

**COOPERATIVE AGREEMENT PROVIDING FOR
COMMISSIONING OF MONTANA HIGHWAY PATROL OFFICERS
FOR ENFORCEMENT OF TRAFFIC LAWS
ON THE ROADS OF THE BLACKFEET RESERVATION**

THIS AGREEMENT is made this 10TH day of September, 2004, by and between **THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION**, acting through the Blackfeet Tribal Business Council, (hereafter referred to as “**COUNCIL**”), and the **STATE OF MONTANA, DEPARTMENT OF JUSTICE, MONTANA HIGHWAY PATROL**, (hereafter referred to as “**MHP**”). The Council is the duly elected and governing body of the Tribe and is authorized to enter into this Agreement on behalf of the Blackfeet Tribe by the Tribe's Constitution, Article VI, Section 1(a) and 1(k). The MHP is authorized to enter into this Agreement under the Montana State - Tribal Cooperative Agreements Act, MCA Title 18, Chapter 11, Part 1 (2003).

RECITALS:

WHEREAS, the Council is authorized by the Blackfeet Constitution, Article VI, Section 1(a) and 1(k) to enact ordinances including the Blackfeet Traffic Offenses Code, to safeguard the peace and safety of the residents of the Blackfeet Reservation, and

WHEREAS, the Council has the authority under the Blackfeet Constitution, Article VI to negotiate with the State and execute this Agreement to commission Montana MHP to cite and arrest Indians on any public roads within the Reservation, including roads within the boundaries of cities of the Reservation for violations of the Tribal Law and Order Traffic Codes, and

WHEREAS, the Montana Department of Justice, Highway Patrol is authorized by the State-Tribal Cooperative Agreements Act, Mont Code Ann §§ 18-11-101 to 112, to enter into cooperative agreements with tribal governments to perform any service authorized by law, including cooperative law enforcement agreements and, pursuant to Mont. Code Ann. §§ 2-15-105, 2-15-2001, the Montana Attorney General is the state officer authorized to commit the Department of Justice, MHP to this Agreement, and

WHEREAS, the parties in 1959 entered into an informal Agreement through which the State provided traffic law enforcement services for the Tribe on the Reservation, and so historically have worked together to protect the traveling public, and

WHEREAS, 25 U.S.C. § 2804 of the Indian Law Enforcement Reform Act, establishes a federal policy favoring such agreements and provides the Secretary of the Interior with authority to enter into and approve such cooperative law enforcement agreements, and

WHEREAS, the parties to this Agreement desire to provide the most efficient law enforcement and police protection to the residents of Montana and the Blackfeet Reservation, and

WHEREAS, the Tribe has contracted with the United States to provide law enforcement services on the Reservation pursuant to 25 U.S.C. § 450-450n, and,

WHEREAS, the parties desire to establish a mechanism whereby: A) the citation and arrest authority of the Tribe over Indians for traffic offenses committed on the public ways of the Reservation is extended to commissioned law enforcement officials of the State of Montana, MHP; B) the framework is established for MHP at some time in the future to extend to commissioned Tribal officers its citation and arrest authority over

non-Indians for traffic offenses committed on the public ways of the Reservation; and,
C) the BIA may issue Special Law Enforcement Commission (SLEC) cards to MHP officers,

NOW, THEREFORE, the parties agree to enter into this Agreement for the purpose of enhancing law enforcement services to all residents of the Reservation and making the best use of scarce rural law enforcement services for the benefit of all Reservation residents.

I. DEFINITIONS

1. **"BIA"** means the United States Department of the Interior, Bureau of Indian Affairs.
2. **"Commissioned Officer"** means any officer of the Montana Highway Patrol, Department of Justice, who has been commissioned to enforce the laws of the Blackfeet Tribe as specified herein or in the officer's special commission.
3. **"Indian"** means any person who would be deemed an Indian as the term is used in 18 U.S.C. § 1153.
4. **"Law and Order Committee"** means the Blackfeet Tribal Business Council Law and Order Committee which is the Commissioning agency for the Tribe.
5. **"MLEA"** means the Montana Law Enforcement Academy.
6. **"MBCC"** means the Montana Board of Crime Control. See generally, Mont. Code Ann. § 44-4-301 (2003).
7. **"POST"** means the Peace Officers Standards Training.
8. **"Reservation"** means the Blackfeet Indian Reservation over which the Blackfeet Tribe asserts jurisdiction, as defined in the agreement of September 26, 1895,

and referenced in Article I, Constitution and By-laws for the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

9. **"Road," "Public Road," or "Public Way,"** means any way of the State open to the public, as that term is defined in Mont. Code Ann. § 61-8-1101 (2003), including but not limited to roads included in the Indian Road System on the Reservation.

10. **"Tribal Code"** means the Law and Order Code of the Blackfeet Tribe.

11. **"Tribe"** means the Blackfeet Tribe of the Blackfeet Indian Reservation.

II. PURPOSES

1. The parties, having conferred together on a government-to-government basis, enter into this Agreement for the purpose of facilitating and coordinating cooperative law enforcement services, addressing mutual law enforcement problems that transcending jurisdictional boundaries, and insuring the prompt and effective delivery of law enforcement services to protect public health and safety on the Blackfeet Indian Reservation.

2. It is the parties' intent that this Agreement serve over a long term to establish a good working relationship among the parties, promote cooperative law enforcement, and enhance the delivery of effective law enforcement services to the residents of the Blackfeet Reservation. This Agreement is entered into in furtherance of the purposes of the Montana State - Tribal Cooperative Agreements Act, the Indian Law Enforcement Reform Act, and the Indian Self Determination and Education Assistance Act. Nothing herein alters or conveys any judicial jurisdiction, including the authority to issue warrants for arrest or search or seizure, or to issue service of process.

III. NEGATIVE DECLARATION

1. This Agreement does not reflect, in this or any context, any party's position with respect to the jurisdictional authority of another. Nothing in this Agreement, or in any conduct undertaken pursuant to this Agreement, shall be construed as enlarging or diminishing the jurisdictional authority of either party. Nothing herein affects any extant statutory or Tribal Code provisions regarding the sovereign immunity of the parties. Neither this Agreement nor the activities of the parties pursuant to this Agreement shall be used to affect the legal or equitable position of any party in any pending or future litigation between these parties. Nothing in the Agreement shall be construed to impact or impair the extradition authority and processes of the parties.

2. Nothing in this Agreement shall be construed as waiving the sovereign immunity of the State of Montana MHP or their employees from suit in Tribal or federal court. The state and its employees' liability for suit in state court are determined by existing state law except to the extent that the Indian Law Enforcement Reform Act may provide federal tort claim act coverage for state officers acting hereunder. Nothing in this Agreement waives the sovereign immunity of the State, or its employees, Tribe or Tribal employees in state, federal or tribal court.

3. This agreement in no way diminishes the existing sovereignty, territorial, legislative, executive and judicial jurisdiction of the Blackfeet Nation over rights-of-way, roads and highways and lands burdened by rights-of-way, including without limitation over persons, including the public, and activities conducted or otherwise occurring within the rights-of-way, roads and highways of the Reservation.

4. This agreement in no way diminishes the existing territorial, legislative, executive and judicial jurisdiction of the State of Montana over rights-of-way, roads and highways and all lands burdened by rights-of-way, including without limitation over persons, including the public, and activities conducted or otherwise occurring within the rights-of-way, roads and highways of the Reservation.

IV. COMMISSIONS

1. Qualifications for Commissions

A. Any officer of MHP who is commissioned as an officer of the Tribe must meet the qualifications for Reservation police set forth in Tribal Code, Mont. Code Ann. § 7-32-303, and current BIA policy, if applicable. All MHP officers commissioned as officers of the Tribe must also complete a "Criminal Jurisdiction in Indian Country" training course within one year of commissioning.

B. In recognition of the rich and distinct cultural backgrounds of the Blackfeet Indian members of the community and the law enforcement profession, all commissioned law enforcement officers must also complete, in addition to any cultural sensitivity training included in MLEA or BIA courses, one day of cultural training in Blackfeet tradition. The Tribe will provide the curriculum and trainer of its choice for this training that shall be a minimum of one full day.

C. The parties agree to notify each other of local in-service training courses to be offered to their officers and to offer such training to the officers of any other party.

D. The MHP will make special efforts to recruit Blackfeet Indians to its employment and cooperate on an ongoing basis with the Tribe to increase the opportunities for Indians to attend the MLEA.

2. **Commissioning Procedure**

A. The MHP will nominate qualified officers to be considered by the Tribe's commissioning agency for appointment as commissioned law enforcement officers of the Tribe. Each commission shall confer only the Tribe's authority to enforce the Tribal traffic code against Indians on public ways of the Reservation.

B. Commission applications should be sent to the Blackfeet Law and Order Committee and records of all commissions and decommissions must also be sent to the MBCC and BIA, Tribe's Department of Law and Order, and the Billings BIA District Five Commander for record maintenance. Each party, upon issuing a commission for one of its officers, must notify Mr. Alan Horsfall, P.O.S.T. Council, MBCC, or his successor; Mr. David Spotted Eagle, Blackfeet Nation Security Department, or his successor, and the Billings BIA District Five Commander, Mathew Pryor, or his successor, of the commission.

C. Upon receiving nominations, the Blackfeet Law and Order Committee may conduct interviews and review the nominees' training qualifications. The Tribe may thereafter appoint such commissioned law enforcement officers, as it deems proper. The parties agree that the standards contained in Mont. Code Ann. § 7-32-303, Tribal Code, and in the current BIA Policy, if applicable, provide the appropriate minimum standards for the issuance of commissions. The parties must provide to the commissioned law enforcement officers identification cards containing the information indicated in Section VII, paragraph 1 of this Agreement.

D. The MHP may apply for and the Tribe may issue interim commissions. Upon application as specified in this Section 2, the MHP may seek interim commissions by fax or electronic communication, to be effective immediately upon receipt of approval of the Tribe and effective only for sixty (60) days. Interim commissions will expire of their own terms after sixty (60) days and may also be issued for new hires that have successfully passed the P.O.S.T. basic course, or equivalent. The application for interim commission must be clearly labeled as such and include the following minimum information about the applicant: name, date of birth, height weight, color of hair and eyes, social security number, date of hire, date of completion of P.O.S.T. basic or equivalent, and title or position in MHP. The application need not be accompanied by supporting documentation. A hard copy of the request and communication must be saved in the parties' files.

E. The parties do not anticipate creating any separate entity to administer or implement this Agreement.

3. Arrest and Investigative Authority and Assistance

A. Officers commissioned by the Tribe, when acting within the Reservation, shall have the same authority to issue citations to and arrest Indians for violations of Tribal Traffic Code on any road on the Reservation and shall have the same authority to issue citations and/or summonses and to accept bond as officers of the Tribe. The MHP is not a general law enforcement agency and generally, absent a request for mutual assistance from a federal or Tribal Officer, will not exercise general law enforcement powers beyond the roadways of the Reservation. Upon arresting any Indian as authorized by this Agreement, commissioned officers must promptly deliver the individual to the Tribal detention facility or to another Tribal law enforcement officer

for further processing pursuant to tribal laws. Each officer making such an arrest must inform the arrestee of his or her commission from the Tribe for the purpose of enforcing Tribal law. The fees and fines levied in the Tribal Court proceedings shall be deposited in such accounts as appropriate under tribal law.

B. The parties to this Agreement recognize that the applicability of federal and tribal criminal laws in Indian Country may depend on whether either the suspect or the victim is Indian. The parties further recognize that state criminal laws do not apply to Indians in Indian Country and that tribal criminal laws do not apply to non-Indians. The parties agree that nothing in this Agreement makes any law applicable to persons or conduct where it would not otherwise be applicable under tribal, federal, state or municipal law. Nothing herein affects state, federal, or tribal codes or statutes:

C. The Tribe and BIA may request investigative assistance from an MHP officer with a commission. Such assistance shall be rendered to the extent possible so long as it does not interfere with the commissioned officer's normal workload, is in response to a specific request by a Tribal officer, or is related to an arrest carried out by the commissioned officer. To the extent possible within existing resources and on a case-by-case request, the MHP will assist with or prepare crash investigations for accidents occurring on the Reservation and provide the Tribe and BIA with prompt access to all crash investigation reports.

IV. Forms

When acting under the authority of a commission, commissioned officers shall issue citations or other legal process on their own forms, which shall clearly be marked as those of the agency for whom the commissioned officer is an employee. Thus, an MHP officer acting under commission from the Tribe shall issue citations (notices to

appear and complaint) on forms provided by the MHP. All other legal forms or further legal process tools necessary for the commissioned officers to carry out their duties shall be provided by the commissioning agency.

V. MONTHLY MEETINGS AND ONGOING COMMUNICATION

1. Cooperative law enforcement requires the officers of all parties to maintain an ongoing commitment to a relationship sustained by respect, focus on the protection of the public, and adherence to the rule of law while respecting cultural traditions of the Blackfeet people. To sustain this relationship the parties through their officers will meet monthly to discuss ongoing law enforcement issues such as; staffing, tribal prosecution process, local events impacting public safety, culturally significant, juvenile issues, or other events which might result in unusually high traffic in the area, and in-service or other ongoing training opportunities or needs of the parties. The monthly meetings will occur in Browning or another convenient location, and should include, if possible, the Law and Order Committee members as well as the Colonel of the MHP.

2. The parties will provide each other copies of monthly reports of all citations, arrests, responses to requests for assistance, and other incidents as experienced by each parties' commissioned officers.

VI. TERRITORIAL LIMITATION

The authority conferred by this Agreement and the processes outlined herein shall be exercised only within the exterior boundaries of the Blackfeet Reservation. A commissioned law enforcement officer may proceed in hot pursuit of an alleged offender across the exterior boundaries of the Reservation and has such authority to arrest and hold in custody an alleged offender, as the officer would have had if the

alleged offender had been apprehended at the location where the alleged offense was committed. Further, this Agreement is not intended to impair or restrict the ability of any commissioned law enforcement officer to respond to mutual aid requests from other jurisdictions in accordance with Montana law.

VII. STATUS OF COMMISSIONED LAW ENFORCEMENT OFFICERS

1. Identification

The Tribe shall issue identification cards, and may issue insignia to officers commissioned pursuant to this Agreement. All commissioned officers must wear their insignia, if issued, and carry the identification cards with them at all times while acting under the authority of the Tribe. The identification cards must bear signatures or other insignia to identify that the MHP officer is commissioned to act on behalf of the Tribe enforcing tribal traffic codes. Commissioned officers must display these identification cards to individuals upon request. The identification cards must include the following: name and recent photograph of the holder of the commission; the date of birth; height; weight; eye and hair color; and social security number. The holder of the commission and the authorized representative(s) of the Tribe must sign all identification cards.

2. Chain of Command, Employment Relationship, Compensation and Expenses.

A. This Agreement does not affect the internal chains of command of the parties. No independent contractor relationship or employment relationship is formed as a result of this Agreement between the commissioned officers and the Tribe. However, to the extent provided by federal law, all such commissioned officers shall be treated as federal employees, in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671-80, and to

the extent applicable, the Indian Self Determination and Education Assistance Act, 25 U.S.C. §§ 450-350n, when performing duties under their commissions.

B. The MHP shall remain responsible for the compensation and ordinary expenses of its officers while the officers are performing functions as commissioned officers of the Tribe. Commissioned officers remain employees of MHP and are subject to all rights, responsibilities and standard chain of command as employees of MHP, Department of Justice, State of Montana.

3. Liability, Insurance and Indemnification

A. The parties agree that, to the extent provided by federal law, all commissioned officers shall be treated as federal employees, in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 1671-80, and other applicable federal laws, when performing duties under their commissions. The MHP assumes no liability and will not defend or indemnify for claims arising from the actions of the Tribe or any Tribal officer as a result of an arrest or incarceration authorized by a commissioned officer pursuant to this Agreement. Each party shall remain solely responsible for the ordinary expense of its employees and its property, including insurance, throughout the term of this Agreement.

B. The MHP's, its officers, employees, and agents tort liability in State Court is governed by Montana Constitution and statute, Mont. Code Ann. § 2-2-101 et seq. The MHP, its officers, employees, and agents are immune from suit in Federal and Tribal Court.

C. The Blackfeet Tribe is immune from suit in Tribal, State, and Federal Court.

D. To the extent this Agreement does not apply, that is for mutual aid requests among any future participating local jurisdictions and MHP, requests for mutual aid shall be governed by Mont. Code Ann., title 44, chapter 11, parts 1 to 3.

VIII. SUSPENSION OR TERMINATION OF COMMISSION

1. Automatic Suspension ~~or~~ Termination of Commission

A. The parties to this Agreement shall promptly notify the appropriate party, MBCC, and the BIA District Five Commander (if applicable) if any of its officers serving as a commissioned officer is suspended, terminated, or resigns from official duties.

B. All suspended, terminated or resigned officers shall automatically and immediately be relieved, without further action, of their official capacity to exercise commissioned authority under this Agreement.

C. Should any person be subsequently reinstated to the official duties in the jurisdiction from which the person was suspended, terminated or had resigned, such person shall not be automatically reinstated as a commissioned officer under this Agreement. Instead, such person must seek a new commission under the procedures and standards set forth in Section IV of this Agreement.

2. Conditions, Suspensions and Terminations

A. The Tribe has the authority with good cause to revoke, suspend or place conditions on any commission issued under this Agreement. The Tribe through its Commissioning Agency may temporarily suspend or place conditions on the commission of any officer; provided, however, that thirty (30) days prior to any final revocation of a commission, the Tribe shall provide written notice of the revocation, and

the specific reasons therefore, to the commissioned officer and to MHP. The commissioned officer and/or MHP shall have a reasonable opportunity to respond to the notice of revocation or condition. However, the decision of the Tribe shall be final. A commissioned officer whose commission is revoked or suspended must immediately return his or her identification card to the Tribe.

B. All commissioned officers must fully comply with the enforcement policies and regulations of the Tribe when exercising authority under their commissions. Failure to comply with this requirement shall be grounds for suspension or revocation of the officer's commission.

C. All suspensions, terminations or special conditions placed on commissioners shall be filed with the MBCC and the Tribe's Security Department for record keeping purposes.

IX. AMENDMENT

This Agreement may not be altered, changed, or amended, except by written instrument executed by the parties and attached hereto, except that additional state political subdivisions, or the BIA may withdraw or be added as a party hereto without affecting the underlying agreement of the remaining parties. Should any party hereto terminate its participation, it shall do so by notice as provided herein. Should any state political subdivision become authorized to participate herein under all the same terms and conditions as the other parties, it may bind itself to this Agreement by sending notice of such authorization, and names and addresses of liaisons and an effective date therefore, to the undersigned parties at the addresses below.

X. EFFECTIVE DATE AND TERM

A. This Agreement shall become effective upon execution by the parties. Each officer must be commissioned by compliance with Article VI and issuance of the identification card or other insignia by the commissioning agency. Unless otherwise provided, the term of each commission shall continue from year to year.

B. Unless terminated as provided herein, this Agreement shall continue from year to year. Any party shall have the right, however, to terminate this Agreement and all commissioners issued hereunder, with or without cause, upon thirty (30) days notice to the other parties.

C. Upon execution by the parties, the State shall file this Agreement with the appropriate officials in accordance with the Montana State/Tribal Cooperative Agreements Act.

XI. LIAISONS

All parties agree timely to notify the others of the successors to the individuals listed as liaisons herein, and to replace the following names in accordance with such notification:

1. Notices sent to the State shall be sent to:

Sgt. Henry Devereaux
Montana Highway Patrol
Great Falls, MT 59403

Mike McGrath
Attorney General
State of Montana
P. O. Box 201401
Helena, MT 59620-1401

Col. Paul Grimstad
Chief, Montana Highway Patrol
P. O. Box 201419
Helena, MT 59620-1419

Alan Horsfall, POST Council
Crime Control Division
State of Montana
P. O. Box 201408
Helena, MT 59620-1408

Cooperative Agreement between
Blackfeet Tribe and State of Montana
Montana Highway Patrol

2. Communications to the Tribe shall be sent to:

William Allen Talks About, Chairman
Blackfeet Tribal Business Council
P. O. Box 850
Browning, MT 59417-0850

Chairman
Blackfeet Law and Order Committee
P. O. Box 850
Browning, MT 59417-0850

COPY

3. Communications to the BIA shall be sent to:

David Spotted Eagle, Chief of Police
BIA Blackfeet Agency
P. O. Box 850
Browning, MT 59417-0850

Matthew Pryor
District 5 BIA Law Enforcement Commander
Federal Building
316 North 26th Street
Billings, MT 59101

The parties evidence their agreement hereto by affixing their signatures below.

STATE OF MONTANA



MIKE MCGRATH
ATTORNEY GENERAL FOR THE
MONTANA HIGHWAY PATROL

Date: 9/10/04

ATTEST:

THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION


FRED GUARDIPEE
Secretary
WILLIAM "ALLEN" TALKS ABOUT
Chairman

Date: September 10, 2004 Date: 9/10/04

U. S. DEPARTMENT OF THE
INTERIOR

BY: Cliff Hall Acting
Title: Blackfeet Agency- Superintendent
Date: 9-16-04

Training Appendices