

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Limited Waiver of Sovereign Immunity in Construction Management
Contract and Contract and General Conditions Related to Dialysis Clinic)**

RESOLUTION NO. 04-685

1 **WHEREAS, effective June 16, 2004, the Tohono O'odham Nation (the "Nation") entered into an**
2 **Architect Agreement with Gresham & Beach Architects, Inc. (the "Architects") to**
3 **provide services related to the Dialysis Clinic (the "Project"), including design,**
4 **bidding, preparation of construction documents, and construction administration;**
5 **and**

6 **WHEREAS, attached hereto is a Construction Management Contract between the Nation and**
7 **ChuskaSahara, LLC, the successful bidder (the "Construction Manager") , for pre-**
8 **construction services related to the Project, including a determination by the**
9 **Construction Manager of a Guaranteed Maximum Price for the construction of the**
10 **Project; and**

11 **WHEREAS, upon acceptance of the Guaranteed Maximum Price, the Construction Manager is**
12 **required to enter into a Contract and General Conditions (Maximum Guaranteed**
13 **Price) with the Nation (the "Construction Contract") for the construction of the**
14 **Project, a form of which is attached hereto as Exhibit "A" to the Construction**
15 **Management Contract; and**

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

20 **WHEREAS, the Health & Human Services Committee and the Budget & Finance Committee**
21 **recommend approval of this Resolution by the Legislative Council.**

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

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

RESOLUTION NO. 04-685

(Approving Limited Waiver of Sovereign Immunity in Construction Management Contract and Contract and General Conditions Related to Dialysis Clinic)

Page 2 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

2. The Legislative Council hereby grants a limited waiver of sovereign immunity 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 and the Contract is in substantially the form attached hereto.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10TH Day of DECEMBER, 2004 at a meeting at which a quorum was present with a vote of 2,463.4 FOR; -0- AGAINST; 166.3 NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Section 1 (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

16th day of December, 2004

ATTEST:



Lucille Lopez, Acting Legislative Secretary

16th day of December, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 16th day of December, 2004 at 3:59 o'clock, 9 .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. 04-685

(Approving Limited Waiver of Sovereign Immunity in Construction Management Contract and Contract and General Conditions Related to Dialysis Clinic)

Page 3 of 3

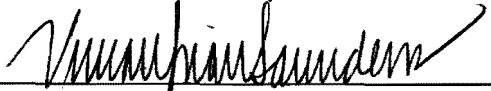
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45

APPROVED

on the 20 day of December, 2004

DISAPPROVED

at 1:26 o'clock, P.M.



VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 20th day of

December, 2004, at 2:37 o'clock, P.M.



Lucille Lopez, Acting Legislative Secretary

ACTION: APPROVING LIMITED WAIVER OF SOVEREIGN IMMUNITY IN CONSTRUCTION MANAGEMENT CONTRACT AND CONTRACT AND GENERAL CONDITIONS RELATED TO DIALYSIS CLINIC

MOVED: COUNCILWOMAN EVELYN JUAN

SECOND: COUNCILWOMAN SANDRA ORTEGA

DATE: DECEMBER 10, 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 (Absent) (Olivia Liston-Villegas) (Present) **	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			X
BABOQUIVARI 364.1	1. FRANCES MIGUEL (Lucilda Norris-Valenzuela)	182.05	X			
	2. FRANCES G. ANTONE ()	182.05	X			
TOTAL		2,629.7	2,463.4	-0-	166.3	[01]

**PASSED VOTES