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Deputation Agreement

Whereas, pursuant to the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801 *et seq.*, the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA), is responsible for providing, or assisting in providing law enforcement in Indian Country; and

Whereas, the Secretary has delegated this authority to the Assistant Secretary – Indian Affairs and the Assistant Secretary – Indian Affairs has redelegated this authority to the Director of the BIA, who has redelegated it to the Deputy Bureau Director, Office of Justice Services (OJS); and

Whereas, the Assistant Secretary – Indian Affairs is committed to working with tribal governments and tribal law enforcement to strengthen law enforcement in Indian country; and

Whereas, on February 10, 2004, the Assistant Secretary – Indian Affairs articulated policy guidance to the BIA --as published at 69 Fed. Reg. 6,321 --to govern the implementation of Deputation Agreements;

Therefore, the BIA, Office of Justice Services (OJS) and the **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** enter into this Deputation Agreement (Agreement) to govern BIA OJS's issuance of Special Law Enforcement Commissions (SLECs).

This Agreement is entered into this **[KEYBOARD DATE]** day of **[KEYBOARD MONTH]**, **[KEYBOARD YEAR]**, by and between the **[KEYBOARD NAME OF TRIBE (TRIBE), a federally recognized Indian tribe, /LAW ENFORCEMENT AGENCY (AGENCY)]** and the BIA- OJS, Department of the Interior, pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C § 2801 *et seq.*, and related **[KEYBOARD NAME OF TRIBE]** tribal ordinances, which provide for cooperative agreements to promote better law enforcement services. The **[KEYBOARD NAME OF TRIBE]** has enacted **[KEYBOARD TRIBAL RESOLUTION NUMBER]**, which authorizes the **[KEYBOARD AUTHORIZED ENTITY/INDIVIDUAL to enter into this Agreement on the Tribe's behalf and also authorizes the]** **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** law enforcement officers, under a BIA SLEC issued through the BIA-OJS, to enforce Federal laws in Indian country.

The intent of this Agreement is to provide for the deputation of law enforcement officers employed by the **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** (hereinafter referred to as the **[KEYBOARD TRIBE/AGENCY]**), which is a party to this Agreement, so that the **[KEYBOARD TRIBE'S/AGENCY'S]** law enforcement officers will be authorized to assist the BIA in its duties to provide law enforcement services and to make lawful arrests in Indian country within the jurisdiction of the Tribe or as described in section 5. It is the express desire and intent of both parties to this Agreement to allow law enforcement officers to react immediately to observed violations of the law and other emergency situations.

Both 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 non-Indian,

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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 immediately the proper jurisdiction for the filing of charges. It is further recognized that the official jurisdictional determination will be made by a prosecutor or court from one of the various jurisdictions, not by arresting officers.

The parties further expressly recognize the manifest intent of the Indian Law Enforcement Reform Act to eliminate the uncertainties that 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 enforcement or carrying out in Indian country of certain federal law. To eliminate such concerns, pursuant to the authority granted by 25 U.S.C. § 2804(a) and (f), a Tribal Law Enforcement Officer who is deputized by an SLEC will be deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act while enforcing or carrying out laws of the United States covered by this Agreement, to the extent outlined in this Agreement. Both parties to this Agreement (BIA-OJS and the Tribe) therefore agree as follows:

1. Purpose

The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in Indian country in the State of **[KEYBOARD NAME OF STATE]**, and its terms should be interpreted in that spirit. Accordingly, both 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.

This Agreement is not entered into pursuant to the Indian Self Determination Act and Education Assistance Act, P.L. 93-638, as amended. The Secretary's revocation or termination of this Agreement is subject to the appeal and review procedure provided below.

2. SLECs

A. BIA-OJS, as a party to this Agreement may, in its discretion, issue SLECs to law enforcement officers of the **[KEYBOARD TRIBE/AGENCY]**, upon the application of such officers. Such SLECs shall grant the officers the same law enforcement authority as that of officers of BIA-OJS (unless specifically limited by the terms of the SLEC), as more specifically described in Section 3 of this Agreement. When BIA-OJS issues such an SLEC, it shall provide notice of that SLEC, including the name of the officer receiving the SLEC, to any other agencies that are parties to this Agreement or that should be aware of this Agreement. The BIA has the authority to evaluate the effectiveness of the SLEC and to investigate any allegations of misuse of authority. 25 C.F.R. § 12.21. Pursuant to such evaluation the BIA may revoke an individual officer's SLEC subject to the appeal and review procedures provided below.

B. An SLEC shall not be granted unless the applicant has complied with all the prerequisites

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for appointment as a police officer as set forth in 25 C.F.R. Part 12. 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 which restricts the ability to carry firearms, or other crime involving moral turpitude (including any convictions 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 that might adversely affect his or her performance as a police officer.

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

C. BIA-OJS may impose any other requirements, including, but not limited to, an orientation course on Federal, tribal, or state criminal procedures.

D. If requested by BIA-OJS, the applicant's agency shall provide a Federal Bureau of Investigation criminal history background check on the applicant.

E. If BIA-OJS denies an officer an SLEC, it shall disclose the grounds for such denial in writing to the agency which employs the applicant.

F. Both parties to this Agreement may, at any time, suspend or revoke an officer's SLEC for reasons solely within their discretion. The parties shall notify each other in writing of the suspension or revocation and the reasons for it and the officer's right to appeal as set forth below. Within ten days after such notification, the SLEC officer's employing agency shall return the SLEC card and any other evidence of the SLEC to BIA-OJS.

G. If the SLEC officer's agency possesses any information on the officer which provides grounds for suspension or revocation of the SLEC, the agency shall immediately notify BIA-OJS.

H. An SLEC issued by BIA-OJS under this Agreement shall not be used to invoke any State of **[KEYBOARD NAME OF STATE]** authority. Officers holding SLECs who are responding to a call, conducting an investigation, or otherwise exercising their authority shall, in their discretion and in the exercise of sound police judgment, address any potential violations of Federal or Tribal law.

3. Scope of Powers Granted

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A. **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** law enforcement officers carrying SLECs issued by BIA-OJS pursuant to this Agreement are given the power to enforce:

All Federal laws applicable within Indian country, and specifically the **[KEYBOARD NAME OF TRIBE]**'s Indian country, including the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153, consistent with the authority conveyed pursuant to Federal law through the issuance of SLECs or other delegations of authority. See Appendix A, which includes an **illustrative** list of Federal statutes that officers may be called upon to enforce; this list is **not exhaustive**.

B. Both 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 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. (A qualified immunity defense may still be available in appropriate circumstances notwithstanding this limitation.) Accordingly, the purpose of this Agreement is to provide **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** SLEC officers the authority to enforce applicable laws. This includes statutes set forth in the local U.S. Attorney Guidelines as well as all laws and statutes applicable in Indian country as described in Section 3.A and Appendix A.

C. Nothing in this Agreement limits, 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.

D. This Agreement does not create any rights in third parties. Issuance and revocation of SLECs pursuant to this agreement are at the sole discretion of BIA-OJS. Nothing in this Agreement is intended to create or does create an enforceable legal right or private right of action by a law enforcement officer or any other person.

4. Uniform, Vehicles and Weapons

A. BIA policy requires that BIA law enforcement officers as a rule be in duty-appropriate uniforms, which will conform with the parameters outlined in the BIA Law Enforcement Handbook; carry a weapon where required by their duties; and, when stationed in marked police vehicles, operate such vehicles equipped with light bars. This policy is standard for police forces nationwide, and is necessary for the safety of the officer and to communicate the officer's status and authority to members of the public.

B. SLEC officers who are temporarily off duty during a shift, or whose duty is temporarily interrupted for any reason are expected to remain in duty-appropriate uniforms, in a marked vehicle, if so stationed, and otherwise prepared for duty so that they are available to respond to emergency calls.

C. SLEC officers and their supervisors may make exceptions to these requirements for

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undercover operations or otherwise on a case-by-case basis, but deviations from this rule are expected to be infrequent and will usually occur for compelling law-enforcement reasons.

5. Travel Outside of Indian Country

A. The ordinary duty stations of BIA law enforcement officers are located within the boundaries of Indian country. In some situations, however, BIA law enforcement officers will be required to leave Indian country as a part of or incidental to their duties. This may occur, for example, where they are responding to an incident in another area of Indian country; where they are transporting evidence or suspects to or from locations in Indian country or to or from other police, court, or prison facilities; when they reside off-reservation and are traveling to their duty station or responding to an emergency call; or when they must obtain products or services located off-reservation while on duty or in the normal course of their business day.

B. When traveling outside of Indian country, BIA law enforcement officers retain their status as Federal law enforcement officials. They are therefore expected as a rule to be in uniform and to operate marked police vehicles as set forth in paragraph 4. They may also be armed; may transport evidence; and may exercise the authority of law enforcement officers to maintain control of suspects in such situations. They may perform comparable incidental Federal police activities outside of Indian country, but will not as a rule conduct investigations or make arrests outside of Indian country, absent exigent circumstances or: (1) a nexus to a crime committed in Indian country, and (2) when communicating and coordinating with the appropriate local or Federal authorities over procedures and methods.

6. SLEC Officers

A. SLEC Officers are treated as BIA police officers for purposes of enforcing Federal laws. They therefore shall conform to all requirements and limitations set forth in this Agreement and in particular in paragraphs 4 and 5.

B. When an SLEC officer receives a call related to a potential Federal offense, that officer shall as a rule be in uniform and in a vehicle equipped as set forth in paragraph 4. Such an officer may undertake off-reservation travel as set forth in paragraph 5.

C. When an SLEC officer is responding to a call that may involve a Federal offense, or undertaking any other duties that relate to or may potentially relate to their Federal functions, he or she shall conform to this Agreement, and in particular the provisions in paragraph 5. The officer shall function as a BIA law enforcement officer as set forth in paragraph 5, irrespective of the boundaries of the Tribe's reservation or the location of Indian country.

D. When an SLEC officer receives an emergency call in circumstances where a Federal offense may exist, he or she shall respond in emergency mode and shall travel to the site of the call as rapidly as it is possible to do without compromising safety, irrespective of the boundaries of Indian country or his or her present location. He or she shall observe the restrictions on the activation of emergency mode and the precautions for the safety of bystanders required in the

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BIA, OJS Law Enforcement Handbook and otherwise respond as appropriate and prudent. In instances where the State has criminal jurisdiction in Indian country, and where there is no significant reason to anticipate that a Federal offense may exist with respect to a particular emergency call, SLEC officers shall respond in accordance with policies and practices set forth under State and local law but may, in certain circumstances, retain their Federal status.

E. When located outside of Indian country, SLEC officers may respond to Observed violations of Federal law in a public safety emergency as appropriate and prudent. Irrespective of their location, SLEC officers may respond to violations of exclusively State law only to the extent consistent with that State's law. SLEC officers may respond to concurrent violations of State and Tribal or Federal laws to the extent consistent with Tribal or Federal law.

7. Disposition and Custody

A. Any person arrested by an SLEC officer shall immediately be brought to the attention of a responsible official of the apparent prosecuting jurisdiction. In order to ascertain the proper prosecuting jurisdiction, the SLEC officer shall attempt to determine, where practicable, whether the arrestee is Indian or non-Indian. The official determination of proper jurisdiction, however, will be made by a prosecutor or court, not an SLEC officer.

B. The agency with whom the SLEC arresting officer is employed shall ensure the arrestee appears before a judge of the appropriate jurisdiction for initial appearance and bond setting within the time guidelines of the tribal, State, or Federal law, as appropriate.

C. When an Indian detainee or prisoner under the jurisdiction of the Tribe requires medical treatment, the law enforcement agency with custody may transport the detainee or prisoner to the nearest Indian Health Service or the appropriate Tribal health care facility. 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.

8. Liabilities and Immunities

A. It is understood and agreed that neither party to this Agreement, nor its agents, employees or insurers, by virtue of this Agreement, assumes any responsibility or liability for the actions of SLEC officers which are outside the scope of their duties.

B. Notwithstanding subsection A, an **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** SLEC officer will be deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act while carrying out those laws applicable in Indian country as described in Section 3.A and Appendix A. Therefore, such officer will not be deemed a Federal employee under 25 U.S.C. § 2804(f)(1), or for purposes of the Federal Tort Claims Act, with respect to the enforcement of any other law except those applicable in Indian country as described in Section 3.A and Appendix A.

C. Nothing in this Agreement shall be read as waiving or limiting any defenses to claims of

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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.

E. The Tribe specifically agrees to hold the United States harmless under this Agreement for any civil claim brought against an SLEC officer arising out of law enforcement activity, except for actions within the scope of authority delegated by this Agreement, provided, however, that this hold-harmless provision shall not be applicable to any obligation of the United States arising out of a relationship between the United States and the Tribe not created under this Agreement.

F. The Tribe agrees that the United States has no obligation under this Agreement to provide legal representation for any constitutional claim for an SLEC officer except as provided by 28 C.F.R. 50.15(a), such that (1) providing representation would otherwise be in the interest of the United States, and (2) the event from which the claim arises is within the scope of authority delegated by this Agreement.

9. Appeal Procedure

Appeals of termination or revocation of this Agreement, or suspension or revocation of an SLEC issued pursuant to it, shall be made within 10 business days of the termination, revocation, or suspension to the Associate Director of Operations, BIA-OJS. The Associate Director's decision shall be the final agency action under the Administrative Procedure Act, 5 U.S.C. § 551. At the **[KEYBOARD TRIBE/AGENCY]**'s option, appeal may be taken to the Interior Board of Indian Appeals (IBIA) to the extent it has jurisdiction.

Signatures:

[KEYBOARD NAME OF DISTRICT SPECIAL AGENT IN CHARGE] Date

[KEYBOARD OJS DISTRICT]-Office of Justice Services, Bureau of Indian Affairs Date

[KEYBOARD NAME OF TRIBAL CHAIRPERSON] Date

[KEYBOARD NAME OF TRIBE] Date

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Appendix A

All Federal criminal laws applicable to Indian country, including the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153.

All Federal statutes applicable within **[KEYBOARD NAME OF TRIBE]** (Tribe's) Indian country in **[KEYBOARD NAME OF STATE]**, which may include, but are not limited to:

1. The Indian country liquor laws, where applicable (18 U.S.C. §§ 1154, 1155, 1156, and 1161),
2. Counterfeiting Indian Arts and Crafts Board Trade-mark (18 U.S.C. § 1158),
3. Misrepresentation of Indian produced goods and products (18 U.S.C. § 1159),
4. Property damaged in committing offense (18 U.S.C. § 1160),
5. Embezzlement and theft from Indian tribal organizations (18 U.S.C. § 1163),
6. Destroying boundary and warning signs (18 U.S.C. § 1164),
7. Hunting, trapping or fishing on Indian land (18 U.S.C. § 1165),
8. Theft from gaming establishments on Indian land (18 U.S.C. § 1167),
9. Theft by officers or employees of gaming establishments on Indian land (18 U.S.C. § 1168),
10. Reporting of child abuse (18 U.S.C. § 1169),
11. Felon in possession of a firearm (18 U.S.C. § 922(g)),
12. Youth Handgun Safety Act (18 U.S.C. § 922(x)(2)),
13. Possession of a firearm while subject to protective order (18 U.S.C. § 922(g)(8)),
14. Interstate domestic violence – Crossing a state, foreign, or Indian country border (18 U.S.C. § 2261(a)(1)),
15. Interstate domestic violence – Causing the crossing of a state, foreign, or Indian country border (18 U.S.C. § 2261(a)(2)),
16. Interstate violation of protective order – Crossing a state, foreign, or Indian country border (18 U.S.C. § 2262),
17. Illegal trafficking in Native American human remains and cultural items (18 U.S.C. § 1170),
18. Lacey Act violations (16 U.S.C. § 3371, *et seq.*),
19. Archaeological Resource Protection Act violations (16 U.S.C. § 470ee),
20. Controlled substances – Distribution or possession (21 U.S.C. §§ 841(a)(1), 844),
21. Unauthorized taking of trees (18 U.S.C. § 1853),
22. Unauthorized setting of fire (18 U.S.C. 1855),
23. Assault of a Federal officer (18 U.S.C. § 111),
24. Bribery of tribal official (18 U.S.C. § 666(a)(2)),

This list is not exhaustive.