

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Arizona Department of Education Food Service Agreement and
Limited Waiver of Sovereign Immunity)

RESOLUTION NO. 03-016

- 1 **WHEREAS, the Arizona Department of Education, Office of Child Nutrition Programs (the "ADE"),**
2 **administers a child and adult care food program (the "Program") through**
3 **participating agencies; and**
- 4 **WHEREAS, pursuant to Resolution No. 02-441, the Tohono O'odham Legislative Council approved**
5 **a budget in the amount of \$40,000 for fiscal year 2003 to enable the Tohono O'odham**
6 **Nation, through the Division of Early Childhood Development (the "Nation"), to**
7 **become a participating agency in the Program; and**
- 8 **WHEREAS, the ADE has submitted a Program Food Service Agreement between the Arizona State**
9 **Board of Education (the "Board of Education") and the Nation (the "Agreement"), a**
10 **copy of which is attached hereto; and**
- 11 **WHEREAS, the Agreement governs the terms and conditions of the Nation's participation in the**
12 **Program, including reimbursement by the Board of Education of costs incurred by**
13 **the Nation; and**
- 14 **WHEREAS, the Agreement provides that (1) under paragraph E, the Board of Education has the**
15 **right to enforce the Agreement in Arizona courts and the Agreement is required to be**
16 **interpreted under Arizona law; (2) under clause F11, the Nation is bound to repay all**
17 **funds received by the Nation which are disallowed as determined by a compliance**
18 **audit; (3) under clause F12, any dispute between the parties is subject to binding**
19 **arbitration, with the award subject to review and enforcement in Arizona courts; and**
20 **(4) the Nation is bound by the laws of Arizona referred to in the Agreement, including**
21 **compliance with the Arizona Procurement Code cited in clause F13 (collectively**
22 **"State Enforcement and Compliance Requirements"); and**
- 23 **WHEREAS, in the absence of a waiver by the Legislative Council, assertion of the Nation's**
24 **sovereign immunity bars application of the State Enforcement and Compliance**
25 **Requirements; and**
- 26 **WHEREAS, the State of Arizona has rejected the Nation's proposal to insert a sovereign immunity**
27 **clause in the Agreement; and**
- 28 **WHEREAS, approval of the Agreement is conditioned on a limited waiver by the Legislative**
29 **Council of the Nation's sovereign immunity with respect to the State Enforcement and**
30 **Compliance Requirements; and**

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1 **WHEREAS, the Human Resources Development Committee and the Budget & Finance Committee**
2 **recommend approval by the Legislative Council of the Agreement and the limited**
3 **waiver of immunity described above.**

4 **NOW, THEREFORE, BE IT RESOLVED THAT:**

- 5 **1. The Tohono O'odham Legislative Council approves the Agreement, in the form**
6 **attached hereto.**
7 **2. The Legislative Council waives the sovereign immunity of the Nation with respect**
8 **to the State Enforcement and Compliance Requirements.**
9 **3. The Chairman of the Nation is authorized and directed to execute the Agreement.**

10 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 07TH, Day**
11 **of JANUARY, 2003 at a meeting at which a quorum was present with a vote of 2,173.15 FOR; -0-**
12 **AGAINST; 244.35 NOT VOTING; and [05] ABSENT, pursuant to the powers vested in the Council by**
13 **Section 1 (d)(2)(3) & (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by**
14 **the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
15 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
16 **18, 1934 (48 Stat. 984).**

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18 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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20 _____
21 **Rita A. Martinez, Legislative Chairwoman**

22
23 9th day of January, 20 03

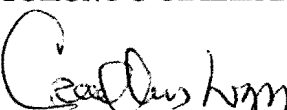
24
25 **ATTEST:**

26 
27 _____
28 **Julianna Saraficio, Acting Legislative Secretary**

29
30 07 day of January, 20 03.

31
32 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham**
33 **Nation on the 9th day of January, 20 03 at 2:06 o'clock, P.M.,**
34 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective**
35 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**
36 **submittal.**

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38 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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40 _____
41 **Rita A. Martinez, Legislative Chairwoman**
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APPROVED

on the 10 day of January, 2003

DISAPPROVED

at 12:30 o'clock, A.M.



EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 10 day of

January, 2003, at 2:30 o'clock, P.M.



Julianna Saraficio, Acting Legislative Secretary

ACTION: APPROVING ARIZONA DEPARTMENT OF EDUCATION FOOD SERVICE AGREEMENT AND LIMITED WAIVER OF SOVEREIGN IMMUNITY

Moved: COUNCILWOMAN FERN SALCIDO

SECOND: COUNCILWOMAN BARBARA SALVICIO

DATE: JANUARY 07, 2003

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 317.7	1. FRANCES MIGUEL ()	158.85	X			
	2. FRANCES G. ANTONE (Lucilda Norris-Valenzuela)	158.85	X			
CHUKUT KUK 248.1	1. KENNETH WILLIAMS (Juanita Homer)	124.05	X			
	2. DAVID GARCIA (Mary Audrey Juan)	124.05	X			
GU ACHI 230.7	1. CAMILLUS LOPEZ ()	115.35	X			
	2. JEROME JOAQUIN ()	115.35	X			
GU VO 188.3	1. FERN SALCIDO ()	94.15	X			
	2. EMILIO LEWIS (Michael Flores)	94.15	X			X
HICKIWAN 167.3	1. SHIRLEY MOLINA ()	83.65			X	
	2. SANDRA ORTEGA ()	83.65	X			
PISINEMO 174.7	1. BARBARA SALVICIO (Alex Antone)	87.35	X			
	2. PATRICIA CRUZ (Johnson Jose)	87.35	X			
SAN LUCY 160.7	1. ALBERT MANUEL, JR. (John W. Lawson, Sr.)	80.35			X	X
	2. GLORIA RAMIREZ ()	80.35			X	
SAN XAVIER 184.7	1. FELICIA NUÑEZ ()	92.35	X			
	2. DENNIS RAMON ()	92.35	X			X
SCHUK TOAK 144.5	1. MARY FLORES ()	72.25	X			
	2. AMBROSE ENCINAS (Frances B. Conde(Francisco))	72.25	X			X
SELLS 416.1	1. DENNIS E. JOSE ()	208.05	X			
	2. EVELYN JUAN ()	208.05	X			
SIF Oidak 184.7	1. ISIDRO LOPEZ ()	92.35	X			
	2. RITA MARTINEZ (Nicholas Jose)	92.35	X			X
TOTAL		2,417.5	2,173.15	-0-	244.35	[05]

****PASSED VOTES**