

Committee: Special Rules

Author: Susan Work, AAG

Date: 07-30-13

Committee Date: 08-12-13

Sponsor: Tina Glory-Jordan, Charles Hoskin, Jr.

**RESOLUTION NO. 63-13**

**COUNCIL OF THE CHEROKEE NATION**

**A RESOLUTION RATIFYING IMPLEMENTATION AGREEMENT # 1  
(IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO TRIBAL  
PRIORITY ALLOCATION FUNDS FOR AID TO TRIBAL GOVERNMENT)  
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**, Resolution Number 86-06 was enacted by the Council of the Cherokee Nation on August 21, 2006, and approved and supported legislation for separate federal recognition of the Delaware Tribe of Indians;

**WHEREAS**, Resolution Number 88-08 was enacted by the Council of the Cherokee Nation on October 23, 2008, and approved a 2008 Memorandum of Agreement between the Cherokee Nation and the Delaware Tribe of Indians to pave the way for federal recognition for the Delaware Tribe;

**WHEREAS**, the Federal Register notice establishing federal recognition of the Delaware Tribe of Indians expressly acknowledged the significance of the 2008 Memorandum of Agreement as follows: "Direct government-to-government relations were reestablished with the Delaware Tribe of Indians through its reorganization under federal statute, the Oklahoma Indian Welfare Act. This reorganization of its tribal government, separate from that of the Cherokee Nation, Oklahoma, is pursuant to a Memorandum of Agreement between the two tribes. The reorganization was effective May 27, 2009." 74 Fed. Reg. 40218-19 (August 11, 2009);

**WHEREAS**, the 2008 Memorandum of Agreement maintains the integrity of the Cherokee Nation's jurisdiction and territory within the historic boundaries of the Cherokee Nation; and

**WHEREAS**, the 2008 Memorandum of Agreement includes provisions to enable the Cherokee Nation and the Delaware Tribe to enter into separate agreements for purposes of implementing provisions in the Memorandum of Agreement concerning federal funding for the Delaware Tribe.

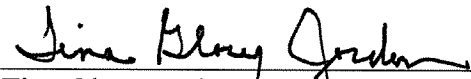
**WHEREAS**, the Principal Chief of the Cherokee Nation and the Chief of the Delaware Tribe have negotiated the attached proposed IMPLEMENTATION AGREEMENT # 1 (IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO TRIBAL PRIORITY ALLOCATION FUNDS FOR AID TO TRIBAL GOVERNMENT) BETWEEN THE CHEROKEE NATION AND THE DELAWARE TRIBE OF INDIANS to enable the Delaware Tribe to seek and receive Tribal Priority Allocation/Aid to Tribal Government ("TPA/ATG") as direct funding from the United States Department of the Interior ("DOI").

**WHEREAS**, Legislative Act 15-01 requires agreements involving significant rights and privileges of the Cherokee people 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 attached IMPLEMENTATION AGREEMENT # 1 (IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO TRIBAL PRIORITY ALLOCATION FUNDS FOR AID TO TRIBAL GOVERNMENT) BETWEEN THE CHEROKEE NATION AND 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 enabling the Delaware Tribe to seek and receive Tribal Priority Allocation/Aid to Tribal Government ("TPA/ATG") as direct funding from the United States Department of the Interior ("DOI").

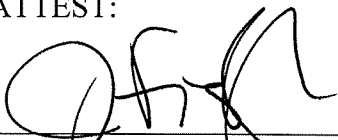
#### CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 12<sup>th</sup> day of August, 2013, having 15 members present, constituting a quorum, by the vote of 15 yea; 0 nay; 0 abstaining.



Tina Glory Jordan, Speaker  
Council of the Cherokee Nation

ATTEST:



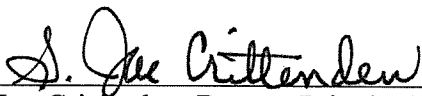
Jodie Wishinghawk, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 15<sup>th</sup> day of Aug., 2013.



Bill John Baker, Principal Chief  
Cherokee Nation

ATTEST:



S. Joe Crittenden, Deputy Principal Chief  
Cherokee Nation

**IMPLEMENTATION AGREEMENT # 1  
(IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO TRIBAL  
PRIORITY ALLOCATION FUNDS FOR AID TO TRIBAL GOVERNMENT)**

**Between  
CHEROKEE NATION  
and  
DELAWARE TRIBE OF INDIANS**

This Implementation Agreement #1 (“this Agreement”) is entered into by and between the Cherokee Nation, P.O. Box 948, Tahlequah, Oklahoma 74465, and the Delaware Tribe of Indians (“Delaware Tribe”), 170 N.E. Barbara, Bartlesville, Oklahoma 74006 (collectively referred to as “the Parties.”)

1. Purpose. The purpose of this Agreement is to implement the Memorandum of Agreement dated October 24, 2008 between the Cherokee Nation and the Delaware Tribe of Indians (“2008 MOA”), with respect to Tribal Priority Allocation/Aid to Tribal Government (“TPA/ATG”) funding from the United States Department of the Interior (“DOI”). Part III.f.3.i of the 2008 MOA requires the Cherokee Nation and the Delaware Tribe to enter into a written agreement regarding operation by the Delaware Tribe of certain federal programs and services within the Cherokee Nation’s Jurisdictional Boundary as defined by the MOA, Part I.b.2, for which the Delaware Tribe applies in a capacity that is dependent on the status of the Delaware Tribe as a federally recognized tribe. The more specific purpose of this Agreement is to enable the Delaware Tribe to receive TPA/ATG base funds directly from DOI in accordance with the MOA, Part I.b.2, and in accordance with the MOA, Part III.g.8, which provides (emphasis added):

8. Aid to Tribal Government (BLA). 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 BLA 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 discussed in subsection II(c)(1). *Such funding is subject to subsection (f)(7), Subaward Requirements, of in [sic] this Part of this MOA.*

2. Acknowledgment of Non-Competition. The Parties acknowledge and agree that the Delaware Tribe's base TPA/ATG funding amount is noncompetitive with the Cherokee Nation's DOI funding amount under its compact with DOI.

3. Authorization.

A. Direct Funding. In FY2008, the Bureau of Indian Affairs transferred to the Nation's base direct funding in the amount of \$241,073 which was appropriated to the Delaware Tribe under the budget category, Tribal Priority Allocations (TPA). This direct base funding intended for the Delaware Tribe has been paid by the Nation to the Delaware Tribe for FY2008 through FY2013 pursuant to the 2008 MOA between the two tribes. The Nation does not object to reversing the base transfer of direct funds intended for the Delaware Tribe in the amount of \$241,073 under the budget category, Tribal Priority Allocations (TPA) as footnoted in the Nation's Reprogramming Request. Commencing with FY2014, TPA/ATG funds allocated to the Delaware Tribe shall not be included in the Nation's Reprogramming Requests. The Nation also does not object to DOI's direct payment to the Delaware Tribe for TPA/ATG funds commencing with FY2014.

B. Indirect Funding. Upon reversing the Delaware Tribe's direct funds from the Nation's base funding, the Nation will no longer receive Contract Support Cost for those funds. Indirect cost funding will be calculated and paid directly to the Delaware Tribe by the Bureau of Indian Affairs in accordance with the approved DOI Contract Support Cost Policy.

4. Delaware Use of TPA/ATG Funding. The Parties acknowledge and agree that the Delaware Tribe's receipt and use of the TPA/ATG funding described in section 3 herein shall be limited to fund necessary core governmental services, including enrollment or administrative services of the Tribe, personnel, accounting, legal, program, policy development, community planning, tribal elections and other essential governmental operating costs. The Parties further acknowledge and agree that such funding may not be used for the performance of judicial authority, law enforcement functions, services involving lands, water, or other natural resources, or any other governmental operating costs involving any type of authority based on territorial jurisdiction within the Cherokee Nation Jurisdictional Boundary as defined by the MOA, Part I.b.2. The Parties acknowledge and agree that the Delaware Tribe's receipt and use of the TPA/ATG funding described herein shall not constitute or provide the basis, for any purpose, for the Delaware Tribe's assertion or exercise of any type of authority that is dependent on territorial jurisdiction within the Cherokee Nation Jurisdictional Boundary as defined by the MOA, Part I.b.2.

5. Delaware Contract with DOI for Use of TPA/ATG Funding. The Parties acknowledge and agree that the Delaware Tribe's receipt and use of the TPA/ATG funding described in section 3 herein shall be governed by a separate contract between the Delaware Tribe and DOI under the Indian Self-Determination and Education Assistance Act ("ISDEAA"), 25 U.S.C. §§ 450, *et seq.*, and all applicable provisions of the ISDEAA. The Delaware Tribe shall provide a copy of each report submitted to DOI, including any audit report, regarding the expenditure of such funds to the Cherokee Nation for the purpose of monitoring compliance with the 2008 MOA and this Agreement. The Delaware Tribe's receipt of such funding shall not be

deemed a sub-award from the Nation under Part III.f.7 of the 2008 MOA, and the Cherokee Nation shall have no responsibility or liability for the Delaware Tribe's use of such funds or compliance with its contract with DOI.

6. No Amendment of 2008 MOA. Nothing in this Agreement shall be deemed to be a modification or amendment of the October 24, 2008 MOA. Nothing in this Agreement shall be deemed to eliminate any authorizations or requirement of the MOA except to the extent expressly provided in this Agreement. As provided in the 2008 MOA, section III.g.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."

7. Effective Date; Applicability; Term; Amendment. This Agreement shall be effective upon the date of last execution below. This Agreement shall apply to federal fiscal years commencing with FY2014. This Agreement shall remain in effect unless and until such time that either party provides written notice to the other, delivered no later than March 31 of the year preceding the fiscal year to be affected, that such party intends to terminate this Agreement or desires to amend this Agreement for purposes of a future fiscal year or years; provided that any such notice shall specify any terms that said party requests be amended; and provided further that any resulting amendment shall not be effective unless executed by the duly authorized officials of the Cherokee Nation and the Delaware Tribe.

8. Authority. Each signatory official below confirms that he or she has authority to execute this Agreement on behalf of his or her respective tribe in accordance with the attached resolutions duly approved by the Council of the Cherokee Nation and the Delaware Tribal Council, and in accordance with the governing Constitution and laws of his or her respective tribe.

CHEROKEE NATION:

\_\_\_\_\_  
Bill John Baker, Principal Chief

\_\_\_\_\_  
Date

DELAWARE TRIBE OF INDIANS:

\_\_\_\_\_  
Paula Pechonick, Chief

\_\_\_\_\_  
Date

**ADMINISTRATIVE  
CLEARANCE**

Dept/Program:  
*Susan Work*

Signature/Initial Date

Executive Director:

*[Signature]*

Signature/Initial Date

Treasurer: (Required:  
Grants/Contracts/Budgets)

*Samuel 7/30/13*

Signature/Initial Date

Government Resources:

Signature/Initial Date

Administration Approval:

*[Signature]*

Signature/Initial Date

**LEGISLATIVE CLEARANCE:**

Legal & Legislative Coordinator:

*Brittain 7/30/13*

Signature/Initial Date

Standing Committee & Date:

*S. Rules 8/12/13*

Chairperson:

*Hoskin Jr.*

Signature/Initial Date

Returned to Presenter:

Date

**Cherokee Nation  
Act/Resolution Proposal Form**

Act  Resolution

TITLE:

DEPARTMENT CONTACT: Susan Work

RESOLUTION PRESENTER: Susan work

COUNCIL SPONSOR: Tina Glory-Jordan, Chuck  
Hoskins, Jr.

**NARRATIVE:**