



Legislation Text

File #: 23-047, Version: 1

A RESOLUTION AMENDING RESOLUTION NO. R-13-23 APPROVING A LETTER OF CREDIT AGREEMENT AND GRANTING A LIMITED CONSENT TO BE SUED

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in 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 Nation enjoys governmental immunity from suit under federal, state, and tribal law;

WHEREAS, the Nation has inherent sovereign authority, as evidenced by the Constitution and tribal law, to enter into contractual agreements providing for waivers, pledges, and consent to suit; and

WHEREAS, Resolution Nos. 11-23 and 13-23, previously approved by the Tribal Council and the Principal Chief, authorized Cherokee Nation Risk Management to obtain through the Financial Resources office, a LOC for the risk and insurance program for the new Hospital construction project;

WHEREAS, the Financial Resources office previously determined that it is advantageous for the Nation to utilize JP Morgan Chase Bank, N.A., for purposes of the LOC and has negotiated terms for an Application and Agreement for Irrevocable Standby Letter of Credit, as amended by Exhibit A thereto ("Agreement") that includes a consent to nonexclusive jurisdiction and a limited consent to be sued which must be approved by the Cherokee Nation Tribal Council.

BE IT RESOLVED BY THE CHEROKEE NATION, that the Council recognizes that the remedy available as a result of a consent to be sued must be carefully and strictly defined, and therefore desires to establish herein the provisions that must be expressly set forth in the Agreement.

BE IT FURTHER RESOLVED that for the sole purpose of allowing the enforcement of the Agreement, and only for the time period set forth therein, the Cherokee Nation agrees to grant a limited consent to be sued and waives any doctrine requiring exhaustion of tribal remedies or administrative remedies, only if all of the following conditions are met:

- (1) The entity seeking to bring suit against the Nation is JP Morgan Chase Bank, N.A., its successors and/or assigns,
- (2) The claim is for breach of contract and seeks only equitable relief or actual damages resulting from the Nation's noncompliance with the Agreement, and
- (3) That any action must be brought first in a court of competent jurisdiction as set forth in the Agreement, or if the action could not be brought in a court pursuant to Section 9.10(b) of the

Agreement, then in the courts of the Cherokee Nation.

BE IT FURTHER RESOLVED that nothing herein shall be construed as consent to any lawsuit seeking punitive damages from any party whatsoever, or as a waiver extended for the benefit of any person, entity, partnership, or firm whatsoever, other than the party having such rights pursuant to the terms of the Agreement and only for enforcement of the obligations set forth in the Agreement.

BE IT FURTHER RESOLVED that this consent to suit 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 immunity from suit shall be expressly preserved.

BE IT FURTHER RESOLVED that this consent to suit shall not allow recovery from any elected official, officer, or employee of the Cherokee Nation of any monetary damages, punitive or exemplary damages, court costs, attorney's fees or any other damages whatsoever not provided for in the Agreement.

BE IT FURTHER RESOLVED that the Cherokee Nation elects to expressly consent to suit as it applies to the Agreement and hereby authorizes the Principal Chief, or his designee, to negotiate and execute the Agreement, and such other documents as may be appropriate.

BE IT FUTHER 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 FUTHER RESOLVED that this Resolution shall replace and supersede Resolution No. 13-23.