



Little River Band of Ottawa Indians

375 River Street
Manistee MI 49660
(231) 723-8288

RESOLUTION NO. #01-1128-01

AUTHORIZING THE TRIBAL OGEMA, OR IN THE ABSENCE OF, THE TRIBAL COUNCIL SPEAKER TO EXECUTE A DEPUTATION AGREEMENT WITH THE BUREAU OF INDIAN AFFAIRS AND AUTHORIZING SUBMISSION OF SUCH AGREEMENT FOR APPROVAL

WHEREAS, the Little River Band of Ottawa Indians is a federally recognized tribe, as reaffirmed under P.L. 103-324, enacted on September 21, 1994, with property rights secured to it under the 1836 Treaty of Washington (7 Stat. 491) and the 1855 Treaty of Detroit (11 Stat. 621); and

WHEREAS, the Little River Band of Ottawa Indians is descended from, and is the political successor to, Grand River Ottawa Bands which were signatories of the 1836 Treaty of Washington (7 Stat. 491), as reaffirmed under P.L. 103-324, enacted on September 21, 1994; and

WHEREAS, the Tribal Council has the authority to adopt laws and regulations to protect Tribal members and property pursuant to the powers vested in it by Article IV, Section 7 of the Constitution, approved July 10, 1998; and

WHEREAS, the regulation, control and prohibition of certain conduct on the Tribe's Reservation is necessary to protect the health, security and general welfare of the Tribe, its members, the general public and property on the Reservation; and

WHEREAS, the Tribal Council has, pursuant to Ordinance No. 99-400-03, adopted a Law and Order Ordinance, which incorporates the Code of Federal Regulations 25 C.F.R. Part 11, Subparts C and D, as Tribal law; and

WHEREAS, the Tribe has purchased approximately 2,750 acres of land within the Reservations established under the 1836 Treaty of Washington (the "Manistee Reserve") and the 1855 Treaty of Detroit; and

WHEREAS, the United States presently holds approximately 500 acres of lands within the Manistee Reserve in trust for the Little River Band of Ottawa; and

WHEREAS, the Tribe anticipates that all 2,750 acres of land within the Tribe's Treaty Reservations will be held in trust for the Tribe by the United States in calendar year 2002; and

WHEREAS, the Tribe and the Bureau of Indian Affairs presently lack sufficient personnel and resources needed to effectively police the Tribe's Reservation lands and enforce federal and Tribal laws applicable to Tribal lands, properties and persons under the jurisdiction of the Tribe; and

WHEREAS, the Tribe desires to coordinate the use of personnel and resources with other law enforcement agencies, including the Bureau of Indian Affairs, to better police the Tribe's Reservation lands and protect the public (both Indian and non-Indian) who are present on Tribal lands; and

SERVING KENT, LAKE, MANISTEE, MASON, MUSKEGON, NEWAYGO,
OCEANA, OTTAWA AND WEXFORD COUNTIES
FAX (231) 723-8020

WHEREAS, the Tribal Council has determined that it is in the best interests of its members and the general public to enter into a deputation agreement with Bureau of Indian Affairs to better to protect the public's safety and welfare on Tribal lands and within the Tribe's Reservation and to provide a vehicle for encouraging State and local law enforcement agencies to enter into similar arrangements.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council of the Little River Band of Ottawa Indians hereby authorizes the Tribal Ogema, or in the absence of, the Tribal Council Speaker, to execute a deputation and mutual assistance agreement with the Bureau of Indian Affairs to assist the Tribe in its efforts to enforce and promote law and order and the administration of justice on Tribal lands within the Tribe's Reservation.


IT IS FURTHER RESOLVED THAT the Tribal Council hereby authorizes the Director of Public Safety, with advice and assistance from the Tribe's Legal Department and Prosecutor, to implement and administer the terms of the Deputation Agreement, including the execution and issuance of written commissions to law enforcement personnel and other matters under this Agreement.

IT IS FURTHER RESOLVED THAT copies of this Resolution and the Deputation Agreement shall be transmitted to representatives of the Bureau of Indian Affairs, the Field Solicitor for the Department of the Interior and the United States Attorney for the Western District of Michigan for approval.

Certificate of Adoption

This resolution was adopted by the Tribal Council of the Little River Band of Ottawa Indians at its Regular Session held at the Little River Band Community Center in Manistee, Michigan on November 28, 2001, by a vote of 7 in favor, 0 opposed, 2 absent, and 0 abstentions. A quorum of the Tribal Council being present for such vote.

Date: 11/28/01


Janine M. Sam, Council Recorder

Attest:


Stephen Parsons, Council Speaker

Distribution: Council Records
Tribal Ogema
Department of Public Safety
Legal Department
Bureau of Indian Affairs



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DEPUTATION AGREEMENT

This Agreement is entered into pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C. 2801, *et seq* and Article IV, Section 7 (a) and (b) of Little River Band of Ottawa Indians Constitution, which provide for cooperative agreements to promote better law enforcement services. The Tribal Council of the Little River Band of Ottawa Indians Tribe has enacted a Resolution of the Tribal Council, which authorizes the Tribal Ogema to enter into this Agreement on the Tribe's behalf and which also authorizes the Secretary of the Interior to enforce tribal laws.

The intent of this Agreement is to provide for the deputation of law enforcement officers employed by the various agencies, 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 Little River Band of Ottawa Indians. 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.

All the parties to this Agreement recognize that when law enforcement officers arrest a criminal suspect, the officers may not know if 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 that therefore 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 of the various agencies, which are parties to this Agreement.

The parties further expressly recognize the manifest intent of the Indian Law Enforcement Reform 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 rights suits as a consequence of the good faith errors of officers making arrests or quelling disturbances in Indian country. To eliminate such concerns, the Bureau of Indian Affairs (BIA), to the maximum extent possible under applicable law, commits that

if a state, local, or tribal officer holding a BIA Special Law Enforcement Commission (SLEC) makes a good faith arrest of an Indian and delivers the arrestee to a detention facility or a prosecutor of the wrong jurisdiction through good faith error, and is later sued in his/her personal capacity in an action sounding either in tort or in a civil rights violation, predicated upon the plaintiffs Indian descent, his/her arrest in Indian country, and his/her delivery to the wrong jurisdiction, it will be the policy of the BIA to provide such an officer with the same protections that would have been made available to a BIA law enforcement officer acting under like circumstances. Those protections shall include those provided by the Federal Tort Claims Act, 28 U.S.C. 2401, 2671-2680, as amended, and by 43 CFR Part 22. The parties to this Agreement therefore agree as follows:

Section 1. Purpose:

- A. The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in and around Indian country in the State of Michigan, and its terms should be interpreted in that spirit. 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. Commissions:

- A. Each agency, which is a party to this Agreement, may, in its discretion, issue special law enforcement commissions to law enforcement officers of another agency, upon the application of such officers. Such commissions shall grant the officers the same law enforcement authority as that of officers of the commissioning agency (unless specifically limited by the terms of the commission), as more specifically described in Section 3 of this Agreement. When an agency issues such a commission, it shall provide notice of that commission, including the name of the officer receiving the commission, to each of the other agencies which is party to this Agreement.
- B. A commission shall not be granted unless the applicant has complied with all the prerequisites for appointment as a police officer as set forth in 25 CFR Part 12 and with the specific requirements of the commissioning agency. Those prerequisites must include the following:
 - 1. United States citizenship.
 - 2. A high school diploma or equivalent.

3. No conviction for a felony, a misdemeanor that restricts the ability to carry firearms, or other crime involving moral turpitude.
 4. Documentation of semiannual weapons qualifications.
 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.
- C. The commissioning agency may impose any other requirements, including, but not limited to, an orientation course on BIA, tribal, or state criminal procedures.
- D. If requested by the commissioning agency, the applicant's agency shall provide a Federal Bureau Investigation criminal history background check on the applicant.
- E. If an agency denies an officer a commission, it shall disclose the grounds for such denial in writing to the agency that employs the applicant.
- F. The BIA may, at any time, suspend or revoke an officer's commission for reasons solely within its discretion. The BIA shall notify the officer's agency in writing of the suspension or revocation and the reasons therein. Within ten (10) days after such notification that agency shall cause the commission card and any other evidence of the commission to be returned to the BIA.
- G. If the officer's agency possesses any information on the officer, which provides grounds for the suspension or revocation of the commission, it shall immediately notify the BIA.

Section 3. Scope of Powers Granted:

- A. Officers carrying SLEC commissions issued by the Bureau of Indian Affairs pursuant to this Agreement are given the power to enforce 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.
- B. Officers carrying commissions issued by the Little River Band of Ottawa Indians are given the power to enforce Tribal Criminal laws applicable to Indian Country of the Little River Band of Ottawa Indians, including the Law and Order Ordinance No. 98-400-03, as the same may be amended from time to time, copies of which code(s) will be provided to each officer issued such a commission.

- C. 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 commissioned officers the authority to enforce Federal and tribal laws in Indian Country of the Little River Band of Ottawa Indians.
- D. 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.
- E. Nothing in this Agreement shall be construed as a cession or diminishment of the jurisdiction of the Tribe over any portion of the Indian Country of the Little River Band of Ottawa Indians or any Indian person found therein. Similarly, neither this Agreement, nor the acts of the parties in implementing the terms of this Agreement, shall be construed as determining the extent or boundaries of the Indian Country of the Little River Band of Ottawa Indians in any future administrative or judicial proceeding.

Section 4. Disposition and Custody:

- A. Any person arrested by an officer commissioned 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 commissioned 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, not to exceed twenty-four (24) hours, 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 Little River Band of Ottawa Indians requires medical treatment, the law enforcement agency with custody may transport the detainee or prisoner to the nearest Indian Health Service or Little River Tribal health care

facility in order to avoid significant medical expense. In such event, tribal or BIA 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. Supervision:

- A. It is understood and agreed by the parties to this Agreement that the BIA, its agents, employees, and insurers, has no authority nor any right whatsoever to control in any manner the day-to-day discharge of the duties of officers whom they have commissioned pursuant to this Agreement.
- B. However, it is understood to be a basic purpose of this Agreement that officers commissioned 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.

Section 6. 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 commissioned pursuant to this Agreement that are performed outside the scope of their duties.
- B. Notwithstanding subsection A, any officer carrying a SLEC issued by the BIA will be treated as a Federal employee under the Federal Tort Claims Act and under 43 CFR Part 22 in connection with any exercise of law enforcement responsibility in Indian country.
- C. 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.
- D. Nothing in this Agreement shall be construed as a waiver of any government's sovereign immunity, not otherwise expressly waived by legislative act.

Section 7. Interagency Committee:

- A. The parties to this Agreement each agree to appoint a responsible person with a professional background in law enforcement to sit on an interagency committee charged with implementation of this Agreement and consideration of disputes concerning its interpretation. Such interagency committee may, for example, establish protocols for radio

dispatching, emergency service, fresh pursuit, and execution of warrants. The inter-agency committee shall also establish and distribute guidelines or require periodic orientation or training sessions for officers commissioned pursuant to the Agreement. The interagency committee shall operate by consensus rather than by a vote of the participating agencies, with its objective to always provide effective law enforcement and peace in the community.

Section 8. Additional Parties:

- A. It is understood by the parties to this agreement that additional agencies with law enforcement responsibilities may choose to join as parties hereto, but that no amendment will be made to the terms of this Agreement without the agreement of all the parties signatory to it.

Signatures:

Date:

Larry Morrin, Regional Director
Bureau of Indian Affairs-Midwest Region

Stephen Parsons

Robert Guenthardt, Tribal Ogema
Little River Band of Ottawa Indians *Acting Ogema Tribal Council Speaker*

11/28/01

Joseph L. LaPorte, Director
Department of Public Safety
Little River Band of Ottawa Indians