureau of Indian Affairs, acting on behalf of the United States of America, pursuant to the Indian Law Enforcement Reform Act, 25 U.S.C. §§2801-2809.
- (2) The Three Affiliated Tribes, a federally recognized Indian tribe composed of the Mandan, Hidatsa and Arikara Nations, acting through its duly elected Tribal Business Council, pursuant to Article VI, Section 3 of the Constitution and By-laws of the Three Affiliated Tribes; and
- (3) The County of Mountrail, a county duly organized according to the laws of the State of North Dakota, acting pursuant to Chapter 54-42.2 of the North Dakota Century Code.

**SECTION 2. PURPOSES**

The purposes of this agreement are:

- (1) To foster cooperation in the enforcement of the criminal laws of the United States, the Three Affiliated Tribes, and the State of North Dakota within those parts of the Fort Berthold Indian Reservation which are within Mountrail County and over which the Three Affiliated Tribes exercises criminal jurisdiction over its members.
- (2) To provide increased availability of law enforcement assistance which will result in better police protection to all persons who reside or come within the boundaries of Mountrail County.

Page 2 of 8

- (3) To provide increased availability of law enforcement assistance which will result in better police protection to all persons who reside or come within the exterior boundaries of the Fort Berthold Reservation.

### SECTION 3. CROSS DEPUTIZATION

- (1) The Sheriff and the Sheriff's Deputies of Mountrail County:
  - (a) Shall be deputized by the Three Affiliated Tribes as "special deputies" for the enforcement of those acts or omissions defined as misdemeanor crimes contained in Chapter 4, Criminal Offenses, Tribal Code, or such successor chapter or section of applicable Tribal law which sets forth misdemeanor criminal offenses and shall also receive a BIA law enforcement card which shall entitle them to be treated as BIA law enforcement officials when acting pursuant to this Agreement.
  - (b) In their capacity as "special deputies", shall respond and assist in law enforcement activities in such parts of the County of Mountrail as are contained within the exterior boundaries of the Fort Berthold Reservation in those particular instances when they are so requested by a Bureau of Indian Affairs or Tribal law enforcement officer.
  - (c) Tribal members or other Indians apprehended within those parts of the County of Mountrail as are contained within the exterior boundaries of the Fort Berthold Reservation by law enforcement officers of the County of Mountrail acting in their capacity as "special deputies" are subject to being prosecuted in Tribal or Federal court, depending on the nature of the crime.
- (2) Bureau of Indian Affairs Law Enforcement Officers and Tribal Law Enforcement Officers:
  - (a) Shall be deputized by the Sheriff of Mountrail County as "special deputies" pursuant to the authority under Chapter 12-63 of the North Dakota Century Code for the purposes of enforcement of any crimes committed by non-Indians in violation of the North Dakota Century Code or applicable Federal law within Mountrail County.
  - (b) In their capacity as "special deputies", shall respond and assist in law enforcement activities in such parts of the County of Mountrail as are outside the exterior boundaries of the Fort Berthold Reservation in those particular instances when they are so requested by the Sheriff of Mountrail County or by a Sheriff's Deputy.
  - (c) Non-Indians apprehended by Bureau of Indian Affairs or Tribal law

Page 3 of 8

enforcement officers shall be prosecuted in state District Court for Mountrail County, or applicable Federal court.

- (3) The Three Affiliated Tribes, the Bureau of Indian Affairs and the County of Mountrail, shall jointly and on an annual basis make up a list of law enforcement officers, who, based upon pertinent law enforcement standards, as established by the "Cross Deputization Commission", are entitled to act in the capacity of "special deputies" pursuant to this Agreement.

#### **SECTION 4. TRANSPORTATION AND ASSOCIATED COSTS**

- (1) Whenever an arrest of a non-Indian is made by a BIA or Tribal law enforcement officer which requires taking the non-Indian into physical custody, the officer shall call a Mountrail County law enforcement officer and wait for the officer to arrive and transport the individual to the appropriate law enforcement center for further processing, but if a Mountrail County law enforcement officer is not available, the BIA or Tribal law enforcement officer will transport the individual to the appropriate law enforcement center as designated in writing by the Sheriff of Mountrail County.
- (2) Whenever an arrest of an Indian is made by a Mountrail County law enforcement officer which requires taking the Indian into physical custody, the officer shall call a BIA or Tribal law enforcement officer and wait for the officer to arrive and transport the individual to the appropriate law enforcement center for further processing, but if a BIA or Tribal law enforcement officer is not available, the Mountrail County law enforcement officer will transport the individual to the appropriate law enforcement center as designated in writing by the officer in charge of the BIA and Tribal law enforcement officers on the Fort Berthold Reservation.
- (3) All costs of transportation of any individual arrested pursuant to this Agreement shall be borne by the party in whose jurisdiction the offense alleged to be committed by the person arrested is to be prosecuted and any costs associated with appearing in the courts of the jurisdiction of the Tribe by a Mountrail County law enforcement officer or in the courts of Mountrail County by a BIA or Tribal law enforcement officer shall be borne by the jurisdiction in which the officer makes an appearance.

#### **SECTION 5. SEARCH WARRANTS**

Law enforcement officers making an arrest pursuant to this Agreement and as "special deputies" shall have such rights to conduct a search as may be permissible under applicable State or Federal law incident to a lawful arrest.

Page 4 of 8

## **SECTION 6. CONFIDENTIALITY OF ARREST AND PROSECUTION INFORMATION**

In the event an arrest is made of an Indian by a Mountrail County law enforcement officer under Tribal law, any record of the arrest, including the citation, any evidence obtained, field notes taken, evidence provided at any phase of the criminal proceeding in Tribal Court or any other information about the arrest and prosecution of the Indian shall be kept confidential to the greatest extent possible and be maintained in such a manner so as not to violate any applicable governing law.

## **SECTION 7. SUPERVISION**

Notwithstanding the provisions of Section 3, each person cross-deputized or commissioned as a "special deputy" and employed by:

- (1) The United States shall at all times remain under the supervision of the United States;
- (2) The Three Affiliated Tribes shall at all times remain under the supervision of the Three Affiliated Tribes; and
- (3) The County of Mountrail shall be at all times under the supervision of the law enforcement officers of the County of Mountrail.

In an emergency situation whereby the law enforcement officers employed by the Bureau of Indian Affairs, the Tribe and the County of Mountrail cooperate in a joint police action, the officer in charge shall be the ranking officer the respective jurisdiction in which the joint operation is being conducted.

## **SECTION 8. CROSS DEPUTIZATION COMMISSION**

Notwithstanding the provisions of Section 3, each person commissioned as a "special deputy" or law enforcement officer pursuant to this Agreement shall serve in such capacity at the pleasure of the cross-commissioning authority. The Sheriff of Mountrail County, the Bureau of Indian Affairs, and the Three Affiliated Tribes hereby consent to establish a Commission comprised of one representative from each of the three entities who shall meet at least once every three months, to perform the following tasks:

- (1) Evaluate the effectiveness of this Agreement, and the performance of the law enforcement officers pursuant to this Agreement, and to make recommendations for improvements that can be made to this cross-deputization Agreement;

Page 5 of 8

- (2) Establish minimum police standards and qualifications for all law enforcement officers who apply for "special deputy" status, and grant this status only to police officers who meet the minimum police standards and qualifications;
- (3) To suspend, revoke or take other appropriate action where warranted, following appropriate investigation, notice and hearing, regarding the "special deputy" status for any law enforcement officer; and
- (4) To hear any and all complaints made by parties to this Agreement and take appropriate action including recommendations to the parties to this Agreement.
- (5) Ensure that all parties to this Agreement are kept apprised of the most current versions of applicable North Dakota and the laws of the Three Affiliated Tribes, including, but not limited to, the motor vehicle and criminal statutes of North Dakota and of the Three Affiliated Tribes.

#### SECTION 9. LIABILITY

- (1) For the purposes of the Federal Tort Claims Act, 28 U.S.C. §§2671-2680, law enforcement personnel commissioned by the United States, and law enforcement personnel commissioned and employed under the terms of a self-determination contract entered into by the Three Affiliated Tribes pursuant to Public Law 101-512, shall be deemed to be employees of the Department of Interior and claims arising from their acts or omissions when carrying out the provisions of this Agreement shall be handled in accordance with the Federal Tort Claims Act. To the extent that the Federal Tort Claims Act does not provide coverage for liability arising from the acts and omissions of the law enforcement personnel commissioned by the United States and law enforcement personnel commissioned and employed under the terms of a self-determination contract entered into by the Three Affiliated Tribes pursuant to Public Law 101-512 when carrying out the provisions of this Agreement, such liability shall be limited to the extent provided in Tribal or state law, as applicable.
- (2) The Sheriff of Mountrail County and his deputies, when carrying out the provisions of this Agreement, shall be deemed to be employees of the Department of Interior and claims arising from their acts or omissions when carrying out the provisions of this Agreement shall be handled in accordance with the Federal Tort Claims Act. To the extent that the Federal Tort Claims Act does not provide coverage for liability arising from the acts and omissions of the Sheriff of Mountrail County and his deputies when carrying out the provisions of this Agreement, such liability shall be limited to the extent provided in Tribal or state law, as applicable.

**Page 6 of 8**

- (3) For the purposes of the North Dakota State Tort Claims Act, the Sheriff of Mountrail County and his deputies and officers designated as "special deputies" (commissioned BIA and Tribal law enforcement officers) shall be deemed to be employees of the County of Mountrail acting within the scope of their employment when carrying out the provisions of this Agreement.
- (4) The Three Affiliated Tribes shall obtain adequate liability insurance for the actions of its law enforcement personnel, or shall ensure that such insurance as is presently in effect is adequate, to the extent such law enforcement personnel are not considered employees of the United States pursuant to paragraph (1) of this Section when carrying out the provisions of this Agreement. However, any insurance policy obtained to fulfill the purposes of this subsection shall waive any right the insurance provider may have to raise as a defense the Tribe's sovereign immunity from suit, provided that such waiver shall extend only to the claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the Tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance in effect. It is understood by the parties that liability arising from the acts and omissions of the law enforcement personnel of the Three Affiliated Tribes, to the extent that such law enforcement personnel are not considered employees of the United States pursuant to paragraph (1) of this Section, when carrying out the provisions of this Agreement shall be limited to the extent provided in Tribal or state law, as applicable.
- (5) The County of Mountrail shall obtain adequate liability insurance against the actions of its law enforcement personnel, to the extent such law enforcement personnel are not considered employees of the County of Mountrail pursuant to paragraph (b) of this subsection, when carrying out the provisions of this Agreement, provided, however, that any insurance policy obtained to fulfill the purposes of this subsection shall waive any right it may have to raise as a defense such sovereign immunity from suit as the County of Mountrail may have, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit such sovereign immunity as the County of Mountrail may have outside or beyond the coverage and limits of the policy of insurance. It is understood by the parties that liability arising from the acts and omissions of the Sheriff of Mountrail County and his deputies when carrying out the provisions of this Agreement shall be limited to the extent provided in Tribal or state law, as applicable.

**SECTION 10. SAVINGS PROVISIONS**

- (1) Nothing in this Agreement shall be construed to affect or modify:

Page 7 of 8

- (a) The treaty and other rights of the Three Affiliated Tribes or its members;
  - (b) The rights and responsibilities of the United States and the Three Affiliated Tribes, acting through its duly elected Tribal Business Council under Federal and Tribal law;
  - (c) The jurisdiction of the United States and the Three Affiliated Tribes over the Fort Berthold Reservation, over members of the Three Affiliated Tribes, and over lands held in trust by the United States for the benefit of the Three Affiliated Tribes or its members;
  - (d) The rights of the citizens of the United States and the State of North Dakota under the United States Constitution, the North Dakota Constitution, or other applicable state, Federal or tribal law;
  - (e) The rights and responsibilities of the Sheriff of Mountrail County, any of his deputies, or the State's Attorney for Mountrail County under state law; or
  - (f) The jurisdiction of the State of North Dakota over persons and lands not subject to the jurisdiction of the United States or the Three Affiliated Tribes.
- (2) Nothing in this Agreement shall be deemed an implied or expressed waiver of Tribal sovereign immunity against suit enjoyed by the Three Affiliated Tribes, except as expressly stated herein.
- (3) Nothing in this Agreement shall be construed to cede any jurisdiction of either of the parties, to waive any immunities, to modify the legal requirements for arrest or search and seizure or to otherwise modify the legal rights of any person, to accomplish any act violative of tribal, state or federal law or to subject parties to any liability to which they would not be subject by law.

#### **SECTION 11. REVOCATION OF THIS AGREEMENT.**

This Agreement may be revoked by any party to the Agreement upon thirty days written notice to the other parties.

**IN WITNESS WHEREOF**, the Bureau of Indian Affairs, the Three Affiliated Tribes, acting through its duly elected Tribal Business Council, and the duly elected officials of Mountrail County have executed this Agreement.

**FOR THE UNITED STATES OF AMERICA:**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Page 8 of 8

By: \_\_\_\_\_

Agency Superintendent  
Department of Interior, Bureau of Indian Affairs

By: \_\_\_\_\_

Chief of Police, Fort Berthold Agency  
Bureau of Indian Affairs

By: \_\_\_\_\_

District I Commander, Office of Law Enforcement Services  
Bureau of Indian Affairs

**FOR THE THREE AFFILIATED TRIBES:**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

By: \_\_\_\_\_

Chairman  
Three Affiliated Tribes

**FOR THE COUNTY OF MOUNTRAIL:**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

By: \_\_\_\_\_

Sheriff  
Mountrail County, North Dakota

By: \_\_\_\_\_

Chairman of Board of County Commissioners, Mountrail County

By: \_\_\_\_\_

Auditor, Mountrail County