

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Vendor Agreement Between the Tohono O'odham Gaming Enterprise and
Kitchell Contractors, Inc. of Arizona and a Limited Waiver of Sovereign Immunity)

RESOLUTION NO. 06-106

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 **which ordinance was adopted pursuant to Resolution No. 93-296 and amended by**
4 **Resolution 97-150, Resolution 97-168, Resolution 97-303, Resolution 99-206, and**
5 **Resolution No. 03-084, that all gaming activities conducted within the Nation shall be**
6 **owned entirely by the Nation and conducted and operated by a tribal enterprise; and**

7 **WHEREAS, the Legislative Council adopted the Charter of the Tohono O'odham Gaming**
8 **Enterprise, which formerly was known as the Tohono O'odham Gaming Authority (the**
9 **"Gaming Enterprise"), by Resolution No. 93-311 and amended the Charter by**
10 **Resolution 02-294, Resolution No. 03-231, and Resolution 04-513; and**

11 **WHEREAS, in accordance with its Charter, the Gaming Enterprise is the tribal enterprise**
12 **responsible for operating the Nation's gaming facilities and conducting gaming**
13 **activities in compliance with the requirements of the Gaming Ordinance; and**

14 **WHEREAS, the Gaming Enterprise proposes to enter into an agreement with Kitchell**
15 **Contractors, Inc. of Arizona, an Arizona corporation ("Kitchell"), for construction**
16 **administration and management services relating to the construction of a new casino**
17 **and hotel at the Gaming Enterprise's Nogales Highway location (the "Agreement"), a**
18 **copy of which is attached to this Resolution as Exhibit A; and**

19 **WHEREAS, Section 8(b)(2) of the Charter of the Gaming Enterprise contains a limited waiver of**
20 **the Gaming Enterprise's sovereign immunity with respect to claims based upon a**
21 **written contract to which the Gaming Enterprise is a party, waiving the Gaming**
22 **Enterprise's immunity to the lesser of the amount of the Enterprise's payment**
23 **obligation under a contract or \$500,000 and only as to actions in the Nation's Courts;**
24 **and**

25 **WHEREAS, Kitchell was unwilling to contract with the Gaming Enterprise unless the Gaming**
26 **Enterprise sought and obtained from the Legislative Council a waiver of the Gaming**
27 **Enterprise's sovereign immunity to allow disputes to be resolved by an arbitration**
28 **before the American Arbitration Association, in accordance with the terms of**

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1 **Article 9 of the Agreement, and to allow for the enforcement of an arbitration award**
2 **for such sums as may be owing under the Agreement, plus costs and fees; and**

3 **WHEREAS, the Commerce Committee of the Legislative Council has reviewed the Agreement and**
4 **the proposed limited waiver of the Gaming Enterprise's immunity set forth in**
5 **Article 9 of the Agreement, and recommends that the Legislative Council approve the**
6 **Agreement and a waiver of the Gaming Enterprise's immunity consistent with the**
7 **provisions of Article 9 of the Agreement; and**

8 **WHEREAS, the interests of the Gaming Enterprise and the Nation will be served by the Tohono**
9 **O'odham Legislative Council approving the Agreement and a limited waiver of the**
10 **Gaming Enterprise's immunity consistent with the provisions of Article 9 of the**
11 **Agreement.**

12 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby approves**
13 **and authorizes the following:**

14 **1. The Nation approves the Agreement between the Gaming Enterprise and Kitchell**
15 **Contractors, Inc. of Arizona for construction administration and management**
16 **services relating to the construction of a new casino and hotel at the Gaming**
17 **Enterprise's Nogales Highway location.**

18 **2. The Nation hereby grants the following limited waiver of sovereign immunity of**
19 **the Tohono O'odham Gaming Enterprise in favor of Kitchell Contractors, Inc. of**
20 **Arizona, which shall be in lieu of the limited waiver in Section 8(b)(2) of the**
21 **Charter of the Gaming Enterprise:**

22 **A. The Nation waives any immunity from suit or action the Gaming Enterprise**
23 **enjoys with respect to any and all disputes, claims, counterclaims, and/or**
24 **crossclaims brought by Kitchell under, arising out of, or related to the**
25 **Agreement, in accordance with the provisions of this Resolution;**

26 **B. The Nation consents to an arbitration against the Gaming Enterprise before**
27 **the American Arbitration Association in accordance with the provisions of**
28 **Article 9 of the Agreement upon any and all disputes, claims, counterclaims,**
29 **and/or crossclaims brought by Kitchell under, arising out of, or related to the**

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Agreement and to a suit, action, or proceeding in any court of competent jurisdiction (in accordance with the provisions of Article 9 of the Agreement) to enforce the agreement to arbitrate, to confirm an arbitration award, to have judgment entered, and to execute upon any such judgment against the personalty of the Gaming Enterprise, whether located on or off the Nation's lands, up to the amount of the judgment (subject to the limitation in Paragraph D below);

C. The Nation waives any obligation Kitchell otherwise might have to exhaust tribal remedies before pursuing arbitration, obtaining a judgment confirming an arbitration award, and/or executing on a judgment confirming an arbitration award;

D. This waiver of sovereign immunity is limited to the sums owed by the Gaming Enterprise to Kitchell under the terms of the Agreement, plus attorneys' fees and other costs and any interest accrued or accruing on those sums; and

E. This limited waiver of sovereign immunity does not extend to any officer, director, agent, or attorney of or for the Gaming Enterprise and no officer, director, agent, or attorney of or for the Gaming Enterprise shall have any personal liability for any of the Gaming Enterprise's obligations under the Agreement or under any arbitration award, judgment, or order. Moreover, the limited waiver of sovereign immunity applies only to the transaction described in the Agreement and to no other.

3. If (a) the Gaming Enterprise assigns the Agreement to the Nation or (b) the Nation dissolves the Gaming Enterprise, winds up the Gaming Enterprise's affairs, and distributes any remaining assets from the Gaming Enterprise to the Nation, then, in either such event and only in such event, the Nation grants the following limited waiver of sovereign immunity of the Nation in favor of Kitchell Contractors, Inc. of Arizona:

A. The Nation waives any immunity from suit or action the Nation enjoys with respect to any and all disputes, claims, counterclaims, and/or crossclaims

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1 brought by Kitchell under, arising out of, or related to the Agreement, in
2 accordance with the provisions of this Resolution;

3 **B. The Nation consents to an arbitration against the Nation before the American**
4 **Arbitration Association in accordance with the provisions of Article 9 of the**
5 **Agreement upon any and all disputes, claims, counterclaims, and/or**
6 **crossclaims brought by Kitchell under, arising out of, or related to the**
7 **Agreement and to a suit, action, or proceeding in any court of competent**
8 **jurisdiction (in accordance with the provisions of Article 9 of the Agreement)**
9 **to enforce the agreement to arbitrate, to confirm an arbitration award, to**
10 **have judgment entered, and to execute upon any such judgment against the**
11 **personalty of the Nation, whether located on or off the Nation's lands, up to**
12 **the amount of the judgment (subject to the limitation in Paragraph D below);**

13 **C. The Nation waives any obligation Kitchell otherwise might have to exhaust**
14 **tribal remedies before pursuing arbitration, obtaining a judgment**
15 **confirming an arbitration award, and/or executing on a judgment confirming**
16 **an arbitration award;**

17 **D. This waiver of sovereign immunity is limited to the sums owed by the Nation**
18 **to Kitchell under the terms of the Agreement, plus attorneys' fees and other**
19 **costs and any interest accrued or accruing on those sums; and**

20 **E. This limited waiver of sovereign immunity does not extend to any officer,**
21 **director, agent, or attorney of or for the Nation and no officer, director, agent,**
22 **or attorney of or for the Nation shall have any personal liability for any of the**
23 **Nation's obligations under the Agreement or under any arbitration award,**
24 **judgment, or order. Moreover, the limited waiver of sovereign immunity**
25 **applies only to the transaction described in the Agreement and to no other.**

26 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 22ND, Day**
27 **of FEBRUARY, 2006 at a meeting at which a quorum was present with a vote of 1,657.7 FOR; -0-**
28 **AGAINST; 783.1 NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by**
29 **Section 1 (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono**
30 **O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**
31 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**
32 **Stat. 984).**

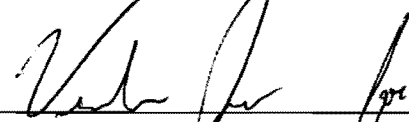
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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Evelyn B. Juan Manuel, Legislative Chairwoman

27 day of February, 2006


ATTEST:


Lucille Lopez, Acting Legislative Secretary


22 day of February, 2006.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 27 day of February, 2006 at 3:06 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


Evelyn B. Juan Manuel, Legislative Chairwoman

APPROVED on the 27th day of February, 2006
 DISAPPROVED at 27 4:32 o'clock, P..M.


VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 27 day of
February, 2006, at 4:43 o'clock, P..M.


Lucille Lopez, Acting Legislative Secretary

ACTION: APPROVING A VENDOR AGREEMENT BETWEEN THE TOHONO O'ODHAM GAMING ENTERPRISE AND KITCHELL CONTRACTORS, INC. OF ARIZONA AND A LIMITED WAIVER OF SOVEREIGN IMMUNITY

Moved: COUNCILWOMAN FRANCES ANTONE

SECOND: COUNCILWOMAN FRANCES MIGUEL

DATE: FEBRUARY 22, 2006

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL ()	155.40	X			
	2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris))	155.40	X			
CHUKUT KUK 258.7	1. ETHEL GARCIA ()	129.35	X			
	2. VERLON M. JOSE (David Garcia)	129.35	X			
GU ACHI 221.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	110.80	X			
	2. CYNTHIA E. MANUEL** (Louis L. Johnson)	110.80	X			
GU VO 193.1	1. RAYMOND VICTOR ()	96.55			X	
	2. MICHAEL FLORES (Grace Manuel)	96.55			X	
HICKIWAN 167.4	1. DELMA GARCIA (Mary E. Sam)	83.70	X			
	2. SANDRA ORTEGA** ()	83.70	X			
PISINEMO 171.8	1. BARBARA SALVICIO ()	85.90	X			
	2. GERALD FAYUANT ()	85.90	X			
SAN LUCY 169.0	1. JOHN W. LAWSON, SR. ()	84.50			X	
	2. GLORIA RAMIREZ ()	84.50			X	
SAN XAVIER 193.8	1. FELICIA NUÑEZ ()	96.90	X			
	2. OLIVIA VILLEGAS-LISTON ()	96.90	X			
SCHUK TOAK 146.9	1. FRANCES B. CONDE ()	73.45	X			
	2. PHYLLIS JUAN** ()	73.45	X			
SELLS 421.0	1. MARLENE SARAFICIO-JUAN** ()	210.50			X	
	2. EVELYN B. JUAN MANUEL ()	210.50			X	
SIF OIDAK 186.7	1. WAVALENE SAUNDERS (Isidro Lopez)	93.35	X			X
	2. DARLENE ANDREW (Rita Martinez)	93.35	X			
TOTAL		2,440.80	1,657.7	-0-	783.1	[01]

**PASSED VOTES