

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing Terms of Settlement of the Claim Asserted by
T.L. Roof & Associates Construction Company Against
O'Odham Construction & Materials and Authorizing
Reallocation of Funds for Settlement)

RES. NO. 449-90

1
2 WHEREAS, by letter of September 14, 1990, T.L. Roof & Associates
3 Construction Company ("T.L. Roof") submitted a claim to
4 O'Odham Construction & Materials Co. ("OCM") in the amount
5 of \$86,483., arising out of the alleged failure of
6 concrete supplied by OCM, for use in the construction of
7 the Indian Oasis School District Administration Building,
8 to meet project specifications; and

9 WHEREAS, in subsequent negotiations with the Chairman's Designee,
10 and the Attorney General, T.L. Roof asserted additional
11 delay damages (claimed to be in the amount of \$25,000.),
12 allegedly as the result of additional subcontractor costs
13 incurred due to purported delays in OCM concrete
14 deliveries; and

15 WHEREAS, in response to notification of the termination and
16 cancellation of OCM's concrete supply agreement, T.L. Roof
17 asserted an additional claim against OCM (in an
18 unspecified amount) for anticipated costs in procuring
19 concrete from another source; and

20 WHEREAS, the Chairman's Designee and the Attorney General informed
21 T.L. Roof, Chuck Westenburg, Inc. ("Westenburg") and the
22 other interested parties that a recommendation would be
23 made to the Legislative Council for settlement of T.L.
24 Roof's claims on the following terms: payment to OCM for
25 all outstanding invoices on concrete and equipment
26 rentals, less \$10,867., (the amount OCM would have
27 subcontracted and paid for out-of-pocket had OCM's right
28 to cure the deficiencies been honored, plus an allowance
29 of 25% of the delay and liquidated damages); and an
30 agreement by OCM to continue to supply concrete for the
31 balance of the project with a limitation of future
32 liability; and

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

WHEREAS, T.L. Roof rejected this proposal as well as an amended proposal to recommend an increase of the amount OCM would offset against amounts due from Westenburg to \$32,405., (OCM's cost had it performed the removal and replacement work itself); and

WHEREAS, T.L. Roof presented a counteroffer, whereby T.L. Roof would: reduce their original demand of \$86,483., by \$2,483; require an immediate cash payment of \$70,000., by OCM; require that OCM set aside in escrow an additional \$14,000., to be paid to the extent of any claim the School District later asserts against T.L. Roof for liquidated damages; and T.L. Roof would waive other, unasserted damages allegedly incurred due to purported delays in OCM concrete deliveries; and

WHEREAS, by Resolution No. 413-90, the Tohono O'Odham Legislative Council rejected T.L. Roof's counter-proposal, and authorized and directed the Chairman's Designee and the Attorney General to cancel and terminate the purported concrete supply agreement with Westenburg due to Westenburg's failure to pay for delivered and accepted concrete and equipment rentals, and to present an offer to settle all claims of T.L. Roof, Westenburg and OCM by payment of \$144., to T.L. Roof; and

WHEREAS, by letters dated November 16, 1990, the Chairman's Designee conveyed the above-described settlement offer and notice of termination of the concrete supply agreement to T.L. Roof and to Westenburg; and

WHEREAS, by letter dated November 27, 1990, T.L. Roof rejected the settlement offer, and instead proposed a settlement of:

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

- a. Payment to T.L. Roof of \$52,958., representing \$50,436., in actual expenses to remove and replace the defective concrete, together with a 5% overhead charge of \$2,522; plus
- b. An agreement that OCM and the Nation would remain liable for liquidated damages (not to exceed \$14,000.), in the event a liquidated damage claim is asserted by the School District; plus
- c. An agreement by T.L. Roof to waive all claims for delay damages; and
- d. Payment to OCM of all amounts due and owing from T.L. Roof and Westenburg; and

WHEREAS, through further discussions and negotiations between T.L. Roof and the Attorney General, T.L. Roof agreed to the following terms of settlement:

- a. the amount T.L. Roof will accept as settlement of all claims against OCM and the Nation is \$45,717;
- b. the amount owed to OCM from Westenburg for all delivered and accepted concrete, and all equipment rentals, exclusive of finance charges, is \$40,997;
- c. the difference between those two amounts is \$4,720, which amount T.L. Roof and Westenburg will agree to accept as payment in full and in exchange waive all claims against OCM and the Nation (exclusive of presently unknown claims for latent defects in the concrete supplied by OCM), but expressly including all delay and liquidated damages, provided that the Nation write a letter to the School District requesting that the School District not assert a claim for liquidated damages as a result of the delay caused by the alleged non-conforming concrete supplied by OCM on the Administration Building; and
- d. an understanding between the parties that by agreeing to this settlement proposal the Nation

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

does not waive its right to assert sovereign immunity in the event a claim for damages due to latent concrete defects is asserted.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. In order to effect a commercially reasonable settlement of this disputed claim, the Tohono O'Odham Legislative Council hereby authorizes payment to T.L. Roof in the amount of \$4,720., in exchange for a release by T.L. Roof and Westenburg of all claims against OCM and the Nation (exclusive of presently unknown claims for latent defects in concrete supplied by OCM), including all delay and liquidated damage claims.
2. The Tohono O'Odham Legislative Council hereby reallocates funds in the amount of \$4,720, from funds which had previously been set aside by Council Resolution No. 390-90 for funding the contract obligations of OCM on the Indian Oasis School District construction project.
3. Subject to obtaining the foregoing release from T.L. Roof and Westenburg the Tohono O'Odham Legislative Council hereby authorizes execution of a release by OCM and the Nation of all claims against T.L. Roof and Westenburg, including the claim against Chuck Westenburg, Inc. for amounts due and owing for concrete sales and equipment rentals.
4. The Tohono O'odham Legislative Council expressly reserves the right to assert the defense of sovereign immunity in the event a claim for damages is made against OCM or the Tohono O'Odham Nation arising out of latent defects in the concrete supplied by OCM on the Indian Oasis School District construction project.
5. The Tohono O'Odham Legislative Council authorizes and directs the Chairman's Designee to execute the releases and any other documents required to

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

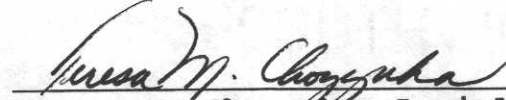
conclude settlement on the terms approved in this Resolution, including transmittal of a letter to the Indian Oasis School District requesting that the School District not assert against T.L. Roof a claim for liquidated damages arising out of delay attributable to non-conforming concrete supplied by OCM for construction of the School District Administration Building.

The foregoing Resolution was passed by the Tohono O'odham Council on the 10th day of December, 1990 at a meeting at which a quorum was present with a vote of 1,558.0 for; -0- against; 166.0 not voting; 03 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

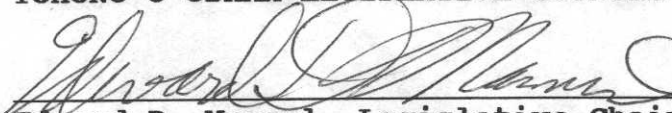

Edward D. Manuel, Legislative Chairman
10th day of December, 1990.

ATTEST:

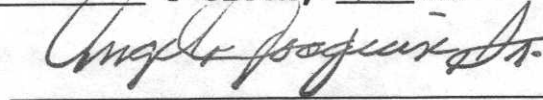

Teresa M. Choyguha, Legislative Secretary
10th day of December, 1990.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 10th day of December, 1990, at 4:32 o'clock, P.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


Edward D. Manuel, Legislative Chairman

[] APPROVED) on the 12th day of December, 1990.
[] DISAPPROVED) at 4:22 o'clock, P.M.


ANGELO J. JOAQUIN, SR., Chairman
TOHONO O'ODHAM NATION

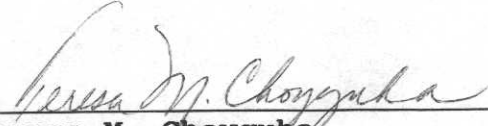
RES. NO. 449-90

(Authorizing Terms of Settlement of the Claim Asserted
by T.L. Roof & Associates Construction Company Against
O'Odham Construction & Materials and Authorizing
Reallocation of Funds for Settlement)

Page (6)

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

Returned to the Legislative Secretary on the 12th day of
December, 1990, at 4:31 o'clock, P.M.



Teresa M. Choyguha
Legislative Secretary

MOVED: Andrew Patricio
 SECOND: Albert Manuel, Jr.
 DATE: December 10, 1990

SUBJECT: Authorizing Terms of Settlement of
Claim asserted by T.L. Roof & Assoc. Constr
Co. against O'Odham Construction & Material

RESOLUTION NO. 449-90

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 229.0	1. Earl A. Francisco (Kenneth Chico, Sr.)	114.5	X			
	2. Joann Garcia (Frances Miguel)	114.5	X			
CHUKUT KUK 163.0	1. Rosita Ruiz (Rosemary Lopez)	81.5	X			
	2. Kenneth G. Williams (Harriet Toro)	81.5	X			
GU ACHI 166.0	1. Percy Lopez ()	83.0			X	X
	2. Alex J. Ramon (Fernando Joaquin)	83.0			X	
GU VO 114.0	1. Cross Antone (Juan Joe Cipriano)	57.0	X			X
	2. Virgil Lewis (Michael Flores)	57.0	X			
HICKIWAN 125.0	1. Lloyd Francisco (Billy C. Manuel)	62.5	X			
	2. Lenora Montana ()	62.5	X			
PISINEMO 119.0	1. Johnson Jose ()	59.5	X			X
	2. Edward Manuel (Alex Antone)	59.5	X			
SAN LUCY 106.0	1. Albert Manuel, Jr. (Max P. Jose)	53.0	X			
	2. John Reno ()	53.0	X			
SAN XAVIER 127.0	1. Eugene Enis. Sr. (Michael Rios)	63.5	X			
	2. Joanne C. Preston (Carmelita Mattias)	63.5	X			
SCHUK TOAK 107.0	1. JoAnn Francisco (David Valenzuela Sr.)	53.5	X			
	2. Joseph Juan (Frances Francisco)	53.5	X			
SELLS 310.0	1. Joseph T. Joaquin (Larry Garcia)	155.0	X			
	2. Andrew Patricio (Daniel Lopez)	155.0	X			
SIF OIDAK 158.0	1. Mary Ann Antone (Nina Jose)	79.0	X			
	2. Willard Juan, Sr. (Melissa Gregorio)	79.0	X			
TOTAL		1,724.0	1,558.0	-0-	166.0	03

**PASSED VOTES