

Resolution No. 10-14

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION RATIFYING IMPLEMENTATION AGREEMENT # 2 (IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO NAHASDA FUNDING FOR DELAWARE FORMULA CURRENT ASSISTED STOCK) 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.

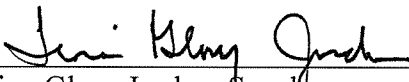
WHEREAS, the Principal Chief of the Cherokee Nation and the Chief of the Delaware Tribe have negotiated the attached proposed IMPLEMENTATION AGREEMENT # 2 (IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO NAHASDA FUNDING FOR DELAWARE FORMULA CURRENT ASSISTED STOCK) BETWEEN THE CHEROKEE NATION AND THE DELAWARE TRIBE OF INDIANS to enable the Delaware Tribe to seek and receive Native American Housing Assistance and Self Determination Act ("NAHASDA) funding as direct funding from the United States Department of Housing and Urban Development ("HUD").

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.

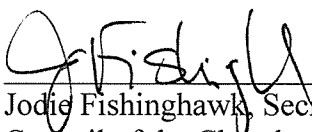
BE IT RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation hereby ratifies the attached IMPLEMENTATION AGREEMENT # 2 (IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO NAHASDA FUNDING FOR DELAWARE FORMULA CURRENT ASSISTED STOCK) BETWEEN THE CHEROKEE NATION AND THE DELAWARE TRIBE OF 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 Native American Housing Assistance and Self Determination Act ("NAHASDA) funding as direct funding from the United States Department of Housing and Urban Development ("HUD").

CERTIFICATION

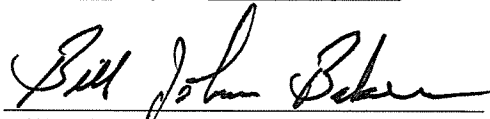
The foregoing Resolution was adopted by the Council of the Cherokee Nation at a duly called meeting thereof on the 10th day of February 2014, having 16 members present, constituting a quorum, by a vote of 16 yea 0 nay and 0 abstaining.


Tina Glory Jordan, Speaker
Council of the Cherokee Nation


ATTEST:


Jodie Fishinghawk, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19th day of Feb., 2014.


Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:


Chuck Hoskin, Jr., Secretary of State
Cherokee Nation

**IMPLEMENTATION AGREEMENT # 2
(IMPLEMENTING 2008 MEMORANDUM OF AGREEMENT AS TO
NAHASDA FUNDING FOR DELAWARE FORMULA CURRENT ASSISTED STOCK)**

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

This Implementation Agreement #2 (“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 the allocation to the Delaware Tribe of a portion of the Formula Current Assisted Stock (“FCAS”) funding from Indian Housing Block Grants (“IHBG”) to the Cherokee Nation from the United States Department of Housing and Urban Development (“HUD”).

2. Subrecipient Agreements for FY2005 through FY2007 Not Affected. Part III.g.1.A of the 2008 MOA describes a subrecipient agreement involving FCAS funding for FY2006 and Part III.g.1B describes a subrecipient agreement for FY 2005 and 2007. Nothing in this Implementation Agreement # 2 shall be deemed to affect the rights and obligations of the Cherokee Nation and the Delaware Tribe under said subrecipient agreements.

3. 2011 Subrecipient Agreement for FY 2008 "and Beyond" Not Affected as to Delaware Expenditures As of September 30, 2013. On October 6, 2011 the Cherokee Nation and the Delaware Tribe entered into a Subrecipient Agreement for FY 2008 and subsequent fiscal years (Attachment 1, "2011 Subrecipient Agreement") to enable the Delaware Tribe to receive FCAS funding as a sub-award from the Cherokee Nation in accordance with section g.1.C of the 2008 MOA, which provides:

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.

Nothing in this Implementation Agreement # 2 shall be deemed to affect the rights and obligations of the Cherokee Nation and the Delaware Tribe under the 2011 Subrecipient agreement for FCAS funds expended by the Delaware Tribe as of September 30, 2013.

4. Delaware Tribe FCAS Sub-Award and Expenditure Amounts. Section 1 of the 2011 Subrecipient Agreement lists the FCAS sub-award amounts for the Delaware Tribe for FY2008 through FY 2011 and provides for automatic amendment “to cover subsequent allocations made by HUD specifically for [FCAS] to the Delaware Tribe . . . under this or any subsequently approved Indian Housing Plan.” As of the effective date of this agreement, the Delaware Tribe has not expended all of its FCAS funding for FY2008 through FY2011 listed in section 1 of the 2011 Subrecipient Agreement, nor has the Tribe expended all of the funding for FY2012 through FY2013. The sub-award amounts and the unexpended amounts as of the effective date of this Implementation Agreement #2 are set forth in Attachment 2 hereto.

5. Direct FCAS Funding for Delaware Tribe. The 2008 MOA, Part III.f.3.i 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 Parties desire to enter into such a written agreement in order to enable the Delaware Tribe to receive direct funding from HUD under a Delaware Tribe Indian Housing Plan (“IHP”) to be submitted to HUD in FY2014 and to go into effect upon approval of the IHP by HUD,. Upon HUD concurrence with the Parties' proposed direct FCAS funding by HUD to the Delaware Tribe, any FCAS funds allocated to the Delaware Tribe shall not be included in the Cherokee Nation's Indian Housing Plan for FY2014 and future fiscal years. All unexpended FCAS funding for the Delaware Tribe for FY2008 through FY2013 shall remain with the Cherokee Nation until expended and the Delaware Tribe shall continue to be a sub-recipient for these funds.

6. Non-Competition. The Parties acknowledge and agree that the Delaware Tribe’s funding amount for Delaware FCAS is noncompetitive with the Cherokee Nation’s funding amount received from HUD in accordance with the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. §4101, et seq., (“NAHASDA”) and that direct payment of such funds to the Delaware Tribe under this Agreement shall not reduce the Nation's share of funding for FCAS or other type of funding under its IHBG. The Cherokee Nation further agrees that it will not object to HUD’s direct payment to the Delaware Tribe for such FCAS funds, subject to the reservation of its right to object in the event that, based on court decision or amendment of NAHASDA, other applicable law, regulations, or HUD guidance, such direct FCAS funding reduces or potentially reduces any type of Cherokee Nation's funding under NAHASDA.

7. Formula Area Not Affected. This Implementation Agreement # 2 and none of the activities or results produced hereunder, including but not limited to housing development, shall be construed as consenting to, enabling or authorizing the Delaware Tribe to claim a formula area within the Cherokee Nation Jurisdictional Boundary as defined by the MOA, Part I.b.2 for the needs portion of the IHBG formula under NAHASDA, other applicable law, 24 CFR Subpart D – Allocation Formula, other applicable regulations, or HUD guidance. Should HUD, or any court decision, determine that no formula area is necessary to apply for the needs portion of the IHBG formula under NAHASDA, the Delaware Tribe will not apply for the needs portion if the Delaware Tribe’s portion would in any way reduce the allocation to the Cherokee Nation. The

Cherokee Nation reserves the right to object in the event that the Delaware Tribe's portion would reduce the allocation to the Cherokee Nation.

8. Delaware Use of FCAS Funding. The Parties acknowledge and agree that the Delaware Tribe's direct receipt and use of the FCAS funding described in section 5 herein shall be limited only to those FCAS purposes authorized by NAHASDA and implementing regulations. The Parties further acknowledge and agree that such funding may not be used for the performance of any operating costs involving any type of Delaware claimed 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 FCAS 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.

9. Delaware Provision of IHP and Reports. The Delaware Tribe shall provide a copy of each IHP and each report submitted to HUD, including any audit report, regarding the Tribe's expenditure of FCAS funds under this Implementation Agreement # 2 to the Cherokee Nation for the purpose of monitoring compliance with the 2008 MOA and this Agreement. The Delaware Tribe's direct receipt of FCAS funding under a Delaware IHP 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 NAHASDA, other applicable law, regulations, or HUD guidance.

10. Reversion of Assets. All real property that was acquired or improved with NAHASDA funds and is under the control of the Subrecipient shall be retained by the subrecipient, unless property ownership or control has been transferred as evidenced by a written document and attached as an addendum to this Agreement.

11. 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."

12. Effective Date; Applicability; Term; Amendment. This Agreement shall be effective upon the date of last execution below. This Agreement shall apply to a Delaware IHP for 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.

13. 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

ATTACHMENT 1

October 6, 2011 Subrecipient Agreement

ATTACHMENT 2

**Delaware Tribe FCAS Sub-Award Amounts for FY2008 through FY2013 and
Delaware Tribe Expenditures as of Effective Date of Implementation Agreement # 2**

<u>Fiscal Year</u>	<u>Sub-Award Amount</u>	<u>Amount Not Expended as of Effective Date of Implementation Agreement # 2 (, 2014)</u>
FY2008 (1)	\$215,000	\$215,000
FY2009	\$480,000	\$ 0*
FY2010	\$491,000	\$ 0*
FY2011	\$470,000	\$ 0*
FY2012	\$462,780	\$199,790*
FY2013	\$477,553	\$457,553*

Total: \$ 872,343_____

*Each year's available funding was reduced by the \$20,000 withheld for Self-Monitoring activities that are performed by Cherokee Nation's Evaluation & Compliance group.

(1) The Delaware were allocated ARRA funds in 2008 but didn't obligate the funds within the required deadline. The Cherokee Nation obligated the ARRA funds and agreed to provide NAHASDA funding as a replacement funds. These funds must be expended in accordance with NAHASDA regulations.

**ADMINISTRATIVE
CLEARANCE**

Dept/Program:

Signature/Initial _____ Date _____

Executive Director:

Signature/Initial _____ Date _____

Treasurer: (Required:
Grants/Contracts/Budgets)

Signature/Initial _____ Date _____

Government Relations:

Signature/Initial _____ Date _____

Administration Approval:

 1/16/14

Signature/Initial _____ Date _____

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

 1/16/14

Signature/Initial _____ Date _____

Standing Committee & Date:

Rules 1/30/14

Chairperson:



Signature/Initial _____ Date _____

Returned to Presenter: _____

Date _____

**Cherokee Nation
Act/Resolution Proposal Form**

Act

Resolution

TITLE:

DEPARTMENT CONTACT: Ron Qualls

RESOLUTION PRESENTER: Elizabeth Odell

COUNCIL SPONSOR: Victoria Vazquez

NARRATIVE:

**A RESOLUTION RATIFYING IMPLEMENTATION
AGREEMENT # 2 (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**

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