

**RESOLUTION NO. 48-10**

**COUNCIL OF THE CHEROKEE NATION**

**A RESOLUTION AUTHORIZING THE INCURRING OF INDEBTEDNESS IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$24,000,000.00 AND AUTHORIZING A GENERAL OBLIGATION CREDIT FACILITY AND OTHER DOCUMENTS AS MAY BE NECESSARY OR REQUIRED; AUTHORIZING THE LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE CHEROKEE NATION IN CONNECTION WITH THE CREDIT FACILITY; PROVIDING FOR THE COMPLIANCE WITH APPLICABLE FEDERAL LAW RELATING TO THE EXCLUSION FROM GROSS INCOME FOR FEDERAL INCOME TAXATION PURPOSES OF INTEREST ON THE FACILITY; CONTAINING OTHER PROVISIONS RELATING THERETO; AND DECLARING AN EMERGENCY**

**WHEREAS**, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people; and

**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; and

**WHEREAS**, the Cherokee Nation has through inherent sovereign authority and by constitution and tribal law, the authority to incur indebtedness and to issue obligations to evidence such indebtedness, to secure such indebtedness by a pledge of the full faith and credit of the Cherokee Nation, and to enter into contractual agreements for such purposes; and

**WHEREAS**, pledges of credit for any loans require approval by the Council in accordance with Article X Section 7 of the Constitution and Title 62, Section 61 and Section 62 of the Cherokee Nation Code (62 CNCA Sections 61-62); and

**WHEREAS**, the Cherokee Nation has determined that it would be most advantageous at this time for the Cherokee Nation to secure a loan in an amount not to exceed \$24,000,000.00, through the issuance of a 15 year term loan, to finance a health facility at Vinita, Oklahoma (the "Project"); and

**WHEREAS**, the Cherokee Nation has determined that the proceeds of the credit facility shall be used for essential governmental functions of the Cherokee Nation and that the Project constitutes a need of the Cherokee Nation which is an essential governmental function of the Cherokee Nation; and

**WHEREAS**, the Principal Chief and/or his designee have negotiated arrangements with Bank of Oklahoma, N.A., relating to the limited waiver of sovereign immunity of the Cherokee Nation relating to the credit facility be granted and determined only as set forth in this Resolution and the documentation approved herein relating to the facility; and

**WHEREAS**, in connection with the securing of the credit facility it is necessary for the Principal Chief to negotiate and execute a promissory note denominated "Cherokee Nation Promissory Note, Series 2010" (the "Series 2010 Note" ),pursuant to the terms of a Loan Agreement (the

"Loan Agreement") by and between the Cherokee Nation and Bank of Oklahoma, N.A. and it is necessary that the Principal Chief and/or his designee negotiate as necessary a limited waiver of sovereign immunity of the Cherokee Nation;

**BE IT RESOLVED BY THE CHEROKEE NATION:**

Section 1. The Cherokee Nation hereby finds and determines that in the exercise of prudent fiscal management, it is in the best financial interest of the Cherokee Nation to authorize the issuance of the Series 2010 Note pursuant to the terms of the Loan Agreement to finance the construction of a health facility in Vinita, Oklahoma.

Section 2. The incurring of indebtedness by the Cherokee Nation in the aggregate principal amount of not to exceed \$24,000,000.00 to be evidenced by and pursuant to the terms of the Series 2010 Note and the Loan Agreement, is hereby approved. The Series 2010 Note shall be a general obligation of the Cherokee Nation payable by the full faith and credit of the Cherokee Nation. The Series 2010 Note shall be additionally secured by a security interest in the Nation's Motor Fuel Tax Education Trust only to the extent of outstanding borrowings.

**BE IT FURTHER RESOLVED** that the Council recognizes that, in order to obtain the most advantageous borrowing costs and most favorable terms in the Series 2010 Note and Loan Agreement, it is necessary to grant a limited waiver of sovereign immunity with respect to the Cherokee Nation so that Bank of Oklahoma, N.A., may maintain causes of action against the Cherokee Nation in the event of default by the Cherokee Nation under the terms of any of the Loan Documents during the term of the loan.

**BE IT FURTHER RESOLVED** that the Council further recognizes that the remedy available as a result of a waiver of sovereign immunity must be carefully and strictly defined, and therefore desires to establish herein the provisions that must be expressly set forth in the Loan Documents.

**BE IT FURTHER RESOLVED** that for the sole purpose of allowing for enforcement of the terms of the Loan Documents, the Cherokee Nation agrees to a limited waiver of sovereign immunity, only if all of the following conditions are met:

- (1) The entity seeking to bring suit against the Nation is Bank of Oklahoma, N.A., and
- (2) The claim is for breach of contract and seeks only actual or liquidated damages resulting from Nation's noncompliance with the Loan Documents, and
- (3) That in the event of an award of actual monetary damages, the award may be paid out of any assets of the Cherokee Nation, excluding real property and improvements by way of fixtures and excluding funds held in trust by the United States on behalf of the Cherokee Nation and shall not be a lien or encumbrance upon tribal property or allow recovery from any elected officials, officers, or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorney fees;

**BE IT FURTHER RESOLVED** that nothing herein shall be construed as a waiver of immunity from suit seeking attorneys fees, punitive damages or any other form of damages from any party whatsoever, or as a waiver extended for the benefit of any entity, person, partnership, or firm whatsoever, other than Bank of Oklahoma, N.A. as a party to the Series 2010 Note and Loan Agreement for enforcement of said note and agreement;

**BE IT FURTHER RESOLVED** that this waiver shall not be construed to authorize any action or claim against the Nation sounding in tort or any other type of claim or recovery not expressly authorized herein, for which purposes the Cherokee Nation's sovereign immunity is and shall be reserved.

**BE IT FURTHER RESOLVED** that Bank of Oklahoma, N.A. as a party to the Series 2010 Note and Loan Agreement may not assign or transfer any rights under this waiver.

**BE IT FURTHER RESOLVED** that this waiver shall not allow recovery from any elected officials, officers or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs, attorney fees or any other damages whatsoever.

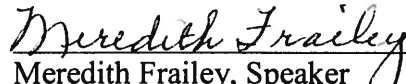
**BE IT FURTHER RESOLVED** that the Cherokee Nation elects to expressly waive the sovereign immunity of the Cherokee Nation as it applies to the Series 2010 Note and Loan Agreement and hereby authorizes the Principal Chief to negotiate and execute limited waivers of sovereign immunity, and additional agreements as part of the Loan Documents

**BE IT FURTHER RESOLVED** that the Principal Chief is authorized to negotiate, prepare, execute and deliver an agreement on behalf of the Nation pursuant to which the Nation would not object known as the Series 2010 Note and Loan Agreement with Bank of Oklahoma, N.A..


**BE IT FURTHER RESOLVED** that this Resolution shall in no manner or in any respect operate or be construed to operate to waive or otherwise diminish the sovereign immunity of the Cherokee Nation, except as to allow certain actions against the Cherokee Nation as provided herein.

#### CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 10<sup>th</sup> day of May, 2010, having 16 members present, constituting a quorum, by the vote of 16 yeas; 0 nays; 0 abstaining.

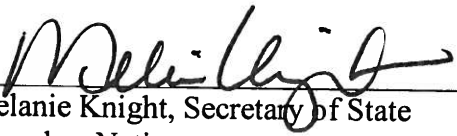
  
Meredith Frailey, Speaker  
Council of the Cherokee Nation

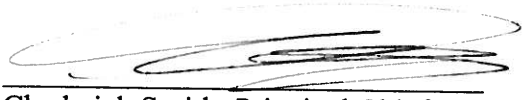
ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 10<sup>th</sup> day of May 2010.

**ATTEST:**

  
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Melanie Knight, Secretary of State  
Cherokee Nation

  
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Chadwick Smith, Principal Chief  
Cherokee Nation