

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Vendor Agreements Between the Tohono O'odham Gaming Enterprise and
Fluoresco Lighting-Sign Maintenance Corp., Network Infrastructure Corporation,
and Sicon, LLC, including Limited Waivers of Sovereign Immunity)**

RESOLUTION NO. 07-302

1 **WHEREAS, the Tohono O'odham Legislative Council has provided in Section 301 of the Ordinance**
2 **for Regulation of Gaming Activities Within the Tohono O'odham Nation (the "Gaming**
3 **Ordinance"), which ordinance was adopted pursuant to Resolution No. 93-296 and**
4 **amended by Resolution 97-150, Resolution 97-168, Resolution 97-303, Resolution 99-**
5 **206, and Resolution No. 03-084, that all gaming activities conducted within the Tohono**
6 **O'odham Nation shall be owned entirely by the Nation and conducted and operated**
7 **by a tribal enterprise; and**

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

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

16 **WHEREAS, the Gaming Enterprise entered into an agreement with Kitchell Contractors, Inc. of**
17 **Arizona for construction administration and management services relating to the**
18 **construction of a new casino and hotel at the Gaming Enterprise's Nogales Highway**
19 **location (the "Kitchell Agreement"); and**

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

25 **WHEREAS, the Kitchell Agreement provides that any disputes under the agreement will be**
26 **resolved by binding arbitration before the American Arbitration Association and**
27 **provides for the enforcement of an arbitration award in court; and**

28 **WHEREAS, by Resolution 06-106, the Tohono O'odham Legislative Council approved a waiver of**
29 **the Gaming Enterprise's sovereign immunity to allow disputes under the Kitchell**
30 **Agreement to be resolved by binding arbitration before the American Arbitration**

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1 **Association and to allow for the enforcement of an arbitration award in court; and**

2 **WHEREAS, the Gaming Enterprise has entered into agreements for construction services and**
3 **equipment relating to the construction of the new casino and hotel at the Gaming**
4 **Enterprise's Nogales Highway location with Fluoresco Lighting-Sign Maintenance**
5 **Corp. (for signage), Network Infrastructure Corporation (for networking, audio-visual,**
6 **security, and telephone equipment), and Sicon, LLC (for a surveillance system), copies**
7 **of which are attached to this Resolution as Exhibits A, B, and C (the "Agreements"); and**

8 **WHEREAS, the Gaming Enterprise desires that any and all disputes arising out of the construction**
9 **of the new casino and hotel at the Gaming Enterprise's Nogales Highway location be**
10 **resolved by binding arbitration before the American Arbitration Association, in part**
11 **to avoid the possibility of having to litigate disputes with different contractors in**
12 **different venues with the possibility of conflicting outcomes; and**

13 **WHEREAS, the Agreements contemplate that disputes will be resolved by binding arbitration**
14 **before the American Arbitration Association, with arbitration awards being enforced**
15 **in court, provided the Tohono O'odham Legislative Council approves a limited waiver**
16 **of the Gaming Enterprise's sovereign immunity to allow disputes under the**
17 **Agreements to be resolved by binding arbitration before the American Arbitration**
18 **Association and to allow for the enforcement of arbitration awards in court; and**

19 **WHEREAS, the Commerce Committee of the Tohono O'odham Legislative Council has reviewed**
20 **the proposed limited waiver of the Gaming Enterprise's sovereign immunity as**
21 **contemplated in the Agreements, and recommends that the Tohono O'odham**
22 **Legislative Council approve a limited waiver of the Gaming Enterprise's sovereign**
23 **immunity; and**

24 **WHEREAS, the interests of the Gaming Enterprise will be served by the Tohono O'odham**
25 **Legislative Council approving a limited waiver of the Gaming Enterprise's sovereign**
26 **immunity.**

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

- 29 **1. The Tohono O'odham Nation grants the following limited waiver of the sovereign**
30 **immunity of the Tohono O'odham Gaming Enterprise in favor of Fluoresco**

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- 1 **Lighting-Sign Maintenance Corp., Network Infrastructure Corporation, and Sicon,**
2 **LLC, which shall be in lieu of the limited waiver in Section 8(b)(2) of the Charter of**
3 **the Gaming Enterprise:**
- 4 **A. The Nation waives any immunity from suit or action the Gaming Enterprise**
5 **enjoys with respect to any and all disputes, claims, counterclaims, and/or**
6 **crossclaims that may be brought by Fluoresco Lighting-Sign Maintenance**
7 **Corp., Network Infrastructure Corporation, or Sicon, LLC under, arising out**
8 **of, or related to the Agreements, in accordance with the provisions of this**
9 **Resolution;**
- 10 **B. The Nation consents to an arbitration against the Gaming Enterprise before**
11 **the American Arbitration Association in accordance with the provisions of**
12 **the Agreements upon any and all disputes, claims, counterclaims, and/or**
13 **crossclaims brought by Fluoresco Lighting-Sign Maintenance Corp., Network**
14 **Infrastructure Corporation, or Sicon, LLC under, arising out of, or related to**
15 **the Agreements and to a suit, action, or proceeding in any court of competent**
16 **jurisdiction (in accordance with the provisions of the Agreements) to enforce**
17 **the agreement to arbitrate, to confirm an arbitration award, to have**
18 **judgment entered, and to execute upon any such judgment against the**
19 **personalty of the Gaming Enterprise, whether located on or off the Nation's**
20 **lands, up to the amount of the judgment (subject to the limitations in**
21 **Paragraph D and E below);**
- 22 **C. The Nation waives any obligation that Fluoresco Lighting-Sign Maintenance**
23 **Corp., Network Infrastructure Corporation, or Sicon, LLC otherwise might**
24 **have to exhaust tribal remedies before pursuing arbitration, obtaining a**
25 **judgment confirming an arbitration award, and/or executing on a judgment**
26 **confirming an arbitration award;**
- 27 **D. This waiver of sovereign immunity is limited to the sums owed by the Gaming**
28 **Enterprise to Fluoresco Lighting-Sign Maintenance Corp., Network**
29 **Infrastructure Corporation, or Sicon, LLC under the terms of the Agreements,**
30 **plus attorneys' fees and other costs and any interest accrued or accruing on**

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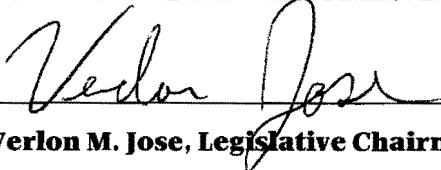
those sums; and

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 Agreements or under any arbitration award, judgment, or order. Moreover, the limited waiver of sovereign immunity applies only to the transactions described in the Agreements and to no other.

F. This limited waiver of sovereign immunity does not extend to the Nation, or to any official, employee, agent, or attorney of or for the Nation, and no official, employee, agent, or attorney of or for the Nation shall have any personal liability for any of the Gaming Enterprise's obligations under the Agreements or under any arbitration award, judgment, or order.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 21ST. Day of MAY, 2007 at a meeting at which a quorum was present with a vote of 2,254.1 FOR; -0- AGAINST; 186.7 NOT VOTING; and [04] 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


Verlon M. Jose, Legislative Chairman

25 day of May, 2007

ATTEST:


Lucille Lopez, Acting Legislative Secretary

31 day of May, 2007.

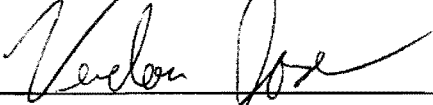
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1 Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono
2 O'Odham Nation on the 25 day of May, 2007 at 5:02 o'clock,
3 A.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
4 effective upon her approval or upon her failure to either approve or disapprove it within 48 hours
5 of submittal.

6 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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9 Verlon M. Jose, Legislative Chairman

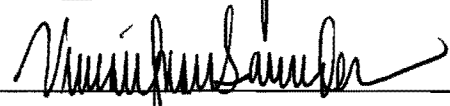
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APPROVED

on the 28 day of May, 2007

DISAPPROVED

at 3:30 o'clock, P.M.

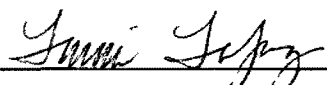


VIVIAN JUAN-SAUNDERS, CHAIRWOMAN

TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 29 day of

May, 2007, at 9:18 o'clock, A.M.



Lucille Lopez, Acting Legislative Secretary

ACTION: APPROVING VENDOR AGREEMENTS BETWEEN THE TOHONO O'ODHAM GAMING ENTERPRISE AND FLUORESCO LIGHTING-SIGN MAINTENANCE CORP., NETWORK INFRASTRUCTURE CORPORATION, AND SICON, LLC, INCLUDING LIMITED WAIVERS OF SOVEREIGN IMMUNITY

MOVED: COUNCILWOMAN FRANCES MIGUEL

SECOND: COUNCILWOMAN FRANCES CONDE

DATE: MAY 21, 2007

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (Vernon J. Smith)	155.40	X			
	2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris))	155.40	X			
CHUKUT KUK 258.7	1. ETHEL GARCIA ()	129.35	X			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			X
GU VO 193.1	1. RAYMOND VICTOR ()	96.55	X			
	2. MICHAEL FLORES (Grace Manuel)	96.55	X			
HICKIWAN 167.4	1. SHIRLEY SANTOS-MOLINA ()	83.70	X			X
	2. SANDRA ORTEGA ()	83.70	X			
PISINEMO 171.8	1. BARBARA SALVICIO ()	85.90	X			
	2. GERALD FAYUANT ()	85.90	X			X
SAN LUCY 169.0	1. LORRAINE EILER ()	84.50	X			
	2. GLORIA RAMIREZ ()	84.50	X			
SAN XAVIER 193.8	1. FELICIA NUÑEZ ()	96.90	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	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** (Kimberly Listo)	210.50	X			
SIF OIDAK 186.7	1. WAVALENE ROMERO (Isidro Lopez)	93.35			X	
	2. DARLENE ANDREW** (Rita Wilson)	93.35			X	
TOTAL		2,440.80	2,254.1	-0-	186.7	[04]

**PASSED VOTES