

**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. 14-512**

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, 1934**  
3 **(48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its members**  
4 **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 resolutions**  
8 **necessary or incidental to the exercise of its legislative powers; and**

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

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

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

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

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

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

31 **WHEREAS, Section 8(b)(2) of the Charter provides for a limited waiver of the Gaming**  
32 **Enterprise's sovereign immunity with respect to claims based upon a written**  
33 **contract to which the Gaming Enterprise is a party; and**

34 **WHEREAS, the Gaming Enterprise entered into a Master Construction Agreement**  
35 **("*Agreement*") on August 25, 2014 with Hunt-PENTA West Valley Resort ("*Hunt-***  
36 ***PENTA*"), a joint venture of Hunt Construction Group, Inc., an Indiana**

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**(Approving a Limited Waiver of the Sovereign Immunity of the Tohono O'odham Gaming Enterprise in favor of Hunt-PENTA West Valley Resort)**

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1 corporation, and The PENTA Building Group, LLC, a Nevada limited liability  
2 company, for the purpose of engaging Hunt-PENTA as its general contractor for  
3 the development and construction of TOGE's newest gaming facility on the  
4 Nation's lands located near Glendale, AZ; and

5 **WHEREAS, the Agreement was the result of significant negotiation between the parties and is**  
6 **expressly conditioned upon a modification of the limited waiver of immunity**  
7 **within Section 8(b)(2) of the Enterprise's Charter solely for purposes of the**  
8 **Agreement and for the sole benefit of Hunt-PENTA West Valley Resort; and**

9 **WHEREAS, pursuant to the Agreement with Hunt-PENTA, within 90 days of the execution of**  
10 **the Agreement, TOGE must seek a modification of the statutory waiver in Section**  
11 **8(b) that conforms to the requirements of Section 25 and Section 26 of the**  
12 **Agreement; and**

13 **WHEREAS, the Enterprise is seeking approval from the Legislative Council for this**  
14 **modification to the scope of the waiver of the TOGE's immunity pursuant to the**  
15 **terms of the Agreement, which is incorporated by this reference; and**

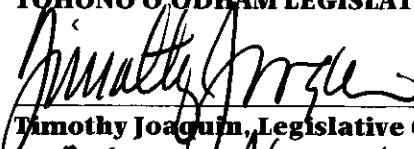
16 **WHEREAS, the Commerce Committee of the Legislative Council has reviewed the language of**  
17 **the proposed wavier under Sections 25 and 26 of the Agreement and believes it is**  
18 **in the best interest of the Nation to adopt a resolution that approves those**  
19 **modifications; and**

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

22 **NOW, THEREFORE, BE IT RESOLVED the Tohono O'odham Legislative Council grants a limited**  
23 **waiver of the sovereign immunity of the Tohono O'odham Gaming Enterprise in**  
24 **favor of Hunt-PENTA West Valley Resort solely for the purpose of compliance with**  
25 **the covenants made in the Agreement and adopts the attached Exhibit A for that**  
26 **purpose.**

27 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 21<sup>ST</sup>**  
28 **day of NOVEMBER, 2014 at a meeting at which a quorum was present with a vote of 2,946.5 FOR;**  
29 **-0- AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by**  
30 **Article VI, Section 1(e) of the Constitution of the Tohono O'odham Nation, adopted by the**  
31 **Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**  
32 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of**  
33 **June 18, 1934 (48 Stat.984).**

34  
35 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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39 **Timothy Joaguin, Legislative Chairman**

40  
41 25 day of November, 2014  
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ATTEST:

[Signature]  
Evonne Wilson, Legislative Secretary

24 day of November, 2014

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 25 day of November, 2014 at 9:17 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

[Signature]  
Timothy Joaquin, Legislative Chairman

APPROVED

on the 25 day of March, 2014

DISAPPROVED

at 11:38 o'clock, A .m.

[Signature]  
NED NORRIS, JR., CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 25 day of

November, 2014, at 11:45 o'clock, A .m.

[Signature]  
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: COUNCILWOMAN ETHEL GARCIA**

**SECOND: COUNCILWOMAN FRANCES STEPHENS**

**DATE: NOVEMBER 21, 2014**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 224.2	1. LUCINDA ALLEN (Nicholas Jose)	112.1	X			
	2. MARY LOPEZ ( )	112.1	X			
SELLS 502.0	1. ARTHUR WILSON (Ophella Patten)	251.0	X			
	2. BARBARA HAVIER (Beverly Rivas)	251.0	X			
SCHUK TOAK 174.2	1. FRANCES B. STEPHENS (Anthony J. Rios)	87.1	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	87.1	X			X
SAN XAVIER 224.2	1. HILARION CAMPUS (Daniel L.A. Preston, III)	112.1	X			
	2. RACHEAL VILSON-STONER (Olivia Villegas-Liston)	112.1	X			
SAN LUCY 219.6	1. DIANA MANUEL (Gloria Ramirez)	109.8	X			X
	2. JANA MONTANA ( )	109.8	X			
PISINEMO 210.6	1. CHESTER ANTONE (Tony Murrietta)	105.3	X			
	2. EDWARD MANUEL, SR. ( )	105.3	X			
HICKIWAN 196.9	1. LOUIS R. LOPEZ ( )	98.45	X			
	2. SANDRA ORTEGA (Manuel Osequeda, Jr.)	98.45	X			X
HIA CED 19.6	1. PATRICK ANDREWS (Janice E. Paul)	9.8	X			
	2. VIRGINIA GARCIA ( )	9.8	X			
GU VO 241.0	1. GRACE MANUEL (Floyd Flores)	120.5	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	120.5	X			
GU ACHI 257.3	1. TIMOTHY L. JOAQUIN ( )	128.65	X			
	2. LORETTA LEWIS (Louis Johnson)	128.65	X			
CHUKUT KUK 319.2	1. ETHEL GARCIA (Marlakay C. Henry)	159.6	X			
	2. BILLMAN LOPEZ ( )	159.6	X			
BABOQUIVARI 357.7	1. FRANCES MIGUEL ( <i>Absent</i> ) (Roberta Harvey) ( <i>Present</i> )	178.85	X			
	2. VERNON J. SMITH (Gloria Zazueta)	178.85	X			
<b>TOTAL</b>		<b>2,946.5</b>	<b>2,946.5</b>	<b>-0-</b>	<b>-0-</b>	<b>[03]</b>