

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Vendor Agreement Between the Tohono O'odham Gaming Enterprise and
Jeter, Cook & Jepson Architects, Inc., a Limited Waiver of Sovereign Immunity, and the
Final Conceptual Design Plans for the New Nogales Highway Casino/Hotel Project)

RESOLUTION NO. 06-107

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 entered into an agreement with Jeter, Cook & Jepson**
15 **Architects, Inc. ("JCJ") on October 14, 2005, and effective as of May 1, 2005, for**
16 **architectural services relating to the construction of a new casino and hotel at the**
17 **Gaming Enterprise's Nogales Highway location (the "Agreement"), a copy of which is**
18 **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, JCJ was unwilling to contract with the Gaming Enterprise unless the Gaming**
26 **Enterprise seeks and obtains from the Legislative Council a waiver of the Gaming**
27 **Enterprise's sovereign immunity to allow disputes to be resolved by an arbitration**

RESOLUTION NO. 06-107

(Approving a Vendor Agreement Between the Tohono O'odham Gaming Enterprise and Jeter, Cook & Jepson Architects, Inc., a Limited Waiver of Sovereign Immunity, and the Final Conceptual Design Plans for the New Nogales Highway Casino/Hotel Project)

Page 2 of 5

1 **before the American Arbitration Association, in accordance with the terms of Section**
2 **§ 1.3.5 of the Agreement; and**

3 **WHEREAS, the Agreement permits JCJ to terminate the Agreement if the Legislative Council does**
4 **not waive the Gaming Enterprise's sovereign immunity in a manner acceptable to JCJ**
5 **and the Agreement also permits the Gaming Enterprise to terminate the Agreement**
6 **if the Gaming Enterprise does not obtain any of the approvals necessary for the**
7 **project or funding for the new Nogales Highway Casino/Hotel Project; and**

8 **WHEREAS, JCJ, in concert with ASCG Incorporated (a wholly owned subsidiary of NANA Regional**
9 **Corporation), has prepared and the Gaming Enterprise has approved final**
10 **conceptual design plans for the new Nogales Highway Casino/Hotel Project, which**
11 **final conceptual design plans have been presented to the Legislative Council and the**
12 **Office of the Chairperson; and**

13 **WHEREAS, the Commerce Committee of the Legislative Council has reviewed the Agreement, the**
14 **proposed limited waiver of the Gaming Enterprise's immunity set forth in Section**
15 **§ 1.3.5 of the Agreement, and the final conceptual design plans and recommends that**
16 **the Legislative Council approve the Agreement, a waiver of the Gaming Enterprise's**
17 **immunity consistent with the provisions of Section § 1.3.5 of the Agreement, and the**
18 **final conceptual design plans; and**

19 **WHEREAS, the interests of the Gaming Enterprise and the Nation will be served by the Tohono**
20 **O'odham Legislative Council approving the Agreement, a limited waiver of the**
21 **Gaming Enterprise's immunity consistent with the provisions of Section § 1.3.5 of the**
22 **Agreement, and the final conceptual design plans for the new Nogales Highway**
23 **Casino/Hotel Project.**

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

- 26 **1. The Nation approves the final conceptual design plans for the new Nogales**
27 **Highway Casino/Hotel Project, as presented to the Legislative Council and the**
28 **Office of the Chairperson.**

RESOLUTION NO. 06-107

(Approving a Vendor Agreement Between the Tohono O'odham Gaming Enterprise and Jeter, Cook & Jepson Architects, Inc., a Limited Waiver of Sovereign Immunity, and the Final Conceptual Design Plans for the New Nogales Highway Casino/Hotel Project)

Page 3 of 5

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

- 2. The Nation approves the Agreement between the Gaming Enterprise and Jeter, Cook & Jepson Architects, Inc. dated October 14, 2005, for architectural services relating to the construction of a new casino and hotel at the Gaming Enterprise's Nogales Highway location.**
- 3. The Nation hereby grants the following limited waiver of sovereign immunity of the Tohono O'odham Gaming Enterprise in favor of Jeter, Cook & Jepson Architects, Inc.:**

 - A. The Nation waives any immunity from suit or action the Gaming Enterprise enjoys with respect to any and all disputes, claims, counterclaims, and/or crossclaims brought by JCJ under, arising out of, or related to the Agreement, in accordance with the provisions of this Resolution;**
 - B. The Nation consents to an arbitration against the Gaming Enterprise before the American Arbitration Association in accordance with the provisions of Section 1.3.5 of the Agreement upon any and all disputes, claims, counterclaims, and/or crossclaims brought by JCJ under, arising out of, or related to the Agreement and to a suit, action, or proceeding in any court of competent jurisdiction (in accordance with the provisions of Section 1.3.5.5 of the Agreement) 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 JCJ 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 JCJ under the terms of the Agreement, plus attorneys' fees and other costs and any interest accrued or accruing on those sums; and**

RESOLUTION NO. 06-107

(Approving a Vendor Agreement Between the Tohono O'odham Gaming Enterprise and Jeter, Cook & Jepsen Architects, Inc., a Limited Waiver of Sovereign Immunity, and the Final Conceptual Design Plans for the New Nogales Highway Casino/Hotel Project)

Page 4 of 5

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

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 of sovereign immunity applies only to the transaction described in the Agreement and to no other.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 22ND Day of FEBRUARY, 2006 at a meeting at which a quorum was present with a vote of 805.75 FOR; 737.05 AGAINST; 898.0 NOT VOTING; and [02] 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



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 3:08 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

RESOLUTION NO. 06-107

(Approving a Vendor Agreement Between the Tohono O'odham Gaming Enterprise and Jeter, Cook & Jepson Architects, Inc., a Limited Waiver of Sovereign Immunity, and the Final Conceptual Design Plans for the New Nogales Highway Casino/Hotel Project)

Page 5 of 5

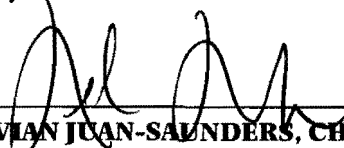
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

APPROVED

on the 27th day of February, 2006

DISAPPROVED

at 4:33 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 JETER, COOK & JEPSON ARCHITECTS, INC., A LIMITED WAIVER OF SOVEREIGN IMMUNITY, AND THE FINAL CONCEPTUAL DESIGN PLANS FOR THE NEW NOGALES HIGHWAY CASINO/HOTEL PROJECT

MOVED: COUNCILWOMAN FELICIA NUNEZ

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	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	805.75	737.05	898.0	[02]

**PASSED VOTES