

12-17-87

**LAW ENFORCEMENT AGREEMENT BETWEEN
THE NAVAJO NATION AND
THE ARIZONA DEPARTMENT OF PUBLIC SAFETY**

EXHIBIT "A"

Section I Parties

This law enforcement agreement (hereinafter "AGREEMENT") is entered into by and between the Navajo Division of Public Safety, Navajo Police Department (hereinafter "NATION") and the Arizona Department of Public Safety (hereinafter "AZ DPS"). The Navajo Nation and State of Arizona may also be referenced as Parties or Agencies.

Section II Purpose

This AGREEMENT is entered into to provide for the orderly and effective enforcement of the criminal and traffic laws of the Navajo Nation and the State of Arizona within Navajo Indian Country, as defined in 18 U.S.C. § 1151; to prevent any jurisdiction from becoming a sanctuary for violators of the law of another jurisdiction; to prevent inter-jurisdictional flight; and to foster greater respect for the laws of each jurisdiction by the more certain application thereof. This AGREEMENT is based on mutual respect for and recognition of the inherent sovereignty of the Navajo Nation and the State of Arizona and the laws enacted by each sovereign.

Section III Authorities

The NATION is duly authorized to enter into this AGREEMENT pursuant to 17 N.N.C. § 102 and 2 N.N.C. § 1353, as amended. AZ DPS is authorized to enter into this AGREEMENT pursuant to A.R.S. § 11-951, *et seq.*, and A.R.S. § 13-3872.

Section IV Creation of Third Party Rights or Benefits; Use of Agreement as Evidence

This AGREEMENT does not create any substantive or procedural right or benefit, civil or criminal, in favor of any person or entity not a party hereto; nor does it create a duty to respond not otherwise imposed by applicable law. No part of this AGREEMENT may be used as evidence in any court proceeding by any party hereto or any successor, assignee, or subrogee of any party hereto unless the entire AGREEMENT is also received into evidence. Failure to follow the provisions of the AGREEMENT shall not, of itself, constitute a defense, ground for suppression of evidence, or basis for dismissal of any criminal action.

Section V Territorial Application

The geographical area covered by this AGREEMENT is co-extensive with the boundaries of the Arizona portion of the Navajo Nation and the State of Arizona, provided nothing herein shall limit the application of the laws of fresh pursuit to any action undertaken pursuant to this AGREEMENT and each Party acting under the authority of this AGREEMENT may engage in fresh pursuit as allowed by law.

Section VI Scope of Powers

A. Pursuant to this AGREEMENT, the NATION hereby grants AZ DPS officers those powers necessary to enforce the criminal and traffic laws of the Navajo Nation, including the powers to conduct searches or make arrests for any violations thereof to the full

extent as allowed by applicable law, hereinafter referred to as "mutual aid law enforcement certification."

- B. The Parties to this AGREEMENT recognize and acknowledge that NATION officers are certified through Arizona Peace Officer Standards and Training, and thereby independently "possess and exercise all law enforcement powers of peace officers" in the State of Arizona, *see* A.R.S. §13-3874. Nothing in this AGREEMENT diminishes such authority.

Section VII Application for Certification

- A. The Director of AZ DPS, or his or her designee, shall complete and submit the NATION's Peace Officer Commission Card form (Exhibit 1) for each AZ DPS officer who is qualified for a mutual aid law enforcement certification. An AZ DPS officer is qualified if he or she completes the required training pursuant to Subsection B, satisfactorily meets all requirements on the Peace Officer Commission Card form, and the Director of DPS, or his or her designee, submits a statement of qualifications that includes certification of a satisfactory background check conducted within the last five years of the date of the application and copies of a currently valid State of Arizona driver's license and a valid Arizona Department of Public Safety law enforcement certification card for each applicant.
- B. AZ DPS officers shall complete a 16-hour training course at the NATION's police academy, or at such other location agreed upon by the Parties, prior to receiving a mutual aid law enforcement certification by the NATION.
- C. The NATION shall, without undue delay, certify each applicant upon determining that the applicant is qualified for mutual aid law enforcement certification. No applicant shall be denied a mutual aid law enforcement certification on the basis of race, creed, sex, or color.
- D. An AZ DPS officer shall remain commissioned under this AGREEMENT unless and until he or she resigns his or her employment as an AZ DPS officer. AZ DPS shall timely notify the NATION of such resignation, and AZ DPS shall return the AZ DPS officer's Navajo mutual law enforcement certification card within ten (10) calendar days of the date of resignation to the official and address shown in Section XXI.
- E. AZ DPS agrees to timely notify the NATION if an AZ DPS officer who holds a Navajo mutual aid law enforcement certification under this AGREEMENT is being considered for termination from AZ DPS employment or has been charged with or convicted of a felony or misdemeanor.
- F. The NATION may, at any time, suspend or revoke any mutual aid law enforcement certification issued pursuant to this AGREEMENT for reasons solely within the NATION's discretion. The NATION shall notify, in writing, the official and address shown in Section XXI of the suspension or revocation of any certified AZ DPS officer. AZ DPS shall return the officer's Navajo mutual law enforcement certification card

within ten (10) calendar days of the date of the suspension or revocation to the official and address shown in Section XXI.

Section VIII Arrest and Custody Procedures

- A. Indian suspects arrested within the NATION's territorial jurisdiction by any certified AZ DPS officer pursuant to this AGREEMENT shall be immediately taken to the appropriate and nearest NATION detention facility for booking except if the appropriate and nearest NATION detention facility is Shiprock, New Mexico. In this case, an AZ DPS officer shall transfer the Indian suspect to a NATION officer who will transport the suspect to the Shiprock detention facility for booking.
- B. Non-Indian suspects arrested by NATION officers pursuant to this AGREEMENT shall be taken to the appropriate County detention facility for booking in the County in which the arrest occurs.
- C. A NATION officer who arrests any non-Indian shall inform the arrestee of his or her rights as required by federal law.
- D. A certified AZ DPS officer who arrests any Indian within the NATION's territorial jurisdiction under any provision of the NATION's criminal laws shall inform the arrestee of his or her rights relating to criminal law under the Navajo Bill of Rights.
- E. A certified AZ DPS officer who, if authorized by the Bureau of Indian Affairs ("BIA") to enforce federal law, arrests any Indian within the NATION's territorial jurisdiction for any offense under 18 U.S.C. § 1152 or 1153, or any other applicable federal criminal law, shall inform the arrestee of his or her rights as required by federal law. If the AZ DPS officer is not federally commissioned by the BIA, he or she shall hold the suspect until a federally commissioned NATION officer or other federally commissioned officer may inform the suspect of his or her rights as required by federal law.
- F. In the event an arrest is made, or could be made, under 18 U.S.C. § 1152 or 1153 or for any federal felony within the NATION's territorial jurisdiction:
 - 1. by a federally commissioned NATION officer, that officer shall immediately notify a NATION Criminal Investigator or FBI Agent who will then proceed with the case; or
 - 2. by an AZ DPS officer only if federally commissioned, he or she shall immediately notify a NATION Criminal Investigator or FBI Agent who will then proceed with the case.
- G. A certified AZ DPS officer who arrests any Indian within the NATION's territorial jurisdiction shall notify the NATION's police dispatcher, via police radio, of the arrest, obtain a report number, prepare and submit a complete and accurate NATION arrest/booking report, submit the arrest report to the proper NATION police district immediately for processing, forward said information and documents to the proper NATION Prosecutor's Office, and shall honor any Navajo district court subpoena and summons relating to the arrest.

- II. A NATION officer who arrests a non-Indian pursuant to this AGREEMENT shall notify the nearest sheriff's dispatcher, via police radio, of the arrest, obtain a report number, prepare and submit a complete and accurate sheriff's arrest/booking report, submit the arrest report to the nearest sheriff's facility immediately for processing, forward said information and documents to that county's district attorney, and shall honor any county or magistrate court subpoena and summons relating to the arrest.

Section IX Investigations

All investigations, including searches and seizures, conducted within the applicable territory of this AGREEMENT shall be conducted pursuant to applicable Navajo, Arizona and/or federal law.

Section X Forfeitures

If, as a result of any investigation within the NATION's territorial jurisdiction in which the NATION and AZ DPS participate together and any tangible items of contraband, including money, are seized from an Indian or non-Indian pursuant to the criminal laws of the Navajo Nation or the State of Arizona, the NATION and AZ DPS shall share in the distribution of any and all items not otherwise legally destroyed or money forfeited as a result of said investigation. Shares and proceeds from the sale of any and all items, including money, will be distributed based on applicable law and the relative contributions of the participating Agencies. Relative contributions will be cooperatively evaluated and determined by participating Agency heads or their authorized delegates.

Section XI Crime Statistics

The Parties agree that crime statistics arising from arrests and investigations conducted pursuant to this AGREEMENT shall be accounted for and maintained by the Agency in whose jurisdiction the offense was committed.

Section XII Extradition

Any Indian located within the NATION's territorial jurisdiction who has violated Arizona criminal law and who seeks asylum from prosecution by the State of Arizona shall be extradited pursuant to 17 N.N.C. §§ 1951 *et seq.*, as may be amended, except if the arrest is as a result of fresh pursuit pursuant to Section V of this AGREEMENT.

Section XIII Citations for Traffic Offenses

- A. A certified AZ DPS officer who effects a stop for a traffic offense within the NATION's territorial jurisdiction on any Indian may issue a written warning or issue a citation into the appropriate Navajo district court or effect an arrest where permitted by Navajo law.
- B. A NATION officer who effects a stop for a traffic offense within the State of Arizona but outside the NATION's territorial jurisdiction on any non-Indian may issue a verbal or written warning or issue a State of Arizona traffic citation or effect an arrest where permitted by Arizona law.

Section XIV Supervision and Control of NATION Officers and AZ DPS Officers

NATION officers remain under the ultimate supervision and control of the NATION, but shall take direction from the ranking AZ DPS officer when NATION officers are exercising authority granted pursuant to this AGREEMENT in assistance of AZ DPS officers outside the NATION's territorial jurisdiction. Certified AZ DPS officers shall remain under the ultimate supervision and control of AZ DPS, but shall take direction from the ranking NATION officer when exercising authority granted pursuant to this AGREEMENT in assistance of NATION officers.

Section XV Compensation and Benefits of NATION Officers and AZ DPS Officers

All NATION officers remain employees of the NATION. The NATION shall remain liable for NATION officers' salaries, workers' compensation, and civil liabilities. Each NATION officer shall be deemed to be performing regular duties for the NATION while performing public safety services pursuant to this AGREEMENT. All certified AZ DPS officers remain employees of the State of Arizona. The State of Arizona shall remain liable for all AZ DPS officers' salaries, workers' compensation, and civil liabilities. Each certified AZ DPS officer shall be deemed to be performing regular duties for the State of Arizona while performing public safety services pursuant to this AGREEMENT.

Section XVI Dispute Resolution

In the event of a dispute, claim or controversy ("dispute") arising out of or related to this AGREEMENT, the Parties agree to meet as promptly as possible to informally resolve the dispute in good faith. In the event the Parties are unable to reach informal resolution, either Party, or both, may notify the other in writing of intent to terminate the AGREEMENT in accordance with Section XVIII of this AGREEMENT.

Section XVII Indemnification

The NATION shall be liable for all acts or failure to act of its Officers acting within the scope of the NATION's employment. The State of Arizona shall be liable for any and all acts or failure to act of certified AZ DPS officers acting within the scope of the State of Arizona's employment.

Section XVIII Duration, Modification and Termination of Agreement

This AGREEMENT is in effect for a period of five (5) years from the date of signing unless modified or terminated as described below. Renewals of this AGREEMENT may be made, each for a five-year period, with each renewal being completed and approved at least thirty (30) calendar days prior to the expiration of the preceding five-year period. Any amendment to this AGREEMENT may be adopted by an instrument in writing signed by all Parties to this AGREEMENT subject to approval by the appropriate authorities. The NATION or AZ DPS may terminate this agreement upon written notice of at least thirty (30) calendar days prior to the termination date, by certified, return receipt, postal mail. Such written notice shall be forwarded to the Director of DPS for the State of Arizona and to the Chief of Police for the NATION. All parties are hereby on notice that this contract is subject to cancellation for Conflicts of Interest pursuant to A.R.S. § 38-511.

Section XIX Provisions Required in Contracts with Agencies of the State of Arizona

Notwithstanding any provision of the AGREEMENT to the contrary, the NATION agrees to abide by the following terms and provisions that are required for contracts with AZ DPS, a constituent department of the State of Arizona:

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- A. The NATION shall retain all data and other records relating to the performance of the AGREEMENT for a period of five years after the completion of the AGREEMENT. All records shall be subject to inspection and audit by the AZ DPS at reasonable times. Upon request, the NATION shall produce a legible copy of any or all such records.
- B. The Parties agree to comply with all applicable state and federal statutes and regulations concerning anti-discrimination practices. This contract is governed by Arizona Executive Order 2009-09.

Section XX Sovereign Immunity

Nothing in this AGREEMENT, or in any future amendments, shall be interpreted, either expressly or impliedly, as constituting a waiver of the sovereign immunity of the Navajo Nation or of the State of Arizona.

Section XXI Notices

All notices and communications required or permitted under this AGREEMENT shall be in writing and shall either be delivered in person or sent by certified mail, return receipt requested, to the intended recipient at the addresses set forth below (or such other address as a Party may hereafter specify in writing):

NATION: Chief of Police
Navajo Police Department
P.O. Box 3360
Window Rock, AZ 86515-3360

AZ DPS: Director
Arizona Department of Public Safety
P.O. Box 6638
Phoenix, AZ 85005-6638

Section XXII Savings Clause

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

Section XXIII Entire Agreement

This AGREEMENT, including any exhibits or other attachments, constitutes the entire terms, conditions and understandings of the Parties hereto. There are no representations or provisions other than those contained herein.

Section XXIV Effective Date of Agreement

This AGREEMENT shall become effective on the date the last signature of the appropriate authorities is affixed below. This AGREEMENT may be executed up to four counterparts; each to be treated as the original.

THE NAVAJO NATION:

Ben Shelly
Ben Shelly, Navajo Nation President

Date

John Billison
John Billison, Executive Director
Navajo Division of Public Safety

12/6/2011
Date

STATE OF ARIZONA:

Janice K. Brewer
Janice K. Brewer, Governor

11-14-11
Date

Robert Halliday FOR
Robert Halliday, Director, Department of Public Safety

11/3/11
Date

Approved as to form:

Arizona Attorney General's Office
Arizona Attorney General's Office

11/2/11
Date



TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CIVIL DIVISION/TRANSPORTATION SECTION

ANNI L. FOSTER
ASSISTANT ATTORNEY GENERAL
DIRECT PHONE NO. 602.542.8859
EMAIL: ANNI.FOSTER@azag.gov

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

DPS Contract No. 2011-217, an agreement between the Navajo Nation and the Arizona Department of Public Safety, has been reviewed pursuant to A.R.S. § 11-952, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the Department of Public Safety.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: November 2, 2011

Thomas C. Horne
ATTORNEY GENERAL

Anni L. Foster
Assistant Attorney General
Transportation Section

ALF:cw:2388397

COMMISSION CARD FORM: Commissioned Officer

This is to certify that _____ holds a commission card as a Commissioned Officer with the Division of Public Safety, Navajo Nation and may exercise all authority concomitant with that position. This commission is expressly subject to the conditions contained in the Affidavit and Agreement attached here to.

PLEASE PRINT ALL INFORMATION

NAME: _____
RANK: _____
DUTY STATION: _____
CURRENT ADDRESS: _____
BADGE NUMBER: _____
SOCIAL SECURITY NUMBER: _____
CENSUS NUMBER: _____
DATE OF BIRTH: _____
HEIGHT: _____
WEIGHT: _____
COLOR OF HAIR: _____
COLOR OF EYES: _____

(IF LOST, WRITTEN DOCUMENTATION MUST BE SUBMITTED TO PERSONNEL
MANAGEMENT SECTION AND A REQUEST FOR A NEW CARD)

FOR OFFICE USE ONLY

DATE OF ISSUE: _____
EXPIRATION DATE: _____
COMMISSION CARD #: _____
APPROVED BY: _____

DIVISION DIRECTOR, NDPS

EXHIBIT

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AFFIDAVIT AND AGREEMENT

I, _____ (*PRINT CLEARLY*) pursuant to my commission as a Commissioned Officer with the Division of Public Safety, Navajo Nation accept the responsibilities of conducting myself in a manner which will not bring discredit to the Navajo Nation. I understand that this involves, among other things, that I will never use my authority officiously, that I will be exemplary in my speech and that in any of my actions under my commission will I never dishonor the trust which has been placed upon me.

I will use this commission only in the course of official law enforcement duties and in the protection of life and property.

Signature of Commissioned Officer

Signature of Chief of Police,
Director or Sheriff

Subscribed and sworn before me this _____ day of _____, 2011

Notary Public

My commission expires

(Seal)