



Council of the Cherokee Nation

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

Legislation Text

File #: 19-093, Version: 1

A RESOLUTION AUTHORIZING THE CHEROKEE NATION TO INCUR INDEBTEDNESS AND AUTHORIZING THE APPROVAL OF A LEASE-PURCHASE AGREEMENT AND LIMITED WAIVER OF SOVEREIGN IMMUNITY TO OKLAHOMA STATE BANK

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 enjoys sovereign immunity from suit under federal, state, and tribal law; 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, Sections 61 and 62 of the Cherokee Nation Code (62 CNCA §§ 61-62); and

WHEREAS, the Cherokee Nation operates a sanitary landfill (the “Landfill”) in Adair County, Oklahoma and has negotiated essential terms of a Lease-Purchase Agreement the (“Agreement”) as evidenced in the attached quote summary dated October 11, 2019 (the “Term Sheet”) with Oklahoma State Bank in an amount not to exceed of \$1,900,000.00, which includes a limited waiver of sovereign immunity, to procure heavy equipment for use in Landfill operations; and

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

WHEREAS, in connection with the securing of credit from the Lender, it is necessary for the Principal Chief to negotiate and execute the Agreement and associated documents, including the execution of a limited waiver of sovereign immunity, subject to the terms of this Resolution, and Term Sheet.

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 to negotiate and execute the Agreement pursuant to the provisions of the Term Sheet for the purpose of financing equipment to be used in Landfill operations.

Section 2. The incurring of indebtedness by the Cherokee Nation in an aggregate principal amount not to

exceed \$1,900,000.00, in accordance with the Term Sheet is hereby approved. The debt incurred by the Agreement shall be secured by the equipment purchased from proceeds provided by Oklahoma State Bank pursuant to the Agreement and 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 Agreement and 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 Oklahoma State Bank to initiate causes of action against the Cherokee Nation in the event of default under the terms of the 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 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 Oklahoma State Bank, or its lawful successor, 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 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 not secured by the Agreement 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 Oklahoma State Bank and only for enforcement of said 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 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 Agreement and hereby authorizes the Principal Chief to

negotiate and execute a limited waiver of sovereign immunity, and such other documents as may be required under the Agreement and consistent with the Term Sheet.

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 this Resolution and the provisions of the Term Sheet and Agreement with Oklahoma State Bank

BE IT FINALLY 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.