

MEMORANDUM OF AGREEMENT BETWEEN THE CHEROKEE NATION AND THE CITY OF OWASSO, OKLAHOMA, A MUNICIPAL CORPORATION

This Memorandum of Agreement (hereinafter referred to as “Agreement”) is made and entered into this 1st day of October, 2021, by and between Cherokee Nation (hereinafter referred to as “Nation”), P.O. Box 948, Tahlequah, Oklahoma 74465, and the City of Owasso, Oklahoma, a Municipal Corporation (hereinafter referred to as “City”), collectively referred to as “Parties.” The Cherokee Nation is a federally recognized Indian tribe with its capitol in Tahlequah, Oklahoma. The City is a municipality located within the Cherokee Nation Reservation.

1. BACKGROUND:

In *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2456, 207 L. Ed. 2d 985 (2020), the United States Supreme Court ruled that the Muscogee (Creek) Nation Reservation was established, and had never been disestablished by Congress. All land, including fee land, within the boundaries of a reservation are defined as Indian Country pursuant to 18 U.S.C. § 1151(a). Both the Major Crimes Act, 18 U.S.C. § 1153, and the General Crimes Act, 18 U.S.C. § 1152, apply to certain crimes committed by Indians within Indian Country. The Supreme Court held that the State of Oklahoma does not have jurisdiction over crimes involving Indian defendants and/or victims of crimes occurring in Indian Country. The Oklahoma Court of Criminal Appeals has held that the Cherokee Nation Reservation (the “Reservation”) was likewise established by treaty, and was never disestablished by Congress. The Supreme Court held that because it has never been expressly disestablished, it remains intact and is properly defined as Indian Country pursuant to 18 U.S.C. § 1151(a). In accordance with the ruling of the Court of Criminal Appeals, the State of Oklahoma, and its municipalities do not have jurisdiction over crimes occurring on the Cherokee Reservation involving Indian defendants and/or victims. Instead, Indian perpetrators who offend within the City of Owasso are subject to the Cherokee Nation’s criminal laws and the jurisdiction of the Cherokee Nation’s courts.

2. PURPOSE:

This Agreement is entered into for the purpose of supporting tribal and community cooperation in an effort to ensure public safety within the Cherokee Reservation and within the City of Owasso. This Agreement shall not concede or confer jurisdiction on any Party, but shall establish an administrative process under which City peace officers, acting pursuant to a cross-deputation agreement with the Cherokee Nation (Attachment 1), may issue criminal citations to Indian perpetrators and non-Indian perpetrators subject to the special domestic violence jurisdiction of the Nation as acknowledged by the 2013 reauthorization of the Violence Against Women Act, Pub. L. No. 113-4, 127 Stat. 540.

“Reservation defendant(s)” shall mean an “Indian” as defined by 21 C.N.C.A. § 9 or a non-Indian subject to the Special Domestic Violence Criminal Jurisdiction of the Nation pursuant to 22 C.N.C.A. § 70.

The Parties recognize a shared interest in ensuring public safety and therefore seek to efficiently and effectively process criminal offenses occurring within the Reservation and necessarily, within the limits of the City of Owasso. Both the City and the Nation agree that it is in the best interest of both parties to enter into this Agreement regarding such matters.

3. **APPLICATION OF LAWS:**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the United States and the laws of the Cherokee Nation. If it should appear that any of the terms contained herein are in conflict with any rule of law or statutory provisions of the United States or the laws of the Nation, such conflicting terms shall be deemed inoperative and declared null and void in so far as it may be in conflict with such relevant law or statutory provision, and shall be deemed modified to conform to such rules of law or statutory provisions. However, such conflict shall not operate to nullify or void this entire Agreement.

4. Nothing in this agreement is intended or shall be construed to limit or create any rights, remedies, or defenses for any third-party individual, entity, organization or other that is not a party to this agreement.

5. **TERM:**

The term of this Agreement shall begin on October 1, 2021, and shall end on September 30, 2022. This Agreement may be cancelled by mutual consent of the parties or by thirty (30) days written notice of one party to the other, with or without cause. Said notice shall state the reasons for the cancellation and be sent by certified mail to the other party at the address contained herein. This Agreement may be amended at any time by mutual written consent of the parties.

6. **THE CITY AGREES TO:**

- A. Continue to abide by the terms and conditions provided in the attached Cross Deputization Agreement with the Nation.
- B. Provide all management, staff, employees, facilities, buildings, equipment and supplies, in the discretion of the City, necessary to administratively process criminal matters involving Reservation defendants.
- C. Identify Reservation defendants and maintain separate accounting system within the City's Municipal Court Clerk's Office, as established by the City's Finance Department.
- D. Ensure that all guilty pleas, warrants or other judicial actions involving Reservation defendants that require a Judge's signature or court approval be forwarded for consideration and execution by a Cherokee Nation District Court Judge. The City will promptly refer matters in which any Reservation defendant has entered a plea of not

guilty and demanded a trial to the Cherokee Nation Attorney General for review and prosecution and transmit all related documentation.

- E. Ensure cooperation of City employees in prosecutions of Reservation defendants.
- F. Collect fees, fines, and costs from each Reservation defendant and remit those fees, fines and costs to the Nation on a monthly basis.
- G. Ensure that all fines, fees and costs collected from Reservation defendants are collected consistently and in accordance with the Fine and Fee Schedule to be provided by the Nation.
- H. Remit Thirty Dollars (\$30.00) per charge from the total amount ordered to be paid and collected from each Reservation Defendant to the Cherokee Nation along with a copy of the citation and a record of the total fee, fine, and cost paid by the Reservation Defendant. Payment to the Nation will be made on a monthly basis.
- I. Provide a monthly accounting to the Nation of all fines, fees and costs collected and remitted.
- J. Maintain adequate records, including payments received and sent to the Nation, pursuant to this Agreement and make the records available to the Nation upon request.

7. **THE NATION AGREES TO:**

- A. Continue to abide by the terms and conditions provided in the attached Cross Deputization Agreement with the City.
- B. Engage with the City to administratively process tribal criminal offenses occurring within the Reservation and necessarily, within the limits of the City of Owasso, involving Reservation defendants.
- C. Accept referrals for prosecution in tribal court, through the Office of the Attorney General, for those cases involving Reservation Defendants who plead not guilty and demand a trial.
- D. Maintain adequate records, including payments received from the City, pursuant to this Agreement and make the records available to the City upon request.
- E. Allow the City to retain, in the form of a donation, the amount of fines, fees, and costs paid by each Reservation Defendant, less Thirty Dollars (\$30.00), to the City in recognition of the public safety and administrative functions performed by the City.

- F. Retain all fees, fines and costs collected on those Reservation Defendants prosecuted in the Cherokee Nation District Court after entering a not guilty plea and demanding a trial.

8. **GENERAL PROVISIONS:**

- A. This Agreement shall constitute the entire agreement between the parties. This Agreement shall supersede all prior or contemporaneous understandings, representations, or warranties not set forth herein. No subsequent amendment or modification of this Agreement shall be of any force or effect unless in writing and signed by the parties to be bound thereby. No provision of this Agreement shall be considered waived by the Nation or the City unless such waiver is in writing and signed by the party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the provision of this Agreement unless expressly stipulated in such a waiver. The parties' further state to the best of their knowledge, no employee of the Nation or City who exercises any functions or responsibilities in connection with the performance of the duties under this Agreement has any personal interest, direct or indirect, in this Agreement.
- B. That each party to the Agreement hereby recognizes that the other shall not control the means or methods by which the terms of this Agreement and the duties outlined herein are rendered. Both parties agree to perform the duties under this contract in a cooperative and professional manner and pursuant to lawful standards.
- C. Whenever any matter is referred to the Cherokee Nation Attorney General for the consideration of filing criminal charges, the responsible City law enforcement officer shall properly receipt all property and evidence and provide a complete inventory sheet to the Cherokee Nation Marshal Service. All property so receipted shall be safeguarded and maintained in a secure environment that may be accessed for viewing. A log shall be kept of all persons with access to the property and said log shall indicate who removes and returns property as well as who views it. No property shall be released except upon written request of the Cherokee Nation Attorney General's Office, court order, or by the Marshal of the Cherokee Nation or his or her designee. The City further agrees to retain said property in accordance with periods of retention as requested by the Cherokee Nation Attorney General.
- D. The City, its subcontractors, agents and employees shall not be considered employees of the Nation and are not eligible for any benefits associated herewith. Likewise, the Nation, its subcontractors, agents and employees shall not be considered employees of the City and are not eligible for any benefits associated herewith.
- E. Each party shall be responsible for their own costs associated with the processing of matters represented by this Agreement.
- F. If this Agreement is cancelled or terminated, a full accounting shall be made by the City. The City shall be entitled to keep any funds received under this Agreement less

the amount due the Nation. For those matters that are concluded and pleas already accepted that were being collected prior to the termination date, the City shall be liable to the Nation for the amounts due in accordance with this Agreement until the Reservation defendant has fulfilled their obligation and paid in full.

9. **NO WAIVER OF SOVEREIGN IMMUNITY:**

Nothing in this Agreement, nor any interpretation or application of the same, shall be construed or interpreted as a waiver of the Sovereign Immunity of either the Cherokee Nation or the City of Owasso.

10. **NOTICE:**

To the Cherokee Nation:

Cherokee Nation
Attention: Office of the Attorney General
P. O. Box 1533
Tahlequah OK 74465

To the City of Owasso, Oklahoma:

City of Owasso
Attention: City Manager
200 South Main Street
Owasso, OK 74055

IN WITNESS WHEREOF, the signatory parties hereto have executed this Agreement as of the last date written below.

Cherokee Nation

By: 

Title: Principal Chief

Date: 10/13/2021

City of Owasso, Oklahoma

By: Bill Bush
Mayor Bill Bush

APPROVED AS TO FORM:

Julie Lombardi
Julie Lombardi, City Attorney

Date: October 5, 2021

ATTEST:

Juliana M. Stevens
Juliana M. Stevens, City Clerk

