



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

File #: 16-041, Version: 1

A RESOLUTION AUTHORIZING THE CHEROKEE NATION TO INCUR INDEBTEDNESS AND AUTHORIZING THE APPROVAL OF A LOAN AGREEMENT AND LIMITED WAIVER OF SOVEREIGN IMMUNITY AS PART OF THE UNITED STATES INDIAN HEALTH SERVICE JOINT VENTURE EXPANSION OF THE CHEROKEE NATION TAHLEQUAH OUTPATIENT FACILITY; 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 has entered into a Joint Venture Agreement with the United States Indian Health Service for construction of a healthcare facility in Tahlequah, Oklahoma (the “Cherokee Nation Tahlequah Outpatient Facility”); 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”) with a group of lenders (the “Lenders”) to be arranged by BOKF, NA dba Bank of Oklahoma (“BOK”) and approved by the Cherokee Nation in a principal amount of \$170,000,000.00, and according to the term structure and amortization schedule identified in the Loan Agreement, to finance construction of the Cherokee Nation Tahlequah Outpatient Facility; 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 Joint Venture project 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 to be entered into with the Lenders (including BOK as one of the Lenders) and with BOK as Administrative Agent for the Lenders, which is evidenced by the attached Summary of Terms and Conditions dated March 9, 2016 (the “Term Sheet”), 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, Term Sheet, and Loan Agreement.

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 pursuant to the provisions of the Term Sheet for the purpose of financing the construction of the Cherokee Nation Tahlequah Outpatient Facility.

Section 2. The incurring of indebtedness by the Cherokee Nation in the aggregate principal amount of and not to exceed \$170,000,000.00, in accordance with the term structure and amortization schedule identified in the Term Sheet 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 as evidenced by the Term Sheet, 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, 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 Term Sheet and 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 entity seeking to bring suit against the Nation is BOK acting as Administrative Agent for the Lenders, and
- (2) The claim is for breach of contract and seeks only actual or liquidated damages, including attorney fees, resulting from the Nation's noncompliance with the Loan Agreement, and
- (3) 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 the Lenders and party to the Loan Agreement and 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 Term Sheet a 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.