



Little River Band of Ottawa Indians

1762 U.S. 31 South
Manistee MI 49660
(231) 723-8288

Resolution No. #02-0327-05

**Authorizing the Tribal Ogema, or in the absence of the Tribal Council Speaker,
to Execute an Agreement with Cunningham-Limp Company
for Design and Construction of the Casino Pit Trellis
Agreeing the Limited Waiver of Sovereign Immunity in That Agreement
and Superseding Resolution No. #02-0213-02 Regarding this Action**

WHEREAS, the Tribe's status as a federally-recognized Indian tribe was reaffirmed and restored by Congress pursuant to Public Law 103-324, 108 Stat. 2156 (25 U.S.C. §1300k et seq.)(hereinafter "Little River Act"); and

WHEREAS, the Tribe adopted a Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, pursuant to Article IV, Section 5 (a)(4) and Article V, Section 5(a)(3) and (8) of the Tribal Constitution, the Tribal Ogema, or in the absence of, the Tribal Council Speaker, is authorized to represent the Tribe in its relations with other organizations and manage the economic affairs/enterprises of the Tribe, in a manner consistent with the Tribal Constitution and resolutions of the Tribal Council; and

WHEREAS, the Tribal Council, pursuant to Article IV, Section 7 (b) of the Constitution, has the power to authorize and ratify agreements and contracts negotiated by the chief executive officer of the Tribe; and

WHEREAS, pursuant to Article XI, Section 1 of the Constitution provides that the Band "shall not waive or limit the right of the Little River Band to be immune from suit, except as authorized by tribal ordinance or resolution or in furtherance of tribal business enterprises"; and

WHEREAS, the Tribal Council has previously approved a Capital Budget for the Casino Resort Expansion Project, which includes estimated budget requirements for the FF&E required for the Casino Resort Expansion; and

WHEREAS, the Tribal Council has previously delegated to the Construction Management Team certain responsibilities regarding bidding and contracting for the FF&E portion of the Casino Resort Expansion Budget; and

WHEREAS, the Tribal Council has, pursuant to Resolution No. #02-0213-02, authorized execution of a change order with Cunningham-Limp Company and approved a budget modification to allocate funds to complete construction of the addition of a trellis above the Casino pit floor; and

WHEREAS, the Construction Management Team is recommending execution of a separate construction contract with Cunningham-Limp Company rather than a change order so as not to increase the guaranteed maximum price under the agreement previously executed with Cunningham-Limp; and

WHEREAS, the Bands' Legal Department has proposed a form of Agreement with Cunningham-Limp Company which would incorporate, by reference, most of the provisions applicable to the Agreement executed with Cunningham-Limp Company in March 2001; and

WHEREAS, Cunningham-Limp Company has requested a limited waiver of sovereign immunity from the Band to allow disputes arising under the Sales Agreement to be resolved through binding arbitration, enforceable in the Commercial Division of the Tribal Court, which agreement is reflected in the Attachment A to the AIA Standard Form of Agreement between Owner and Contractor for a Small Project (A105); and

WHEREAS, the Tribal Council has adopted the Arbitration Code, Ordinance #01-300-02, governing the approval of contracts which include arbitration provisions; and

WHEREAS, the Tribal Council has determined that the specific waiver of sovereign immunity requested by Cunningham-Limp Company for the specific purpose of enforcement and/or interpretation of that agreement is in furtherance of important Tribal purposes and tribal business enterprises and that such waiver is authorized by and is consistent with Article XI, Section 1 of the Tribe's Constitution.

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby authorizes the Tribal Ogema, or in the absence of, the Tribal Council Speaker, to execute the AIA Standard Form of Agreement between Owner and Contractor for a Small Project (A105) with Cunningham-Limp Company for construction of the Casino Pit Trellis for a cost not to exceed \$126,160.00.

IT IS FURTHER RESOLVED THAT the Tribal Council agrees to a limited waiver of sovereign immunity and consents to have disputes between the Tribe and Cunningham-Limp Company, which arise under that agreement decided by arbitration, including the limitation on recourse provisions contained in Section 6.3 of Attachment A to that Agreement, and which provides of arbitration awards in the Commercial Division of the Tribal Court in accordance with the Tribal Arbitration Code.

IT IS FINALLY RESOLVED THAT the terms of this Resolution shall supercede Resolution No. #02-0213-02 regarding this action.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 4 FOR, 2 AGAINST, 0 ABSTAINING, and 3 ABSENT, at a Regular Closed Session of the Little River Band of Ottawa Indians Downtown Offices on March 27, 2002, in Manistee, Michigan. A quorum of the Tribal Council being present for such vote.



Janine M. Sam, Council Recorder



Stephen Parsons, Council Speaker

Attest:

Distribution: Tribal Council Records
Accounting Department (ATTN: Dale Magoon)
Tribal Court
Legal Department
Cunningham-Limp Company