



**THE
NAVAJO
NATION**

COPY


**ALBERT A. HALE
PRESIDENT**

**THOMAS E. ATCITY
VICE PRESIDENT**

September 22, 1997

MEMORANDUM

TO : All District Offices
Special Investigations Unit
Child Sexual Abuse Unit
OFFICE OF THE PROSECUTOR

FROM : 
Donovan D. Brown, Sr., Acting Chief Prosecutor
OFFICE OF THE CHIEF PROSECUTOR

SUBJECT : **NAVAJO NATION / MCKINLEY COUNTY CROSS
COMMISSIONING AGREEMENT**

Attached for your review is an unsigned copy of the above-described agreement. This agreement has been long awaited by the Eastern Agency. Copies have been distributed to other jurisdictions (Counties) with recommendations that this be utilized as a model for additional agreements.

Should you have any questions or comments, please submit them in writing.

cc: Nancy Bitah, ASO I / Office of the Prosecutor
FILES*ADM-371-97*Chrono

EXHIBIT "A"**CROSS-COMMISSION AGREEMENT BETWEEN
THE NAVAJO NATION
AND
THE MCKINLEY COUNTY SHERIFF'S OFFICE****DRAFT****Section I Purpose**

This Agreement is entered into: in order to provide for the orderly, efficient, and effective enforcement of the criminal and traffic laws of the Navajo Nation and of the State of New Mexico; to prevent each jurisdiction from becoming a sanctuary for the violators of the laws of the other; to prevent inter-jurisdictional flight; and to provide greater respect for the laws of each jurisdiction by the more certain application thereof; all on a basis of mutual respect for, and recognition of, the inherent sovereignty of the Navajo Nation and the State of New Mexico, and the laws enacted by each.

Section II Authority

- A. This Agreement is entered into by the Navajo Nation, herein after NATION, pursuant to 17 N.N.C. § 102, and 2 N.N.C. § 1353, as amended, setting forth the power of the Navajo Nation to enter into cooperative agreements with federal and state law enforcement agencies, and the power of the Executive Director of the Navajo Division of Public Safety to execute the provisions of this Agreement as set forth below.
- B. This Agreement is entered into by the McKinley County Sheriff, herein after SHERIFF, pursuant to 29-8-1 NMSA 1978, et seq., and 4-41-1 NMSA 1978, et seq., the SHERIFF is authorized to enter into mutual aid Agreements and to commission special deputy sheriffs.
- C. The sources of authority above listed are not intended to be exclusive, and the action of any party or agent of any party hereto, which can be lawfully sustained under any law, statute or common, not otherwise stated herein, shall be authorized hereunder.

Section III Third Party Beneficiaries: creation of third-party rights or benefits: use of Agreement as Evidence

This Agreement does not create any substantive or procedural right or benefit in favor of any person or entity not a party hereto, civil or criminal, neither does it create a duty to respond not otherwise imposed by law. No part of this Agreement may not be used in evidence in any court proceeding by any party hereto, or any successor, assign, or subrogee of any party hereto, against any other party, successory assign, or subrogee of any party hereto, unless the entire Agreement is also received into evidence. Failure to follow the provisions of this Agreement shall not, of itself, constitute a defense, grounds for suppression of evidence, or basis for dismissal of a criminal action.

Section IV Territorial Application

This area covered by this Agreement is coextensive with the boundaries of McKinley County, New Mexico, provided, nothing herein shall limit the application of the laws of fresh pursuit to any action undertaken under the authority of this agreement, and one otherwise acting under the authority granted in this agreement may engage in fresh pursuit as allowed by law to any other holding a commission issued by the jurisdiction involved.

Section V Definitions

A. As used in this Agreement:

"Cross-commissioned officer" shall mean a full-time salaried commissioned employee of the Navajo Division of Public Safety also holding a special deputy commission card issued by the McKinley County SHERIFF as provided for hereunder.

"Cross-commissioned deputy" shall mean a full-time salaried commissioned SHERIFF's deputy of the McKinley County SHERIFF's Department holding a Navajo Division of Public Safety commission card issued by the Director of NDPS.

"Director" is the Executive Director of the Navajo Division of Public Safety.

"NDPS" is the Navajo Division of Public Safety.

"Indian" means any person who would be treated as an Indian under 18 U.S.C. § 1151, *et seq.*, and 1153, *et seq.*

Section VI Commissioning Officers

A. The SHERIFF shall complete and submit the "Peace Officer Commission Card Form" provided by NDPS for each law enforcement deputy who is qualified to serve as a tribal law enforcement officer, with description of the qualifications to the Director. A deputy shall be qualified if he or she satisfies the "Peace Officer Commission Card Form", attached hereto and made a part hereof as Exhibit "A", and a statement of qualifications which shall include a departmental certification of satisfactory background check having occurred within the last five years and a copy of each applicant's valid commission card.

B. The Director shall complete and submit an application for commission to the SHERIFF which includes the names of tribal law enforcement officers who are qualified to serve as special deputies, along with a description of the qualifications of each named officer. An officer shall be qualified if he or she satisfies the McKinley County Application for commission, attached hereto and made a part hereof as Exhibit "B", and a statement of qualifications which shall include a departmental certification of satisfactory background check having occurred within the last five years and a copy of each applicant's valid commission card.

C. The Director or the SHERIFF shall without undue delay, commission as a special deputy or tribal law enforcement officer, each applicant upon determining the officer is qualified to serve as a special deputy or tribal law enforcement officer.

D. All Cross-commissioned deputies shall complete a 16-hour training course to be provided by the Navajo Nation at Toyei, Arizona. All Cross-commissioned officers shall complete a 16-hour training course to be provided by the McKinley County SHERIFF at Gallup, New Mexico. This provision is waived as to Cross-commissioned officers holding New Mexico peace officer commission under other agreements or authority.

E. A Cross-commissioned officer shall remain commissioned until his commission is revoked as provided herein, or until he or she separates his or her employment with the NDPS, or the term of office of the issuing SHERIFF expires. A Cross-commissioned deputy shall remain commissioned until his commission is revoked as provided herein or he or she separates his or her employment with the McKinley County SHERIFF's Department.

F. The Director or SHERIFF may, at any time, suspend or revoke any Cross-commission issued under this Agreement for reasons solely within his or her discretion.

G. The Director or SHERIFF shall notify, in writing, the other of the suspension or revocation of any Cross-commission issued pursuant to this Agreement.

H. Within 10 days of receiving written notice of suspension or revocation from the Director or the SHERIFF, the agency so notified shall return the suspended or revoked Cross-commission unless otherwise directed.

I. The Director and the SHERIFF shall notify each other when one of the following conditions exists:

1. The Cross-commissioned officer or deputy separates his or her employment as a full-time officer or deputy;
2. The Cross-commissioned officer or deputy is transferred to another area or jurisdiction;
3. The Cross-commissioned officer is disciplined for any reason;
4. The Cross-commissioned officer or deputy is charged with or convicted of any criminal offense, including traffic offenses;
5. The Cross-commissioned officer or deputy is found to have physical, emotional, or mental condition which might adversely affect his or her performance as a law enforcement officer; or
6. The Cross-commission has expired.

J. No applicant shall be denied a Cross-commission on the basis of race, creed, sex, color, or national origin.

Section VII Scope of Powers

A. Pursuant to this Agreement, all Cross-commissioned officers and deputies shall have all powers necessary to enforce Navajo Nation or State of New Mexico criminal and traffic laws, including the power to make arrests for any violations thereof to the full extent as allowed by law.

B. Cross-commissioned officers and deputies shall comply with the applicable statutory provisions concerning enforcement of criminal and traffic laws of the NATION or the State of New Mexico.

Section VIII Arrest and Custody Procedures of Prisoners

A. Indian suspects arrested within Navajo Indian Country, by any Cross-commissioned deputy under this Agreement, shall be taken to the Navajo Police District, Crownpoint, New Mexico, or Window Rock, Arizona, for booking.

B. Non-Indian suspects arrested by any Cross-commissioned officers within the exterior boundaries of McKinley County shall be taken to the McKinley County Jail facility, Gallup, New Mexico, for booking.

C. Cross-commissioned deputies who arrest any Indian within Navajo Indian Country under any provision of the Navajo Nation code shall inform the arrestee of his or her rights relating to criminal law under the Navajo Nation Bill of Rights. Cross-commissioned deputies who arrest any Indian within Navajo Indian Country for an offense under 18 U.S.C. 1152, 18 U.S.C. 1153 or any federal felony, shall inform the arrestee of his or her rights pursuant to *Miranda vs. Arizona*, (1966). Cross-commissioned officers who arrest any non-Indians shall inform the arrestee of his or her rights pursuant to *Miranda vs. Arizona*, (1966).

D. Cross-commissioned deputies who make arrests within the NATION's jurisdiction shall notify NDPS Communication Centers via police radio of the arrest; obtain a report number; prepare and submit a complete and accurate report of the arrest; submit the report to the NATION immediately for administrative review and approval; and forward to the Office of the Prosecutor to be filed with the courts of the Navajo Nation.

E. Cross-commissioned officers who make arrests within the SHERIFF's jurisdiction shall notify McKinley County dispatch via police radio of the arrest; prepare a complete and accurate Arrest/Booking report and criminal complaint before booking the arrestee into the McKinley County detention center; and shall submit the Arrest/Booking report and criminal complaint to the SHERIFF. All felony charging decisions under state law must be approved by the McKinley County District Attorney's Office.

F. Notwithstanding the above, an Indian arrested in Navajo Indian Country by a Cross-commissioned deputy may be held, not to exceed eight hours, in the McKinley County jail in order to provide time to arrange for transportation to the jails or courts of the NATION; a Non-Indian arrested by a Cross-commissioned officer may be held in a Navajo Nation jail, not to exceed eight hours in order to provide time to arrange for transportation to the jails or courts of McKinley County. The cost of such temporary jailing shall be borne by the jurisdiction in the jail of which the prisoner is held.

G. An Indian suspect arrested outside of Navajo Indian Country by a Cross-commissioned officer in fresh pursuit for an offense committed in Navajo Indian country, shall be surrendered to said officer or any other Navajo Nation commissioned officer for transportation to the Navajo Nation.

H. Prisoners lawfully held under the law of a party hereto may be transported from within that jurisdiction to any other point within that jurisdiction, notwithstanding said route leaves that jurisdiction and crosses the jurisdiction of the other party hereto.

I. In the event an arrest is made, or could be made, by any party under the provision of 18 U.S.C. 1152, 1153, or for any federal felony in Navajo Indian Country an FBI Agent, Criminal Investigator of the NDPS, or BIA Criminal Investigator shall be notified.

Section IX Citations for Traffic Offenses

A. Cross-commissioned deputies who effects stops for a traffic offenses in Navajo Indian country on an Indian may issue a verbal or written warning or issue a Navajo Nation traffic citation or effect an arrest where permitted by Navajo law. Cross-commissioned deputies who effects stops for traffic offenses in Navajo Indian country on a non-Indian may issue a verbal or written warning or issue a state citation or effect an arrest where permitted by state law, or issue a Navajo Nation civil traffic citation or issue citations under the laws of both sovereigns.

B. Cross-commissioned officers who effect a stop for a traffic offense in Navajo Indian country of a Non-Indian may issue a verbal or written warning, issue a state citation or effect an arrest where permitted by state law, issue a Navajo Nation civil traffic citation, or issue citations under the authority of both jurisdictions. A Cross-commissioned officer who effects a stop of an Indian or Non-Indian outside of Indian country shall issue a verbal or written warning or issue a state citation or make an arrest where permitted by state law.

C. The Director and the SHERIFF shall exchange sequentially numbered citation books to the effect the provisions of this section, each to bear his or her own costs.

D. Tribal citations issued pursuant to this Agreement shall be submitted within three days to the NATION's law enforcement records clerk at either Crownpoint, New Mexico or Window Rock, Arizona, in the respective police district the citation was issued.

Section X Supervision and Control of Officers

A. Cross-commissioned officers shall remain under the ultimate control of the Director; but, shall take supervision and direction by the SHERIFF when exercising authority granted pursuant to this Agreement.

B. Cross-commissioned deputies shall remain under the ultimate control of the SHERIFF; but, shall take supervision and direction by the Director when exercising authority granted pursuant to this Agreement.

Section XI Compensation and Benefits of Officers

A. Cross-commissioned deputies are not employees of the NATION. The SHERIFF shall remain liable for employees' salaries, worker's compensation protection and civil liabilities and each county officer shall be deemed to be performing regular duties for the SHERIFF while performing services pursuant to this Agreement.

B. Cross-commissioned officers are not employees of the SHERIFF. The NATION shall remain liable for employees' salaries, worker's compensation protection and civil liabilities and each tribal law enforcement officer shall be deemed to be performing regular duties for the NATION while performing services pursuant to this Agreement.

Section XII Committee

A. A committee consisting of tribal law enforcement and criminal investigation officials and county law enforcement officials shall be created to review activities and performance undertaken pursuant to this Agreement.

B. The Director and the SHERIFF shall serve as Co-chairpersons and shall jointly preside and set dates and locations for meetings.

C. This committee may recommend any amendments to this Agreement for consideration by the parties. This committee shall review, in the first instance, any disputes that may arise by any party, relating to this Agreement.

D. The committee shall meet at least quarterly or more frequently at the call of either the SHERIFF or the Director to discuss the status of the Agreement and may invite other law enforcement agencies or other officials to attend as necessary. The committee Co-chairpersons may invite representatives from their respective courts and prosecutors to attend meetings.

E. The purpose and operations of this committee are not intended to, nor shall be deemed, to conflict with the purposes and authorities of any oversight Committee of the Navajo Nation Council.

Section XIII Sovereign Immunity

Nothing in this Agreement shall be interpreted as constituting a waiver, either expressed or implied, of the Sovereign Immunity of the Navajo Nation or McKinley County.

Section XIV Indemnification

The participating agencies agree to defend, indemnify and hold each other harmless including its entities, officials and employees, representatives from and against any and all claims, demands, suits defense costs, liability or consequential damages of any kind or nature, caused by any act, omission, fault, mistake or negligence of the agencies and its employees in connection with their performance, or failure to perform, under the terms and conditions of this Agreement.

Section XV Savings Clause

If any provision of this Agreement is held invalid or unenforceable by any court of law, the remainder shall remain in effect unless terminated as provided in this Agreement.

Section XVI Termination of Agreement

Either party may terminate this Agreement upon thirty (30) days written notice to the other party, whereupon all new obligations under this Agreement shall cease. Cancellation shall be effective when written notice, from the Director and the SHERIFF, is received, by either party of this Agreement unless the notice is specified at a later date.

Section XVII Notice

A. All notices and communications required by this Agreement shall be in writing, and may be delivered personally to Director and the SHERIFF, or may be mailed by certified mail, postage pre-paid, return receipt requested, as follows:

1. In the case of the SHERIFF, notices shall be sent to the:

David Nez, Executive Director
Navajo Division of Public Safety
P.O. Box #3360
Window Rock, Arizona 86515

2. In the case of the NATION, notices shall be sent to the:

Frank Gonzales, Sheriff
McKinley County Sheriff's Office
2105 East Aztec
Gallup, New Mexico 87301

Section XVIII Amendments

This Agreement shall not be amended except by an instrument in writing executed by the signatories below. However, notice of changes in persons holding positions, changes in addresses and similar changes of a ministerial nature do not constitute amendments which require approval. This Agreement and any amendments hereto shall be governed by the laws of the Navajo Nation and the State of New Mexico.

Section XIX Effective Date of Agreement

This Agreement shall take effect on the date the last signature is affixed as indicated below. This Agreement may be executed up to five counterparts; each to be treated as the original.

This Agreement constitutes the entire Agreement between the parties and shall supersede any prior oral or written communication between the parties upon execution.

MCKINLEY COUNTY:

By: _____
Frank Gonzales, Sheriff

Date: _____

STATE OF NEW MEXICO:

By: _____
Gary Johnson, Governor

Date: _____

ATTEST:

By: _____
Stephanie Gonzales, Secretary of State
State of New Mexico

Date: _____

PUBLIC SAFETY:

By: _____
David Nez, Executive Director

Date: _____

NAVAJO NATION:

By: _____
Albert Hale, President

Date: _____