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TRIBAL COUNCIL MEMBERS

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Bryce In The Woods

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Merrie Miller
Kevin C. Keckler
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DISTRICT 5
Robert "Bob" Walters
Randel J. "RJ" Lawrence
Ryman LeBeau
Derek Bartlett

DISTRICT 6
Tuffy Thompson
Ronald Rousseau

TRIBAL MEMORANDUM

DATE : 06/28/21

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Ev Ann White Feather, Tribal Secretary 

SUBJECT: Resolution No. 135-2021-CR: That the Cheyenne River Sioux Tribal Council hereby adopts a COVID-19 Household Economic Assistance 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 negative economic impacts and contains the provision.

Transmitted herewith are an original and two (2) copies of Resolution No. 135-2021-CR which was duly adopted by the Cheyenne River Sioux Tribal Council during its Special Session held on June 28, 2021.

- Cc:** Chairman
Treasurer
Administrative Officer
Tribal Comptroller
Central Record
Budget Committee Chairman
Legal Department/Steve Gunn
Committee Secretary
District Officers (6)
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,** in response to the COVID-19 public health emergency, the federal government enacted the American Rescue Plan ("ARP") 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; and
- WHEREAS,** the Tribe has received or will receive payments from the FRF; and
- WHEREAS,** the ARP Act states that a Tribal government may use FRF payments, among other things, "to cover costs incurred by the ... Tribal government, by December 31, 2024 ... 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," ARP Act § 602(c)(1)(B); and
- WHEREAS,** the U.S. Department of the Treasury ("Treasury") has issued guidance regarding how Treasury interprets the ARP provisions regarding permissible FRF expenditures, Treasury Department, Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule, 86 Fed. Reg. 26786 (May 17, 2021) (hereafter "Interim Final Rule"), and has further provided Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions (updated June 24, 2021) (hereinafter "FAQ"), and
- WHEREAS,** Treasury's Interim Final Rule provides that FRF monies may be used to provide "[a]ssistance to households or populations facing negative economic impacts due to COVID-19," including: "Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance ... ; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training," 86 Fed. Reg. at 26794, and

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WHEREAS, the Interim Final Rule establishes proposed regulations at 31 C.F.R. § 35.6(b)(8) authorizing "[a]ssistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency," 86 Fed. Reg. at 26822; and Treasury's FAQ answers in the affirmative the question of whether recipients of FRF monies may provide "direct cash transfers to households," FAQ at Q. 2.6; and

WHEREAS, the Interim Final Rule states that, "in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic." 86 Fed. Reg. at 26794; and

WHEREAS, the Interim Final Rule further states that: "Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency . . . Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses . . . and could be subject to recoupment," *id.*; and

WHEREAS, the Interim Final Rule further provides that "a recipient could provide survivor's benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims," *id.*; and

WHEREAS, Treasury's FAQ provides that recipients may use FRF monies to provide assistance to households for "economic harms experienced or costs incurred by the household [due to the COVID-19 public health emergency] prior to March 3, 2021," FAQ at Q. 4.7; and

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WHEREAS, the Cheyenne River Sioux Tribe (“Tribe”) has 23,394 enrolled members, as of February 1, 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 Indian reservations in the United States; and

WHEREAS, Reservation residents suffer from high rates of poverty, with 2019 poverty rates of 31.3% for Dewey County and 42.5% for Ziebach County, and 35.1% for the Reservation as a whole, compared to 12.3% for the United States as a whole, according to data from the American Community Survey of the U.S. Census Bureau; and

WHEREAS, Reservation residents also suffer from disproportionately high rates of unemployment, food insecurity, and housing insecurity; and

WHEREAS, tribal 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

WHEREAS, members of the Cheyenne River Sioux Tribe have required and continue to require financial assistance for food, utilities, housing, rent and mortgage payments, home repairs, medical and burial expenses, distance learning and telework expenses, job training, personal protective equipment and sanitation supplies, and other expenses in response to the COVID-19 public health emergency; and

WHEREAS, tribal members have required and continue to require economic assistance to enable them to comply with the Tribe’s public health measures, including but not limited to measures relating to sheltering in place, self-quarantining, and social distancing; and

WHEREAS, the Tribal Council enacts this Resolution to provide one-time economic assistance to households who suffered negative economic impacts due to the COVID-19 public health emergency; 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 member households have faced as a result of the COVID-19 public health emergency and that the economic assistance authorized by

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this Resolution is necessary to enable compliance with public health measures in response to COVID-19; now

THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribal Council hereby adopts a COVID-19 Household Economic Assistance 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 negative economic impacts; and

BE IT FURTHER RESOLVED, that the Cheyenne River Sioux Tribe COVID-19 Household Economic Assistance Program shall be open to all enrolled members of the Cheyenne River Sioux Tribe who have experienced negative economic impacts from the COVID-19 public health emergency, and eligibility will be based on an assessment of need based on those negative economic impacts; and

BE IT FURTHER RESOLVED, that to receive one-time financial assistance under this program, an enrolled tribal member must submit a signed application and certification form, which will be made available by the Tribe on July 12, 2021, and the individual must provide all information requested on the form and certify, subject to pains and penalties of perjury, that the applicant needs economic assistance due to actual negative economic impacts suffered by the applicant as a result of the COVID-19 public health emergency and such negative economic impacts are in an amount not less than \$2,000, and the applicant will be required to submit such information or documentation as the Tribe deems necessary and appropriate; and

BE IT FURTHER RESOLVED, that examples of negative economic impacts as a result of the COVID-19 public health emergency 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; and persons in the household are surviving spouses or dependents of persons who have passed away due to COVID-19; and

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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 October 1, 2021, 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 Internal Revenue Service deems the assistance taxable, 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 obligation legally enforceable 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 Tribe will enact a further resolution to promulgate rules and regulations governing the application and payment process for this program; 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 15, constituting a quorum, were present at a meeting duly and specially called, noticed, convened and held this 28th day of June 2021, Special Session; and that the foregoing resolution was duly adopted at such meeting by a roll call vote of 15 yes, 0 no, 0 abstaining, and 0 absent.


Ev Ann White Feather, Secretary
Cheyenne River Sioux Tribe