

Memorandum of Agreement between the Cherokee Nation and the Town of Bernice

This Memorandum of Agreement (hereinafter referred to as "Agreement") is made and entered into this 12th day of October, 2021, by and between Cherokee Nation (hereinafter referred to as "Nation"), P.O. Box 948, Tahlequah, Oklahoma 74465, and the Town of Bernice (hereinafter referred to as "Town"), 104 East Harry Street, Bernice, Oklahoma 74331 (collectively referred to as "Parties"). The Cherokee Nation is a federally recognized Indian tribe with its capitol in Tahlequah, Oklahoma. The Town of Bernice is a municipality located within the exterior boundaries of the state of Oklahoma and 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 had been established, and had never been disestablished, by Congress. All land, including fee land, within the boundaries of a reservation is defined as Indian country under 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. As a result, neither the state of Oklahoma nor its municipalities have jurisdiction over crimes involving Indian defendants and/or victims occurring in Indian country. Following the *McGirt* decision, the Oklahoma Court of Criminal Appeals in *Hogner v. State*, 2021 OK CR 4, ___ P. 3d, ___ (2021), expanded this holding to the Cherokee Nation Reservation. The Cherokee Nation Reservation ("Reservation") was likewise established by treaty and has never been disestablished by Congress. Because it has never been expressly disestablished, it remains intact and is properly defined as Indian country under 18 U.S.C. § 1151(a); therefore, the State of Oklahoma, and the municipalities therein do not have jurisdiction over crimes occurring on the Cherokee Reservation involving Indian defendants and/or victims. Instead, Indian perpetrators who offend within the Town of Bernice 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 Town of Bernice. This agreement shall not concede or confer jurisdiction on any Parties, but shall establish an administrative process under which Town 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.

Both Indian perpetrators and non-Indian perpetrators subject to the special domestic violence jurisdiction of the Nation shall hereinafter be referred to as "Reservation defendant(s)".

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 Town of Bernice. Both the Town 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 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.

This Agreement shall apply to offenses committed by Reservation defendants which, if committed by a non-Indian defendant against a non-Indian victim within the Town, would be subject to prosecution by the Town under its own municipal jurisdiction.

4. **TERM:**

The term of this agreement shall begin on the date it is executed by both the Nation and the Town and shall extend for a period of one (1) year and shall automatically renew for successive one (1) year periods thereafter. 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.

5. **THE TOWN AGREES TO:**

- A. Continue to abide by the terms and conditions provided in the Cross Deputization Agreement with the Nation.
- B. Provide all management, staff, employees, facilities, buildings, equipment and supplies necessary to administratively process criminal matters involving Reservation defendants.
- C. Identify Reservation defendants and maintain a separate accounting system within the Town Court Clerk's office.
- 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. 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 Town employees in prosecutions of Reservation defendants.
- F. Collect fees, fines, and costs from each Reservation defendant.
- G. Remit Thirty Dollars (\$30.00) from the total amount paid by 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 defendant. Payment to the Nation will be made on a monthly basis.
- H. Retain all other fees, fines, and costs as a donation from the Cherokee Nation.
- I. Ensure that all fines, fees and costs collected from Reservation defendants are collected consistently and in accordance with the attached fine and fee schedule produced by the Nation.
- J. Provide a monthly accounting to the Nation of all fines, fees and costs collected and remitted.
- K. Records of payments received from and sent to the Nation shall be maintained by the Town pursuant to this Agreement and shall be made available to the Nation at any time.

6. **THE NATION AGREES TO:**

- A. Abide by the terms and conditions provided in the attached Cross Deputization Agreement with the Town.
- B. Engage with the Town to administratively process tribal criminal offenses occurring within the Reservation and necessarily, within the limits of the Town of Bernice, 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. Donate the amount of fines, fees, and costs paid by each Reservation defendant, less Thirty Dollars (\$30.00), to the Town in recognition of the public safety and administrative functions performed by the Town.
- E. Records of payments received from and sent to the Town shall be maintained by the Nation pursuant to this Agreement and shall be made available to the Town at any time.
- F. Retain all fees, fines, and costs collected from those Reservation defendants prosecuted in the Cherokee Nation District Court after entering a not guilty plea and demanding a trial.

7. 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 Town 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 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 Town 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 potential prosecution, the responsible Town 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 Town further agrees to retain said property in accordance with periods of retention as requested by the Cherokee Nation Attorney General.
- D. The Town, its subcontractors, agents, and employees shall not be considered employees of the Nation and shall not be eligible for any benefits associated herewith. Likewise, the Nation, its subcontractors, agents, and employees shall not be considered employees of the Town and shall not be eligible for any benefits associated herewith.
- E. Each party shall be responsible for their own costs associated with the processing of matters represented in this Agreement.
- F. If this Agreement is cancelled or terminated, a full accounting shall be made by the Town. The Town shall be entitled to keep any funds already received under this Agreement less the amount due to the Nation. For concluded matters and matters in which pleas were accepted prior to the termination date, the Town 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 the amount due in full.

8. **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 Town of Bernice.

9. **NOTICE:**

To the Cherokee Nation:

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

To the Town of Bernice:

Town of Bernice
Attention: Sherrie Whitson, Court Clerk
104 East Harry Street
Bernice, OK 74331

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: 10/22/2021

Town of Bernice

By:  _____

Title: Mayor

Date: October 12, 2021