

AGNES GONZALEZ
TRIBAL CHAIRPERSON

MORNING STAR GALI
TRIBAL VICE-CHAIRPERSON

JOLIE GEORGE
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PIT RIVER TRIBE
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ELEVEN AUTONOMOUS BANDS

RESOLUTION NO. 23-07-01

DATE APPROVED: July 29, 2023

SUBJECT: Resolution to Delegate Authority to Pit River Tribal Council to Grant Limited Waivers of Sovereign Immunity for California Department of Housing and Community Development Program Funding

WHEREAS: The Pit River Tribe is a federally recognized Indian Tribe located in Shasta, Siskiyou, Modoc, and Lassen Counties in the State of California, established pursuant to the Indian Reorganization Act of 1934, and is a recognized Tribal Government as defined by the Indian Self-Determination and Education Assistance Act (Public Law 93-638); and

WHEREAS: The Pit River Tribe is a federally recognized Tribe (“Tribe”) composed of Eleven Autonomous Bands located in Northeastern California since time immemorial; and

WHEREAS: The Pit River Tribal Council is empowered by Article VII, Section 1 (a) of the Constitution to negotiate, consult and contract with Federal, State and Tribal Governments, private enterprises, individuals, and other organizations; and

WHEREAS: The Pit River Tribal Council is empowered by Article VII, Section 1(s) of the Constitution to enact all ordinances and resolutions which shall be necessary and proper for carrying into effect the Council’s powers and responsibility; and

WHEREAS: The Pit River Voting Membership has retained the power to waive sovereign immunity, subject to a majority vote of the registered voters voting thereon at a meeting duly called, noticed and convened for that express purpose pursuant to Article VII, Section 3(a) of the Constitution; and

WHEREAS: The Tribe possesses the same inherent sovereignty and sovereign authority as other nations; and

WHEREAS: Tribal sovereign immunity exists both on and off reservation, and extends to the Tribe itself, to agencies, arms, entities, and enterprises of the Tribe as well as to

ATWAMSINI

ATSUGEWI

ASTARIWI

APORIGE

AJUMAWI

HAMMAWI

HEWISEDAWI

ILLMAWI

ITSATAWI

KOSEALEKTE

employees, officers, agents acting on behalf of the Tribe and within the scope of their authority; and

WHEREAS: The principle of tribal sovereign immunity is well established and long recognized in federal policy and in federal judicial decisions, legislative enactments, and in administrative regulations, policies and decisions; and

WHEREAS: Under the principle of tribal sovereign immunity, the Tribe, its agencies, arms, entities and enterprises and its employees, officers and agents cannot be sued in any court without the Tribe's express consent, or if the Congress of the United States has enacted specific legislation expressly waiving the sovereign immunity of Indian tribes in certain instances; and

WHEREAS: Waiver of the Tribe's sovereign immunity for specific transactions is an exercise of the Tribe's sovereign authority because only sovereign nations possess the authority to waive their sovereign immunity; and

WHEREAS: Except as otherwise expressly provided below, the Tribe reserves all of its inherent sovereign rights, including sovereign immunity from unconsented suit or legal proceedings. However, the Tribe irrevocably grants to the Department of Housing and Community Development ("HCD") solely, and to no other party other than another California state agency responsible for the management and enforcement of the Department's obligations and responsibilities pursuant to the funding program requirements for all funding administered by HCD and the State Documents governing the Project, including any federal documents required by virtue of a federally funded program administered by HCD, a limited waiver of sovereign immunity (and any defense based thereon) from any suit, action, claim or proceeding or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, exercise of contempt powers, or otherwise) to seek the following rights and remedies:

- (i) the enforcement of any provision of any Funding Agreement with HCD;
- (ii) any claim, action or legal proceeding arising under or related to any Funding Agreement with HCD;
- (iii) any determination, judgment, order or award issued by a court of competent jurisdiction, including without limitation, an award of actual damages, an order requiring the Pit River Tribe to pay direct and actual damages resulting from any breach of any Funding Agreement with HCD, or an order from a court of competent jurisdiction for injunctive relief requiring or prohibiting the Tribe to take certain action;
- (iv) claim or action to interpret and/or enforce the provisions of any Funding Agreement with HCD and to resolve disputes, controversies, or claims arising or related to any of the foregoing;
- (v) any counterclaims against or relating to claim(s) brought in connection any Funding Agreement with HCD; and
- (vi) injunctive relief pursuant to any Funding Agreement with HCD.

The Pit River Tribe expressly, unequivocally, and irrevocably waives its sovereign immunity from unconsented suit (and any defense based thereon) for the rights, remedies, and actions identified in this paragraph, but no others; and

WHEREAS: This limited waiver of sovereign immunity does not extend to tort claims or other types of damages, including indirect, special, incidental, non-compensatory, consequential, or punitive damages, whether by way of indemnification or otherwise. The Tribe does not waive sovereign immunity for lawsuits by third parties or disputes between the parties not arising from this Agreement. This waiver does not allow, and the Department separately agrees not to bring, any claims, actions, or lawsuits against any individual, including Pit River tribal officials, employees, agents, and others acting on behalf of the Tribe. The Department will sue only the Tribe as an entity. This limited waiver shall not, under any circumstances, allow the cumulative award against the Tribe to exceed the HCD grant(s) or loan(s) amounts and in no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the grants, revenues from the Project, and the real property on which the Project is located. This limited waiver shall authorize the award of attorney's fees to the extent authorized by applicable law; and

WHEREAS: The Tribe represents and warrants its limited waiver of sovereign immunity is valid and binding and is in compliance with all applicable law, including the laws of the Tribe, and that all approvals, required under said laws, including procedural requirements, to effectuate said waiver have been duly issued and no other approvals or actions of the Tribe is required. The Tribe further represents and warrants that the remedies set forth in the State Documents pledged against its limited waiver of sovereign immunity are allowed by, and in compliance with, the laws of the Pit River Tribe; and

WHEREAS: Except as otherwise expressly provided in this Agreement, the parties intend that any cause of actions to enforce, construe, and determine any disputes or claims regarding this Agreement as well as any default, breach of contract, injunctive relief, or specific performance remedies, regarding the Property, to be brought and prosecuted to completion as described below:

The Tribe hereby consents to the jurisdiction of the Pit River Tribal Court and the federal and California courts, to the extent they have jurisdiction, over all subject matters described herein, including but not limited to any breach of contract action brought by any of the parties to enforce the terms of this Agreement, or any other appropriate action brought by any of the parties to prosecute any other rights available to the parties hereto arising under or related to the Agreement. The Tribe acknowledges that such consent is given without in any way limiting its other rights and remedies, and the Department shall be entitled in the Pit River Tribal Court or federal and California state courts where appropriate, to pursue, among other things, specific performance, declaratory judgment, injunctive relief (mandatory or prohibitive), mandamus (or a remedy in the nature of mandamus) to prevent or stop violations of any covenants and other provisions hereof, actual and direct damages, receiverships, or to generally protect the Property and the rights and interests of any

tenants or occupants thereof or the Department's interests therein. Any right, power, or principle requiring deferral to or exhaustion of remedies in Pit River Tribal Court and the federal and California state courts to the extent they have jurisdiction or other governmental body of the Tribe or federal government, or HCD, is hereby waived and deemed satisfied by this Resolution, and the Department shall not assert the same in Pit River Tribal Court, or federal and California state court to the extent they have jurisdiction, as a bar or abatement to the claims of the other; and

WHEREAS: The Pit River Tribe agrees that any judicial action, suit, or counterclaim initiated by the Tribe against the Department will be in either, the Pit River Tribal Court or federal courts and California courts to the extent they have jurisdiction, over all subject matters described herein, unless otherwise required by federal Indian law. Such waiver is limited to the rights, remedies, default, and enforceability of the provisions of this Agreement, and transfer or assignment of the Tribe's interest in any funding agreement between the Tribe and HCD; and

WHEREAS: That the Pit River Tribe Voting Membership was provided a copy of Tribal Council Resolution number 23-07-01, pursuant to Article VII, Section 3(a) of the Constitution (Referendum), which included a copy of this resolution that was submitted to the Voting Membership for review and approval; and

WHEREAS: That the Pit River Tribe Voting Membership held a duly called, noticed and convened meeting on July 29, 2023, for the express purpose of voting upon this Resolution pursuant to Article VII, Section 3(a) of the Constitution (Referendum); and

NOW THEREFORE BE IT RESOLVED: By majority vote of the Pit River Tribe Voting Membership, the Voting Membership approves this Resolution to agree and delegate its authority to waive sovereign immunity to the Tribal Council and to authorize it to enter into this limited waiver of tribal sovereign immunity, as to the State of California Department of Housing and Community Development as set forth in this Resolution.

NOW THEREFORE BE IT FURTHER RESOLVED: That the Voting Membership agrees with the Tribal Council's recommendation and authorizes the Tribal Chairperson, or his/her designee, as having authority to sign loan and grant agreements with HCD, including but not limited to Standard Agreements, Promissory Notes, Deeds of Trust, Regulatory Agreements, and all other documents deemed necessary between the Tribe and HCD, which contain a limited waiver of tribal sovereign immunity consistent with this Resolution.

C - E - R - T - I - F - I - C - A - T - I - O - N

I, the undersigned Tribal Chairperson, Agnes Gonzalez, of the Pit River Tribe, do hereby certify that the Pit River Voting Membership is composed of eligible Voting Members of eleven autonomous bands of which _____ were present, constituting a quorum as a specially called, noticed, convened, and held meeting on July 29, 2023, and the resolution was adopted by a vote

of ____ FOR, ____ AGAINST, and ____ ABSTAINING, and that said resolution has not been rescinded in any way.

Agnes Gonzalez, Tribal Chairperson

Date

Jolie George, Tribal Secretary

Date

Tribal Council Member Signatures:

Ajumawi: _____ Date: _____

Aporige: _____ Date: _____

Astarawi: _____ Date: _____

Atsugewi: _____ Date: _____

Atwamsini: _____ Date: _____

Hammawi: _____ Date: _____

Hewisedawi: _____ Date: _____

Illmawi: _____ Date: _____

Itsatawi: _____ Date: _____

Kosealekte: _____ Date: _____

Madesi: _____ Date: _____