

TO APPROVE A LIMITED WAIVER OF SOVEREIGN IMMUNITY
COMMUNITY CENTERS AND HEAD START PRESCHOOL FACILITIES
HUGO, BETHEL, AND ATOKA

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

ANTHONY DILLARD INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE a limited waiver of sovereign immunity from the Choctaw Nation of Oklahoma (the "Nation") with respect to the NMTC Financing and the NMTC Financing Documents (as defined herein and in Exhibit A).

WHEREAS, it has been proposed that the Nation enter into financing (the "NMTC Financing") with U.S. Bancorp Community Development Corporation, a Minnesota corporation ("USBCDC") and REI Subsidiary CDE 5, LLC, an Oklahoma limited liability company (the "Sub-CDE") utilizing federal tax credits under the New Markets Tax Credit program governed by Section 45D of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder (the "NMTC Program" and as to the credits, the "NMTCs") for the development and construction of the following: (i) a community center at 1306 W. Chahta St., Hugo, Oklahoma 74743 (the "Hugo Project"); (ii) a community center and Head Start preschool facility at 3150 Battiest Pickens Road, Broken Bow, Oklahoma 74724 (the "Bethel Project"); and (iii) a Head Start preschool facility at 1203 W. Liberty Road, Atoka, Oklahoma 74525 (the "Atoka Project" and together with the Hugo Project and the Bethel Project, the "Projects"), as described in Exhibit A attached hereto;

WHEREAS, as a condition to entering into the NMTC Financing, USBCDC and the Sub-CDE are requiring a limited waiver of sovereign immunity from the Nation applicable to the NMTC Financing and the NMTC Financing Documents in substantially the following form:

Limited Waiver of Sovereign Immunity. To the extent that any party to this [Agreement] may be entitled in any state or jurisdiction to claim or benefit from any sovereign immunity now or hereafter for itself or any of its properties or assets (which it now has or may hereafter acquire) in respect of its obligations under this [Agreement] [or any other Loan Documents (as defined in this Agreement)] from service of process or other documents relating to proceedings, jurisdiction, suit, judgement, execution, attachment (whether before awarded or judgement, in aid or execution or otherwise) or legal process or to the extent that in any such jurisdiction there may be attributed to it or any of its properties or assets such sovereign immunity (whether or not claimed), each of the parties to this [Agreement] expressly, unconditionally and irrevocably agrees not to claim, invoke or permit to be invoked, on its or its properties' or assets' behalf or for its or its properties' or assets' benefit, and hereby expressly, unconditionally and irrevocably waives, such sovereign immunity to the fullest extent permitted by the laws of such jurisdiction; provided that such limited waiver shall be limited to the enforcement of the obligations under this [Agreement] [or any other Loan Document] and nothing in this Section [] shall be construed as extending or enlarging this limited waiver of sovereign

immunity hereunder beyond the scope of the obligations set forth in this [Agreement] or [any other Loan Document].

Except as specifically set forth in this Section [], nothing contained herein [or in any Loan Document] is intended to, nor shall it be construed to:

1. benefit any party other than as specified herein or therein;
2. waive the sovereign immunity of any party except as specifically set forth herein or therein;
3. waive the sovereign immunity of (i) any legally distinct and separate agency or affiliate of the Choctaw Nation of Oklahoma or (ii) any official acting on behalf of the Choctaw Nation of Oklahoma, or such agency or affiliate, and within the scope of his or her official authority.

WHEREAS, the Unconditional Guaranty of New Markets Tax Credits, Put Price and Environmental Indemnification (the “NMTC Indemnity”) by the Nation and the QALICB (as defined in Exhibit A) require that the Nation and the QALICB indemnify USBCDC against any loss or recapture of the NMTCs resulting from certain actions or inactions of the Nation or the QALICB;

WHEREAS, as a condition to entering into the NMTC Financing, USBCDC and the Sub-CDE are requiring that, with respect to the NMTC Financing Documents other than the Put/Call Agreement, NMTC Indemnity, Collateral Assignment of Fund Loan Documents and Bank Account Control Agreement, the Nation agree to Oklahoma governing law and jurisdiction and venue in the state and federal courts in Oklahoma City, Oklahoma;

WHEREAS, as a condition to entering into the NMTC Financing, USBCDC is requiring that, with respect to the Put/Call Agreement, NMTC Indemnity and Collateral Assignment of Fund Loan Documents, the Nation agree to Missouri governing law and jurisdiction in the state and federal courts in Missouri;

WHEREAS, as a condition to entering into the NMTC Financing, USBCDC is requiring that, with respect to the Bank Account Control Agreement, the Nation agree to Minnesota governing law and jurisdiction in the state and federal courts in Minnesota;

WHEREAS, the Nation has determined that it is in the best interests of the Nation to enter into the NMTC Financing and NMTC Financing Documents; and

WHEREAS, the Tribal Council of the Nation has determined that it is in the best interests of the Nation to grant such a limited waiver of sovereign immunity as described above with respect to the NMTC Financing Documents.

THEREFORE, BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority for the express, unequivocal and irrevocable grant of a limited waiver of the sovereign immunity of the Nation as set forth in this Council Bill; provided that the limited waiver of sovereign immunity shall be not be effective until the finalization, execution and delivery of the NMTC Financing Documents in connection with closing of the NMTC Financing.

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be

construed to, benefit any party other than the Nation, the QALICB, USBCDC, the Investment Fund (as defined in Exhibit A), REI (as defined in Exhibit A) and the Sub-CDE.

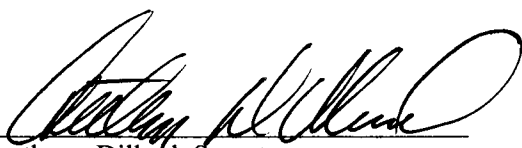
BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed to, waive the sovereign immunity of the Nation, or any agency thereof, except as specifically set forth herein.

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed to, waive the sovereign immunity of (i) any legally distinct and separate agency or affiliate of the Choctaw Nation of Oklahoma or (ii) any official acting on behalf of the Choctaw Nation of Oklahoma, or such agency or affiliate, and within the scope of his or her official authority, except as specifically set forth herein.

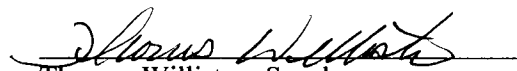
BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that the Chief of the Nation, or his written designee, be authorized to prepare, execute, deliver and/or file any and all agreements (including, but not limited to, the NMTC Financing Documents), certificates, instruments and documents, in such form and with such terms and provisions as the Chief or his written designee may approve, with his, her or their execution, delivery and/or filing thereof to be conclusive evidence of such approval, and to take such other action as he, she or they may deem proper or appropriate, to carry out the intent and purposes of the foregoing enactments.

CERTIFICATION

I, the undersigned, as Speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that ten (10) members answered the roll call and that a quorum was present at the Regular Session of the Tribal Council at Tushka Homma, Oklahoma on this March 12, 2016. I further certify that the foregoing Council Bill CB-77 -16 was adopted at such meeting by the affirmative vote of ten (10) members, zero (0) negative votes, and zero (0) members abstaining.


Anthony Dillard, Secretary
Choctaw Nation Tribal Council

Date: 3-16-16


Thomas Williston, Speaker
Choctaw Nation Tribal Council

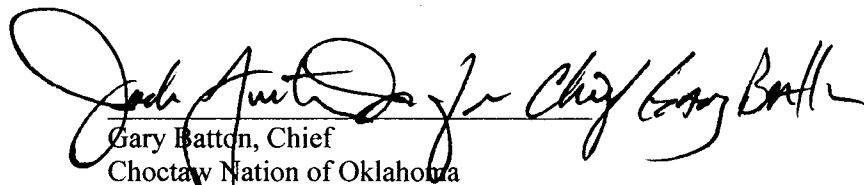

Gary Batton, Chief
Choctaw Nation of Oklahoma

EXHIBIT A

NEW MARKETS TAX CREDIT FINANCING

I. Formation of QALICB; Ground Leases and Operating Leases. In connection with the NMTC Financing:

It has been proposed that the Nation form an Oklahoma limited liability company, Choctaw Services Land and Facilities, LLC (the "QALICB"), of which the Nation will own ninety-five percent (95%) and the Chickasaw Nation, through one of its wholly-owned subsidiaries, will own five percent (5%) and that the Nation enter into the Operating Agreement for the QALICB (the "QALICB Operating Agreement") pursuant to which the Nation will make a capital contribution to the QALICB in the amount of approximately \$501,727;

It has been proposed that the Nation and QALICB enter into one or more ground leases (each a "Ground Lease" and collectively, the "Ground Leases"), whereby the Nation will lease the real property for the Projects to the QALICB for a term of fifty (50) years and the QALICB will own the Projects and certain fixtures, furniture and equipment to be installed or placed in service at the Projects;

It has been proposed that the Nation and QALICB enter into one or more triple net operating leases (each an "Operating Lease" and collectively, the "Operating Leases"), whereby the QALICB will lease the Projects to the Nation for a term of approximately thirty (30) years for operation by the Nation;

It has been proposed that the QALICB and the Nation enter into a Reimbursement Agreement (the "Reimbursement Agreement") pursuant to which the QALICB will reimburse the Nation for certain costs and expenses incurred by the Nation with respect to the Projects; and

It has been proposed that the QALICB and the Nation enter into a Construction Management Agreement whereby the Nation will provide construction management services to the QALICB with respect to the Projects (the "Construction Management Agreement").

II. Loan to Investment Fund. In connection with the NMTC Financing:

It has been proposed that the Nation make a loan to Twain Investment Fund 156, LLC, a Missouri limited liability company (the "Investment Fund"), which is a wholly-owned subsidiary of USBCDC, which loan is in the principal amount of approximately \$9,919,350 (the "Leverage Loan") which will have a term of approximately thirty (30) years and an interest rate of approximately 1.377441%. The Leverage Loan will be secured by a pledge of the Investment Fund's equity interest in the Sub-CDE and pursuant to the Leverage Loan Documents described below, the enforcement of the remedies of the Nation with respect to any defaults under the Leverage Loan will be subject to forbearance during the seven-year tax credit compliance period ("NMTC Compliance Period") and to secure the obligations of the Nation under the NMTC Guaranty, USBCDC requires that the Nation collaterally assign its interest in the Leverage Loan Documents to USBCDC; and

In connection with the Leverage Loan, the Nation will enter into loan documents with the Investment Fund, including, without limitation, a Fund Loan Agreement, Promissory Note, Pledge Agreement and Collateral Assignment of Fund Loan Documents (collectively, the "Leverage Loan Documents").

III. QLICI Loan Documents and USBCDC Equity Investment Documents. In connection with the NMTC Financing:

It has been proposed that at closing of the NMTC Financing, USBCDC will make a capital contribution to the Investment Fund in the amount of \$4,674,150 (the "NMTC Equity Investment") and a capital contribution of \$40,000 (the "Fee Equity Investment") and together with the NMTC Equity Investment, the "USBCDC Equity Investment") in exchange for 100% of the ownership interests in the Investment Fund;

The Investment Fund will use the proceeds of the Leverage Loan and the USBCDC Equity Investment to (i) make a \$14,100,000 qualified equity investment (the "QEI") in the Sub-CDE which is intended to be a "qualified equity investment" under the NMTC Program, (ii) pay a \$493,500 subcompliance fee ("Compliance Fee") to REI Development Corp., an Oklahoma not for profit corporation and managing member of the Sub-CDE ("REI") and (iii) fund a \$40,000 reserve for management fees for the Investment Fund;

The Sub-CDE will use the proceeds of the QEI to (i) pay a \$423,000 sub-allocation fee to REI ("Sub-Allocation Fee"), and (ii) make one or more loans in the aggregate amount of \$13,677,000 ("QLICI Loans"), each of which are intended to constitute a Qualified Low-Income Community Investment ("QLICIs") under the NMTC Program, to the QALICB, which is intended to qualify as a "Qualified Active Low-Income Community Business" under the NMTC Program. Each of the QLICI Loans will have a term of approximately thirty (30) years and bear interest at the annual rate of approximately 1.0%, with payments of interest only for the first seven (7) years of the term, and amortizing payments of principal and interest over the remaining term of the QLICI Loans. The QLICI Loans will be secured by an assignment of leases and rents on the Projects, a pledge of the disbursing account in which the proceeds of the QLICI Loans will be held and a completion guaranty from the Nation;

In connection with the QLICI Loans, it is proposed that the QALICB enter into loan documents with the Sub-CDE, including, without limitation, a Loan Agreement, one or more Promissory Notes, Assignment of Leases and Rents with respect to the Projects, Bank Account Pledge and Control Agreements for the construction disbursement account, Disbursing Agreement, Certificate and Indemnity Regarding Hazardous Substances, Negative Pledge Agreement whereby the QALICB agrees not to grant any liens on the Projects, Unconditional Guaranty of Construction Completion and Excess Development Costs whereby the QALICB guarantees to the Sub-CDE the completion of construction of the Projects, Community Benefits Agreement, and REI Fee Agreement, and such other certificates, instruments and documents as may be required in connection with the QLICI Loans (the "QLICI Loan Documents");

In connection with the QLICI Loans to the QALICB, it is proposed that the Nation enter into loan documents with the Sub-CDE, including, without limitation, Unconditional Guaranty of Construction Completion and Excess Development Costs whereby the Nation guarantees to the Sub-CDE the completion of construction of the Projects, Certificate and Indemnity Regarding Hazardous Substances, and a Negative Pledge Agreement whereby the Nation agrees not to grant any liens on its interest in the Projects (the "Nation QLICI Loan Documents");

The QALICB will use the proceeds of the QLICI Loans, together with the proceeds of the capital contributions described in Section I above, to pay certain fees and expenses related to the NMTC Financing, to finance the development and construction of the Project and to reimburse the Nation for certain costs and expenses incurred by the Nation with respect to the Projects;

Also in connection with the NMTC Financing, REI and the Sub-CDE charge certain fees and expense reimbursements as set forth in the REI Fee Agreement between REI, the Sub-CDE and the

QALICB, including, the Compliance Fee paid by the Investment Fund in the amount of \$493,500, the Sub-Allocation Fee paid by the Sub-CDE out of QEI proceeds in the amount of \$423,000, a success fee paid by the QALICB at the end of the NMTC Compliance Period in the amount of \$141,000 (one percent (1%) of the QEI amount) (the "Success Fee"), and the \$10,000 annual Sub-CDE audit and tax reimbursement paid by the QALICB (the "Audit and Tax Fee" and together with the Sub-Allocation Fee, Compliance Fee and Success Fee, the "REI Fees");

As a condition to the Sub-CDE's making the QLICI Loans to the QALICB, it has been proposed that the Nation enter into a Fee Guaranty Agreement with respect to the guaranty by the Nation to REI and the Sub-CDE of payment of the REI Fees (the "Fee Guaranty Agreement");

In connection with USBCDC's NMTC Equity Investment in the Investment Fund, it is proposed that the Nation and the QALICB enter into the NMTC Indemnity in favor of USBCDC whereby the Nation and the QALICB agree, jointly and severally, to indemnify USBCDC against any loss or recapture of the NMTCs resulting from certain actions or inactions of the QALICB or the Nation, guaranty payment of the Put Option (defined below) price pursuant to the Put/Call Agreement, and indemnify USBCDC against any environmental liability, all as set forth in the NMTC Indemnity;

In connection with USBCDC's NMTC Equity Investment in the Investment Fund, it is proposed that USBCDC and the Nation enter into a certain Investment Fund Put and Call Agreement whereby following the expiration of the NMTC Compliance Period or the occurrence of a NMTC Recapture Event (as defined in the Put/Call Agreement), USBCDC will have the right at its option ("Put Option") to cause the Nation to purchase USBCDC's interest in the Investment Fund for a purchase price of \$1,000 plus additional amounts as set forth in the Put/Call Agreement ("Put Price"), and if USBCDC does not exercise its Put Option, the Nation can cause USBCDC to sell its interest in the Investment Fund to the Nation for an amount equal to the greater of (A) the fair market value of such interest and (B) the Put Price (the "Put/Call Agreement", and together with the NMTC Indemnity, Fee Guaranty Agreement, Nation QLICI Loan Documents, QLICI Loan Documents, Leverage Loan Documents, Reimbursement Agreement, Operating Leases, Ground Leases, Construction Management Agreement and QALICB Operating Agreement, the "NMTC Financing Documents"); and

Following completion of construction of the Projects, the QALICB will lease the Projects to the Nation pursuant to the Operating Leases and the Nation will operate the Projects. Lease payments from the Nation to the QALICB will be used by the QALICB to fund any necessary equipment reserves and to pay debt service on the QLICI Loans. The Investment Fund will receive distributions of income from the Sub-CDE and will utilize those cash distributions to pay debt service on the Leverage Loan to the Nation.

A diagram of the NMTC structure and transactions described herein may be found on the following page.

CHOCTAW SERVICES LAND AND FACILITIES, LLC
 PROJECT #24496
 FINANCIAL FORECAST
 SUPPLEMENTAL SCHEDULE OF FLOW OF FUNDS - CLOSING

