

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 PeopleSoft USA, Inc.)

RESOLUTION NO. 04-671

1 **WHEREAS, the Legislative Council has provided in Section 301 of the Ordinance for Regulation**
2 **of Gaming Activities Within the Tohono O'odham Nation (the "Gaming Ordinance"),**
3 **adopted pursuant to Resolution No. 93-296, and amended by Resolution No. 03-084,**
4 **that all gaming activities conducted within the Nation shall be owned entirely by the**
5 **Nation and conducted and operated by a tribal enterprise; and**

6 **WHEREAS, the Legislative Council, by adopting Resolution No. 93-311, adopted the Charter of the**
7 **Tohono O'odham Gaming Enterprise (the "Gaming Enterprise," which formerly was**
8 **known as the Tohono O'odham Gaming Authority) and established the Gaming**
9 **Enterprise as the tribal enterprise responsible for operating the Nation's gaming**
10 **facilities and conducting gaming activities in compliance with the requirements of**
11 **the Gaming Ordinance; and**

12 **WHEREAS, Section 8(b)(2) of the Charter of the Gaming Enterprise contains the following limited**
13 **waiver of the Gaming Enterprise's sovereign immunity with respect to claims based**
14 **upon a written contract to which the Gaming Enterprise is a party:**

15 **"(2) Contract Claims.**

16 **(A) With respect to claims against the Enterprise (i) arising out of any**
17 **written contract to which the Enterprise is a party, and (ii) the**
18 **amount and nature of which are not within the express coverage**
19 **of a policy of insurance procured and maintained pursuant to**
20 **section 6(j) of this Charter, as acknowledged by the insurer under**
21 **such policy, the Enterprise's immunity is waived to the lesser of**
22 **the amount of the Enterprise's payment obligation under the**
23 **contract or \$500,000.**

24 **(B) The Enterprise's immunity from execution on any judgment,**
25 **award or order is hereby waived only with respect to a pledge of,**

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1 or security interest in, the Enterprise's personal property, cash,
2 accounts receivable and other assets (exclusive of any leasehold
3 interests) granted by the Enterprise as collateral for any payment
4 obligations under such contract, provided that:

5 (i) Execution on any such collateral shall be limited to that amount
6 which, when added to amounts received from other sources in
7 satisfaction of such judgment, award or order, does not exceed
8 \$500,000.

9 (ii) Execution on any such collateral shall be solely by judicial process
10 pursuant to a judgment, order or award of a court of competent
11 jurisdiction.

12 (iii) For purposes of applying the provisions of this subsection (b)(2),
13 all contracts entered into with the same party on the same subject
14 matter shall be deemed to be one contract."; and

15 WHEREAS, the Gaming Enterprise has entered into contracts with PeopleSoft USA, Inc., a
16 Colorado corporation ("PeopleSoft"), dated September 30, 2004, to license enterprise
17 management software from PeopleSoft for use in the Gaming Enterprise's businesses
18 (the "Contracts"); and

19 WHEREAS, the Contracts are expressly conditioned upon the \$500,000 limits in Section 8(b)(2)(A)
20 and 8(b)(2)(B)(i) of the Charter of the Gaming Enterprise being increased to \$7,000,000
21 for purposes of the Contracts; and

22 WHEREAS, the Gaming Enterprise has requested that the Tohono O'odham Legislative Council
23 increase the \$500,000 limit in Section 8(b)(2) of the Charter of the Gaming Enterprise
24 to \$7,000,000 for purposes of the Contracts; and

25 WHEREAS, the Commerce Committee of the Legislative Council has reviewed the proposed
26 increase in the \$500,000 limit in Section 8(b)(2) of the Charter of the Gaming

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1 **Enterprise to \$7,000,000 for purposes of the Contracts and recommends that the**
2 **Legislative Council approve the requested increase; and**

3 **WHEREAS, the interests of the Gaming Enterprise and the Nation will be served by the Tohono**
4 **O'odham Legislative Council increasing the \$500,000 limit in Section 8(b)(2) of the**
5 **Charter of the Gaming Enterprise to \$7,000,000 for purposes of the Contracts.**

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

7 **1. The Nation hereby grants the following limited waiver of sovereign immunity**
8 **of the Tohono O'odham Gaming Enterprise in favor of PeopleSoft USA, Inc. for**
9 **purposes of the Contracts. The Contracts shall be exempt from the provisions**
10 **of Section 8(b)(2) of the Charter of the Gaming Enterprise and the following**
11 **provisions shall apply to the Contracts in lieu of the provisions of Section 8(b)(2)**
12 **of the Charter of the Gaming Enterprise:**

13 **“(2) Contract Claims.**

14 **(A) With respect to claims against the Enterprise (i) arising out of written**
15 **contracts dated September 30, 2004, between the Enterprise and**
16 **PeopleSoft USA, Inc., a Colorado corporation (“PeopleSoft”), relating to**
17 **the licensing of enterprise management software from PeopleSoft for use**
18 **in the Enterprise's businesses (the “Contracts”), and (ii) the amount and**
19 **nature of which are not within the express coverage of a policy of**
20 **insurance procured and maintained pursuant to section 6(j) of this**
21 **Charter, as acknowledged by the insurer under such policy, the**
22 **Enterprise's immunity is waived to the lesser of the amount of the**
23 **Enterprise's payment obligation under the Contracts or \$7,000,000.**

24 **(B) The Enterprise's immunity from execution on any judgment, award or**
25 **order is hereby waived only with respect to a pledge of, or security**
26 **interest in, the Enterprise's personal property, cash, accounts receivable**
27 **and other assets (exclusive of any leasehold interests) granted by the**

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- 1 **Enterprise as collateral for any payment obligations under the Contracts,**
2 **provided that:**
- 3 **(i) Execution on any such collateral shall be limited to that amount which,**
4 **when added to amounts received from other sources in satisfaction of**
5 **such judgment, award or order, does not exceed \$7,000,000.**
- 6 **(ii) Execution on any such collateral shall be solely by judicial process**
7 **pursuant to a judgment, order or award of a court of competent**
8 **jurisdiction.**
- 9 **(iii) For purposes of applying the provisions of this subsection (b)(2), the**
10 **Contracts shall be deemed to be one contract."**

11 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 08TH Day**
12 **of DECEMBER, 2004 at a meeting at which a quorum was present with a vote of 2,101.1 FOR; 95.70**
13 **AGAINST; 432.9 NOT VOTING; and [-0-] ABSENT, pursuant to the powers vested in the Council by**
14 **Section 1 (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono**
15 **O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**
16 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**
17 **Stat. 984).**

18
19 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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21 
22 **Isidro Lopez, Legislative Chairman**

23
24 13th day of December, 2004

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27 **ATTEST:**

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30 **Lucille Lopez, Acting Legislative Secretary**

31
32 13th day of December, 2004.

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34 **Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono**
35 **O'Odham Nation on the 13th day of December, 2004 at 8:51 o'clock,**
36 **A .M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become**
37 **effective upon her approval or upon her failure to either approve or disapprove it within 48 hours**
38 **of submittal.**

39

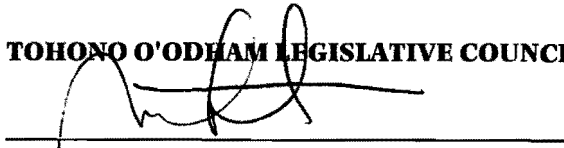
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TOHONO O'ODHAM LEGISLATIVE COUNCIL



Isidro Lopez, Legislative Chairman

APPROVED

on the 14th day of December, 2004

DISAPPROVED

at 11:47 o'clock, AM.M.


VIVIAN JUAN SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 14th day of

December, 2004, at 12:17 o'clock, P.M.


Lucille Lopez, Acting Legislative Secretary

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

MOVED: COUNCILWOMAN FRANCES MIGUEL

SECOND: COUNCILMAN KENNETH WILLIAMS

DATE: DECEMBER 08, 2004

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 192.6	1. ISIDRO LOPEZ (Nicholas Jose)	96.30	X			
	2. DARLENE ANDREW (Rita Martinez)	96.30			X	
SELLS 465.6	1. DENNIS E. JOSE ()	232.80	X			
	2. EVELYN JUAN ** ()	232.80	X			
SCHUK TOAK 176.1	1. FRANCES B. CONDE ()	88.05	X			
	2. PHYLLIS JUAN ()	88.05	X			
SAN XAVIER 215.4	1. FELICIA NUÑEZ ** (Olivia Liston-Villegas)	107.70	X			
	2. DENNIS RAMON (Eleanor Hunter)	107.70	X			
SAN LUCY 166.3	1. JOHN W. LAWSON, SR. ()	83.15			X	
	2. GLORIA RAMIREZ ()	83.15			X	
PISINEMO 175.4	1. BARBARA SALVICIO ()	87.70	X			
	2. PATRICIA CRUZ ()	87.70	X			
HICKIWAN 170.3	1. DELMA GARCIA (Mary E. Sam)	85.15			X	
	2. SANDRA ORTEGA ()	85.15			X	
GU VO 191.4	1. RAYMOND VICTOR ()	95.70	X			
	2. MICHAEL FLORES (Willard Manuel)	95.70		X		
GU ACHI 253.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	126.80	X			
	2. JEROME JOAQUIN (Roberta Picard)	126.80	X			
CHUKUT KUK 258.9	1. KENNETH WILLIAMS (Juanita Homer)	129.45	X			
	2. VERLON M. JOSE (David Garcia)	129.45	X			
BABOQUIVARI 364.1	1. FRANCES MIGUEL (Lucilda Norris-Valenzuela)	182.05	X			
	2. FRANCES G. ANTONE ()	182.05	X			
TOTAL		2,629.7	2,101.1	95.70	432.9	[-0-]

**PASSED VOTES