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TRIBAL MEMORANDUM

DATE : 01/25/22

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Ev Ann White Feather, Tribal Secretary *EWAF/kr*

SUBJECT : Resolution No. 54-2022-CR: That the Cheyenne River Sioux Tribal Council hereby adopts a COVID-19 Pandemic Relief Payment Program to provide one-time economic assistance to households by providing payments to enrolled members of the Tribe, utilizing the funds from the Tribe's Coronavirus State and Local Fiscal Recovery Fund ("FRF") payment, in the amount of \$2,000 per eligible enrolled tribal member. This economic assistance will be expended only to address needs arising from the COVID-19 public health emergency and its continued negative economic impacts and contains the provision.

Transmitted herewith are an original and two (2) copies of Resolution No. 54-2022-CR which was duly adopted by the Cheyenne River Sioux Tribal Council during its Regular Session held on January 24, 2022.

EWAF/kr

- Cc:** Chairman
Treasurer
Administrative Officer
Tribal Comptroller
Central Records
Committee Secretary
District Officers (6)
Budget & Finance Committee Chair
Legal Department
File/2

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

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- WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 [48 Stat. 984]; and
- WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws; and
- WHEREAS, pursuant to the Cheyenne River Sioux Tribal Constitution and By-Laws, the Tribal Council is vested with the authority to promote the interests of the Tribe, including the peace, safety, property, health and general welfare of the Tribe's members; and
- WHEREAS, the Cheyenne River Sioux Tribe ("Tribe") has 24,990 enrolled members, as of November 8, 2021, and a large percentage of the Tribe's enrolled members live on the Cheyenne River Indian Reservation ("Reservation"); and
- WHEREAS, the Reservation encompasses over 4,250 square miles of land in north central South Dakota, including all of Dewey and Ziebach Counties, and is one of the largest and most geographically remote Indian reservations in the United States; and
- WHEREAS, Reservation residents suffer from high rates of poverty, with a 2019 poverty rate of 35.1% for the Reservation as a whole, compared to 12.3% for the United States as a whole, according to the U.S. Census Bureau; and
- WHEREAS, in early 2020, a novel and highly contagious coronavirus known as COVID-19 began a worldwide pandemic, overwhelming health care systems and causing millions of hospitalizations and deaths. The COVID-19 virus was - and still is - a critical health threat to CRST members. Studies have shown that, over the past two years, Native Americans nationwide have experienced more than 1 ½ times the rate of COVID-19 infections, more than 3 times the rate of hospitalizations, and more than 2 times the death rate compared to non-Natives; and
- WHEREAS, according to the US Centers for Disease Control ("CDC"), low-income and minority populations such as members of the Cheyenne River Sioux Tribe also exhibit higher rates of pre-existing medical conditions that contribute to an increased risk of COVID-19 mortality; and
- WHEREAS, because of the Reservation's pervasive lack of adequate housing and aging infrastructure, many members of the Cheyenne River Sioux Tribe have had

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more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the COVID-19 virus; and

WHEREAS, in response to the COVID-19 public health emergency, the federal government enacted the American Rescue Plan ("ARPA") Act, Pub. L. 117-2 (Mar. 11, 2021), which established a Coronavirus State and Local Fiscal Recovery Fund ("FRF") to be administered by the U.S. Department of the Treasury ("Treasury"). The Tribe has received payments from this fund; and

WHEREAS, ARPA states that a Tribal government may use FRF payments, among other things, to cover costs incurred by a Tribal government "to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households," ARPA § 602(c)(1)(B); and

WHEREAS, when ARPA was initially enacted, Treasury issued interim guidance and responses to frequently asked questions regarding how it would implement the ARPA provisions related to permissible FRF expenditures ("Interim Rule" and "FAQ"); and

WHEREAS, pursuant to the guidance contained in the Interim Rule and the FAQ, as well as the authority contained in CRST Resolution #135-2021-CR, the Tribe issued a cash assistance payment in the amount of \$2,000.00 to each eligible member beginning in July 2021 to assist with their economic recovery from the pandemic; and

WHEREAS, since that time other COVID-19 variants, such as Delta and Omicron, which are both more infectious and transmittable than the original virus, have sparked new surges across the nation and among members of the Cheyenne River Sioux Tribe. According to the CDC, as of December 2021, COVID-19 in total has infected over 50 million and killed over 800,000 Americans; and

WHEREAS, on the Cheyenne River Sioux Reservation, COVID-19 has been even more lethal. As of January 21, 2022, it has infected 3,621 residents, of which 237 (6.5% of infections) have been hospitalized and 53 (22% of those hospitalized) have died. The number of deaths caused by COVID on the Cheyenne River Reservation has surpassed all deaths caused by cancer, heart disease, diabetes, liver disease, and accidents from 2014-2018 combined. Preventing and mitigating the spread of COVID-19 among its members continues to require a major public health response from the CRST; and

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WHEREAS, the combination of underlying health, economic, demographic, and social vulnerabilities has contributed to more severe public health outcomes of the pandemic within the Cheyenne River Sioux Tribe, resulting in an exacerbation of pre-existing disparities in health and economic outcomes; and

WHEREAS, thanks in large part to the availability of COVID-19 vaccines beginning in early 2021, the national and local economy has made some progress in its recovery since May 2021. However, the economy has also faced setbacks that illustrate the continued risks to the recovery; and

WHEREAS, because of the Delta and Omicron variants that have raged throughout the United States since this summer, the Tribe has faced additional severe waves of infections, hospitalizations, and deaths, which in turn have increased the strain on our healthcare and governmental support systems and lead to a slowdown in a return to economic stability for members: Inflation is being felt in every aspect of life. Food supplies are not steady, and prices have risen for even the most basic staples. Propane, electricity, and other utility expenses have skyrocketed. The availability of adequate housing is still extremely limited, and housing costs have reached record high levels. PPE is difficult to find, and even when available, it is very expensive. Childcare providers have shut their doors, which has forced many working parents to drop out of the workforce and stay home to care for their children. Thus, despite some progress, there is still a need to respond to the pandemic's long-term economic effects on members of the CRST; and

WHEREAS, on January 6, 2022, Treasury released its final rule (hereafter "Final Rule") implementing the FRF, stating that it would be effective as of April 1, 2022, but that recipients such as the CRST could take actions and use funds before April 1, 2022, in a manner consistent with the final rule. Treasury Department, 31 CFR Part 35, *Coronavirus State and Local Fiscal Recovery Funds Final Rule* (<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf>, released Jan. 6, 2022, pending publication in Federal Register); and

WHEREAS, the Final Rule establishes regulations at 31 C.F.R. § 35.6(b)(3)(ii)(A)(1) authorizing "[a]ssistance to households and individuals, including assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits," Final Rule at p. 418; and

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WHEREAS, the Final Rule requires that when assessing whether a potential use of FRF funds is eligible, a FRF recipient such as CRST must determine if there has been a negative economic impact or harm experienced by its members that resulted from the COVID–19 public health emergency. If so, the Tribe must then design a response that addresses the identified economic harm resulting from or exacerbated by the public health emergency. Final Rule at pp. 24-25. In assessing whether a household or population experienced economic harm as a result of the pandemic, the Tribe may presume that a household or population that experienced (1) unemployment, (2) increased food insecurity, (3) increased housing insecurity, or that is (4) low- or moderate-income, had economic harm resulting from the pandemic. Final Rule at p. 37; and

WHEREAS, the Final Rule further recognizes that there exist “disproportionately impacted households,” which are those that are experiencing a disproportionate, or meaningfully more severe, impact from the pandemic because of pre-existing disparities in health and economic status in certain communities, and that these pre-existing disparities magnified the impact of the pandemic on these households and communities. Final Rule at p. 38. Populations receiving services provided by Tribal governments are presumed to be “disproportionately impacted households” under the Final Rule. Final Rule at p. 39; and

WHEREAS, the Final Rule further states in regard to cash assistance that: “Cash transfers must respond to the negative economic impacts of the pandemic on a household or class of households. ... [R]esponses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced.” Final Rule at p. 91; and

WHEREAS, since the pandemic began, CRST members have suffered significant and disproportionate negative economic and health impacts and other harms due to the COVID-19 public health emergency, including illness, death, unemployment, increased food and housing insecurity, increased expenses, and loss of income; and

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WHEREAS, because of the lethal and highly contagious COVID variants that continue to circulate around the US, and the precarious economic recovery of the nation, members of the Cheyenne River Sioux Tribe continue to require financial assistance for increased food, utilities, housing, rent and mortgage expenses, home repairs, medical and burial expenses, distance learning and telework expenses, personal protective equipment and sanitation supplies, and other expenses in response to the COVID-19 public health emergency; and

WHEREAS, the Tribal Council finds that it is administratively and financially less burdensome for the Tribe to provide one cash assistance payment to members rather than develop and administer separate programs to assist its members with such needs as food assistance, housing assistance, internet access, home repairs and weatherization, cash assistance, etc....; and

WHEREAS, such a cash assistance payment would alleviate the immediate and near-term negative economic impacts caused by the pandemic on its members, especially the additional burdens brought about by the delta and omicron waves of COVID-19, while allowing the Tribe to also concentrate on addressing the long-term disproportionate impacts of COVID-19 on its members due to pre-existing health and economic disparities; and

WHEREAS, the Tribal Council finds that the economic assistance authorized by this Resolution is proportional to the negative economic impacts and other harms tribal members continue to endure as a result of the COVID-19 public health crisis; now

THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribal Council hereby adopts a COVID-19 Pandemic Relief Payment Program to provide one-time economic assistance to households by providing payments to enrolled members of the Tribe, utilizing funds from the Tribe's Coronavirus State and Local Fiscal Recovery Fund ("FRF") payment, in the amount of \$2,000 per eligible enrolled tribal member. This economic assistance will be expended only to address needs arising from the COVID-19 public health emergency and its continued negative economic impacts; and

BE IT FURTHER RESOLVED, that the Cheyenne River Sioux Tribe COVID-19 Pandemic Relief Payment Program shall be open to all enrolled members of the Cheyenne River Sioux Tribe who are experiencing continued negative economic impacts from the COVID-19 public health emergency, and

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eligibility will be based on an assessment of continued need based on those negative economic impacts; and

BE IT FURTHER RESOLVED, that to receive financial assistance under this program, an enrolled tribal member must submit a signed certification form, which will be made available by the Tribe on January 26, 2022. The individual must provide all information requested on the form and certify, subject to penalties of perjury, that the applicant needs additional economic assistance due to actual negative economic impacts suffered by the applicant as a result of the continuing COVID-19 public health crisis and that such negative economic impacts are at least \$2,000.00. The applicant will be required to submit such information or documentation as the Tribe deems necessary and appropriate to support members' claims; and

BE IT FURTHER RESOLVED, that examples of continued negative economic impacts as a result of the COVID-19 pandemic include, but are not limited to:

- increased household expenses due to the COVID-19 pandemic;
- decreased household income due to the COVID-19 pandemic;
- persons in the household who are over age 18 have experienced unemployment during the pandemic and/or are currently unemployed;
- persons in the household have experienced food insecurity during the pandemic;
- persons in the household have experienced housing insecurity during the pandemic;
- the household is low- or moderate-income;
- elementary, secondary, or post-secondary students who have lost instructional time due to school closures or remote education; and
- persons in the household are surviving spouses or dependents of persons who have passed away due to COVID-19; and

BE IT FURTHER RESOLVED, that in order to be eligible for assistance under this program, an applicant must be enrolled as a member of the Cheyenne River Sioux Tribe on or before January 19, 2022, and meet all other eligibility requirements; and

BE IT FURTHER RESOLVED, that while this program will be structured with the intent that the assistance will be non-taxable to tribal members under the Tribal General Welfare Exclusion Act and IRS Revenue Procedure 2014-35, if the

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Internal Revenue Service deems the assistance taxable, or any other public assistance agency determines the payment made herein is to be counted as income toward public benefits, then the tribal members - and not the Tribe - shall be responsible for any taxes, interest, and penalties, and nothing in this program shall create any legally enforceable obligation against the Tribe or waive the sovereign immunity of the Tribe or any of its officers, agents or employees; and

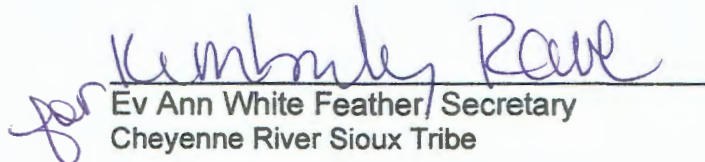
BE IT FURTHER RESOLVED, that the program will be open until June 1, 2022, and will be administered in accordance with the CRST COVID-19 PANDEMIC RELIEF PAYMENT PROGRAM policy attached to this resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately and shall supersede, repeal, and replace all prior, inconsistent laws of the Cheyenne River Sioux Tribe; and

BE IT FINALLY RESOLVED, that nothing in this resolution diminishes, divests, alters, or otherwise affects any inherent, treaty, statutory or other rights of the Cheyenne River Sioux Tribe over the property or activities described herein. The Cheyenne River Sioux Tribe expressly retains all rights and authority over the property and activities described herein, including but not limited to legislative, regulatory, adjudicatory, and taxing powers.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 12, constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held this 24th day of January 2022, Regular Session; and that the foregoing resolution was duly adopted at such meeting by a roll call vote of 12 yes, 0 no, 0 abstaining, and 3 absent.


Ev Ann White Feather, Secretary
Cheyenne River Sioux Tribe