

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Design/Build Agreement between the Tohono O'odham Gaming Authority
and Design Build Alliance, Inc. for the Construction of a new Gaming Facility)

RESOLUTION NO. 2000-079

1 **WHEREAS, by Resolution No. 93-311, the Legislative Council adopted the Charter of the Tohono**
2 **O'odham Gaming Authority as the entity of the Nation charged with developing,**
3 **operating and maintaining the Nation's gaming facilities; and**

4 **WHEREAS, by Resolution No. 99-467, the Legislative Council approved a lease (the "Lease") of a**
5 **parcel of the Nation's trust land, comprising approximately 80 acres, located**
6 **adjacent to Interstate 19 at the Pima Mine Road exit within the San Xavier District,**
7 **to the Tohono O'odham Gaming Authority for the purpose of locating a gaming**
8 **facility thereon; and**

9 **WHEREAS, by Resolution No. 99-476, the Legislative Council approved the general development**
10 **plan and architect's design for the complete development of the entire premises (the**
11 **"Gaming Facility"), which is subject to the Lease approved by Resolution No. 99-467;**
12 **and**

13 **WHEREAS, in accordance with Section 6 of the Lease, the Tohono O'odham Gaming Authority**
14 **recommends constructing the Gaming Facility through a design/build contract,**
15 **substantially in the form attached hereto, with Design Build Alliance, Inc. (the**
16 **"Design/Builder"), a licensed and bonded construction contractor, in which the**
17 **Design/Builder will assume all risk and all liability for, and guarantee completion**
18 **of, the Gaming Facility and the payment in full of claims of all persons for work**
19 **performed in or materials furnished for construction of the Gaming Facility; and**

20 **WHEREAS, it is in the interests of the Nation for the Tohono O'odham Gaming Authority to**
21 **construct the Gaming Facility under the terms of the proposed Design/Build**
22 **Agreement with the Design/Builder; and**

23 **WHEREAS, the Commerce Committee recommends approval of the proposed Design/Build**
24 **Agreement between the Tohono O'odham Gaming Authority and Design Build**
25 **Alliance, Inc. for the construction of the new Gaming Facility.**

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

- 27 **1. The Tohono O'odham Gaming Authority's proposal to satisfy the provisions of**
28 **Section 6 of the Lease through a design/build arrangement in which the**

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- 1 **Design/Builder, a licensed and bonded construction contractor, assumes all risk**
2 **and all liability for, and guarantees completion of, the Gaming Facility and the**
3 **payment in full of claims of all persons for work performed in or materials**
4 **furnished for construction of the Gaming Facility is hereby approved.**
- 5 **2. The proposed Design/Build Agreement, substantially in the form attached**
6 **hereto, between the Tohono O'odham Gaming Authority and Design Build**
7 **Alliance, Inc. for the construction of the new Gaming Facility is hereby approved.**
- 8 **3. In accordance with the terms of the proposed agreement, the Nation hereby**
9 **grants a limited waiver of sovereign immunity of the Tohono O'odham Gaming**
10 **Authority in favor of the Design/Builder, on the following terms:**
- 11 **(a) The Nation waives any immunity from suit or action the Gaming Authority enjoys**
12 **with respect to any and all controversies, claims, or disputes (collectively,**
13 **"Disputes"), claims, counterclaims, and/or crossclaims brought by the**
14 **Design/Builder under, arising out of, or related to the Design/Build Agreement;**
- 15 **(b) The Nation consents to an arbitration against the Gaming Authority before the**
16 **American Arbitration Association ("AAA") in accordance with the provisions of**
17 **Article 10 of the Design/Build Agreement upon any and all Disputes, claims,**
18 **counterclaims, and/or crossclaims brought by the Design/Builder under, arising**
19 **out of, or related to the Design/Build Agreement and to a suit, action, or**
20 **proceeding in any court of competent jurisdiction (in accordance with the**
21 **provisions of Paragraph 10.3 of the Design/Build Agreement) to confirm an**
22 **arbitration award, to have judgment entered, and to execute upon any such**
23 **judgment against the personalty of the Gaming Authority, whether located on or**
24 **off the Nation's lands; and**
- 25 **(c) The Nation waives any obligation the Design/Builder otherwise might have to**
26 **exhaust tribal remedies before pursuing arbitration, obtaining a judgment**
27 **confirming an arbitration award, and/or executing on a judgment confirming an**
28 **arbitration award.**

1 **Notwithstanding the foregoing, the Nation's limited waiver of the Gaming Authority's**
2 **sovereign immunity with respect to the execution on any arbitration award,**
3 **judgment, or order only extends to the sums owed by the Gaming Authority to the**
4 **Design/Builder under the terms of the Design/Build Agreement (including any**
5 **liquidated damages payable because of a termination of the Design/Build**
6 **Agreement), plus attorneys' fees and other costs and any interest accrued or**
7 **accruing on those sums. The waiver extends to the Gaming Authority's officers,**
8 **directors, members, agents, and attorneys, but no officer, director, member, agent,**
9 **or attorney of or for the Gaming Authority shall have any personal liability for any of**
10 **the Gaming Authority's obligations under the Design/Build Agreement or under any**
11 **arbitration award, judgment, or order. Moreover, the limited waiver of sovereign**
12 **immunity applies only for the transaction described in the Design/Build Agreement**
13 **and for no other. The Nation also hereby modifies (for the transaction described in**
14 **the Design/Build Agreement and for no other) the limited waiver of immunity**
15 **otherwise available under the Charter of the Tohono O'odham Gaming Authority,**
16 **Section 8, consistent with the foregoing.**

17 **4. Also in accordance with the terms of the proposed agreement, the Nation hereby**
18 **grants a limited waiver of sovereign immunity in favor of the Design/Builder, but**
19 **that this waiver shall be effective only if (i) the Legislative Council dissolves the**
20 **Gaming Authority or (ii) the Gaming Authority assigns the Design/Build**
21 **Agreement to the Nation. The terms of this limited waiver of sovereign immunity**
22 **are as follows:**

23 **(a) The Nation waives any immunity from suit or action the Nation enjoys with**
24 **respect to any and all controversies, claims, or disputes (collectively, "Disputes"),**
25 **claims, counterclaims, and/or crossclaims brought by the Design/Builder under,**
26 **arising out of, or related to the Design/Build Agreement;**

27 **(b) The Nation consents to an arbitration against the Nation before the American**
28 **Arbitration Association ("AAA") in accordance with the provisions of Article 10 of**
29 **the Design/Build Agreement upon any and all Disputes, claims, counterclaims,**

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1 and/or crossclaims brought by the Design/Builder under, arising out of, or
2 related to the Design/Build Agreement and to a suit, action, or proceeding in any
3 court of competent jurisdiction (in accordance with the provisions of Paragraph
4 10.3 of the Design/Build Agreement) to confirm an arbitration award, to have
5 judgment entered, and to execute upon any such judgment against the
6 personalty of the Nation, whether located on or off the Nation's lands; and
7 (c) The Nation waives any obligation the Design/Builder otherwise might have to
8 exhaust tribal remedies before pursuing arbitration, obtaining a judgment
9 confirming an arbitration award, and/or executing on a judgment confirming an
10 arbitration award.

11 Notwithstanding the foregoing, the Nation's limited waiver of its sovereign immunity
12 with respect to the execution on any arbitration award, judgment, or order only
13 extends to the sums owed by the Gaming Authority or the Nation to the
14 Design/Builder under the terms of the Design/Build Agreement (including any
15 liquidated damages payable because of a termination of the Design/Build
16 Agreement), plus attorneys' fees and other costs and any interest accrued or
17 accruing on those sums. The waiver extends to the Nation's officers, directors,
18 members, agents, and attorneys, but no officer, director, member, agent, or attorney
19 of or for the Nation shall have any personal liability for any of the Gaming Authority's
20 or the Nation's obligations under the Design/Build Agreement or under any
21 arbitration award, judgment, or order. Moreover, the limited waiver of sovereign
22 immunity applies only for the transaction described in the Design/Build Agreement
23 and for no other.

24
25 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 28TH day
26 of FEBRUARY, 2000 at a meeting at which a quorum was present with a vote of 1,595.35 FOR; 506.1
27 AGAINST; 64.05 NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by
28 Section 1 (d)(5) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the
29 Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
30 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
31 18, 1934 (48 Stat. 984).
32

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TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

28th day of February, 20 00

ATTEST:



Julianna Saraficio, Acting Legislative Secretary

28 day of February, 20 00.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 28th day of February, 20 00 at 1:46 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

APPROVED

on the 1st day of March, 20 00

DISAPPROVED

at 11:30 o'clock, A.M.



EDWARD D. MANUEL, Chairman

TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 01 day of

March, 2000, at 1:15 o'clock, P.M.



Julianna Saraficio, Acting Legislative Secretary

ACTION: APPROVING A DESIGN/BUILD AGREEMENT BETWEEN THE TOHONO O'ODHAM GAMING AUTHORITY AND DESIGN BUILD ALLIANCE, INC. FOR THE CONSTRUCTION OF A NEW GAMING FACILITY

MOVED: COUNCILMAN TONY BURRELL

SECOND: COUNCILWOMAN MARY ANN ANTONE

DATE: FEBRUARY 28, 2000

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF ODAK 171.8	1. MARY ANN ANTONE (Darlene Andrew)	85.9	X			
	2. RITA MARTINEZ (Nicholas Jose)	85.9	X			
SELLS 372.7	1. DENNIS E. JOSE ** ()	186.35		X		
	2. EVELYN JUAN ()	186.35		X		
SCHUK TOAK 133.4	1. MARY FLORES ** ()	66.7		X		
	2. AMBROSE ENCINAS ()	66.7		X		
SAN XAVIER 165.9	1. TONY BURRELL ()	82.95	X			
	2. DENNIS RAMON ()	82.95	X			
BABOQUIVARI 286.5	1. FRANCES MIGUEL ()	143.25	X			
	2. FRANCES G. ANTONE (Edward N. Kisto)	143.25	X			
GU ACHI 209.6	1. CAMILLUS LOPEZ (Louis Johnson)	104.8	X			
	2. ALEX J. RAMON ()	104.8	X			X
PISINEMO 156.8	1. BARBARA SALVICIO (Alex Antone)	78.4	X			
	2. JOHNSON JOSE ()	78.4	X			X
SAN LUCY 128.1	1. ALBERT MANUEL, JR. ()	64.05	X			
	2. GLORIA RAMIREZ ()	64.05			X	
GU VO 160.0	1. FERN SALCIDO ()	80.0	X			X
	2. GLORIA MONTANA (Phillip Antone)	80.0	X			
HICKIWAN 158.1	1. ALEX JOSE ** (Shirley Santos)	79.05	X			
	2. LLOYD FRANCISCO (Susan Sam)	79.05	X			
CHUKUT KUK 222.6	1. KENNETH WILLIAMS ()	111.3	X			
	2. DAVID GARCIA (Mary Audrey Juan)	111.3	X			
TOTAL		2,165.5	1,595.35	506.1	64.05	[03]

**PASSED VOTES