

**RESOLUTION NO. 38-22**

**COUNCIL OF THE CHEROKEE NATION**

**A RESOLUTION AUTHORIZING THE CHEROKEE NATION TO INCUR INDEBTEDNESS AND AUTHORIZING THE APPROVAL OF A LOAN AGREEMENT AND LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR CONSTRUCTION OF A NEW HOSPITAL; AND DECLARING AN EMERGENCY**

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

**WHEREAS**, the Cherokee Nation is a federally recognized Indian Nation with a historic and continuing government-to-government relationship with the United States of America; and

**WHEREAS**, the Cherokee Nation intends to construct a new hospital in Tahlequah, Oklahoma; and

**WHEREAS**, the Cherokee Nation has inherent sovereign authority under the Constitution and tribal law to incur indebtedness, to issue obligations evidencing 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 §§ 61-62); and

**WHEREAS**, the Cherokee Nation has determined that it would be most advantageous at this time for the Cherokee Nation to accept and execute a general obligation credit facility loan agreement (the "Loan Agreement"; capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement) with a group of lenders (the "Lenders") to be arranged by BOK Financial Public Finance, Inc. ("BOK") as Administrative Agent, and approved by the Cherokee Nation in a principal amount of \$200,000,000 and according to the term structure and amortization schedule identified in the draft of the proposed Loan Agreement attached hereto, to finance a portion of the project costs of a new hospital in Tahlequah, Oklahoma; and

**WHEREAS**, the Cherokee Nation has determined that the proceeds of the Loan Agreement shall be used for essential governmental functions of the Cherokee Nation and that the new hospital constitutes a need of the Cherokee Nation and is an essential governmental function; and

**WHEREAS**, the Principal Chief and/or his designee has negotiated with BOK the essential terms to be included in the Loan Agreement and related Fee Letter, Notes, other documents and certificates, treasury agreements, cash management agreements, swap agreements, master agreements and other instruments or certificates in connection with cash management and hedging arrangements to be entered into with the Lenders (including BOK as one of the Lenders) (collectively, together with the Loan Documents (as defined in the Loan Agreement), the "Loan Documents") and with BOK as Administrative Agent for the Lenders, which is evidenced by the attached Loan Agreement, including attachments thereto, which includes a limited waiver of the Cherokee Nation's sovereign immunity; and

**WHEREAS**, in connection with the securing of credit from the Lenders, it is necessary for the Principal Chief and/or his designee to negotiate and execute additional documents associated with the Loan Agreement, including the execution of a limited waiver of sovereign immunity subject to the terms of this Resolution, the Loan Agreement, and related Loan Documents, including Notes in favor of the Lenders.

**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 Principal Chief and/or his designee to negotiate and execute the Loan Agreement and the other Loan Documents, including any treasury agreements, cash management agreements, swap agreements, master agreements and other instruments or certificates in connection with cash management and hedging arrangements to be entered into with the Lenders from time to time (and any amendments or modifications thereto) as the Principal Chief and/or his designee may deem necessary or desirable for the purpose of financing the project costs of a new hospital in Tahlequah, Oklahoma.

Section 2. The incurring of indebtedness by the Cherokee Nation in the aggregate principal amount of and not to exceed \$200,000,000 in accordance with the Loan Agreement is hereby approved. The debt incurred by the Loan Agreement shall be a general obligation of the Cherokee Nation and payable by the full faith and credit of the Cherokee Nation.

**BE IT FURTHER RESOLVED** that the Council recognizes that, in order to obtain the most advantageous borrowing costs and most favorable terms in the Loan Agreement, it is necessary to grant a limited waiver of sovereign immunity with respect to the Cherokee Nation for the sole purpose of allowing BOK, as Administrative Agent, or the Lenders participating pursuant to the Loan Agreement to initiate causes of action against the Cherokee Nation in the event of default under the terms of the Loan Agreement.

**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 Agreement.

**BE IT FURTHER RESOLVED** that for the sole purpose of allowing for enforcement of the Loan Agreement, and only for the time period set forth in the Loan Agreement, the Cherokee Nation agrees to grant a limited waiver of sovereign immunity, only if all of the following conditions are met:

- (1) The claim is brought before a Specified Court identified in Section 11.25 of the Loan Agreement or, in the event that the Specified Courts determine that they lack or decline to exercise jurisdiction, before an arbitrator pursuant to Section 11.21 of the Loan Agreement, and
- (2) The entity seeking to bring a claim against the Nation is BOK, as Administrative Agent for the Lenders, and
- (3) The claim is for: (a) breach of contract and seeks only actual or liquidated damages, including

attorneys' fees, resulting from the Nation's noncompliance with the Loan Agreement or any other Loan Document, or (b) indemnity pursuant to Sections 2.20(b), 3.8, 9.2 or 11.13 of the Loan Agreement, and

(4) That in the event of an award of actual monetary damages, the award may be paid out of any unrestricted 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 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 BOK as Administrative Agent for the Lenders and only for enforcement of said Loan 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 BOK, as Administrative Agent under the Loan Agreement, may not assign or transfer any rights under this waiver, provided that any successor administrative agent for the Lenders appointed in accordance with the terms of the Loan Agreement will succeed to the rights under the waiver, but only for the benefit of the Lenders and only for enforcement of the Loan Agreement.

**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 Loan Agreement and hereby authorizes the Principal Chief and/or his designee to negotiate and execute limited waivers of sovereign immunity, and such other documents as may be required under the Loan Agreement.

**BE IT FURTHER RESOLVED** that the Principal Chief and/or his designee is authorized to negotiate, prepare, execute and deliver an agreement on behalf of the Nation pursuant to this Resolution and the provisions of the Loan Agreement with the Lenders and BOK as Administrative Agent for the Lenders.

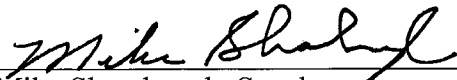
**BE IT FURTHER RESOLVED** that this Resolution shall in no manner or in any respect operate or be construed to operate to waive or otherwise diminish the sovereign immunity of the Cherokee Nation, except as to allow certain actions against the Cherokee Nation as provided herein.

**BE IT FURTHER RESOLVED**, that any resolutions or other actions of the Cherokee Nation, or any of its officers, employees, or agents, either written or established by tradition that are in conflict with or inconsistent with the terms of this resolution or any provision set forth in any document authorized to be executed hereunder are hereby to such extent superseded by such


conflicting or inconsistent term for so long as any amounts owing under the Loan Documents shall remain outstanding. This resolution shall supersede any prior or currently existing resolutions or other actions of the Cherokee Nation, or any of its officers, employees or agents, subdivisions, agencies or instrumentalities, that is contrary to the actions authorized or contemplated herein or in a document authorized hereunder to the extent that it is so contrary.

### CERTIFICATION


The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 11<sup>th</sup> day of July, 2022, having 16 members present, constituting a quorum, by the vote of 16 yea; 0 nay; 0 abstaining.

  
\_\_\_\_\_  
Mike Shambaugh, Speaker  
Council of the Cherokee Nation

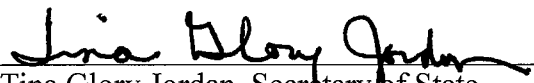
**ATTEST:**

  
\_\_\_\_\_  
Dora Patzkowski, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 11<sup>th</sup> day of July, 2022.

  
\_\_\_\_\_  
Chuck Hoskin, Jr, Principal Chief  
Cherokee Nation

**ATTEST:**

  
\_\_\_\_\_  
Tina Glory Jordan, Secretary of State  
Cherokee Nation