

MEMORANDUM OF AGREEMENT BETWEEN CHEROKEE NATION AND DELAWARE TRIBE

This Memorandum of Agreement (MOA), entered by and between the Cherokee Nation (hereinafter Nation) and the Delaware Tribe of Indians (hereinafter Tribe), is hereby executed for the purpose of addressing generally the intergovernmental relationship between the Nation and the Tribe (together Parties), and specifically the provisions for jurisdiction and other governmental authorities between the Parties, and the operation of certain federal or State programs and services. This MOA is entered into in conjunction with the ongoing efforts of the Parties to secure the independent federal recognition of the Tribe in a manner acceptable to both Parties.

I. PURPOSE AND DEFINITIONS

a. PURPOSE OF MOA

The purpose of this MOA is to set forth the working intergovernmental relationship between the Nation and the Tribe and to document agreements for application for or operation of State and federal programs and services pursuant to this MOA. The Parties contemplate that the Tribe will secure independent federal recognition as a separate, sovereign Indian tribe, either through an Act of Congress or through administrative action by the United States Department of the Interior. The Tribe's headquarters currently are located within the Cherokee Nation Jurisdictional Boundary, however, and the Nation's support for restoration of the Tribe's separate federally recognized status has been conditioned on the Nation's ability to protect its sovereign jurisdictional interests within that boundary. Accordingly, this MOA gives the Nation control over certain matters within the Cherokee Nation Jurisdictional Boundary, including the authority to approve or decline the Tribe's operation of certain government-funded programs. It is the intent of the Nation and the Tribe to foster a working relationship that will allow the Tribe to exist and thrive within the intergovernmental structure set forth in this MOA and to promote tribal sovereignty and self-sufficiency. It is also the intent of the Parties to maximize federal and State funding to the Parties, and the Nation will give strong consideration to any program proposal by the Tribe that would increase net funding and that is not inimical to the Nation's interests. It is the commitment of the Parties to honor this MOA, including any amendments thereto. This includes the commitment, included expressly below, to not subvert the delicate balance reflected herein but rather to pursue a duly approved amendment to this MOA to address changing circumstances through good faith negotiations.

b. DEFINITIONS.—In this MOA:

1. 1867 AGREEMENT.—The term "1867 Agreement" means the agreement entered into by and between the Tribe and the Nation on April 8, 1867,

and approved by the President on April 11, 1867, pursuant to Article XV of the Treaty.

2. CHEROKEE NATION JURISDICTIONAL BOUNDARY.—The term "Cherokee Nation Jurisdictional Boundary" means the boundary surrounding lands within the Indian Territory that were ceded by the United States to the Nation pursuant to the Treaties of May 6, 1828, February 14, 1833, and December 29, 1835, 7 Stat. 478, the Indian Removal Act of 1830, 4 Stat. 411, and the fee patent executed by President Martin Van Buren on December 31, 1838, diminished only by sales under the Acts of February 28, 1877, 19 Stat. 265, June 2, 1886, 24 Stat. 121, March 3, 1893, ch. 209, 27 Stat. 612, 645, and Proclamation No. 5, 20 Stat. 1222 (1893), including any interpretation of that boundary under federal law or by courts of competent jurisdiction, and shall also include those specific parcels of Indian lands of the Nation outside that boundary wherever or whenever acquired.

3. INDIAN COUNTRY.—The term "Indian Country" has the meaning given the term in section 1151 of title 18, United States Code.
4. RESTRICTED LAND.—The term "restricted land" means any land, the title to which is held in the name of an Indian individual or Indian tribe subject to a restriction by the United States against alienation.
5. STATE PROGRAMS AND SERVICES.—The term "State programs or services" means those Oklahoma State government programs which are funded through a majority of federal funds to be passed through via subcontract or subgrant to State or federally recognized Indian tribes or members of federally recognized Indian tribes.
6. TREATY.—The term "Treaty" means the Treaty with the Cherokee Indians entered into by the United States and the Cherokee Nation on August 11, 1866 (14 Stat. 799).
7. TRUST LAND.—The term "trust land" means land the title to which is held by the United States in trust for the benefit of an Indian tribe or Indian individual.

II. DISPUTE RESOLUTION AND ENFORCEMENT OF THIS AGREEMENT.

- a. To preserve the balance sought by the Parties and that resulted in mutual support of the Tribe's independent and separate federal recognition, the ability to enforce this MOA is of the highest priority to both the Nation and the Tribe. The goal of the Parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this MOA first shall give written notice to the other Party. The notice shall identify

the specific MOA provision alleged to have been violated or in dispute and shall specify in detail the asserting Party's contention, any factual basis for the claim, and other information that it believes would aid in resolution. Representatives of the Nation and Tribe shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute. If a party refuses to meet within 30 days, either party may proceed to litigation or arbitration under section (b).

b. ENFORCEABILITY BETWEEN THE PARTIES.

1. Any and all disputes arising out of the interpretation, performance, or enforcement of this MOA that are not resolved through good faith negotiations within thirty (30) days of the first meeting under section (a) of this Part II may be brought in the U.S. District Court—Northern District of Oklahoma, which shall have sole and exclusive judicial jurisdiction over any and all such disputes.
2. The Parties hereto mutually waive any claim of sovereign immunity each might have to the extent, and only to the extent, necessary for a determination of rights under this MOA by the U.S. District Court—Northern District of Oklahoma and the enforcement of that determination upon its becoming a final, non-appealable judgment. No other waiver of sovereign immunity is intended or implied. Each Party also agrees that it will not interpose as a defense or otherwise any failure to exhaust tribal remedies by the other Party in any action filed under this Part.
3. If the U.S. District Court—Northern District of Oklahoma determines that it does not have jurisdiction over the subject matter of a dispute arising under this MOA or if the Parties agree in writing to pursue arbitration first, the Parties agree to submit to arbitration, which may become binding, as follows:
 - A. Either Party may refer a dispute arising under this MOA to arbitration under the rules of the American Arbitration Association (AAA), subject to enforcement or pursuant to review as provided by paragraph (C) of this subsection by the U.S. District Court—Northern District. The remedies available through arbitration are limited to interpretation and enforcement of the provisions of this MOA. The Parties consent to the jurisdiction of such arbitration forum and court for such limited purposes and no other, and each waives sovereign immunity with respect thereto. One arbitrator shall be chosen by each of the Parties from a list of qualified arbitrators to be provided by the AAA. The two arbitrators chosen by each of the Parties shall choose the third arbitrator. The expenses of arbitration shall be borne equally by the Parties;

- B. A Party asserting noncompliance or seeking an interpretation of this MOA under this section shall be deemed to have certified that to the best of the Party's knowledge, information, and belief, formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this MOA is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute; and
- C. Notwithstanding any provision of law, either Party to the MOA may bring an action against the other in the US District Court—Northern District of Oklahoma following a final arbitration decision.
- i. If filed within 30 days of the final arbitration decision, either Party may seek de novo review by the district court of any arbitration decision under paragraph (A) of this subsection. If no de novo review is sought within said 30 days, the arbitration decision shall become binding.
 - ii. At any time after a final arbitration decision, either Party may bring an action in that district court to enforce the arbitration decision.

The decision of the court shall be subject to appeal by either Party. Each of the Parties, and their respective officers, hereto waives sovereign immunity and consents to suit therein for the limited purposes defined in this subsection, and agrees not to raise such immunity as a defense. Notwithstanding the rules of the AAA or any provision of law, each Party's waiver of sovereign immunity does not extend to any dispute resolution forum other than the two specified above: arbitration and the U.S. District Court—Northern District of Oklahoma. If the district court concludes it lacks jurisdiction over the subject matter of an action filed under this paragraph, the arbitration decision shall be binding. If the district court concludes that it lacks subject matter jurisdiction to reach the merits of the dispute but does have subject matter jurisdiction to enforce the arbitration decision, an action may proceed solely to enforce such a final decision by the arbitrators.

- D. If the dispute is found to have been initiated in violation of this subsection, the Arbitrators/Tribunal, upon request or upon their own initiative, may impose upon the violating Party an appropriate sanction, which shall be strictly limited to an award to the other Party of its reasonable expenses and attorney fees.

4. The waivers of sovereign immunity are expressly limited to actions by the Nation against the Tribe, or the Tribe against the Nation. The waiver does not apply to an action by any other person or entity against either or both of the Parties.
5. Nothing in this MOA shall be construed to be a consent by either the Nation or the Tribe to suits for money damages; the waivers of immunity herein shall be solely for prospective injunctive relief, prospective declaratory relief, or indemnification as expressly allowed herein.
6. CHOICE OF LAW. Contract questions are to be resolved under federal common law if available and under Oklahoma State law if not. Federal law shall apply to all other substantive disputes unless the dispute involves the application of the law of the Nation, the Tribe, or both under the express terms of this MOA.

c. ENFORCEABILITY OF PROVISIONS RELATING TO UNITED STATES.

Purpose. A number of the provisions in the MOA are intended to affect the actions of the United States and its agencies with respect to the rights and authorities of the Parties. The MOA also allocates how certain federal funds are to be distributed to the Parties. It is the intent of the Parties that the terms of this MOA be honored by the United States. The following provisions are intended to address mechanisms to ensure that the Parties' intent is carried out.

1. It is the preference of the Parties that enforcement of this MOA, including specifically a requirement that the United States honor its provisions, be addressed in legislation enacted by the United States Congress. The Parties agree to use their best efforts to have mutually agreeable legislation enacted for that purpose.
2. The Tribe also agrees that any resolution or other communication it may convey to the Department of the Interior seeking reorganization under the Act of June 26, 1936 (25 U.S.C. 501 et seq.) (commonly known as the "Oklahoma Indian Welfare Act" or "OIWA") will include language specifying that its reorganization would be subject to this MOA. It is the informal opinion of the Solicitors' Office that such a request, and any reorganization subsequently accomplished, would allow and require the federal government to recognize lawful provisions of this MOA.
3. To insure that the Secretary's approval of any request by the Tribe to proceed to a Secretarial election to reorganize under the OIWA expressly acknowledges that such a reorganization is subject to the terms of this MOA or otherwise acceptable to the Nation, the Tribe will provide to the Secretary of State of the Nation a copy of the approval from the Secretary upon receipt by the Tribe. The Nation shall have fourteen calendar days

after receipt to provide to the Tribe a written objection to the Secretary's approval if it deems that the approval is not consistent with this MOA and the underlying agreement between the Parties that any restoration of independent federal recognition to the Tribe will not adversely affect the Nation without its consent. If the Nation objects, the Parties will attempt in good faith to resolve the objection with the Department of the Interior. If the Parties are unable to resolve the Nation's objection to the Nation's written satisfaction, the Tribe agrees: (1) to request a delay in the Secretarial election, (2) to completely withdraw the Tribe's request to reorganize under the OIWA, or (3) to take such other action as the Parties may agree in writing. The stated goal of the Parties is for the Tribe to take action that will prevent the Secretary from holding the Secretarial election under the OIWA in a manner that will be least disruptive to the OIWA reorganization process if the Parties are ultimately able to resolve the objection of the Nation. Injunctive relief as provided in subsection (4) below is expressly available to accomplish the intent of this subsection.

4. In addition to any remedies that may become available pursuant to legislative or administrative action by the United States, each of the Nation and the Tribe is expressly authorized to seek enforcement of the provisions of this MOA against the other through injunctive or declaratory relief intended to eliminate any benefit conferred by the United States on one of the Parties contrary to this MOA. For example, if the Department fails to allocate funds in accordance with the terms of this MOA, one Party may seek an injunction against the other to prevent the expenditure of any funds received in a manner contrary to this MOA. In any action between the Parties to enforce the terms of this MOA, each Party expressly agrees that it will not raise as a defense that the United States or any of its officers or agencies is a necessary or indispensable party to the action.

III. JURISDICTIONAL, GOVERNMENTAL, AND GEOGRAPHICAL RELATIONSHIP BETWEEN THE NATION AND THE TRIBE

a. INDEPENDENT FEDERALLY RECOGNIZED STATUS OF THE DELAWARE TRIBE.—

1. **IN GENERAL.**—Notwithstanding the 1867 Agreement or any other law, treaty, or court decision and conditioned on the agreement between the Parties embodied in this MOA (including any such future amendments agreed upon by the Parties), the Nation supports the independent federal recognition of the Tribe through reorganization under the OIWA or by any other means.
2. **RELEASE OF CERTAIN CLAIMS.** —Accordingly, while the Nation expressly retains the ability to enforce this MOA as described herein, if

and only if the approval of the OIWA reorganization of the Tribe or other approval of the recognition of the Tribe by other means is consistent with the intent and specifications found within this MOA, the Nation expressly waives against any party any claim, action, or other legal right it may have now or in the future to challenge in any court or agency, or in Congress, the restoration of the Tribe to the list of federally recognized tribes by the United States, whether through a reorganization under the OIWA or by any other means.

3. LAW APPLICABLE TO TRIBE.— The Tribe and the Nation acknowledge that, except as expressly limited by this MOA, the OIWA and all other laws (including regulations) of the United States of general application to Indians, Indian tribes, or Indian reservations shall apply to the Tribe (including members and land of the Tribe). The Parties intend that the Tribe shall enjoy all benefits of federal recognition not inconsistent with this MOA.

b. JURISDICTIONAL AND PROGRAMMATIC AUTHORITY—IN GENERAL.

1. The Parties recognize the complex history between the Tribe and the Nation resulting from the 1867 Agreement, and acknowledge the Nation's jurisdictional authority and concomitant governmental powers in Indian Country within the Cherokee Nation Jurisdictional Boundary.
2. The Parties therefore recognize that, notwithstanding the restoration of the independent federal recognition of the Delaware Tribe by whatever means, this MOA describes the relationship among the Tribe, the Nation, and the United States, but the rights, authorities, and privileges of the Tribe are limited only to the extent expressly stated herein and only within the Cherokee Nation Jurisdictional Boundary.

c. TRIBAL JURISDICTION WITHIN CHEROKEE NATION JURISDICTIONAL BOUNDARY.—

IN GENERAL.—The Tribe shall not exercise jurisdiction within the Cherokee Nation Jurisdictional Boundary.

1. EFFECT ON TRIBAL AUTHORITY.—Nothing in the introductory paragraph to this section (c)—
 - A. diminishes the general authority of the Tribe to control and regulate its governmental affairs (such as the authority to tax and regulate Tribal entities, elections, and members of the Tribe) in any circumstance in which that authority is not dependent on territorial jurisdiction or the location of an activity; or

B. waives the sovereign immunity of the Tribe or its officers (except that, subject to subsection (2), the sovereign immunity of the Tribe shall not prohibit the Nation from regulating, enforcing laws against, bringing a civil action relating to the conduct of, or otherwise exercising jurisdiction over, any activity occurring on Indian Country within the Cherokee Nation Jurisdictional Boundary).

2. GOVERNMENTAL ACTIVITIES.—With respect to activities of the Tribe that are governmental in nature (such as the activities described in paragraph (1)(A)), the Nation agrees that it will not exercise jurisdiction over such matters. Specifically, the Tribe is prohibited from exercising any tax or regulation that is not dependent on territorial jurisdiction or the location of an activity, including but not limited to, the issuance of motor vehicle registrations.

3. TAXATION AND REGULATION.—This subsection expressly permits the Nation to tax and regulate activities of the Tribe (including Delaware Tribe businesses) within the Cherokee Nation Jurisdictional Boundary that are otherwise taxed and regulated under the Nation's code, regardless of whether the activities are also taxed or regulated by the Tribe; provided, however, that the Nation agrees that it will not tax or regulate such an activity if the activity is subject to comparable taxation or regulation by the state.

4. AUTHORITY OF CHEROKEE NATION.—Nothing in this section (c) diminishes or otherwise affects the jurisdiction or sovereign authority of the Nation.

d. TRIBAL AND INDIVIDUAL LAND

1. IN GENERAL.—By virtue of its restored status as a federally recognized Indian tribe and to reestablish its land base, the Tribe shall be eligible, and subject to subsections (2) and (3), to have land acquired in trust for the benefit of the Tribe (including members of the Tribe) under—

A. the Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly known as the "Indian Reorganization Act");

B. the first section of the OIWA; and

C. any other similar Federal law.

2. TRUST LAND WITHIN CHEROKEE NATION JURISDICTIONAL BOUNDARY.—The Tribe will not seek and shall not obtain land held in

trust by the United States within the Cherokee Nation Jurisdictional Boundary by any means.

3. INDIAN LANDS FOR GAMING WITHIN CHEROKEE NATION JURISDICTIONAL BOUNDARY. —Further, the Tribe may not conduct gaming under the auspices of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) within the Cherokee Nation Jurisdictional Boundary without the written consent of the Nation.

4. For purposes of this section (d), the consent of the Nation must be in the form of a written consent signed by the Principal Chief and confirmed by a majority vote of the Council.

e. ORGANIZATION, MEMBERSHIP, AND ASSETS OF THE DELAWARE TRIBE.—

1. The Nation disclaims any interest in the Tribe's establishment and amendment of its governing documents and law or in the Tribe's membership; provided that the Nation reserves the right to enforce the terms of this MOA.

2. The Nation disclaims any interest in:

A. funds awarded to the Tribe as a result of litigation against the United States relating to violation of treaties between the Tribe and the United States or relating to the funds flowing from such litigation, and

B. any funds or property received by the Tribe from the United States or any other entity during or related to the period in which the Tribe was listed as federally recognized tribe.

f. GOVERNMENT PROGRAMS AND SERVICES FOR INDIANS AND INDIAN TRIBES—GENERAL PROVISIONS.—

1. IN GENERAL.—Subject to this MOA, the Parties acknowledge that, once restored, the Tribe shall be eligible for all special programs and services provided by the United States to Indians because of their status as Indians.

2. CONTINUATION OF BENEFITS.—Except as provided in subsections (3) and (4), members of the Tribe who reside within the Cherokee Nation Jurisdictional Boundary and are eligible for federal or State programs or services because of their status as Indians shall receive those program benefits or services through the Nation.

3. ADMINISTRATION BY DELAWARE TRIBE.—

A. IN GENERAL.—Within the Cherokee Nation Jurisdictional Boundary, the Tribe shall be eligible to apply for and administer programs and services described in subsection (4) only if—

- i. the Nation and the Tribe enter into a written agreement regarding the operation by the Tribe of the programs and services;
- ii. the Nation, through the Secretary of State of the Nation, makes a written determination that the Nation is ineligible, or elects not, to apply for the programs or services; or
- iii. by the date that is 30 days after the date of receipt by the Nation of written notice specifying a particular program or service (sent via certified mail, return receipt requested) by the Tribe to the Secretary of State of the Nation, the Nation has not objected in writing to the Tribe administering the program or service.

4. PROGRAMS AND SERVICES.—The programs and services within the Cherokee Nation Jurisdictional Boundary referred to in subsection (3) are—

- A. special programs and services provided by the United States to Indians because of their status as Indians;
- B. other State and federal programs and services that—
 - i. are available only to governments; and
 - ii. require jurisdiction over territory, land, or natural resources;
- C. other State, federal, and local programs providing for law enforcement cross-deputization agreements (which may or may not include authority areas outside Indian Country) or other agreements involving other governmental powers normally exercised by an Indian tribe on Indian lands; provided that this paragraph is not intended to prevent the unilateral deputization (including any funding) of Tribal members to enforce State or local law on lands outside Indian Country within the Cherokee Nation Jurisdictional Boundary; or

- D. other State and federal programs and services for which the Tribe applies in a capacity that is dependent on the status of the Tribe as a State or federally recognized Indian tribe; or
- E. other State and federal programs and services for which the operation or application of a program would occur on Indian Country within the Cherokee Nation Jurisdictional Boundary.

5. OTHER PROGRAMS AND SERVICES.—

- A. IN GENERAL.—The Tribe shall be entitled to apply for, administer, or otherwise use within the Cherokee Nation Jurisdictional Boundary programs and services that are generally available but that are not described in subsection (4).
- B. NOTIFICATION.—The Tribe shall notify the Nation in writing of the intent of the Tribe to apply for any funds under a program or service described in paragraph (5)(A).

6. GENERAL PRINCIPLES.—The Parties agree that:

- A. notwithstanding other provisions in this section, the Tribe shall have independent authority to apply for any federal, State or other programs specifically for projects or programs to preserve, promote, or enhance the Delaware language.
- B. in recognition of the rich but very different histories of the two Parties, the Nation will give special consideration to proposals by the Tribe to apply for projects and programs otherwise governed by this MOA that would preserve, promote, or enhance Delaware Culture.
- C. the Tribe shall have all of the rights, privileges and authorities under the NAGPRA as any other tribe. If either Party receives notice regarding items that may be related to the other Party, it shall forward timely notice to the other Party.
- D. to maximize the autonomy of the Tribe in administering programs pursuant to this MOA while maintaining compliance with applicable law and sound governmental practices, the Nation will endeavor to include a forward or advance funding provision in agreements executed by the Parties pursuant to this MOA unless federal law or another compelling reason would render such a provision unlawful or, in the view of the Nation, imprudent.

7. SUBAWARD REQUIREMENTS

- A. For all amounts subawarded from the Nation to the Tribe under this MOA (as opposed to funds applied for and received directly by the Tribe), the requirements in this subsection (7) shall apply.
- B. All provisions of the grants, compacts or other agreements between the respective federal or State agencies and the Nation apply to subawards under this MOA. Additionally, all applicable tribal, federal, and State law and regulations apply to subawards under this MOA, including any eligibility requirements for programs and services.
- C. Unless otherwise provided under separate agreement, the Nation shall pay the Tribe within 30 days of receipt of a valid invoice in accordance with this MOA.
- D. OMB Circular A-87 (or any successor circular) shall apply to subawards under this MOA. Indirect Costs shall be applied by the Nation in accordance with the Indirect Cost Agreements as negotiated with the National Business Center. Indirect and direct cost amounts provided will be passed through to the Tribe unless a significant administrative burden will be required of the Nation pursuant to a subaward. In that event, costs may be allocated between the Tribe and the Nation in a manner calculated to reflect the respective costs to each related to the subaward, but only by mutual agreement of the Parties. The Tribe agrees to monitor its activities conducted with amounts awarded and comply with any administrative cost limitations of grants, compacts or other agreements between the respective federal or State agency and the Nation as they apply to this MOA. Either the Tribe's or the Nation's Indirect Cost rate may be used in the application to federal agencies for funds under this MOA and other agreements between the Parties under this MOA.
- E. Requirements for data collection and reporting, audit, and compliance shall be identified and negotiated between the Parties as soon as practicable.
- F. The Tribe shall maintain records sufficient to document all costs and activities of subawarded programs required by the granting agency. Such records shall be available to the Nation upon reasonable request.
- G. On-site reviews may be made by the Nation by providing at least 30 days written notice, unless emergency conditions necessitate a

shorter notice. On-site reviews by the funding agency may be conducted in accordance with its policies and procedures.

H. Subawards are conditional upon the satisfactory compliance by the Tribe with all funding requirements and applicable federal, State, Nation and/or the Tribe's laws and policies. Should the Tribe fail to comply with such requirements, the Nation shall notify the Tribe by certified letter and provide 30 days for response, unless the matter involves an immediate health and safety concern or the funding agency requires a more expedient response. Failure to respond, continued non-compliance, or non-compliance posing an immediate danger to health and safety may result in immediate termination of the subaward. The Tribe and the Nation shall attempt in good faith to resolve any compliance issues. The Tribe shall be accountable to the respective federal or State agency, and shall hold the Nation harmless, for any disallowed costs or other matters of non-compliance arising from a subaward under this MOA.

I. Audits.

i. Review of Records.

The Tribe must make its records relating to any subaward under this MOA available for review by the Nation, other funding agencies, and the federal Government Accountability Office, as well as others authorized by federal, tribal or State law, regulations or policy. The Tribe shall provide reasonable access to appropriate staff to respond to any needed clarification of transactions.

ii. Compliance.

The Tribe shall comply with applicable sections of OMB Circular A-133, Revised (or any successor circular). The Tribe shall have prepared and submitted to the Nation a combined single audit annually, prepared in accordance with OMB Circular A-133 (or any successor circular), and inclusive of the auditor's Single Audit Reports and Management Letters.

The Nation retains the right to suspend or terminate any subaward under this MOA if the Tribe materially fails to comply with the MOA's provisions.

J. Conflicts.

Should the provisions of this subsection (7) directly conflict with any provisions of other subaward or subrecipient agreements entered into between the Tribe and the Nation, the provisions of such other subaward or subrecipient agreement shall apply.

8. AMENDMENT, TERMINATION, OR CANCELLATION OF SUBAWARDS

- A. Either Party may terminate a subaward under this section (f) in the event of an unresolved material breach by the other Party, provided that, before a material breach can be deemed unresolved, the aggrieved Party must provide the breaching Party with 30 days' written notice of the default and allow the breaching Party the opportunity to cure the breach. If the breaching Party cures the breach within the time to cure, the subaward shall continue in full force and effect. If the breaching Party fails to cure the breach within the 30 days, or within any other time frame agreed to in writing by the Parties, the subaward shall terminate upon expiration of the time to cure. The Parties agree that an uncured failure by the Tribe to comply with applicable requirements with respect to a particular subaward will be cured by termination pursuant to the terms of that subaward or by mutually acceptable revision of that subaward so that termination of this entire MOA is unnecessary.
- B. In the event a subaward under this MOA is terminated by either Party, the Nation shall compensate the Tribe only for subawarded services completed up to the point of termination and only for allowable costs under the subaward.
- C. A subaward under this MOA may be amended only in writing by mutual agreement. The Parties agree to meet to discuss in good faith amendment of a subaward at the request of either Party or if the relevant program addressed by a subaward is changed materially.

9. INDEMNIFICATION

The Tribe indemnifies the Nation for any and all liabilities that occurred or existed prior to the date of execution of this MOA or that occur as a result of any non-compliance by the Tribe with the terms of this section (f) of this MOA to the extent permitted by law. The Nation indemnifies the Tribe for any and all liabilities that occur as a result of any non-

compliance by the Nation with the terms of this section (f) of this MOA to the extent permitted by law.

10. STAFFING

In connection with those portions of programs for which the Nation receives federal or State funding based on the Tribe's membership but for which such funding is not passed through by the Nation to the Tribe pursuant to this or another agreement, the Nation will strive to recruit qualified members of the Tribe in those areas of such programs that provide services to members of the Tribe or that support such program areas. Those members of the Tribe who also maintain citizenship with the Nation shall be treated as any other citizen of the Nation with respect to employment policies and procedures.

11. DUPLICATION OF SERVICES

It is the intent of the Parties to prevent any person from receiving duplicative services from the Parties. The Parties agree to work cooperatively to limit the likelihood of such duplication.

g. SPECIFIC PROGRAMS AND FUNDING

1. Housing

- A. 2006 Maintenance of Current Assisted Stock: The Nation and the Tribe have negotiated a separate Subrecipient Agreement, dated June 29, 2006, which has been submitted to the Department of Housing and Urban Development (HUD) for maintenance of existing housing units and associated activities, consisting of approximately 83 Mutual Help units and 73 Low Rent Units. This Subrecipient Agreement totals \$574,546 in 2006 funding that will be transferred to the Housing Authority of the Tribe to fund these agreed-upon maintenance activities.
- B. 2005 and 2007 Maintenance of Current Assisted Stock: The Secretary of HUD approved by letter dated September 19, 2006 the availability of 2005 funding for the maintenance of housing stock for the Tribe. These funds total \$523,529. The Parties have negotiated a Subrecipient Agreement which has been submitted to HUD to release these funds. Additionally, a Subrecipient Agreement for 2007 funds was executed on January 30, 2007 and submitted to HUD for approval of \$550,000 in FY 2007 funding. To date, this brings the total amount of funds authorized under such agreements for HUD programs to \$1,648,075.

- C. Maintenance of Current Assisted Stock for Future Years: The Nation and the Tribe agree to negotiate Subrecipient Agreements in good faith for maintenance of the Tribe's current assisted stock for 2008 and beyond. Funding under such agreements shall, at a minimum, provide for costs of maintaining such units as required by HUD.
- D. Indian Community Development Block Grants (ICDBG): Applications by the Tribe for the ICDBG shall be evaluated by the Nation on a case-by-case basis. The Nation agrees to respond within 15 days of receipt of the conceptual framework of a proposal from the Tribe. The existence of competition with the Nation would not necessarily preclude approval for a separate application by the Tribe.
- E. Other Housing Funding: The Parties agree that the Tribe retains the ability to apply for and receive housing funding on some other basis than tribal or governmental status (i.e., non-profit status) independent of the Nation. The Nation and the Tribe also agree to consider whether there is a means available, and acceptable to both Parties, to provide funding to the Tribe for development of future housing projects.

2. Health

- A. Bartlesville Facility Generally: The Nation currently operates a primary care facility in the City of Bartlesville. The Nation agrees to consider altering the naming and appearance of the Bartlesville health operation to reflect Delaware history and culture.
- B. Health Programming and Design: Regarding matters related to health care services in the Bartlesville area, the Nation Health Services Group will consult with the Tribe in the Tribe's preferred forum (Tribal Council, Health Board, etc.). This will provide a regular forum for input to health programming and feedback regarding services in the Bartlesville area.
- C. Prenatal Care Added: The Nation will provide prenatal care, as appropriate, at the existing Bartlesville Health Clinic and will obtain additional training for its Bartlesville provider(s) as needed.
- D. Wellness Programs: The Healthy Nations Department of the Nation will conduct an assessment of how the Nation might assist in the continuation of the Tribe's wellness program. Healthy Nations will assist the community with information and technical

assistance as appropriate for the community-based wellness program.

- E. Behavioral Health – Community Prevention: The Nation’s Behavioral Health Services Community Prevention Program will conduct an assessment for potential establishment of Behavioral Health Services community prevention programs for the Delaware community.
- F. Eligibility: Any health services jointly developed or funded by the Parties will follow the IHS eligibility policy.
- G. Facilities: The Nation and the Tribe will explore the possibility of using the Tribe’s facilities for mutually beneficial health programs. The Tribe will identify buildings or land that it agrees might be used for health services. The Nation will assign staff to complete a visit and assessment of identified Delaware buildings and property to determine what mutually beneficial uses could be developed. The Parties agree to consider the health needs of the Tribe’s members, the Nation’s citizens, and other Indians, along with the Nation’s short- and long-term health planning.
- H. Health Equipment: The Tribe currently has wellness and medical equipment. The Parties agree that the Tribe will retain title to the medical equipment but that the equipment may be utilized by the Bartlesville clinic operated by the Nation upon written agreement by the Parties. The wellness equipment will be used by the Tribe in its wellness program.
- I. IHS Diabetes Grant: The Nation agrees to transfer an amount equal to the former IHS Diabetes grant allocation to the Tribe on an annual basis for the purpose of supporting the operation of the wellness program described above. The amount of this allocation is \$33,088 per year, subject to adjustment by IHS. The administration and expenditure of such funding is subject to subsection (f)(7) of this Part.
- J. IHS Tribal Management Grants: As with other competitive grants, the Nation agrees to evaluate proposals from the Tribe on a case-by-case basis. If the Nation declines to compete, the Nation will provide the Tribe a letter of notification of same upon request.
- K. Future Bartlesville Facility: The Nation and the Tribe agree to jointly seek funding for a new Bartlesville clinic to serve members of the Tribe and the Nation, as well as other eligible Indians, in the Bartlesville area. While any new clinic would be a part of the

Nation's health system unless otherwise agreed in writing, the Tribe and the Nation will explore means of maximizing the Tribe's role in the clinic consistent with the larger health-care structure of the Nation.

3. Administration for Native Americans (HHS)

- A. It is agreed that there will be no limitation on the Tribe applying under the "non-profit" eligibility criteria, rather than the "tribal" eligibility criteria.
- B. Grant applications submitted by the Tribe to the funding agency as an eligible tribe shall be evaluated by the Nation on a case-by-case basis, with the exception of Language grants, which are subject to paragraph (C) of this subsection. The existence of competition with the Nation would not necessarily preclude approval of a separate application by the Tribe.
- C. Notwithstanding subparagraph (A) above, the Parties agree that the Tribe shall have independent ability to apply as a tribe for the ANA Language grant program, without any further approvals from the Nation, even though such applications may compete with those submitted by the Nation.

4. Child Care and Development Fund (HHS)

- A. The Nation currently has a Child Care Memorandum of Agreement with the Washington County Child Care Foundation (WCCCF) (a non-profit organization) to fund and operate the three Child Care centers and associated services for the Tribe. The amount of funds for this program is currently estimated to be \$1.3 million annually, subject to federal appropriations and funding allocation to the Nation.
- B. At the option of the Tribe, the Parties agree to discontinue the Child Care Memorandum of Agreement with the WCCCF organization and enter into an agreement between the Nation and the Tribe for the direct operation of the program by the Tribe. The Nation agrees to continue the Child Care Memorandum of Agreement with the Tribe (or with the WCCCF if the Tribe chooses not to directly operate this program) as long as the operating entity maintains compliance with the terms and conditions of the MOA.

5. Administration on Aging (HHS)

The Parties agree that the Tribe has independent authority to apply for and receive separate funding for its elder nutrition program under Title VI.

6. Low Income Home Energy Assistance Program (HHS)

The Parties agree that the Tribe has independent authority to apply for and receive separate funding for its Low Income Home Energy Assistance Program (LIHEAP) program.

7. Small Business Administration (DOC)

The Tribe had obtained 8(a) contractor status previously through the U.S. Small Business Administration, but that status was terminated by the SBA while the Tribe's federally recognized status was not clarified. The Parties agree that the Tribe shall be able to regain its 8(a) status and then have the ability to compete for any contracts for which it is eligible utilizing that status. The possibility that the Parties may be in competition with one another for contracting shall not impact the Tribe's ability to operate under its 8(a) contractor status.

8. Aid to Tribal Government (BIA)

Pursuant to a separate agreement with the Nation for Fiscal Year 2008, as amended, the Tribe resumed its Aid to Tribal Government Program. That agreement provided for \$277,867, which included \$241,073 direct funding plus an additional \$36,794 in indirect costs (based upon BIA funding of 94.8% of 16.1%). The Parties agree that the Tribe shall continue its Aid to Tribal Government program in future fiscal years, funded at comparable levels to be determined based on available federal funds and other relevant factors. The Aid to Tribal Government program is critical to fund necessary core governmental services of the Tribe. Accordingly, such funding shall be utilized to provide enrollment or administrative services of the Tribe, including personnel, accounting, legal, program, and other essential governmental operating costs. The Tribe's priorities and activities performed with such funds must be consistent with the agreement between the Parties embodied in this MOA and in any legislation enacted by Congress as discussed in subsection II(c)(1). Such funding is subject to subsection (f)(7), Subaward Requirements, of in this Part of this MOA.

9. National Park Service (NPS)

The Parties agree that the Tribe may apply independently, without further approval from the Nation, for grants offered by the NPS for Native American Graves Protection and Repatriation Act (NAGPRA) activities.

10. All future agreements concerning the funding of any program or application for any grant or sub-award, whether listed herein or not, shall be made in a separate agreement which may be entered into by the Parties without modification to this MOA.

IV. GENERAL PROVISIONS

a. EFFECTIVE DATE

This MOA shall become effective immediately upon execution by both Parties and ratification by the Nation's Tribal Council.

b. PRIVACY

The Parties agree that all provisions of this MOA and related agreements are intended to protect the privacy of private information to the greatest extent possible while carrying out the purposes of any given provision. Disclosures of private information will be limited to the greatest extent possible, and each Party agrees to protect private information from any further disclosure not consistent with its initial disclosure by one Party to the other. "Private information" means information that would be protected from disclosure by the federal Privacy Act, the federal Trade Secrets Act, or similar law.

c. SEVERABILITY, AMENDMENT, AND INTERPRETATION;
TERMINATION OR CANCELLATION

1. This MOA may be terminated by written mutual consent of the Parties as evidenced by the signature of the Chief of each of the Nation and the Tribe with authorization to terminate this MOA by a two-thirds majority of the full Tribal Council of each of the Nation and the Tribe.
2. Any provision of this MOA held to violate applicable law may be severed with remaining provisions continuing in full force and effect. Given the delicate balance of interests represented by this MOA, the Nation and the Tribe agree that all provisions of this MOA are to be interpreted in a manner that will preserve as much of the MOA as possible and that termination or cancellation of the MOA, except by mutual consent, is not a preferred remedy.

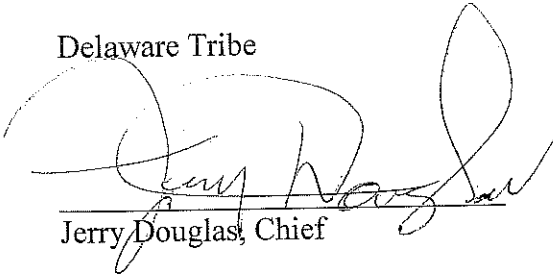
3. This MOA may be amended only in writing by mutual agreement. The Parties agree to meet to discuss in good faith amendment of this MOA at the request of either Party.

d. EQUAL TREATMENT OF DELAWARE MEMBERS

The Nation agrees that it will not pass laws or apply existing laws of the Nation in a manner that discriminates against similarly situated entities or members of the Tribe, including but not limited to laws with respect to: (1) taxation of Indian lands, Indian individuals, or Indian-owned enterprises, (2) State or federally funded programs and services, except where a federally-approved plan or funding agreement so requires, or where the Tribe provides duplicative services, or (3) the right of eligible Delaware members to citizenship in the Nation. Nothing herein shall affect the Nation's ability to require Cherokee Nation citizenship to be eligible for certain licenses or to participate in programs and services funded by Cherokee Nation funds which are available only to citizens of the Nation as defined by Cherokee Nation law.

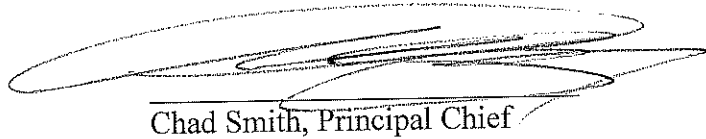
Executed this 24th day of October, 2008.

Delaware Tribe



Jerry Douglas, Chief

Cherokee Nation



Chad Smith, Principal Chief

Committee: Special Rules
Date: 10-13-08 Committee Date: 10-23-08

Author: Melanie Knight
Sponsor: Councilor Brad Cobb; Co-sponsors Buel Anglen
& Cara Cowan Watts

RESOLUTION NO. 88-08

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION RATIFYING THE MEMORANDUM OF AGREEMENT BETWEEN THE CHEROKEE NATION AND THE DELAWARE TRIBE OF INDIANS

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people;

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

WHEREAS, the Cherokee Nation entered a treaty with the federal government in 1866 and entered an agreement with the Delaware in 1867 pursuant to that treaty which provided the foundation for the future relationship between themselves and the federal government;

WHEREAS, the Cherokee Treaty of 1866 and the 1867 Agreement between the Nation and the Delaware Tribe has been interpreted by several Courts, including the U.S. Supreme Court, and has been the subject of much litigation, nearly dating back to the date the agreement was first entered;

WHEREAS, the most recent decision affecting the status of the Delaware Tribe was issued by the 10th Circuit Court of Appeals on November 14, 2004, which found that the Bureau of Indian Affairs' decision in 1996 to federally recognize the Delaware was unlawful and that the Delaware Tribe had under the 1867 Agreement relinquished its separate tribal sovereignty and was consolidated and merged into the Cherokee Nation;

WHEREAS, Resolution Number 86-06 was enacted by the Council of the Cherokee Nation on August 21, 2006, which approved and supported legislation for separate federal recognition of the Delaware Tribe of Indians;

WHEREAS, the Cherokee Nation and the Delaware Tribe have been working productively with the U.S. Congress to negotiate and revise the proposed legislation and a Memorandum of Agreement to pave the way for federal recognition for the Delaware Tribe;

WHEREAS, the Memorandum of Agreement as agreed by the Principal Chief maintains the integrity of the Nation's jurisdiction and territory within the historic boundaries of the Cherokee Nation;

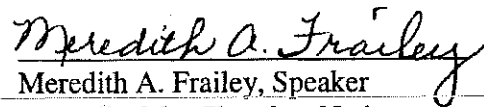
WHEREAS, Legislative Act 15-01 requires Memorandum of Agreements involving issues of sovereignty to be ratified by the Council of the Cherokee Nation.

BE IT RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation hereby ratifies the substantive provisions of Memorandum of Agreement

(MOA) attached, with the Delaware Tribe of Indians in order to protect, to the fullest extent possible, the territory, jurisdiction and sovereignty of the Cherokee Nation while also providing for the federal recognition of the Delaware Tribe; and that the Principal Chief is hereby authorized to execute a limited waiver of sovereign immunity for the specific purpose of enforcing the provisions of the MOA, as long as the MOA includes an equivalent waiver by the Delaware Tribe.

CERTIFICATION

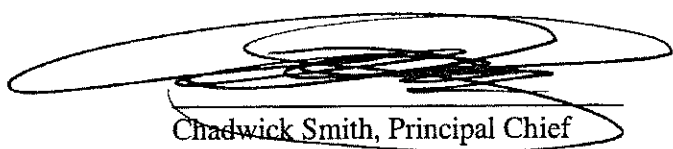
The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 23rd day of October, 2006, having 14 members present, constituting a quorum, by the vote of 14 yea; 0 nay; 0 abstaining.


Meredith A. Frailey, Speaker
Council of the Cherokee Nation

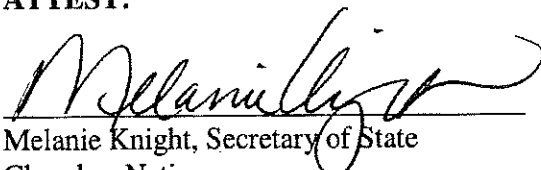
ATTEST:

Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 23rd day of October, 2008.


Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:


Melanie Knight, Secretary of State
Cherokee Nation