

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a limited waiver of the Tohono O'odham Gaming Authority's sovereign immunity for purposes of entering into contracts for the acquisition of 500 gaming devices and related hardware and software)**

RESOLUTION NO. 01-039

- 1 **WHEREAS, the Tohono O'odham Gaming Authority was established by a charter adopted by the**
2 **Legislative Council pursuant to Resolution No. 93-311; and**
- 3 **WHEREAS, the Gaming Authority is empowered under its charter to operate the Nation's gaming**
4 **facilities; and**
- 5 **WHEREAS, the Gaming Authority is constructing a new gaming facility that will be located at 1100**
6 **Pima Mine Road, San Xavier, Arizona; and**
- 7 **WHEREAS, the Gaming Authority intends to enter into approximately \$8.1 million of contracts**
8 **with International Game Technology, Bally's Gaming, Williams Gaming, and other**
9 **vendors for the acquisition of 500 gaming devices and coinless system interface**
10 **hardware and software, slot management software, and player tracking software for**
11 **those gaming devices; and**
- 12 **WHEREAS, the Gaming Authority has the attributes of governmental sovereignty, including**
13 **immunity from suit, subject to the limited waiver of sovereign immunity in the**
14 **Gaming Authority's charter; and**
- 15 **WHEREAS, when the Gaming Authority engages in large commercial transactions for the**
16 **purchase of goods or services from non-tribal entities, the Gaming Authority may be**
17 **requested to obtain a further waiver of its immunity from suit as a condition of the**
18 **transactions to provide a means of recourse against the Gaming Authority in the**
19 **event of default by the Gaming Authority under the terms of the transactions; and**
- 20 **WHEREAS, the Gaming Authority anticipates that International Game Technology will require**
21 **and other vendors also may require a limited waiver of the Gaming Authority's**
22 **immunity as a condition of entering into purchase agreements for the 500 gaming**
23 **devices and coinless system interface hardware and software, slot management**
24 **software, and player tracking software for those gaming devices; and**
- 25 **WHEREAS, from time to time it is in the Nation's interest to authorize a further limited waiver of**
26 **the Gaming Authority's immunity from suit beyond that set forth in the Gaming**
27 **Authority's charter; and**

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1 **WHEREAS, it would not be practical or expedient for the Gaming Authority to seek a limited**
2 **waiver of immunity on a contract by contract basis because that process could delay**
3 **the opening of the new gaming facility because of the lead time involved in**
4 **negotiating contracts and obtaining delivery of the gaming devices and related**
5 **hardware and software once contracts are signed.**

6 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that:**

- 7 **1. The Gaming Authority is authorized to negotiate and execute contracts for the**
8 **acquisition of 500 gaming devices for the gaming facility located at 1100 Pima**
9 **Mine Road, San Xavier, Arizona, and coinless system interface hardware and**
10 **software, slot management software, and player tracking software for those**
11 **gaming devices (the "Contracts").**
- 12 **2. Subject to the restrictions contained in Paragraph 3, the Gaming Authority's**
13 **immunity is waived to the extent the Gaming Authority:**
 - 14 **A. Consents in the Contracts to a limited waiver of the Gaming Authority's**
15 **immunity from suit to permit an arbitration proceeding or a suit against the**
16 **Gaming Authority in a court of competent jurisdiction to recover any sums**
17 **owed by the Gaming Authority under the terms of the Contracts, including**
18 **liquidated damages, attorneys' fees and other costs, and any interest accrued**
19 **or accruing on those sums; and**
 - 20 **B. Consents in the Contracts to a limited waiver of the Gaming Authority's**
21 **immunity to permit the execution on any arbitration award, judgment, or**
22 **order, but only to the extent permitted in Paragraph 2(A).**
- 23 **3. The Gaming Authority is authorized to consent to a limited waiver of its**
24 **immunity beyond that set forth in the Gaming Authority's charter as set forth in**
25 **Paragraph 2 only:**
 - 26 **A. In the Contracts for 500 gaming devices for the gaming facility located at 1100**
27 **Pima Mine Road, San Xavier, Arizona, and coinless system interface**
28 **hardware and software, slot management software, and player tracking**
29 **software for those gaming devices.**

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- B. To the extent of an aggregate obligation of \$8.1 million under the Contracts;**
- and**
- C. If the Contracts are entered into by the Gaming Authority on or before July 31, 2001.**
- 4. Nothing in this limited waiver of sovereign immunity shall be construed or interpreted (i) to apply to anything beyond the terms and conditions of the Contracts, (ii) as authorizing the Gaming Authority to waive its immunity to permit a creditor to execute on any interest in any real property held in trust by the United States for the benefit of the Tohono O'odham Nation or any interest in any real property held by the United States for the benefit of individual Indians, (iii) as a general waiver of the sovereign immunity of the Gaming Authority or as a limited waiver of the sovereign immunity of the Gaming Authority beyond that expressly authorized in this resolution, or (iv) as a general or limited waiver of the sovereign immunity of the Nation.**

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 24TH Day of JANUARY, 2001 at a meeting at which a quorum was present with a vote of 2,032.1 FOR; -0- AGAINST; -0- NOT VOTING; and 133.4 [06] ABSENT, pursuant to the powers vested in the Council by Section 1 (e) 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


Dennis Ramon, Legislative Chairman

26 day of January, 20 01

ATTEST:


Julianna Saraficio, Acting Legislative Secretary

24 day of January, 20 01.

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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 26 day of January, 20 01 at 2:41 o'clock, P.M.,
3 pursuant to the provisions of Section 5 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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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Dennis Ramon, Legislative Chairman

APPROVED

on the 29th day of January, 20 01
at 5:15 o'clock, P.M.

DISAPPROVED


EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 30 day of

January, 20 01, at 9:49 o'clock, A.M.


Julianna Saraficio, Acting Legislative Secretary

ACTION: APPROVING A LIMITED WAIVER OF THE TOHONO O'ODHAM GAMING AUTHORITY'S SOVEREIGN IMMUNITY FOR PURPOSES OF ENTERING INTO CONTRACTS FOR THE ACQUISITION OF 500 GAMING DEVICES AND RELATED HARDWARE AND SOFTWARE

MOVED: COUNCILWOMAN MARY ANN ANTONE

SECOND: COUNCILWOMAN FRANCES MIGUEL

DATE: JANUARY 24, 2001

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 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			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			
SAN LUCY 128.1	1. ALBERT MANUEL, JR. ()	64.05	X			X
	2. GLORIA RAMIREZ ()	64.05	X			
GU VO 160.0	1. FERN SALCIDO ()	80.0	X			
	2. GLORIA MONTANA (Phillip Antone)	80.0	X			
HICKIWAN 158.1	1. SHIRLEY MOLINA ()	79.05	X			
	2. LLOYD FRANCISCO (Susan Sam)	79.05	X			X
CHUKUT KUK 222.6	1. KENNETH WILLIAMS ()	111.3	X			
	2. DAVID GARCIA (Mary Audrey Juan)	111.3	X			
TOTAL		2,165.5	2,032.1	-0-	-0-	133.4 [06]

**PASSED VOTES