



Mashpee Wampanoag Tribe
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**TRIBAL COUNCIL RESOLUTION
2022-RES-023**

**AUTHORIZATION TO APPROVE MEMORANDUM OF
UNDERSTANDING WITH BARNSTABLE COUNTY SHERIFF
REGARDING DETENTION SERVICES**

WHEREAS, the Mashpee Wampanoag Tribe (“Tribe”), is a federally recognized Indian Tribe with duly-enacted Constitution and the governing body of the Tribe is known as the Mashpee Wampanoag Tribal Council (“Tribal Council”); and

WHEREAS, the Tribal Council, deems it essential under Article VI, § 2.A of the Mashpee Wampanoag Tribal Constitution (“Constitution”) to promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and members of the Tribe; and

WHEREAS, Pursuant to Article VI, § 2 of the Constitution, the Tribal Council is empowered to exercise certain powers, including the power to promote and protect the economic security and general welfare of the Tribe and its members, and the power to negotiate and enter into contracts with other governments and with private persons and corporate entities; and

WHEREAS, the Tribal Council desires the continuous availability of detention services to all persons, Native American and non-Native American that commit criminal offenses on Tribal Lands; and

WHEREAS, the Barnstable County Sheriff’s Department (“BSCO”) has and maintains a detention facility at the Barnstable County Correction Facility; and

WHEREAS, on July 3, 2018, the Tribal Council approved entering a Memorandum of Understanding (“MOU”) with the BCSO for detention services; and

WHEREAS, the Tribe continues to have a need for detention spaces for Tribal Detainees; and

WHEREAS, the Tribal Council finds that it will benefit the Tribe to enter into a new MOU memorializing the cooperative relationship between the Tribe and the BSCO; and

WHEREAS, the Tribal Council desires to express its authorization for the Tribal Council Chairman, or in his absence other Tribal Council Officer, to execute such MOU, and to take such other actions as are reasonable or necessary in furtherance of the execution or performance of such agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council hereby approves the Memorandum of Understanding attached hereto as Exhibit A with the BCSO to assist the Tribe with detention services.

BE IT FINALLY RESOLVED, that the Tribal Council hereby grants to the Tribal Chairman, or in his absence, other Tribal Council Officer, the requisite authority and power for an on behalf of the Tribe to execute the MOU and to take such other actions as are reasonable and necessary in furtherance of the execution or performance of the MOU.

All resolutions or parts of resolutions inconsistent with this resolution are repealed. This resolution is effective immediately and shall continue pursuant to the authority vested in the Tribal Council pursuant to Article VI, §§ 2.A. and D. of the Constitution.

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CERTIFICATION

We, the undersigned duly elected Chairman and Secretary of the Tribal Council do hereby certify that the above Resolution was duly adopted on April 13, 2022, by the Mashpee Wampanoag Tribal Council which is composed of 13 members, of whom 10 constituting a quorum, were present at a regular meeting duly called, noticed, convened, and held on April 13, 2022 , and that the foregoing Resolution was duly adopted by the affirmative vote of 7 members, with 2 opposing, and with 0 not voting and that said Resolution has not been rescinded or amended in any way.

Dated this 13th day of April, 2022.



Brian Weeden, Chairman
Mashpee Wampanoag Tribal Council

ATTEST:



Cassie Jackson, Secretary
Mashpee Wampanoag Tribal Council.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING



MEMORANDUM OF UNDERSTANDING

THIS IS A MEMORANDUM OF UNDERSTANDING (THE "MOU") BETWEEN THE MASHPEE WAMPANOAG TRIBE (HEREINAFTER, "TRIBE") AND THE BARNSTABLE COUNTY SHERIFF'S OFFICE, (HEREINAFTER "BCSO) FOR THE PROVISION OF DETENTION SERVICES.

The date this MOU is entered into is the 30th day of March, 2022. This MOU shall go into effect immediately. The Parties agree as follows:

1. FINDINGS:

- a. The Tribe intends to exercise the full extent of its civil and criminal jurisdiction over its Tribal Lands and its Tribal citizens and other members of federally-recognized Indian tribes in accordance with federal law.
- b. The Parties acknowledge that the applicability of federal and tribal criminal laws on Tribal Lands may depend on whether the subject or the victim is Native American, and that State criminal law has been held inapplicable to Native Americans in Indian Country.
- c. The Parties acknowledge that the State continues to hold criminal jurisdiction over non-Native Americans for crimes committed against non-Native Americans and victimless crimes on Tribal Lands. The Parties agree that nothing in this MOU shall make any law applicable to a certain person or certain conduct where it would not otherwise be applicable.
- d. The Tribe desires the continuous availability of detention services to all persons, Native American and non-Native American that commit criminal offenses on Tribal Lands.
- e. The BCSO has and maintains a detention facility at the Barnstable County Correctional Facility.
- f. The Mashpee Wampanoag Tribe has a need for detention spaces for "Safe Keeps" and Tribal Detainees, as defined herein, detained pursuant to the authority of the Mashpee Wampanoag Tribal Court.
- g. The Parties find that it will benefit both the BCSO and the Tribe to enter into an agreement to make available space in the Barnstable County Correctional Facility to

the Mashpee Wampanoag Tribe, for which space the Mashpee Wampanoag Tribe shall reimburse the BCSO as set forth below.

2. AUTHORITY:

- a. The Tribe is a federally recognized Indian tribe listed in the Federal Register. *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 26826-26832, 26829 (May 4, 2016). The Tribe is acting through its Tribal Council as authorized by the Constitution of the Mashpee Wampanoag Tribe, article VI, sections 2A and 2D.
- b. The Sheriff is the duly elected law enforcement official of Barnstable County.

3. PURPOSE: The purpose of this MOU is to memorialize the BCSO and Tribe's agreement for the provision of detention services by the Sheriff to the Tribe in the Barnstable County Correctional Facility.

4. DEFINITIONS:

- a. "Detention Facility" means Barnstable County Correctional Facility located in Barnstable County, Massachusetts.
- b. "BCSO" means the Barnstable County Sheriff's Office and its agencies, departments, and offices.
- c. "Q5 status" means the code used in LEAPS field of the CJIS Computer System to identify or report individuals who have attempted or threatened suicide while in law enforcement custody.
- d. "Safe Keep" means a person arrested on a warrant or placed into custody by the Tribal Police, or a person deputized to enforce Tribal Law, for violation of Tribal Law on Tribal land, prior to any court appearance.
- e. "State" means the Commonwealth of Massachusetts.
- f. "Tribal Court" means the Mashpee Wampanoag Tribal Court.
- g. "Tribal Detainees" means a duly enrolled member of a federally-recognized Indian tribe that is under the custody of the BCSO, detained pre-trial or by sentence pursuant to the authority of the Mashpee Wampanoag Tribal Court. Tribal Detainees shall not include duly enrolled members of a federally-recognized Indian tribe under the custody of the BCSO detained pursuant to the authority of a Federal or State court.
- h. "Tribal Police" means an individual listed in Exhibit A as may be added to from time-to time by the Mashpee Wampanoag Tribe.

- i. "Tribe" means the Mashpee Wampanoag Tribe and its agencies, departments, and offices.
5. DURATION: This MOU will remain in effect from the date of signing by both Parties until it is terminated by either Party. This MOU will be reviewed annually for effectiveness and compliance by both agencies. Either Party, at any time may request a review and/or modification of the MOU.
6. ORGANIZATION: No separate legal or administrative entity is to be created by this MOU.
7. NO BENEFIT TO NON-PARTIES: No person or entity is intended to be a third-party beneficiary of the provisions of this MOU for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this MOU.
8. PROPERTY: No real or personal property is to be acquired or held under this MOU. When personal property is loaned from one party.
9. DETENTION:
 - a. SAFE-KEEPING AND DETAINMENT TERMS AND CONDITIONS:
 - i. The BCSO will agree to hold "Safe Keeps" placed into custody by the Tribal Police or a person deputized to enforce Tribal Law. Tribal "Safe Keeps" will be held by the BCSO only so long as they would otherwise be held pursuant to Mass. R. Crim. P. 7(a)(1).
 - ii. The BCSO will accept all eligible Tribal Detainees delivered by Tribal Police to the Detention Facility for confinement and will hold them until such time as they are lawfully discharged from custody pursuant to Tribal law. Tribal Detainees or "Safe Keeps" who identify at any time as Q5 status and/or who are otherwise not mentally, physically or medically suitable for detainment at the Barnstable County Correctional Facility may not, in the BCSO's sole discretion, be accepted into the custody of the BCSO.
 - iii. The Detention Facility will not receive a Tribal Detainee into custody until Tribal Police having custody of the person provides the Detention Facility with an order issued by the Tribal Court.
 - iv. Tribal Police must remain in the immediate presence of the "Safe Keep" or Tribal Detainee until the BCSO deputy confirms that pre-booking is

complete, at which time the BCSO will come into custody of the "Safe Keep" or the Tribal Detainee.

- v. The BCSO will provide secure custody, safekeeping, housing, subsistence and care of "Safe Keeps" and Tribal Detainees in accordance with Federal, State and/or local laws, standards, regulations, and policies, or court orders applicable to the operations of the Detention Facility.
- vi. Parties agree that the BCSO shall, in its sole discretion, be responsible for operational decisions regarding the appropriate level of security, inmate care and management, and housing of all inmates, unless this MOU expressly provides otherwise. The BCSO expressly reserves the right to determine, at any time, in its sole discretion, that it can no longer continue to hold a "Safe Keep" or Tribal Detainee. This decision shall not be subject to review, legal challenge, or to the dispute resolution provisions of Paragraph 23. The Tribe agrees to take custody of the "Safe Keep" or Tribal Detainee within 24 hours of notice that the "Safe Keep" or Tribal Detainee can no longer be housed at the Detention Facility.
- vii. "Safe Keeps" and Tribal Detainees will be afforded the same programs and care provided to non-Tribal Detainees, unless otherwise provided in this MOU.
- viii. A Tribal Detainee serving a sentence or commitment will not be held beyond his/her sentence commitment expiration date and time.
- ix. The Parties agree that the BCSO's exercise of its rights and responsibilities to make operational decisions, including but not limited to medical care, religious practices, the appropriate level of security, inmate care and management, and housing of all "Safe Keeps" and Tribal Detainees shall not be subject to the dispute resolution provisions set forth in Paragraph 23.
- x. The Tribe agrees to indemnify and hold harmless the BCSO, and its agents, employees, and assigns, and the Commonwealth of Massachusetts, for any and all claims by "Safe Keeps" or Tribal Detainees, or their representatives, heirs, or assigns, whether criminal or civil, arising out of or relating to the "Safe Keeps" or Tribal Detainee's detention by the BCSO under this agreement.

b. MEDICAL:

- i. "Safe Keeps" and Tribal Detainees will be afforded the full range of routine medical care **inside** the Detention Facility including all medical, preventive dental, and mental health care as well as the cost of medical supplies, over the counter medications and any prescription medication

routinely stocked by the Detention Facility. If a "Safe Keep" or Tribal Detainee is in need of medical care for non-routine and/or chronic medical conditions, the Sheriff agrees to notify Tribal Police of such needs and afford the Tribe the opportunity to arrange for the treatment and/or transportation for treatment or to otherwise advise Sheriff of the action to be taken. The Tribe is financially responsible for the cost of the treatment and care provided by the Detention Facility to "Safe Keeps" and Tribal Detainees for all non-routine and/or chronic medical conditions. Non-routine and/or chronic medical conditions are determined by the Sheriff in his sole discretion and may include, but are not limited to, Dialysis, HIV, and Hepatitis C as well as the cost of dentures, hearing aids, physical, occupational, and/or respiratory therapy services, including CPAP or BiPAP machines.

- ii. In cases of emergency, where it is not feasible or practicable to notify Tribal Police, Sheriff may obtain such care for "Safe Keeps" and Tribal Detainees at any facility as the emergency needs dictate.
- iii. The Tribe is financially responsible for all medical care provided **outside** the detention facility and shall be billed directly by the medical provider. In the event the BCSO incurs any outside medical costs, the Tribe agrees to reimburse the BCSO in a timely manner not to exceed thirty (30) days from the date of billing.
- iv. In the event that a "Safe Keep" or Tribal Detainee is hospitalized, the BCSO will immediately contact Tribal Police. Tribal Police will be responsible for providing custodial security in the hospital if custodial security is required.

c. TRANSPORTATION:

- i. Tribal Police shall provide or arrange transportation for "Safe Keeps" and Tribal Detainees upon release from custody for any reason unless an emergency dictates otherwise.
- ii. When possible, the BCSO agrees to provide Tribal Police with twenty-four (24) hours of notification prior to releasing a "Safe Keep" or Tribal Detainee from custody for any reason.

d. RELIGIOUS PRACTICES

- i. Tribe agrees to consult with and provide training to the BCSO to assist the BCSO with ensuring, to the extent possible, consistent with the BCSO Policies and Procedures, that "Safe Keeps" and Tribal Detainees are able to properly observe their Native American religious practices.

e. FEES AND BILLING:

- i. The per-diem rate for detention/custody shall be the same as the Federal Government rate currently fixed at \$90 per "Safe Keep" or Tribal Detainee which shall include the day of arrival, but not the day of departure.
- ii. The BCSO shall bill the Tribe for detention costs on a monthly basis. Tribe shall pay all billings in a timely manner, not to exceed thirty (30) days from the date of billing.

10. NON-DETENTION SERVICES: This MOU shall not apply to non-detention services such as court and probation services.

11. PAYMENT OF COSTS: Unless otherwise indicated, each Party shall within its lawful methods of financing, establish and provide for payment of the costs and expenses of performance of its own obligations undertaken pursuant to this MOU and no taxable event shall arise from this MOU. Each Party will pay its own employees' overtime and expenses associated with fulfilling the obligations under this MOU.

12. TERMINATION: This MOU may be terminated by either Party at any time by personally delivering notice or sending by certified or registered mail. Termination shall take effect immediately upon receipt of such notice.

13. NOTICES: Written notices required or permitted under this MOU are sufficient if they are sent by registered or certified mail or by other means mutually acceptable to the Parties.

In the case of the Tribe, notices must be sent to:

Brian Weeden, Chairman
Mashpee Wampanoag Tribal Council
Mashpee Wampanoag Tribe
483 Great Neck Road, South
Mashpee, MA 02649

In the case of the Sheriff, notices must be sent to:

James M. Cummings, Sheriff
Barnstable County Sheriff's Office
6000 Sheriff's Place
Bourne, MA 02532

14. SOVEREIGN IMMUNITY: Nothing in this MOU shall be construed as a waiver of either Party's sovereign immunity under either Federal, Tribal, or Massachusetts Law, and is not intended to impair, limit, or affect the status of any Party. It is the intent of the Parties, and by execution of this MOU the Parties hereby agree, that there shall not be any right of action for either Party to sue the other with respect to the exercise of any duties, rights or responsibilities authorized under the terms of this MOU.
15. AMENDMENTS: This MOU may only be amended by a writing signed by the duly authorized representatives of each Party.
16. COUNTERPARTS: This MOU may be executed in several counterparts, each of which is an original, but all of which together constitute a single instrument.
17. ENTIRE AGREEMENT: This MOU constitutes the entire agreement between the Parties on these issues.
18. SAVINGS CLAUSES:
- a. Under no circumstance shall any officer, agent, or employee of the BCSO be subject to tribal court jurisdiction by virtue of entering into this MOU or by performing or failing to perform any duty and/or obligation set forth in this MOU. Nothing in this MOU shall be construed to subject the BCSO or any Deputies or agents thereof to the jurisdiction of the Tribe or to tribal law.
 - b. Under no circumstance shall any officer, agent, or employee of the Tribe be subject to State court jurisdiction by virtue of entering into this MOU or by performing or failing to perform any duty and/or obligation set forth in this MOU. Nothing in this MOU shall be construed to subject the Tribe or any officers or agents thereof to the jurisdiction of the State or to State law.
 - c. The provisions of this MOU are severable and should any provision be held invalid or unenforceable, the remainder of this MOU remains in effect unless terminated as provided in this MOU. If any provision of this MOU is severed from the MOU then the Parties must promptly meet and negotiate in good faith to achieve the intended purpose of the severed provision in a manner that is valid and enforceable under applicable law.
19. AUTHORITY: The undersigned represent that they are authorized to execute this MOU on behalf of the Tribe and the BCSO, respectively.
20. APPLICABLE LAW: Interpretation of any disputed provision of this MOU, or related to any alleged act or omission of the BCSO or Tribe or officer or representative thereof, shall be interpreted consistent with the laws of Massachusetts and the United States.

21. WAIVERS: Parties agree that failure of either Party to insist upon compliance with any provision of this MOU at any time shall not waive performance of such provision at any other time. No waiver by either Party of any default or breach hereunder by the other shall constitute a waiver of any subsequent default or breach.
22. BEST EFFORTS: The Parties agree that they shall devote their best efforts to the fulfillment of their respective duties and obligations hereunder in accordance with the provisions of this MOU.
23. NON-BINDING DISPUTE RESOLUTION: The Parties recognize that there may be areas about which they cannot easily agree during the course of implementation of this MOU. In order to address this possibility, the Parties agree to employ, when necessary, the services of a neutral party and to engage in good faith negotiations with such a mediator to resolve such differences promptly and effectively. The Parties agree to first look to neutral mediators who may be available at no cost. Should costs be incurred for a mediator, the parties agree to share equally such costs.

[Signatures on following page]

EXECUTED as a sealed instrument on the date first mentioned above.

Barnstable County Sheriff's Office

Mashpee Wampanoag Tribe

By: _____
James M. Cummings, Sheriff

By: 
Brian Weeden, Chairman