

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Limited Waiver of Sovereign Immunity in a Vendor Agreement
Between the Tohono O'odham Gaming Enterprise and Hnedak Bobo Group)**

RESOLUTION NO. 11-429

- 1 **WHEREAS, the Tohono O'odham Nation (the "*Nation*") is a federally recognized Indian tribe**
2 **organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48**
3 **Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its members and its**
4 **lands; and**
- 5 **WHEREAS, pursuant to Article VI of the Nation's Constitution, the Tohono O'odham Legislative**
6 **Council (the "*Legislative Council*") is vested with all of the legislative powers of the**
7 **Nation and is empowered to enact laws, ordinances, and resolutions necessary or**
8 **incidental to the exercise of its legislative powers; and**
- 9 **WHEREAS, the Legislative Council of the Nation has enacted an Ordinance for Regulation of**
10 **Gaming Activities within the Tohono O'odham Nation (the "*Gaming Ordinance*"),**
11 **Ordinance No. 93-01, as amended (16 Tohono O'odham Code Chapter 1); and**
- 12 **WHEREAS, the Gaming Ordinance provides that all gaming activities conducted within the Nation**
13 **shall be owned entirely by the Nation and conducted and operated by a tribal**
14 **enterprise; and**
- 15 **WHEREAS, the Tohono O'odham Gaming Enterprise (the "*Enterprise*") is a tribal governmental**
16 **enterprise of the Nation established pursuant to Article VI of the Nation's Constitution**
17 **as the tribal enterprise responsible for operating the Nation's gaming facilities and**
18 **conducting gaming activities in compliance with the requirements of the Gaming**
19 **Ordinance; and**
- 20 **WHEREAS, the Legislative Council adopted the Charter of the Gaming Enterprise (the "*Charter*")**
21 **by Resolution No. 93-311 and amended the Charter by Resolution 02-294, Resolution**
22 **No. 03-231, and Resolution 04-513 (16 Tohono O'odham Code Chapter 2); and**
- 23 **WHEREAS, Section 8(b)(2) of the Charter of the Gaming Enterprise contains a limited waiver of the**
24 **Gaming Enterprise's sovereign immunity with respect to claims based upon a written**
25 **contract to which the Gaming Enterprise is a party; and**
- 26 **WHEREAS, the Gaming Enterprise has entered into a written agreement with the Hnedak Bobo**
27 **Group, a Tennessee corporation ("*HBG*"), for architectural services relating to the**
28 **design and construction of the West Valley Resort; and**
- 29 **WHEREAS, Section 8(b)(2) of the Charter of the Gaming Enterprise contains a limited waiver of the**
30 **Gaming Enterprise's sovereign immunity with respect to claims based upon a written**
31 **contract to which the Gaming Enterprise is a party, waiving the Gaming Enterprise's**
32 **immunity to the lesser of the amount of the Enterprise's payment obligation under a**

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1 **contract or \$500,000 and only as to actions in the Nation's Courts; and**

2 **WHEREAS, the Gaming Enterprise prefers that its significant construction-related contracts**
3 **provide for disputes to be resolved in an arbitration before the American Arbitration**
4 **Association and its agreement with HBG provides that disputes will be resolved by an**
5 **arbitration before the American Arbitration Association; and**

6 **WHEREAS, the Commerce Committee of the Legislative Council has reviewed the proposed**
7 **limited waiver of the Gaming Enterprise's immunity and recommends that the**
8 **Legislative Council approve the proposed limited waiver of the Gaming Enterprise's**
9 **immunity; and**

10 **WHEREAS, the interests of the Gaming Enterprise will be served by the Tohono O'odham**
11 **Legislative Council approving the proposed limited waiver of the Gaming Enterprise's**
12 **immunity.**

13 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby approves**
14 **and authorizes the following:**

15 **1. The Nation hereby grants a limited waiver of sovereign immunity of the Tohono**
16 **O'odham Gaming Enterprise in favor the Hnedak Bobo Group, a Tennessee**
17 **corporation, in the form attached hereto.**

18 **Exhibit A**

19 **A. The Nation waives any immunity from suit or action the Gaming Enterprise enjoys**
20 **with respect to any and all disputes, claims, counterclaims, and/or crossclaims**
21 **brought by HBG under, arising out of, or related to its agreements with the**
22 **Gaming Enterprise, in accordance with the provisions of this waiver.**

23 **B. The Nation consents to HBG resolving any and all disputes, claims, counterclaims,**
24 **and/or crossclaims under, arising out of, or related to HBG's agreements with the**
25 **Gaming Enterprise in an arbitration or arbitrations with the Gaming Enterprise**
26 **before the American Arbitration Association, and to a suit, action, or proceeding**
27 **in any court of competent jurisdiction to confirm an arbitration award, to have**
28 **judgment entered, and to execute upon any such judgment against the personalty**
29 **of the Gaming Enterprise, whether located on or off the Nation's lands, up to the**
30 **amount of the judgment (subject to the limitation in Paragraph D below).**

31 **C. The Nation waives any obligation HBG otherwise might have to exhaust tribal**
32 **remedies before pursuing arbitration, obtaining a judgment confirming an**

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arbitration award, and/or executing on a judgment confirming an arbitration award.

D. This waiver of sovereign immunity is limited to the sums owed by the Gaming Enterprise to HBG under the Gaming Enterprise's agreements with HBG, plus attorneys' fees and other costs and any interest accrued or accruing on those sums.

E. This limited waiver of sovereign immunity does not extend to any officer, director, agent, or attorney of or for the Gaming Enterprise and no officer, director, agent, or attorney of or for the Gaming Enterprise shall have any personal liability for any of the Gaming Enterprise's obligations under the Gaming Enterprise's agreements with HBG or under any arbitration award, judgment, or order. Moreover, the limited of sovereign immunity applies only to the Gaming Enterprise's agreements with HBG and to no other agreements.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 14TH Day of SEPTEMBER, 2011 at a meeting at which a quorum was present with a vote of 2,304.90 FOR; 475.70 AGAINST; [01] NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by Section 1 (f) and 1 (l) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Timothy Joaquin, Legislative Chairman

21 day of September, 2011

ATTEST:


Evonne Wilson, Legislative Secretary

20 day of September, 2011

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1 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham**
2 **Nation on the 21 day of September, 2011 at 2:54 o'clock, P.M.,**
3 **pursuant to the provisions of Section 4 of Article VII of the Constitution and will become effective**
4 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**
5 **submittal.**

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7 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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11 **Timothy Joaquin, Legislative Chairman**

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16 **APPROVED**

on the 22 day of September, 2011

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18 **DISAPPROVED**

at 8:55 o'clock, A.M.

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22 **NED NORRIS, JR., CHAIRMAN**
23 **TOHONO O'ODHAM NATION**

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28 **Returned to the Legislative Secretary on the 22 day of**
29 **September, 2011, at 9:53 o'clock, A.M.**

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34 **Evonne Wilson, Legislative Secretary**

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ACTION: APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN A VENDOR AGREEMENT BETWEEN THE TOHONO O'ODHAM GAMING ENTERPRISE AND HNEDAK BOBO GROUP

MOVED: COUNCILWOMAN FRANCES MIGUEL

SECOND: COUNCILWOMAN FRANCES G. ANTONE

DATE: SEPTEMBER 14, 2011

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 342.0	1. FRANCES MIGUEL (Roberta Harvey)	171.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
CHUKUT KUK 302.2	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILLMAN LOPEZ ()	151.10	X			
GU ACHI 244.9	1. TIMOTHY L. JOAQUIN (Rose Johnson Antone)	122.45	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45	X		X	
GU VO 226.7	1. GRACE MANUEL (Floyd Flores)	113.35	X			
	2. PAMELA ANGHILL (Angela Ortiz)	113.35	X			X
HICKIWAN 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			
	2. SANDRA ORTEGA ()	93.15	X			X
PISINEMO 200.7	1. CHESTER ANTONE <i>(Absent)</i> (Tony Murrietta) <i>(Present)</i>	100.35	X			
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
SAN LUCY 204.6	1. LORRAINE EILER ()	102.30	X			X
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
SAN XAVIER 215.8	1. HILARION CAMPUS ()	107.90	X			
	2. OLIVIA VILLEGAS-LISTON <i>(Absent)</i> (Eugene Enis) <i>(Present)</i>	107.90	X			
SCHUK TOAK 169.8	1. FRANCES B. CONDE ()	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X			
SELLS 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85		X		
	2. EVELYN B. JUAN MANUEL ()	237.85		X		
SIF OIDAK 211.9	1. NICHOLAS JOSE ()	105.95	X			
	2. MARY LOPEZ ()	105.95	X			
TOTAL		2,780.60	2,304.90	475.70	[01]	[03]