



Legislation Text

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A RESOLUTION APPROVING THE HEALTHY LIVING PROGRAM COOPEDRATIVE AGREEMENT WITH THE OKLAHOMA TOBACCO SETTLEMENT ENDOWMENT TRUST (TSET) AND WAIVING IMMUNITY OF THE CHEROKEE NATION FOR PURPOSES OF THE COOPERATIVE AGREEMENT

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

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;

WHEREAS, the Council of the Cherokee Nation under Title 73, Chapter 1, Sections 4(B) and 4(C) has the authority by Resolution to waive sovereign immunity and to grant authority to waive sovereign immunity; and

WHEREAS, a goal of the Cherokee Nation is to address all the health needs and to promote the health and welfare of its citizens, and

WHEREAS, the Cherokee Nation has been awarded a grant from the Oklahoma Tobacco Settlement Endowment Trust (TSET) for the purpose of the TSET Healthy Living Program; and,

WHEREAS, the attached Cooperative Agreement reflects the agreement proposed between the Oklahoma Tobacco Settlement Endowment Trust and the Cherokee Nation; and

WHEREAS, a condition of this grant is that the Cherokee Nation enact a limited waiver of its sovereign immunity; and

WHEREAS, the Council of the Cherokee Nation has determined that a waiver of the immunity of the Cherokee Nation that is limited as stated in this Resolution is appropriate for the purpose of the Cooperative Agreement, and that the waiver of sovereign immunity should be as follows:

Limited Waiver of Sovereign Immunity

To the extent that the Cherokee Nation may have immunity from any action to enforce the terms of the attached Cooperative Agreement, the Cherokee Nation, by and through the Council of the Cherokee Nation, expressly and irrevocably waives, to the fullest extent permitted by law, any immunity on the grounds of sovereignty, or other similar grounds, from (a) any liability, dispute, suit or action arising out of the Cooperative Agreement or matters ancillary thereto, (b) jurisdiction of any court, including the courts of the State of Oklahoma, (c) such relief, including monetary damages, injunction, order for specific performance or the recovery of property that is equal in money or value to a court-ordered judgment that pertains to this Cooperative Agreement or matters ancillary thereto, including any interest or attorney fees included in such judgment, and to execution, enforcement, or collection of any judgment that may issue from any action or

dispute arising out of the Cooperative Agreement or ancillary thereto.

The Cherokee Nation expressly and irrevocably waives its right to require exhaustion of tribal remedies, and the Cherokee Nation consents to have its liability determined in accordance with the same rules of law as are applicable in actions against a natural person or corporation under Oklahoma law as it applies to the attached contractual agreement being approved by the Cherokee Nation by and through the Council of the Cherokee Nation. These waivers by the Cherokee Nation extend to all of the rights, duties, and obligations under the Cooperative Agreement and shall be effective from February 23, 2017, and shall remain and continue in effect for five (5) years after the expiration, termination, or cancellation of the Cooperative Agreement, and shall further remain in effect, even if after said five (5) year period, for the duration of any arbitration, litigation, or dispute resolution proceedings arising out of the Cooperative Agreement or matters ancillary thereto, all appeals therefrom, and the full satisfaction of any awards or judgments that may issue from such proceedings. As to the Cherokee Nation, these waivers are specifically limited to actual or liquidated damages as the recovery of punitive and/or exemplary damages against the Cherokee Nation is not allowed.

Except as specifically set forth herein, these waivers 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.

BE IT RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation hereby adopts and approves the above Limited Waiver of Sovereign Immunity of the Cherokee Nation as related to the Oklahoma Tobacco Settlement Endowment Trust and the attached Cooperative Agreement and matters ancillary thereto, which above Limited Waiver of Sovereign Immunity is incorporated by reference as part of this Resolution, and the Council of the Cherokee Nation hereby waives sovereign immunity as set forth above and in this Resolution and as set forth in the attached Cooperative Agreement.

BE IT RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation approves the attached Cooperative Agreement with the Oklahoma Tobacco Settlement Endowment Trust for the grant awarded to the Cherokee Nation for the TSET Healthy Living Program, and the Council of the Cherokee Nation authorizes the Principal Chief of the Cherokee Nation or his designee to execute the Cooperative Agreement and any other documents, if any, necessary to effectuate the terms the Cooperative Agreement and/or the Limited Waiver of Sovereign Immunity granted herein.

BE IT RESOLVED BY THE CHEROKEE NATION, by and through the Council of the Cherokee Nation and the Principal Chief of the Cherokee Nation, that the Limited Waiver of Sovereign Immunity approved herein shall not be repealed, rescinded, or modified in any manner until all obligations of the Cherokee Nation referenced in the Cooperative Agreement and in the Limited Waiver of Sovereign Immunity are fully satisfied.