

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Limited Waiver of Sovereign Immunity in a Vendor Contract
Between the Tohono O'odham Gaming Enterprise and Oracle USA, Inc.)

RESOLUTION NO. 11-430

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 entered into written contracts with PeopleSoft USA, Inc., a**
27 **Colorado corporation ("PeopleSoft"), in September 2004, for the purpose of obtaining**
28 **enterprise management software for use in the Gaming Enterprise's businesses (the**
29 **"Contracts"); and**

30 **WHEREAS, the Contracts with PeopleSoft were the result of significant negotiation between the**
31 **parties and were expressly conditioned upon a modification to Section 8(b)(2) of the**
32 **Enterprise's Charter solely for purposes of the Contracts; and**

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Page 2 of 3

1 **WHEREAS, on December 8, 2004 the Tohono O'odham Legislative Council passed Resolution 04-**
2 **671 which amended the Section 8(b)(2) waiver for purposes of the Contracts only; and**

3 **WHEREAS, PeopleSoft USA, Inc. was acquired by Oracle USA, Inc. ("Oracle") in December, 2004 and**
4 **thereafter Oracle continued to license the software and provide support to the**
5 **Enterprise pursuant to the Contracts as successor-in-interest to PeopleSoft; and**

6 **WHEREAS, in 2011, the Enterprise negotiated a new agreement with Oracle which will allow the**
7 **Enterprise to acquire additional components to function with the existing PeopleSoft**
8 **enterprise management software; and**

9 **WHEREAS, the Enterprise seeks an additional modification to the scope of the waiver of the**
10 **Enterprise's immunity in accordance with the terms of the new agreement; and**

11 **WHEREAS, the interests of the Gaming Enterprise will be served by the Tohono O'odham**
12 **Legislative Council modifying the scope of the existing limited waiver of immunity for**
13 **the limited purpose of the Gaming Enterprise's new agreement and any future**
14 **agreements with Oracle.**

15 **NOW, THEREFORE, BE IT RESOLVED THAT:**

- 16 **1. The Nation hereby grants a limited waiver of the sovereign immunity of the**
17 **Tohono O'odham Gaming Enterprise in favor of Oracle USA, Inc. in the form**
18 **attached hereto and authorizes the Gaming Enterprise to enter into agreements**
19 **with Oracle containing language in substantially the form attached hereto.**

20 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 14TH Day**
21 **of SEPTEMBER, 2011 at a meeting at which a quorum was present with a vote of 2,182.45 FOR;**
22 **598.15 AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council**
23 **by Section 1 (f) and 1 (i) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by**
24 **the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
25 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
26 **18, 1934 (48 Stat. 984).**

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28 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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32 **Timothy Joaquin, Legislative Chairman**

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34 21 day of September, 2011
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Page 3 of 3

1 ATTEST:

2 *Evonne Wilson*

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4 Evonne Wilson, Legislative Secretary

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6 20 day of September, 2011

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8 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham
9 Nation on the 21 day of September, 2011 at 2:55 o'clock, P.M.,
10 pursuant to the provisions of Section 4 of Article VII of the Constitution and will become effective
11 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
12 submittal.

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14 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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16 *Timothy Joaquin* For
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18 Timothy Joaquin, Legislative Chairman

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22 APPROVED

on the 22 day of September, 2011

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25 DISAPPROVED

at 8:56 o'clock, A.M.

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27 *Ned Norris, Jr.*
28 NED NORRIS, JR., CHAIRMAN
29 TOHONO O'ODHAM NATION
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35 Returned to the Legislative Secretary on the 22 day of

36 September, 2011, at 9:53 o'clock, A.M.

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39 *Evonne Wilson*
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41 Evonne Wilson, Legislative Secretary

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ACTION: APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN A VENDOR CONTRACT BETWEEN THE TOHONO O'ODHAM GAMING ENTERPRISE AND ORACLE USA, INC.

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		
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	2,182.45	598.15	-0-	[03]