

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Amending Resolution No. 16-152 "Approving Master Lease Between the Pisinemo
District of the Tohono O'odham Nation, as Lessor, and Traveling Eagle, LLC, as
Lessee, and the Related Form of Sublease")

RESOLUTION NO. 18-291

1 **WHEREAS,** pursuant to Article XVI, Section 1 of the Constitution of the Tohono O'odham
2 Nation,

3 The unallotted lands of the Tohono O'odham Nation and all lands
4 hereafter acquired by the nation, or held for the use of the nation or its
5 members, are a valuable public resource and shall be held as national
6 lands forever. Control and management thereof are vested in the Tohono
7 O'odham Council, which may enact laws governing the use, assignment,
8 permit, lease or other disposition of lands, interests in land and resources
9 of the nation consistent with Federal law.

10 ; and

11 **WHEREAS,** Article XVI, Section 5 of the Constitution further provides that,

12 Lands of the Tohono O'odham Nation which are not under use, permit,
13 lease or other disposition authorized by the Tohono O'odham Council, and
14 which are not under assignment made by a district council, . . . may be
15 leased by the district council consistent with federal law and one-half (1/2)
16 of the proceeds of such leases shall accrue to the Tohono O'odham Council
17 and one-half (1/2) to the district council; provided that such leases are
18 subject to approval by the Secretary of the Interior and all leases to
19 nonmembers, and leases to members in excess of a reasonable acreage,
20 shall be subject to the approval of the Tohono O'odham Council.

21 ; and

22 **WHEREAS,** by Resolution No. 16-152, the Tohono O'odham Nation approved the Master Lease
23 by and between the Pisinemo District as Lessor and Traveling Eagle, LLC, an
24 Arizona limited liability company as Lessee; and

25 **WHEREAS,** the Master Lease has been approved by the Nation and executed by the Lessor and
26 Lessee, but has not yet been approved by the Secretary of the Interior delegated
27 to the Superintendent of the Papago Agency; and

28 **WHEREAS,** the Superintendent initially raised three issues: that the National Environmental
29 Policy Act ("NEPA") had not fully been complied with and the Council resolution
30 did not address bonding and appraisal waivers; and

31 **WHEREAS,** NEPA has been complied with and completed with a Finding of No Significant
32 Impact ("FONSI") approved by the Secretary; and

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Page 2 of 4

1 **WHEREAS,** there are two different types of performance bonds discussed in the regulations
2 for business site leases: (i) payment and performance bonds which are required
3 to ensure the completion of construction projects and the payment of
4 subcontractors and materialmen, and these bonds are not being waived, but are
5 also not due until the construction is initiated, and (ii) a rental bond, pursuant to
6 25 CFR 162.434 which provides that "the performance bond or alternative form of
7 security must be in an amount sufficient to secure the contractual obligations
8 including (1) No less than: (i) The highest annual rental specified in the lease, if
9 compensation is paid annually . . . ;" and

10 **WHEREAS,** the Pisinemo District has satisfied the rental bond requirement by delivering a
11 check to the Superintendent for the sum of Twenty-five Dollars (\$25) payable to
12 the Nation which is the annual rent specified in the Master Lease times the 25
13 years of the first term of the lease and to the extent that such sum has not been
14 deposited shall reissue such check; and

15 **WHEREAS,** the Master Lease provides for waiver of the valuation in paragraph 5(A) which
16 states: "In accordance with 25 CFR 162.420, Lessor and the Nation hereby
17 acknowledge and agree that (i) such Base Rent is satisfactory to Lessor and the
18 Nation, (ii) Lessor and the Nation have waived valuation of the Leased Premises
19 and (iii) accepting the Base Rent and waiving valuation in order to encourage
20 economic development is in the best interest of Lessor and the Nation;" and

21 **WHEREAS,** Resolution No. 16-152, resolves that "in accordance with 25 CFR Part 162.420, the
22 Legislative Council, on behalf of the Nation, waives valuation of the leased
23 premises in order to encourage the development of the Project"; and

24 **WHEREAS,** the Secretary of the Interior, acting through its delegee the Superintendent of the
25 Papago Agency BIA, does not find the treatment of the rental bond nor the waiver
26 of the appraisal covered sufficiently in the Resolution No. 16-152, this resolution
27 amends Resolution No. 16-152 in order to ensure that the Superintendent is able
28 to expeditiously approve the Master Lease; and

29 **WHEREAS,** while Resolution No. 16-152 described the composition of and purpose for
30 forming Traveling Eagle, LLC, Resolution No. 16-152 did not expressly state that
31 formation of the Traveling Eagle, LLC by the Pisinemo District is not a waiver of
32 the District's or Nation's sovereign immunity, which are expressly preserved; and

33 **WHEREAS,** as additional clarification, Resolution No. 16-152 did not pledge, appropriate, or
34 authorize the expenditure of Nation's financial resources to Traveling Eagle, LLC;
35 and

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Page 3 of 4

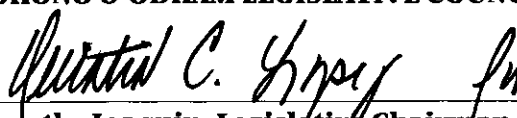
1 **WHEREAS, the Agricultural and Natural Resources Committee reviewed Pisinemo District's**
2 **requested amendments and recommend approval.**

3 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council amends**
4 **Resolution No. 16-152 to add these additional provisions to the first resolved**
5 **clause:**

- 6 **1. Authorizes the Pisinemo District to form Traveling Eagle as a limited**
7 **liability company under the laws of the State of Arizona, provided that**
8 **nothing in this authorization shall be construed as a waiver of the**
9 **sovereign immunity of the District or of the Nation, which are expressly**
10 **preserved.**
- 11 **2. Acknowledges that payment to the Nation of \$25 as full payment of the**
12 **rental payment of One Dollar per year for the first term of 25 years meets**
13 **the requirements of 25 CFR Part 162.434 and is in the Nation's best**
14 **interest.**
- 15 **3. Requests that in accordance with 25 CFR 162.434, the Secretary defer to the**
16 **maximum extent possible to the Nation's determination of the sufficiency**
17 **of the rental payment.**
- 18 **4. Recognizes that in accordance with 25 CFR Part 162.420, the Nation: (i) has**
19 **negotiated compensation satisfactory to the Nation; (ii) waives valuation;**
20 **and (iii) has determined that accepting such negotiated compensation**
21 **and waiving valuation is in the Nation's best interest.**

22 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09TH**
23 **day of AUGUST, 2018 at a meeting at which a quorum was present with a vote of 3,084.6 FOR; -0-**
24 **AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by**
25 **Article VI, Section 1(i); Article XVI, Section 1 and Section 5 of the Constitution of the Tohono**
26 **O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by**
27 **the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant**
28 **to Section 16 of the Act of June 18, 1934 (48 Stat.984).**

31 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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33 _____
34 **Timothy Joaquin, Legislative Chairman**

35 15 day of August, 2018
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Page 4 of 4

1 **ATTEST:**

2 *Evonne Wilson*
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4 **Evonne Wilson, Legislative Secretary**

5 15 day of August, 2018
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9 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono**
10 **O'odham Nation on the 15 day of August, 2018 at 4:46 o'clock, P .m.,**
11 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become**
12 **effective upon his approval or upon his failure to either approve or disapprove it within 48**
13 **hours of submittal.**

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15 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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17 *Timothy Joaquin* for
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19 **Timothy Joaquin, Legislative Chairman**

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24 **APPROVED**

on the 16th day of August, 2018

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26 **DISAPPROVED**

at 11:34 o'clock, A .m.

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28 *Edward D. Manuel* for
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30 **EDWARD D. MANUEL, CHAIRMAN**
31 **TOHONO O'ODHAM NATION**

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36 **Returned to the Legislative Secretary on the 16 day of**

37 August, 2018, at 11:48 o'clock, A .m.

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40 *Evonne Wilson* for
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42 **Evonne Wilson, Legislative Secretary**

ACTION: AMENDING RESOLUTION NO. 16-152 "APPROVING MASTER LEASE BETWEEN THE PISINEMO DISTRICT OF THE TOHONO O'ODHAM NATION, AS LESSOR, AND TRAVELING EAGLE, LLC, AS LESSEE, AND THE RELATED FORM OF SUBLEASE"

Moved: COUNCILWOMAN MONICA K. MORGAN

Second: COUNCILMAN BILLMAN LOPEZ

DATE: AUGUST 09, 2018

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 235.8	1. MARY LOPEZ ()	117.9	X			
	2. LUCINDA ALLEN (<i>Absent</i>) (Yolonda Garcia) (<i>Present</i>)	117.9	X			
SELLS 527.2	1. ARTHUR WILSON (<i>Absent</i>) (Evelyn Juan Manuel) (<i>Present</i>)	263.6	X			
	2. ADRIANNE TILLER (Idaleen Reyes)	263.6	X			
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. (<i>Absent</i>) (Teresa F. Donahue) (<i>Present</i>)	92.85	X			
	2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85	X			
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (<i>Absent</i>) (Felicia Nunez) (<i>Present</i>)	116.15	X			X
	2. JANICE FELIX ()	116.15	X			
SAN LUCY 231.1	1. JANA MONTANA (Diana Manuel)	115.55	X			
	2. GLORIA RAMIREZ (Lorraine Eiler)	115.55	X			
PISINEMO 225.9	1. CHESTER ANTONE (Caroline D. Garcia)	112.95	X			
	2. MONICA K. MORGAN ()	112.95	X			
HICKIWAN 209.0	1. LOUIS R. LOPEZ (Shirley Molina)	104.5	X			
	2. SANDRA D. ORTEGA ()	104.5	X			
GU VO 256.9	1. GRACE MANUEL ()	128.45	X			
	2. DALLAS LEWIS (<i>Absent</i>) (Nacho Flores) (<i>Present</i>)	128.45	X			
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	135.45	X			
	2. LORETTA LEWIS (<i>Absent</i>) (Victoria Hobbs) (<i>Present</i>)	135.45	X			X
CHUKUT KUK 337.7	1. BILLMAN LOPEZ (Patricia Antone)	168.85	X			
	2. VIVIAN JUAN-SAUNDERS (Juanita Homer)	168.85	X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL (Roberta E. Harvey)	186.05	X			
	2. LEANDER MASE (Francine Schooling)	186.05	X			
TOTAL		3,084.6	3,084.6	-0-	-0-	[02]