

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving Limited Waiver of Sovereign Immunity in Construction Management and**  
**Construction Contracts for the Cultural Center/Museum)**

**RESOLUTION NO. 04-188**

1 **WHEREAS, pursuant to Resolution No. 2000-275, the Tohono O'odham Legislative Council**  
2 **appropriated \$15,191,080 for the design and construction, staffing and operation of**  
3 **the Cultural Center/Museum (the "Project"); and**

4 **WHEREAS, pursuant to Resolution No. 04-037, the Legislative Council approved a limited waiver**  
5 **of sovereign immunity in the Architect Agreement (1/29/04 Draft) with respect to**  
6 **remedies available to the Architect under the Agreement; and**

7 **WHEREAS, The Durrant Group was selected as the Architect for the Project and an Architect**  
8 **Agreement was entered into by the parties, effective April 13, 2004; and**

9 **WHEREAS, attached hereto is a Construction Management Contract between the Tohono**  
10 **O'odham Nation (the "Nation") and the Construction Manager (4/23/04 Draft) for pre-**  
11 **construction services, including a determination by the Construction Manager of a**  
12 **Guaranteed Maximum Price for the construction of the Project; and**

13 **WHEREAS, upon acceptance by the Nation of the Guaranteed Maximum Price, the Construction**  
14 **Manager is required to enter into a Construction Contract with the Nation for the**  
15 **construction of the Project; and**

16 **WHEREAS, the Construction Contract (4/23/04 Draft) has been prepared and is attached hereto**  
17 **as Exhibit A to the Construction Management Contract; and**

18 **WHEREAS, the Construction Management Contract and the Construction Contract provide**  
19 **remedies for claims asserted by the Construction Manager and Construction**  
20 **Contractor which are only enforceable upon approval by the Legislative Council of a**  
21 **limited waiver of sovereign immunity in each Contract; and**

22 **WHEREAS, the Cultural Preservation, Domestic Affairs and Budget & Finance Committees**  
23 **recommend approval of this Resolution by the Legislative Council.**

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

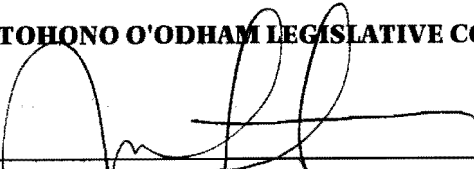
- 25 **1. The Tohono O'odham Legislative Council hereby grants a limited waiver of**  
26 **sovereign immunity with respect to claims and remedies of the Construction**  
27 **Manager on the conditions prescribed in Paragraph 15 of the Construction**  
28 **Management Contract.**
- 29 **2. The Legislative Council hereby grants a limited waiver of sovereign immunity**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44


with respect to claims and remedies of the Construction Contractor on the conditions prescribed in Paragraph 19.5 of the Construction Contract.

- 3. The limited waiver of sovereign immunity in each Contract shall be effective on the date the Contract is fully executed, the Nation issues a notice to proceed thereunder and the Contract is in substantially the form attached hereto.

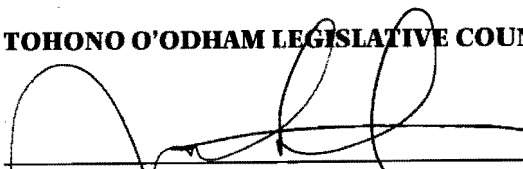
The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 05<sup>TH</sup> Day of MAY, 2004 at a meeting at which a quorum was present with a vote of 2,629.7 FOR; -0- AGAINST; -0- NOT VOTING; and [05] ABSENT, pursuant to the powers vested in the Council by Section 1 (d)(2)&(f) 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  
  
Isidro Lopez, Legislative Chairman  
11<sup>th</sup> day of May, 2004

ATTEST:

  
Lucille Lopez, Acting Legislative Secretary  
15 day of May, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 11<sup>th</sup> day of May, 2004 at 5:12 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL  
  
Isidro Lopez, Legislative Chairman

**RESOLUTION NO. 04-188**

**(Approving Limited Waiver of Sovereign Immunity in Construction Management and Construction Contracts for the Cultural Center/Museum)**

Page 3 of 3

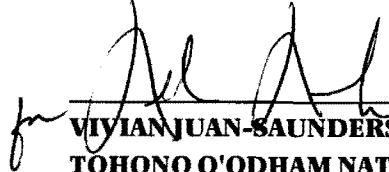
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45

APPROVED

on the 11<sup>th</sup> day of May, 2004

DISAPPROVED

at 6:35 o'clock, P.M.

  
\_\_\_\_\_  
VIVIAN JUAN-SAUNDERS, CHAIRWOMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 12<sup>th</sup> day of

May, 2004, at 9:33 o'clock, A.M.

  
\_\_\_\_\_  
Lucille Lopez, Acting Legislative Secretary

**ACTION: APPROVING LIMITED WAIVER OF SOVEREIGN IMMUNITY IN CONSTRUCTION MANAGEMENT AND CONSTRUCTION CONTRACTS FOR THE CULTURAL CENTER/MUSEUM**

**MOVED: COUNCILMAN TIMOTHY JOAQUIN**

**SECOND: COUNCILWOMAN FRANCES CONDE**

**DATE: MAY 05, 2004**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>SIF Oidak</b> <b>192.6</b>	1. ISIDRO LOPEZ (Nicholas Jose)	96.30	X			
	2. DARLENE ANDREW(Absent) (Rita Martinez)(Present)	96.30	X			
<b>SELLS</b> <b>465.6</b>	1. DENNIS E. JOSE ( )	232.80	X			
	2. EVELYN JUAN ( )	232.80	X			
<b>SCHUK TOAK</b> <b>176.1</b>	1. FRANCES B. CONDE ( )	88.05	X			
	2. PHYLLIS JUAN ( )	88.05	X			
<b>SAN XAVIER</b> <b>215.4</b>	1. FELICIA NUÑEZ (Olivia Villegas-Liston)	107.70	X			
	2. DENNIS RAMON (Eleanor Hunter)	107.70	X			X
<b>SAN LUCY</b> <b>166.3</b>	1. JOHN W. LAWSON, SR. ( )	83.15	X			
	2. GLORIA RAMIREZ ( )	83.15	X			
<b>PISINEMO</b> <b>175.4</b>	1. BARBARA SALVICIO ( )	87.70	X			
	2. PATRICIA CRUZ ( )	87.70	X			X
<b>HICKIWAN</b> <b>170.3</b>	1. DELMA GARCIA (Mary E. Sam)	85.15	X			
	2. SANDRA ORTEGA ( )	85.15	X			X
<b>GU VO</b> <b>191.4</b>	1. RAYMOND VICTOR ( )	95.70	X			
	2. MICHAEL FLORES (Willard Manuel)	95.70	X			X
<b>GU ACHI</b> <b>253.6</b>	1. TIMOTHY L. JOAQUIN (Jonas Robles)	126.80	X			
	2. JEROME JOAQUIN (Roberta Picard)	126.80	X			
<b>CHUKUT KUK</b> <b>258.9</b>	1. KENNETH WILLIAMS (Juanita Homer)	129.45	X			X
	2. VERLON M. JOSE (David Garcia)	129.45	X			
<b>BABOQUIVARI</b> <b>364.1</b>	1. FRANCES MIGUEL ( Lucilda Norris-Valenzuela )	182.05	X			
	2. FRANCES G. ANTONE ( )	182.05	X			
<b>TOTAL</b>		<b>2,629.7</b>	<b>2,629.7</b>	<b>-0-</b>	<b>-0-</b>	<b>[05]</b>

**\*\*PASSED VOTES**