

CROSS-DEPUTIZATION LAW ENFORCEMENT AGREEMENT

STATE OF NEBRASKA, COUNTY OF KNOX and SANTEE SIOUX NATION

PREAMBLE

This Agreement is entered into by and between the Santee Sioux Nation, the County of Knox, and the State of Nebraska for the purpose of establishing a process for the cross-deputization of qualified Santee Sioux Nation law enforcement officers by the State of Nebraska. The parties enter into this Agreement pursuant to the authority of the State-Tribal Cooperative Agreements Act, Neb. Rev. Stat. §§ 13-1501, *et seq.*, which provide for cooperative agreements to promote better law enforcement services. The Tribal Council of the Santee Sioux Nation has enacted Resolution #04-__ which authorizes the Tribal Chairman to enter into this Agreement on the Santee Sioux Nation's behalf.

RECITALS

WHEREAS, the intent of the Agreement is to provide for the deputization of law enforcement officers employed by the Santee Sioux Nation, the County of Knox, and by the State of Nebraska 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 Santee Sioux Nation. 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, or whether the subject persons are Indian or non-Indian.

WHEREAS, all the 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 whether the arrest or the suspected crime has occurred in Indian country, as defined by 18 U.S.C. § 1151, and as a result 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 by cross-deputized arresting officers who may deliver the arrestees to the detention facilities operated by the parties to this Agreement.

WHEREAS, the parties further expressly recognize the manifest intent of the State-Tribal Cooperative Agreements 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 subjected to tort and civil disturbances in Indian country.

AGREEMENT

The parties to this Agreement therefore agree as follows:

Section 1. Purpose

The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in and around Indian country of the Santee Sioux Indian Reservation and its surrounding areas within the State of Nebraska and the County of Knox. 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.

Section 2. Cross-Deputization

- A. The State of Nebraska and the County of Knox, may, in their discretion, issue cross-deputization to law enforcement officers of the Santee Sioux Nation upon the application of such officers. The Santee Sioux Nation, may, in its discretion, cross-deputize law enforcement officers of the State or County upon application of such officers. Such cross-deputization shall not be unreasonably withheld. Such cross-deputization shall grant the officers the same law enforcement authority as that of officers of the deputizing agency (unless specifically limited by the terms of the deputization), as more specifically described in Section 3 of this Agreement. When the State of Nebraska or County of Knox issues such a deputization, it shall provide notice of that deputization, including the name of the officer receiving the cross-deputization, to the Santee Sioux Nation Tribal Police.
- B. A cross-deputization shall not be granted unless the applicant has complied with all the prerequisites for appointment as a police officer as set forth in Santee Sioux Nation Criminal Code and Resolution #04-__, or received a certificate of satisfactory completion in accordance with Neb. Rev. Stat. § 81-1414 (Cum. Supp. 2002), and with Rule and Regulation Title 79, Chapter 3 of the Nebraska State Administrative Code. The applicant shall also meet the following specific requirements of the deputizing agency:
1. United States citizenship;
 2. A high school diploma or equivalent;
 3. No conviction for a felony, a misdemeanor which restricts ability to carry firearms, or other crime involving moral turpitude (including crimes expunged 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 which might adversely affect his or her performance as a police officer.

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

- C. A Santee Sioux Nation Tribal law enforcement officer in order to be eligible for cross-deputization under this Agreement, must be certified by the Federal Law Enforcement Training Center, or have equivalent training, and in addition, successfully complete “in-lieu of training” provided by the Nebraska Law Enforcement Training Center, found in Neb. Rev. Stat. §§ 81-1401, *et seq.*
- D. A Nebraska state or Knox County law enforcement officer in order to be eligible for cross-deputization under this Agreement must successfully complete the “in-lieu of training” program provided by the Bureau of Indian Affairs and receive certification by the BIA.
- E. If requested by the deputizing agency, the applicant’s agency shall provide a Federal Bureau of Investigations criminal history background check on the applicant.
- F. Notwithstanding any provision of this Agreement, each person cross-deputized under this Agreement shall serve at the pleasure of the cross-deputizing authority. The State of Nebraska, the County of Knox, and the Santee Sioux Nation expressly reserve the right to revoke or suspend a of their respective agencies of any person employed by the other agency. The party revoking such deputization shall not be called upon to justify the exercise of authority under this provision.

Section 3. Scope of Powers Granted

- A. Any duly authorized and qualified law enforcement officer of the State of Nebraska or the County of Knox that is cross-deputized by the Santee Sioux Nation shall be authorized and empowered to enforce Santee Sioux Nation Tribal laws within the territory described in Section 8 of this Agreement. All actions taken under this Agreement regarding suspected traffic violations or criminal conduct by Indians shall be pursuant to Tribal or federal law and shall be referred to the Tribe or federal government for prosecution in the Santee Sioux Nation Tribal Court, CFR Court, or Federal court. Provided, however, that to the extent possible, all enforcement of Santee Sioux Nation Tribal Law shall be directed by and in cooperation with the Santee Sioux Nation Tribal Police.

Further, State or County law enforcement officers carrying cross-deputizations issued by the Santee Sioux Nation pursuant to this Agreement are given the power to enforce:

1. 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 11 where applicable; and,
 2. The Santee Sioux Nation Criminal Code Tribal Laws, where the Santee Sioux Nation has authorized the Secretary of the Interior to enforce such laws.
- B. Any duly authorized and qualified law enforcement officer of the Santee Sioux Nation that is cross-deputized by the State of Nebraska and the County of Knox shall be authorized and empowered to enforce all Nebraska State and Knox County laws against non-Indians within the territory described in Section 8 of this Agreement. All actions taken under this Agreement regarding suspected traffic violations or criminal conduct by non-Indians shall be pursuant to Nebraska State law and shall be referred to the State of Nebraska, or a subdivision of the State, for prosecution in State court, or to federal authorities for prosecution in federal court.
- C. The State of Nebraska, the County of Knox, and the Santee Sioux Nation Tribal Police shall have the right to call upon law enforcement officers of the other departments for the purpose of requesting assistance, back-up, or other form of mutual aid or assistance which may be required in the performance of law enforcement duties. For such purposes, a request made by a member of an agency will be deemed to be a request of the agency itself.
- D. 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 inapplicable 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 cross-deputized officers the authority to enforce applicable law only.
- E. 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.
- F. The State of Nebraska and the County of Knox agree that each will make arrests for the Santee Sioux Nation outside Indian Country pursuant to a valid Santee Sioux Nation Tribal Court warrant, and the Tribe agrees that it will make arrests in Indian Country for the State of Nebraska and the County of Knox pursuant to a valid State or County Court warrant.
- G. Arrest Warrants
1. The State or County law enforcement officers shall present arrest warrants authorizing the arrest of individual(s) located on the Santee Sioux Nation's

Reservation and Indian Country (in accordance with Santee Sioux Nation Tribal Code) to Santee Sioux Nation Tribal law enforcement authorities for execution.

2. The Santee Sioux Nation Tribal Police agree to cooperate in the execution of properly issued state arrest warrants within its reservation and Indian Country and to observe the requirements of State and Federal law in doing so.
3. Tribal authorities shall invite State or County law enforcement officers to accompany Santee Sioux Nation Tribal officers when a state warrant is executed by Tribal officers. The presence or absence of State or County officers shall not affect the validity of any state warrant executed by Tribal officers under this Agreement.
4. Santee Sioux Nation Tribal law enforcement officers shall present arrest warrants authorizing the arrest of individual(s) located off the Santee Sioux Nation's Reservation and Indian Country to County law enforcement authorities for execution.
5. The State and County agree to cooperate in the execution of Santee Sioux Nation Tribal arrest warrants off the reservation and Indian Country and to observe the requirements of State, Tribal, and Federal law in doing so.
6. The State and County shall invite Santee Sioux Nation Tribal law enforcement officers to accompany State or County officers when a Tribal warrant is executed by State or County officers. The presence or absence of Tribal officers shall not affect the validity of any Tribal warrant executed by State or County officers under this Agreement.

Section 4. Disposition and Custody

- A. Any person arrested by an officer deputized 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 deputized 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, 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 the Santee Sioux Nation requires medical treatment, the law enforcement agency with custody may transport the detainee or prisoner to the nearest Indian Health Service or Santee Sioux Health Clinic in order to avoid significant medical expense. In such event, tribal 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.

Section 5. Status and Supervision of Officers

- A. It is understood and agreed by the parties to this Agreement that their agents, employees, and insurers, have no authority nor any right whatsoever to control in any manner the day-to-day discharge of the duties of the officers whom they have deputized pursuant to this Agreement. However, it is understood to be a basic purpose of this Agreement that officers deputized 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.
- B. Each cross-deputized officer remains the employee of the party who hired the officer and is not an employee of the party who deputized the officer under this Agreement. The party who employs a cross-deputized officer shall remain liable for the employee's salary and fringe benefits including workers' compensation protection and for the civil liabilities of the officer, to the same extent as if this Agreement did not exist. A cross-deputized officer shall be deemed to be performing regular duties of the party who employs the officer while performing services pursuant to this Agreement, and shall remain under the same chain of command of his employer.

Section 6. No Remuneration Unless Separately Agreed

No monetary exchange or remuneration shall be due by any party to any other party for any assistance which may be requested or for services which may be rendered under this agreement unless such payment or remuneration shall be separately agreed upon by the parties.

Section 7. 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 deputized pursuant to this Agreement which are performed either within or outside the scope of their duties.
- B. Any claim of tort against the State of Nebraska, or the Nebraska State Patrol arising out of or in connection with the existence of this Agreement shall be brought pursuant to Neb. Rev. Stat. §§ 81-8,209, *et seq.*, of the Nebraska State

Tort Claims Act, together with subsequent amendments thereto or revisions thereof as exist at the time such claim of tort arises.

- C. Any claim of tort against the County of Knox, or the Knox County Sheriff arising out of or in connection with the existence of this Agreement shall be brought pursuant to Neb. Rev. Stat. §§ 13-901, *et seq.*, of the Political Subdivisions Tort Claims Act, together with subsequent amendments thereto or revisions thereof as exist at the time such claim of tort arises.
- D. The State of Nebraska shall self-insure with respect to its obligations under this section, the County of Knox shall be insured pursuant to the Political Subdivisions Tort Claims Act, and the Santee Sioux Nation shall be covered as set forth in the Indian Self-Determination Act, as amended, with respect to its obligations under this section.
- E. 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.
- F. Nothing in this Agreement shall be construed as a waiver of any government's sovereign immunity, not otherwise expressly waived by legislative act.

Section 8. Territorial Limitations

The authority conferred by this Agreement upon any law enforcement officer may be exercised within the territorial boundaries of the Santee Sioux Nation within Knox County, Nebraska and the immediate surrounding area.

Section 9. Property

Each party shall remain responsible for acquisition, holding and disposition of its own property and pursuant to this Agreement.

Section 10. Savings Clause

- A. This Agreement, or any deputization issued pursuant to it, shall not confer any authority on a court or other authority of any of the parties which the court or authority would not otherwise have.
- B. Nothing in this Agreement shall be construed to cede or transfer any jurisdiction of the parties, to waive any immunities, to modify the legal requirements for arrest or search and seizure or otherwise modify the legal rights of any person, to accomplish any act violative of tribal, state, or federal law or to subject the parties to any liability to which they would not be subject to absent this Agreement.

- C. The provisions of this Agreement are severable and should any provision be held invalid or unenforceable, the remainder of this Agreement is to remain in effect, unless terminated as provided in this Agreement.

Section 11. Filing Requirements

Executed copies of this Agreement shall be filed with the appropriate parties in accordance with Neb. Rev. Stat. § 13-1505.

Section 12. Duration of Agreement

The Agreement shall remain in full force and effect for three (3) years from the effective date, unless terminated prior to that time. At the end of the initial term, the Agreement may be renewed. A party may terminate its participation at any time upon thirty days written notice to the other parties.

Section 13. On-going communication and Conflict Resolution

A committee shall be established to review the implementation of this Agreement. The committee shall be comprised of designated representatives of the Nebraska State Patrol, the County of Knox, and the Santee Sioux Nation of Nebraska. The committee shall meet at least quarterly and as needed at such times and places as may be mutually agreed and shall make a written report to be distributed to each party and to the Santee Sioux Nation of Nebraska.

Section 14. Effective Date

The effective date of this Agreement shall be upon the effective date of retrocession.

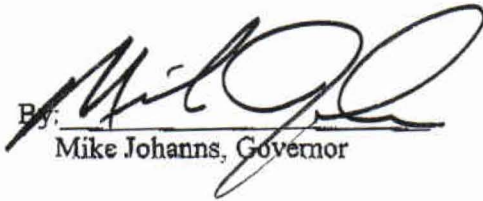
Section 15. Amendments

This Agreement shall not be amended except by an instrument in writing executed by the parties.

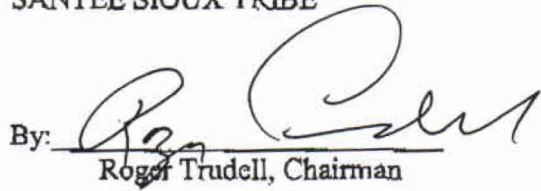
IN WITNESS THEREOF, the parties have executed the Agreement the date and year above by authority of each of the parties.

DATED this 9 day of August, 2004.

STATE OF NEBRASKA

By: 
Mike Johanns, Governor

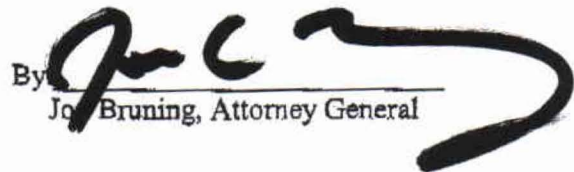
SANTEE SIOUX TRIBE

By: 
Roger Trudell, Chairman

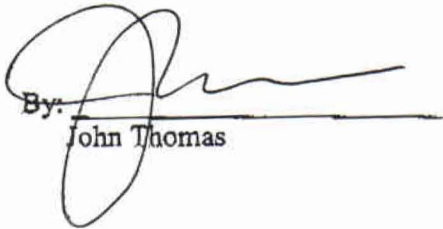
NEBRASKA STATE PATROL

By: 

NEBRASKA ATTORNEY GENERAL

By: 
Jon Bruning, Attorney General

KNOX COUNTY ATTORNEY

By: 
John Thomas

KNOX COUNTY SHERIFF

By: 
James F. Janacek