

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Adopting a Wage Determination for Commercial Construction, Residential
Construction, and Heavy Construction projects within the boundaries of the
Tohono O'odham Nation)**

RESOLUTION NO. 01-028

- 1 **WHEREAS, the work force of the Tohono O'odham Nation includes many skilled trade workers**
2 **who are employed in Commercial Construction, Residential Construction and Heavy**
3 **Construction; and**
- 4 **WHEREAS, these O'odham skilled trade workers are entitled to be paid wages for work**
5 **performed within the boundaries of the Tohono O'odham Nation equivalent to wages**
6 **paid to similar workers outside of the Nation's lands; and**
- 7 **WHEREAS, the federal Davis-Bacon Act (40 U.S.C. 276a et seq.) which protects the wages of**
8 **construction workers employed under federal contracts has only limited application**
9 **for projects within the Tohono O'odham Nation, and its wage rates vary between**
10 **Maricopa, Pinal and Pima Counties; and**
- 11 **WHEREAS, the Tohono O'odham Nation, in exercise of its inherent sovereignty, wishes to adopt**
12 **a wage determination in the fields of Commercial Construction, Residential**
13 **Construction and Heavy Construction in order to protect the wages of O'odham**
14 **skilled trade workers on projects within the boundaries of the Tohono O'odham**
15 **Nation; and**
- 16 **WHEREAS, the Tribal Employment Rights Commission (TERO Commission), advised by the Tribal**
17 **Employment Rights Office (TERO Office), has recommended to the Legislative Council**
18 **that the wage determination attached hereto be adopted, and that the wage**
19 **determination be enforced by the TERO Office and the TERO Commission; and**
- 20 **WHEREAS, the Domestic Affairs Committee of the Legislative Council has reviewed this wage**
21 **determination proposal and recommends that it be adopted by the Legislative**
22 **Council.**
- 23 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Nation adopts a wage**
24 **determination for Commercial Construction, Residential Construction and Heavy**
25 **Construction projects within the boundaries of the Tohono O'odham Nation, as**
26 **follows:**
- 27 **1. Wage Determination. The wage determination attached hereto is adopted.**

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- 1 **Contractors and subcontractors in projects covered by this wage determination**
2 **are required to pay their workers, at a minimum, the wages and cash in lieu of**
3 **benefits specified therein.**
- 4 **2. Effective Date. The effective date of this wage determination shall be August 01,**
5 **2000. Projects for which a request for bids or a request for proposals was issued**
6 **prior to the effective date, or for which a contract was entered into prior to the**
7 **effective date, are exempt from this wage determination.**
- 8 **3. Definitions.**
- 9 **A. "Construction" means all construction activity which relates to: the erection**
10 **or building of new structures or improvements and the acquisition,**
11 **replacement, expansion, remodeling, alteration, modernization or extension**
12 **of existing structures and improvements; drilling, blasting, excavating, earth**
13 **moving, clearing and landscaping; painting and decorating; the**
14 **manufacturing or finishing of materials, articles, supplies or equipment at**
15 **the construction site; and road construction and repair.**
- 16 **B. "Commercial construction" means construction of all buildings other than**
17 **single family homes and apartments up to and including 4 stories.**
- 18 **C. "District" means any of the 11 districts of the Nation as described in Article**
19 **IX of the Constitution of the Tohono O'odham Nation and any Districts**
20 **hereafter added.**
- 21 **D. "Heavy Construction" means all construction other than buildings, but**
22 **excluding dam construction.**
- 23 **E. "Nation" means the Tohono O'odham Nation, a federally recognized Indian**
24 **tribe, organized under the Constitution of the Tohono O'odham Nation.**
- 25 **F. "Person" means any individual, company, public or private corporation,**
26 **trust, firm, association, partnership, Indian Nation or any subordinate entity**
27 **or political subdivision thereof, any business chartered by any Indian Nation,**
28 **any State or county or municipal government or any of their departments,**

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1 **commissions or political subdivisions, the United States or any department,**
2 **agency or instrumentality of the United States, interstate body, industry, any**
3 **legal entity or private enterprise, and includes members and non-members**
4 **of the Tohono O'odham Nation.**

5 **G. "Residential Construction" means construction of single family homes and**
6 **apartments up to and including 4 stories.**

7 **H. "Worker" means any employee on a construction project occurring within**
8 **the Tohono O'odham Nation.**

9 **4. Scope of Coverage. Except as exempted by Section 2 or Section 5 herein, this wage**
10 **determination shall apply to all persons performing business within the**
11 **boundaries of the Tohono O'odham Nation, both private and governmental,**
12 **including the Tohono O'odham Nation, and all of its branches, departments,**
13 **programs, districts, and subordinate enterprises and authorities. Also included**
14 **are all federally assisted projects such as projects funded by a Public Law 93-638**
15 **contract, a Community Development Block Grant (CDBG), and the Native**
16 **American Housing Assistance and Self-Determination Act (NAHASDA). Where the**
17 **Davis-Bacon Act applies to a project and specifies a higher rate, the Davis-Bacon**
18 **rate shall be paid.**

19 **5. Exemptions. The following categories of projects shall be exempt from this wage**
20 **determination:**

21 **A. Projects in which one of the Districts of the Tohono O'odham Nation is a**
22 **contracting party, unless that District adopts the wage determination of the**
23 **Nation.**

24 **B. Projects where the United States government or any of its departments,**
25 **agencies or instrumentalities is a contracting party.**

26 **C. Projects where the state of Arizona or any political subdivision of the state is**
27 **a contracting party or a funding party.**

28 **D. Projects where wages are established by a collective bargaining agreement.**

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- E. Projects performed by a natural person for that person's personal, family or household purposes.
 - F. Projects performed with the existing employees of an otherwise covered entity.
 - G. Projects where the total cost of construction is \$5,000.00 or less.
6. **Enforcement.** The TERO Office shall have authority to enforce this wage determination under procedures specified in the TERO Ordinance, Ordinance No. 01-85. Failure by any employer, contractor or subcontractor to pay wage rates as set by this wage determination, or higher wages, shall render such employer liable for the difference between the amounts actually paid and the amounts required under this wage determination, together with simple interest thereon at 10 percent per annum. Actions of the TERO Office or TERO Commission may be appealed under the terms of Section 15 of Ordinance No. 01-85.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10TH Day of JANUARY, 2001 at a meeting at which a quorum was present with a vote of 2,037.4 FOR; -0- AGAINST; -0- NOT VOTING; and 128.1 [07] ABSENT, pursuant to the powers vested in the Council by Section 1 (c) 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


Dennis Ramon, Legislative Chairman

12th day of January, 20 01

ATTEST:


Julianna Saraficio, Acting Legislative Secretary

10 day of January, 20 01

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 12th day of January, 2001 at 4:48 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


Dennis Ramon, Legislative Chairman

APPROVED

on the 17th day of January, 2001
at 10:45 o'clock, A.M.

DISAPPROVED


EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 17 day of

January, 2001, at 4:47 o'clock, P.M.


Julianna Saraficio, Acting Legislative Secretary

ACTION: ADOPTING A WAGE DETERMINATION FOR COMMERCIAL CONSTRUCTION, RESIDENTIAL CONSTRUCTION, AND HEAVY CONSTRUCTION PROJECTS WITHIN THE BOUNDARIES OF THE TOHONO O'ODHAM NATION

MOVED: COUNCILWOMAN FERN SALCIDO

SECOND: COUNCILMAN DAVID GARCIA

DATE: JANUARY 10, 2001

| DISTRICT | LEGISLATIVE REPRESENTATIVES | # OF VOTES | FOR | AGAINST | NOT VOTING | ABSENT |
|----------------------------|-------------------------------------------|----------------|----------------|------------|------------|-----------------------------|
| SIF OIDAK 171.8 | 1. MARY ANN ANTONE (Darlene Andrew) | 85.9 | X | | | X |
| | 2. RITA MARTINEZ (Nicholas Jose) | 85.9 | X | | | |
| SELLS 372.7 | 1. DENNIS E. JOSE () | 186.35 | X | | | |
| | 2. EVELYN JUAN () | 186.35 | X | | | |
| SCHUK TOAK 133.4 | 1. MARY FLORES () | 66.7 | X | | | X |
| | 2. AMBROSE ENCINAS () | 66.7 | X | | | |
| SAN XAVIER 165.9 | 1. TONY BURRELL () | 82.95 | X | | | |
| | 2. DENNIS RAMON () | 82.95 | X | | | |
| BABOQIVARI 286.5 | 1. FRANCES MIGUEL () | 143.25 | X | | | |
| | 2. FRANCES G. ANTONE (Edward N. Kisto) | 143.25 | X | | | |
| GU ACHI 209.6 | 1. CAMILLUS LOPEZ (Louis Johnson) | 104.8 | X | | | |
| | 2. ALEX J. RAMON () | 104.8 | X | | | |
| PISINEMO 156.8 | 1. BARBARA SALVICIO (Alex Antone) | 78.4 | X | | | |
| | 2. JOHNSON JOSE () | 78.4 | X | | | |
| SAN LUCY 128.1 | 1. ALBERT MANUEL, JR. () | 64.05 | | | | X |
| | 2. GLORIA RAMIREZ () | 64.05 | | | | X |
| GU VO 160.0 | 1. FERN SALCIDO () | 80.0 | X | | | |
| | 2. GLORIA MONTANA (Phillip Antone) | 80.0 | X | | | X |
| HICKIWAN 158.1 | 1. SHIRLEY MOLINA () | 79.05 | X | | | X |
| | 2. LLOYD FRANCISCO (Susan Sam) | 79.05 | X | | | |
| CHUKUT KUK 222.6 | 1. KENNETH WILLIAMS () | 111.3 | X | | | X |
| | 2. DAVID GARCIA (Mary Audrey Juan) | 111.3 | X | | | |
| TOTAL | | 2,165.5 | 2,037.4 | -0- | -0- | 128.1 [07] |

****PASSED VOTES**