

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving a Limited Waiver of the Sovereign Immunity of the Tohono**  
**O'odham Gaming Enterprise in Favor of Hunt-PENTA West Valley Resort)**

**RESOLUTION NO. 17-614**

1 **WHEREAS, the Tohono O'odham Nation (the "Nation") is a federally recognized Indian tribe**  
2 **organized pursuant to Section 16 of the Indian Reorganization Act of June 18,**  
3 **1934 (48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its**  
4 **members and its lands; and**

5 **WHEREAS, pursuant to Article VI of the Nation's Constitution, the Tohono O'odham**  
6 **Legislative Council (the "Legislative Council") is vested with all of the legislative**  
7 **powers of the Nation and is empowered to enact laws, ordinances, and**  
8 **resolutions necessary or incidental to the exercise of its legislative powers; and**

9 **WHEREAS, the Legislative Council of the Nation has enacted an Ordinance for the**  
10 **Regulation of Gaming Activities Within the Tohono O'odham Nation (the**  
11 **"Gaming Ordinance"), which ordinance was adopted pursuant to Resolution No.**  
12 **93-296 and amended by Resolution No. 97-150, Resolution No. 97-168, Resolution**  
13 **No. 97-303, Resolution No. 99-206, Resolution No. 03-084, and Resolution No. 07-**  
14 **300 (16 T.O.C. Chapter 1); and**

15 **WHEREAS, the Gaming Ordinance provides that all gaming activities conducted within the**  
16 **Nation shall be owned entirely by the Nation and conducted and operated by a**  
17 **tribal enterprise; and**

18 **WHEREAS, the Tohono O'odham Gaming Enterprise (the "Gaming Enterprise") is a tribal**  
19 **governmental enterprise of the Nation established pursuant to Article VI of the**  
20 **Nation's Constitution as the tribal enterprise responsible for operating the**  
21 **Nation's gaming facilities and conducting gaming activities in compliance with**  
22 **the requirements of the Gaming Ordinance; and**

23 **WHEREAS, the Legislative Council adopted the Charter of the Gaming Enterprise (the**  
24 **"Charter") by Resolution No. 93-311 and amended the Charter by Resolution No.**  
25 **02-294, Resolution No. 03-231, Resolution No. 04-513, Resolution No. 15-062, and**  
26 **Resolution No. 17-408 (16 T.O.C. Chapter 2); and**

27 **WHEREAS, Section 5(d)(3) of the Charter charges the Gaming Enterprise with the**  
28 **responsibility for planning, constructing, and management of all new or**  
29 **additional gaming facilities; and**

30 **WHEREAS, the Gaming Enterprise Management Board is authorized to enter into, make,**  
31 **perform and carry out contracts for any lawful purpose pertaining to the**  
32 **Enterprise's business (Charter, Section 5(d)(10)); and**

33 **WHEREAS, Section 8(b)(2) of the Charter provides for a limited waiver of the Gaming**  
34 **Enterprise's sovereign immunity with respect to claims based upon a written**

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1 contract to which the Gaming Enterprise is a party and reserves to the  
2 Legislative Council "the power to prospectively modify this limited waiver of the  
3 Enterprise's immunity either generally or with respect to particular  
4 circumstances." (Charter, Section 8(b)(2) and 8(c)); and

5 **WHEREAS,** the Gaming Enterprise has entered into a Master Agreement for Pre  
6 Construction Services ("Pre-Con Agreement") on August 25, 2017 with Hunt-  
7 PENTA West Valley Resort ("Hunt-PENTA"), a joint venture of Hunt Construction  
8 Group, Inc., an Indiana corporation, and The PENTA Building Group, LLC, a  
9 Nevada limited liability company, for the purpose of engaging Hunt-PENTA as  
10 construction consultant for the development and construction of TOGE's West  
11 Valley Resort gaming facility on the Nation's lands located near Glendale, AZ;  
12 and

13 **WHEREAS,** TOGE also entered into a Master Construction Agreement ("Construction  
14 Agreement") with Hunt-PENTA on November 1, 2017 for the purpose of engaging  
15 Hunt-PENTA as the General Contractor for the next phase of construction and  
16 development of TOGE's West Valley Resort; and

17 **WHEREAS,** the Pre-Con Agreement and the Construction Agreement negotiated between  
18 TOGE and Hunt-PENTA requires a modification of the limited waiver of  
19 immunity within Section 8(b)(2) of the Enterprise's Charter solely for purposes of  
20 these Agreements and for the sole benefit of Hunt-PENTA; and

21 **WHEREAS,** the Gaming Enterprise is seeking approval from the Legislative Council for this  
22 modification to the scope of the waiver of the TOGE's immunity pursuant to the  
23 terms of both the Pre-Con Agreement and the Construction Agreement, which is  
24 incorporated by this reference; and

25 **WHEREAS,** the Commerce Committee of the Legislative Council has reviewed the language  
26 of the proposed waiver and believes it is in the best interest of the Nation to  
27 adopt a resolution that approves those modifications; and

28 **WHEREAS,** the Nation's best interest will be served by modifying TOGE's statutory waiver of  
29 sovereign immunity as provided in the attached Exhibit A.

30 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council grants a  
31 limited waiver of the sovereign immunity of the Tohono O'odham Gaming  
32 Enterprise in favor of Hunt-PENTA solely for the purpose of compliance with the  
33 covenants made in the Agreement and adopts the attached Exhibit A for that  
34 purpose; provided that the Tohono O'odham Nation's sovereign immunity is not  
35 waived and the Nation shall have no liability with respect to any claims or other  
36 obligations asserted against the Enterprise or arising out of its operations.

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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 18<sup>TH</sup> day of DECEMBER, 2017 at a meeting at which a quorum was present with a vote of 3,084.6 FOR; -0- AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(e) 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

Timothy C. Joaquin for  
Timothy Joaquin, Legislative Chairman  
20 day of December, 2017

ATTEST:

Evonne Wilson  
Evonne Wilson, Legislative Secretary  
19 day of December, 2017

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 20 day of December, 2017 at 9:21 o'clock, a.m., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy C. Joaquin for  
Timothy Joaquin, Legislative Chairman

APPROVED

on the 20 day of December, 2017

DISAPPROVED

at 5:46 o'clock, P.m.

Edward D. Manuel  
EDWARD D. MANUEL, CHAIRMAN  
TOHONO O'ODHAM NATION

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1 Returned to the Legislative Secretary on the 21 day of  
2  
3 December, 2017, at 11:45 o'clock, a .m.  
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7 **Evonne Wilson, Legislative Secretary**  
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**ACTION: APPROVING A LIMITED WAIVER OF THE SOVEREIGN IMMUNITY OF THE TOHONO O'ODHAM GAMING ENTERPRISE IN FAVOR OF HUNT-PENTA WEST VALLEY RESORT**

**Moved: COUNCILMAN BILLMAN LOPEZ**

**SECOND: COUNCILWOMAN JANICE FELIX**

**DATE: DECEMBER 18, 2017**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 235.8	1. MARY LOPEZ ( )	117.9	X			X
	2. LUCINDA ALLEN ( <i>Absent</i> ) (Yolonda Garcia) ( <i>Present</i> )	117.9	X			
SELLS 527.2	1. ARTHUR WILSON ( )	263.6	X			
	2. ADRIANNE TILLER (Idaleen Reyes)	263.6	X			
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. (Teresa F. Donahue)	92.85	X			
	2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85	X			
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (Felicia Nunez)	116.15	X			
	2. JANICE FELIX ( )	116.15	X			
SAN LUCY 231.1	1. JANA MONTANA (Diana Manuel)	115.55	X			
	2. GLORIA RAMIREZ (Lorraine Eiler)	115.55	X			
PISINEMO 225.9	1. CHESTER ANTONE (Caroline D. Garcia)	112.95	X			
	2. MONICA K. MORGAN ( )	112.95	X			
HICKIWAN 209.0	1. LOUIS R. LOPEZ (Shirley Molina)	104.5	X			
	2. SANDRA D. ORTEGA ( )	104.5	X			
GU VO 256.9	1. GRACE MANUEL ( )	128.45	X			
	2. DALLAS LEWIS (Nacho Flores)	128.45	X			
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	135.45	X			
	2. LORETTA LEWIS (Victoria Hobbs)	135.45	X			
CHUKUT KUK 337.7	1. BILLMAN LOPEZ (Patricia Vicenti)	168.85	X			
	2. VIVIAN JUAN-SAUNDERS (Juanita Homer)	168.85	X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL (Roberta E. Harvey)	186.05	X			
	2. LEANDER MASE ( )	186.05	X			
<b>TOTAL</b>		<b>3,084.6</b>	<b>3,084.6</b>	<b>-0-</b>	<b>-0-</b>	<b>[01]</b>