

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE
23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND BUDGET AND FINANCE COMMITTEES; APPROVING LAW ENFORCEMENT AGREEMENT BETWEEN THE NAVAJO NATION AND NAVAJO COUNTY SHERIFF

BE IT ENACTED:

SECTION ONE. AUTHORITIES

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600 (A). The committee oversees all law enforcement matters within the Navajo Nation, among other duties and responsibilities. 2 N.N.C. § 600(C). More particularly, the committee has legislative oversight authority over several entities and programs of the Navajo Nation, including the Navajo Police Department within the Division of Public Safety. 2 N.N.C. § 601(C)(1).
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. The committee, among other duties and responsibilities, "review[s] and continually monitor[s] ... programs and activities of federal and state departments and ... assist[s] development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments." 2 N.N.C. § 701(A)(7).
- C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council. 2. N.N.C. § 300. The committee, among other duties and responsibilities, "authorize[s], review[s], approve[s] and accept[s] agreements, including contracts and grants, between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement, or upon recommendation of the Chapter." 2 N.N.C. § 301(B)(15).

SECTION TWO. FINDINGS

- A. The Navajo Nation covers over 27,000 square miles.
- B. With enforcing laws and protecting the general public, the Navajo Nation currently lacks sufficient police officers. The Navajo County Sheriff has offered assistance with law enforcement.
- C. It is in the best interests for the residents of the Navajo Nation that the Navajo Nation enters a law enforcement/cross commission agreement with the Navajo County Sheriff.

**SECTION THREE. APPROVING CROSS COMMISSION AGREEMENT WITH THE
NAVAJO COUNTY SHERIFF**

The Navajo Nation hereby approves the attached cross commission agreement, marked as Exhibit "A" between the Navajo Nation and Navajo County Sheriff's Office.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 13 in Favor, and 00 Opposed, on this 29th day of November 2018.

A handwritten signature in black ink, appearing to read "LoRenzo C. Bates", with a stylized flourish at the end.

LoRenzo C. Bates, Chairman
Naabik'íyáti' Committee

Motioned: Honorable Alton Joe Shepherd
Second : Honorable Leonard H. Pete

Chairman LoRenzo C. Bates not voting

**LAW ENFORCEMENT AGREEMENT BETWEEN
THE NAVAJO NATION AND THE NAVAJO COUNTY SHERIFF'S OFFICE**

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 Navajo County Sheriff's Office (hereinafter "COUNTY"). The Navajo Nation and Navajo County Sheriff's Office 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 Navajo County, 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. COUNTY 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**

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

9 10 **Section V. Territorial Application**

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

16 17 **Section VI. Scope of Powers**

18 A. Pursuant to this AGREEMENT, the NATION hereby grants COUNTY deputies
19 those powers necessary to enforce the criminal and traffic laws of the Navajo Nation,
20 including the powers to conduct searches or make arrests for any violations thereof to
21 the full extent as allowed by applicable law, hereinafter referred to as "mutual aid law
22 enforcement certification."

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

1
2 **Section VII. Application for Certification**

3 A. The Navajo County Sheriff, or his or her designee, shall complete and submit the
4 NATION's Peace Officer Commission Card form (Exhibit 1) for each COUNTY deputy
5 who is qualified for a mutual aid law enforcement certification. A COUNTY deputy is
6 qualified if he or she completes the required training pursuant to Subsection B,
7 satisfactorily meets all requirements on the Peace Officer Commission Card form, and the
8 Navajo County Sheriff, or his or her designee, submits a statement of qualifications that
9 includes certification of a satisfactory background check conducted within the last five
10 years of the date of the application and copies of a currently valid State of Arizona driver's
11 license and a valid Navajo County law enforcement certification card for each applicant.

12 B. COUNTY deputies shall complete a 16-hour training course at the NATION's police
13 academy, or at such other location agreed upon by the Parties, prior to receiving a mutual aid
14 law enforcement certification by the NATION.

15 C. The NATION shall, without undue delay, certify each applicant upon determining that
16 the applicant is qualified for mutual aid law enforcement certification. No applicant shall be
17 denied a mutual aid law enforcement certification on the basis of race, creed, sex, or color.

18 D. A COUNTY deputy shall remain commissioned under this AGREEMENT unless and
19 until he or she resigns his or her employment as a COUNTY deputy. The COUNTY
20 shall timely notify the NATION of such resignation, and the COUNTY shall return the
21 COUNTY deputy's Navajo mutual law enforcement certification card within ten (10)
22 calendar days of the date of resignation to the official and address shown in Section XXI.

23 E. The COUNTY agrees to timely notify the NATION if a COUNTY deputy who holds
24 a Navajo mutual aid law enforcement certification under this AGREEMENT is being
25 considered for termination from COUNTY employment or has been charged with or
26 convicted of a felony or misdemeanor.

27 F. The NATION may, at any time, suspend or revoke any mutual aid law
28 enforcement certification issued pursuant to this AGREEMENT for reasons solely within
29 the NATION's discretion. The NATION shall notify, in writing, the official and address
30 shown in Section XXI of the suspension or revocation of any certified COUNTY deputy.

1 The COUNTY shall return the officer's Navajo mutual law enforcement certification card
2 within ten (10) calendar days of the date of the suspension or revocation to the official
3 and address shown in Section XXI.
4

5 **Section VIII. Arrest and Custody Procedures**

6 A. Indian suspects arrested within the NATION's territorial jurisdiction by any certified
7 COUNTY deputy pursuant to this AGREEMENT shall be immediately taken to the
8 appropriate and nearest NATION detention facility for booking.

9 B. Non-Indian suspects arrested by NATION officers pursuant to this AGREEMENT shall
10 be taken to the appropriate COUNTY detention facility for booking.

11 C. A NATION officer who arrests any non-Indian shall inform the arrestee of his or her
12 rights as required by federal law.

13 D. A certified COUNTY deputy who arrests any Indian within the NATION's territorial
14 jurisdiction under any provision of the NATION's criminal laws shall inform the arrestee of
15 his or her rights relating to criminal law under the Navajo Bill of Rights.

16 E. A certified COUNTY deputy who, only if authorized by the Bureau of Indian Affairs
17 ("BIA") to enforce federal law, arrests any Indian within the NATION's territorial
18 jurisdiction for any offense under 18 U.S.C. § 1152 or 1153, or any other applicable
19 federal criminal law, shall inform the arrestee of his or her rights as required by federal
20 law. If the certified COUNTY deputy is not federally commissioned by the BIA, he or she
21 shall hold the suspect until a federally commissioned NATION officer or other federally
22 commissioned officer may inform the suspect of his or her rights as required by federal law.

23 F. In the event an arrest is made, or could be made, under 18 U.S.C. § 1152 or 1153 or for
24 any federal felony within the NATION's territorial jurisdiction:

- 25 1. by a federally commissioned NATION officer, that officer shall immediately
26 notify a NATION Criminal Investigator or FBI Agent who will then proceed with the
27 case; or
- 28 2. by a certified COUNTY deputy only if federally commissioned, he or she shall
29 immediately notify a NATION Criminal Investigator or FBI Agent who will then
30 proceed with the case.

1 G. A certified COUNTY deputy who arrests any Indian within the NATION's
2 territorial jurisdiction shall notify the NATION's police dispatcher, via police radio, of the
3 arrest, obtain a report number, prepare and submit a complete and accurate NATION
4 arrest/booking report, submit the arrest report to the proper NATION police district
5 immediately for processing, forward said information and documents to the proper
6 NATION Prosecutor's Office, and shall honor any Navajo district court subpoena and
7 summons relating to the arrest.

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

14 15 **Section IX. Investigations**

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

19 20 **Section X. Forfeitures**

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

1 **Section XI. Crime Statistics**

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

5
6 **Section XII. Extradition**

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

11
12 **Section XIII. Citations for Traffic Offenses**

13 A. A certified COUNTY deputy who effects a stop for a traffic offense within
14 the NATION's territorial jurisdiction on any Indian may issue a written warning or issue a
15 citation into the appropriate Navajo district court or effect an arrest where permitted by
16 Navajo law.

17 B. A NATION officer who effects a stop for a traffic offense within Navajo County, State
18 of Arizona, but outside the NATION's territorial jurisdiction on any non-Indian may issue a
19 verbal or written warning or issue a State of Arizona traffic citation or effect an arrest
20 where permitted by Arizona law.

21
22 **Section XIV. Supervision and Control of NATION Officers and COUNTY Deputies**

23 NATION officers remain under the ultimate supervision and control of the NATION,
24 but shall take direction from the ranking COUNTY deputy when NATION officers are
25 exercising authority granted pursuant to this AGREEMENT in assistance of COUNTY
26 deputies outside the NATION's territorial jurisdiction. Certified COUNTY deputies shall
27 remain under the ultimate supervision and control of the COUNTY, but shall take
28 direction from the ranking NATION officer when exercising authority granted pursuant to
29 this AGREEMENT in assistance of NATION officers.

1 **Section XV. Compensation and Benefits of NATION Officers and COUNTY Deputies**

2 All NATION officers remain employees of the NATION. The NATION shall remain
3 liable for NATION officers' salaries, workers' compensation, and civil liabilities. Each
4 NATION officer shall be deemed to be performing regular duties for the NATION while
5 performing public safety services pursuant to this AGREEMENT. All certified COUNTY
6 deputies remain employees of the COUNTY. The COUNTY shall remain liable for all
7 certified COUNTY deputies' salaries, workers' compensation, and civil liabilities. Each
8 certified COUNTY deputy shall be deemed to be performing regular duties for the COUNTY
9 while performing public safety services pursuant to this AGREEMENT.

10
11 **Section XVI. Dispute Resolution**

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

17
18 **Section XVII. Indemnification**

19 The NATION shall be liable for all acts or failure to act of its Officers acting within the
20 scope of the NATION's employment. The COUNTY shall be liable for any and all acts or
21 failure to act of certified COUNTY deputies acting within the scope of the COUNTY's
22 employment.

23
24 **Section XVIII. Duration, Modification and Termination of Agreement**

25 This AGREEMENT is in effect from the date of signing unless modified or
26 terminated as described below. This AGREEMENT shall be effective until terminated as
27 provided in this AGREEMENT. Any amendment to this AGREEMENT may be adopted
28 by an instrument in writing signed by all Parties to this AGREEMENT subject to approval
29 by the appropriate authorities. The NATION or the COUNTY may terminate this
30 agreement upon written notice of at least thirty (30) calendar days prior to the termination

1 date, by certified, return receipt, postal mail. Such written notice shall be forwarded to the
2 Sheriff of Navajo County and to the Chief of Police for the NATION. All parties are
3 hereby on notice that this contract is subject to cancellation for Conflicts of Interest
4 pursuant to A.R.S. § 38-511.

5
6 **Section XIX. Provisions Required in Contracts with Agencies of the State of Arizona**

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

10 A. The NATION shall retain all data and other records relating to the performance of
11 the AGREEMENT for a period of five years after the completion of the AGREEMENT. All
12 records shall be subject to inspection and audit by the COUNTY at reasonable times.
13 Upon request, the NATION shall produce a legible copy of any or all such records.

14 B. The Parties agree to comply with all applicable state and federal statutes and
15 regulations concerning anti-discrimination practices. This contract is governed by Arizona
16 Executive Order 2009-09.

17
18 **Section XX. Sovereign Immunity**

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

22
23 **Section XXI. Notices**

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

28
29 **NATION:** Chief of Police
30 Navajo Police Department
P.O. Box 3360

Window Rock, AZ 86515-3360

COUNTY: Navajo County Sheriff
Navajo County Sheriff's Office
P.O. Box 668
Holbrook, AZ 86025

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:

Russell Begaye, Navajo Nation President

Date

Jesse Delmar, Executive Director
Navajo Division of Public Safety

Date

STATE OF ARIZONA:

Navajo County Board of Supervisors

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Sheriff Kelly Clark, Navajo County

Date

Approved as to form:

Brad Carlyon, Navajo County Attorney

Date

NAVAJO NATION

RCS# 1120

11/29/2018

Naa'bik'iyati Committee

02:05:53 PM

Amd# to Amd#

Legislation No. 0348-18

PASSED

MOT Shepherd

Approving Law Enforcement

SEC Pete

Agreement between the Navajo
Nation and Navajo County Sheriff

Yea : 13

Nay : 0

Excused : 0

Not Voting : 11

Yea : 13

Begay, K
BeGaye, N
Bennett
Crotty

Hale
Jack
Kieyoomia

Perry
Pete
Shepherd

Slim
Yazzie
Yellowhair

Nay : 0

Excused : 0

Not Voting : 11

Bates
Begay, NM
Brown

Chee
Damon
Daniels

Filfred
Phelps
Smith

Tso
Tsosie