



CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
Executive Council • Edward K. Thomas Building
9097 Glacier Highway • Juneau, Alaska 99801

Executive Council of the Central Council
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Resolution EC 15-30

Title: Express Authorization of Limited Waiver of Sovereign Immunity Required for the SBA 8(a) Program Eligibility of T&H Services LLC, a Limited Liability Company Wholly-Owned and Controlled by THTBC.

WHEREAS, Central Council of Tlingit and Haida Indian Tribes of Alaska (Central Council) is a federally recognized tribe of nearly 30,000 tribal citizens worldwide; and

WHEREAS, the Tribe is established pursuant to the inherent sovereign authority of the Tlingit and Haida Indian Tribes of Alaska; and

WHEREAS, the Tribal Constitution designates the Tribal Assembly as the governing body of the Tribe when in session, and the Executive Council as the governing body of the Tribe when the Tribal Assembly is not in session; and

WHEREAS, the Tribal Constitution authorizes the Tribe's governing body to regulate the conduct of commerce and economic development within the Tribe's jurisdiction and to charter or otherwise establish entities to promote the good of the Tribe

WHEREAS, pursuant to the Tribal Constitution, the Executive Council formed the TLINGIT HAIDA TRIBAL BUSINESS CORPORATION (THTBC), a federally chartered corporation pursuant to the Indian Reorganization Act, 25 U.S.C. § 477 (a "Section 17 Corporation"); and

WHEREAS, pursuant to the Tribal Constitution, the Executive Council approved the THTBC corporate charter, and the United States Secretary of the Interior approved the THTBC corporate charter consistent with the requirements of 25 U.S.C. § 477 on February 10, 2010; and

WHEREAS, the duration of the THTBC Corporation is perpetual, or until revoked by an Act of the United States Congress, pursuant to 25 U.S.C. § 477 as amended; and

WHEREAS, pursuant to Article V of the THTBC Charter, all rights of the Tribe as sole owner of THTBC are to be exercised by the President of the Tribe as sole stock holder representative or the Executive Council acting as a meeting of shareholders; and

WHEREAS, pursuant to Article VIII of the THTBC Charter, THTBC formed a wholly owned subsidiary limited liability company under the laws of the Tribe, T&H Services LLC

(THS LLC) , to pursue economic development opportunities, including but not limited to facility support services and property management; and

WHEREAS, T&H LLC has determined that it will apply to participate in the United States Small Business Administration (SBA) Section 8(a) Business Development program; and

WHEREAS, pursuant to 13 CFR 124.109(c)(1), the SBA Section 8(a) Business Development program requires any applicant or participating enterprise to be a separate and distinct legal entity organized or chartered by the Tribe, and, if a limited liability company, requires its articles of organization to contain express sovereign immunity waiver language or a sue and be sued clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs, including, but not limited to, Section 8(a) Business Development program participation, loans and contract performance; and

WHEREAS, pursuant to Article VIII of the THTBC Charter, the THTBC Board of Directors will need to receive authority from the Executive Council to issue waivers of the immunity of THTBC on a transaction-by-transaction basis and by written resolution set the express conditions, terms and limits of the waiver for each such transaction; and

NOW THEREFORE BE IT RESOLVED, that the Executive Council hereby approves and authorizes the THTBC Board of Directors to approve and authorize the actions of THS LLC, the THTBC's wholly owned and controlled limited liability company, to adopt the following limited waiver provisions in the THS LLC Certificate of Formation:

“To the extent that the Company is engaged in business activities with or relating to the United States Small Business Administration (the “SBA”) and its programs, including, without limitation, Section 8(a) Business Development program participation, loans and contract performance, THTBC has vested the Company with the power to sue and be sued, has designated the United States Federal Courts to be among the courts of competent jurisdiction for all such matters (subject to the exhaustion of CCTHITA tribal court remedies), and has expressly vested the Company with the authority to waive the Company's immunity as to all such matters, provided that this authority to sue and be sued and to waive immunity is strictly limited to such SBA matters and so as to reach only the assets of the Company. For the avoidance of doubt, the granting of authority by THTBC to the Company to sue and be sued and to waive the immunity of the Company may not be construed, interpreted or inferred to authorize any waiver of immunity of THTBC or CCTHITA.”; and

BE IT FURTHER RESOLVED, that the THS LLC is authorized to submit an application to the SBA Section 8(a) program.

ADOPTED this 24 day of June 2015, by the Executive Council of the Central Council of Tlingit and Haida Indian Tribes of Alaska, by a vote of 5 yeas, 0 nays, 0 abstentions and 1 absence(s).

CERTIFY



President Richard J. Peterson

ATTEST

 for:

Tribal Secretary Jolene Edenshaw