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Little River Band of Ottawa Indians

375 River Street
Manistee, MI 49660
(231) 723-8288

Resolution # 05-1109-582

Ratification of Contract with DeVere Construction Company, Inc., and to Provide a Limited Waiver of Sovereign Immunity

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new 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, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council created the Development Committee by resolution # 04-0310-115, and later by adoption of the Development Committee - 2005 Resort Expansion Act, for the purposes of managing the Little River Casino Resort Expansion Project (Expansion Project); and

WHEREAS, the Development Committee submitted requests for proposals to qualified construction firms for the purposes of building Phase II of the Expansion Project, and the Development Committee has selected DeVere Construction Company, Inc. (*DeVere*) to manage Phase II of the Expansion Project; and

WHEREAS, the Development Committee has negotiated a contract with DeVere (the "Contract"), which identifies the scope of work and associated costs necessary to provide construction services for the Expansion Project, and is recommending its ratification by Tribal Council; and

WHEREAS, the Contract includes dispute resolution and arbitration clauses which utilize the American Arbitration Association and Federal Arbitration Act, respectively, for the purposes of conducting the hearings in the event of a dispute; and

WHEREAS, the arbitration clause identifies that the United States District Court for the Western District shall be the court of first jurisdiction, followed by the Tribal Court, and if both courts deny jurisdiction the courts of the State of Michigan, for judicial resolution if either party refuses to participate in arbitration, and purposes of enforcement of an arbitration award; and

WHEREAS, the enforceability of the consent to dispute resolution and arbitration provisions require a waiver of the inherent sovereign immunity of the Tribe for the purpose of permitting or compelling binding arbitration, and for enforcing arbitration awards, pursuant to the specific written rights and duties of the Tribe and DeVere; and

WHEREAS, the Tribal Council has adopted the Arbitration Code, # 01-300-02, which identifies the processes by which the Tribe authorizes arbitration proceedings and jurisdiction; and

WHEREAS, in accordance with Article XI, Section 1, of the Constitution authorizing the Tribal Council to waive the inherent sovereign immunity of the Tribe, and in accordance with section 4.03 of the Arbitration Code, the Tribal Council has determined that a waiver of sovereign immunity supports the important governmental activity of Expansion Project which is intended to increase revenue from the Little River Casino and Resort of which such revenues support governmental programs which benefit Tribal members; and

WHEREAS, the Tribal Council has determined that the waiver of the Tribe's sovereign immunity contained in the Contract and the Tribe's consent to the jurisdiction of the federal courts, and the secondary jurisdiction of the Tribal Court, and the last resort jurisdiction of the courts of the State of Michigan, for enforcement of the binding arbitration and dispute resolution provisions of the Contract is warranted by the benefits of the Expansion Project;

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby ratifies the Contract with DeVere Construction Company, Inc. (*DeVere*) and authorizes the Ogema to enter into the Contract.

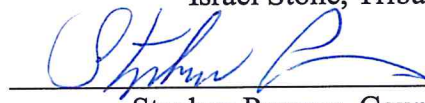
IT IS FURTHER RESOLVED THAT in accordance with Article XI, Section 1 of the Constitution and section 4.03 of the Arbitration Code, the Tribal Council hereby authorizes and approves a limited waiver of the inherent sovereign immunity of the Little River Band of Ottawa Indians as identified specifically in Article 9 of the contract with DeVere, for the specific purposes of permitting or compelling binding arbitration and enforcement of an arbitration award resulting from a contract dispute that was first unable to be resolved through dispute resolution as set forth in the Contract; provided, however, that this waiver of sovereign immunity is expressly limited to the terms provided in Article 3 of the Supplemental Conditions to the Contract recourse for recovery of any damages awarded against the Little River Band of Ottawa Indians in satisfaction of any enforcement proceedings under the Contract is specifically limited to the net revenues of the Little River Casino, or construction financing for the Expansion Project.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 7 FOR, 0 AGAINST, 0 ABSTAINING, 1 ABSENT, and 1 VACANT, at a Regular Closed Session of the Little River Band of Ottawa Indians Tribal Council held on November 9, 2005, at the Little River Band's Conference Room in Manistee, Michigan, with a quorum being present for such vote.



Israel Stone, Tribal Councilor



Stephen Parsons, Council Speaker

Attest:

Distribution: Council Records
Tribal Ogeema
Tribal Court