

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Joinder Agreements for the Arizona Public Safety Personnel Retirement System,
Approving Limited Waivers of Sovereign Immunity Incident to the Joinder Agreements and
Required Legal Opinions, and Modifying and Superceding All Prior Inconsistent Laws)

DEFEATED
RESOLUTION NO. 06-227

1 **WHEREAS, the Tohono O'odham Nation (the "Nation), as an aspect of its sovereignty, is entitled**
2 **to immunity from suit in all tribal, federal and state law courts absent the clear,**
3 **express and unequivocal waiver of the Tohono O'odham Nation or the clear, express**
4 **and unequivocal abrogation of the Nation's immunity by the United States Congress;**
5 **and**

6 **WHEREAS, the Nation seeks to provide defined benefit pension coverage for certain of its police**
7 **and firefighter employees through the Arizona Public Safety Personnel Retirement**
8 **System (the "State System"); and**

9 **WHEREAS, participation by the Nation as a participating employer in, and coverage of certain**
10 **Nation police and firefighters by, the State System requires, among other matters, the**
11 **limited waiver by the Nation of its sovereign immunity, including the express**
12 **agreement by the Nation to subject itself and its police and its firefighter employees**
13 **participating in the State System to the exclusive jurisdiction of the laws and courts**
14 **of the State of Arizona in connection with any and all matters referenced in, related**
15 **to, or implicated by Articles 4 and 5 of Chapter 5 of Title 38 of the Arizona Revised**
16 **Statutes; and**

17 **WHEREAS, a valid and binding waiver of sovereign immunity, and consent to suit by the Nation**
18 **in any state or federal court may be accomplished through duly enacted Resolutions**
19 **of the Tohono O'odham Legislative Council (the "Legislative Council"), setting forth**
20 **the clear, express and unequivocal terms of such consent and waiver; and**

21 **WHEREAS, participation by the Nation, as a participating employer in, and coverage of the**
22 **Nation's police and firefighters by, the State System requires certain additional**
23 **actions, including execution by a duly authorized representative of the Nation of**
24 **documents formally reflecting agreement by the Nation to be bound by the State**
25 **System, and engagement by the Nation of outside legal counsel satisfying certain**
26 **criteria for the purpose of providing to the State System a legal opinion letter (the**
27 **"Opinion") acknowledging the legality of the limited waiver of sovereign immunity by**
28 **the Nation in connection with participation by the Nation in the State System; and**

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1 **WHEREAS, the Legislative Council has been informed, and fully understands, that (i) the**
2 **sovereign immunity waiver set forth in the Joinder Agreements is intended to be**
3 **irrevocable in nature, and to bind future Councils and prevent future Councils or the**
4 **Nation through referendum or otherwise, from modifying or changing any obligation**
5 **under the Joinder Agreements without the permission of the State of Arizona, (ii) that**
6 **the State System does not currently contemplate the Nation's ability to terminate its**
7 **participation in the State System, and may not at any time in the future allow the**
8 **Nation to terminate its participation in the State System, and (iii) that participation**
9 **in the State System is a permanent delegation to the State of Arizona of authority to**
10 **increase, decrease, or modify benefits provided to Nation employees under the State**
11 **System, and the Nation's contribution costs therefor, without the consent of the**
12 **Nation, and over the objection of the Nation; and**

13 **WHEREAS, the Opinion Letter negotiated by the Nation's attorneys, and the approval of the**
14 **Joinder Agreements by this Council, is based on the assumptions that the Joinder**
15 **Agreements will be interpreted in a manner which reflects that:**

16 **A. References in the Joinder Agreements to Covered Employees are not intended to**
17 **require the Nation to bind its Covered Employees to any greater extent than any other**
18 **non-tribal employer participating in the State System must or can bind its Covered**
19 **Employees without the direct written agreement of each such employee;**

20 **B. All references in the Joinder Agreements to "irrevocable" or "irrevocably" are**
21 **intended to mean that the limited sovereign immunity waivers shall remain in force**
22 **only so long as the Nation is a participating employer in the State System, or owes**
23 **duties to the State System which accrued during a period of the Nation's participation**
24 **in the State System;**

25 **C. The requirements referred to in Paragraph 5(iii) of the Joinder Agreements are**
26 **the same uniform and non-discriminatory requirements which would apply to**
27 **non-tribal employers with regard to collection of amounts due;**

28 **D. The references in Paragraph 5(iv) of the Joinder Agreements to "service of**
29 **process and collection efforts" are intended to clarify that the Nation has waived its**
30 **right to assert sovereign immunity in challenging service of process and collection**

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1 **efforts, but is not intended to waive the normal legal process and procedures that**
2 **may be required to enforce, enroll, or otherwise effectuate a state court judgment or**
3 **order against a tribe or tribal entity which has provided a valid waiver of its immunity**
4 **covering the subject of the judgment or order;**

5 **E. Nothing in the Joinder Agreements is intended to be construed in a manner**
6 **which would grant the State System, the Fund Manager, the Administrator, or any of**
7 **their agents a greater legal right to irrevocability or enforcement over the Nation or**
8 **the Nation's Covered Employees than the State System, the Fund Manager, the**
9 **Administrator, or any of their agents would have over a non-tribal participating**
10 **employer or its covered employees;**

11 **F. References in the Joinder Agreements to the rights of the Fund Manager, the**
12 **Administrator of the State System, or their respective agents to seize, levy upon,**
13 **attach, garnish, lien, execute, or foreclose upon personal property or assets within**
14 **the Nation's lands or reservation to satisfy debts owed by the Nation to the State**
15 **System are not intended to encompass any authorization to seize, levy upon, attach,**
16 **garnish, lien, execute or foreclose upon, any property or assets held in trust for the**
17 **Nation by the United States or any other property or assets in which the Nation has an**
18 **interest, and the transfer or alienation of which requires the express consent by the**
19 **Department of the Interior;**

20 **G. References in the Joinder Agreements relating to the Nation's unconditional and**
21 **irrevocable adoption, acceptance, and agreement to be bound by all terms and**
22 **conditions of the State System are intended to bind the Nation to the same degree**
23 **other participating employers are bound under Title 38, Chapter 5, Articles 4 and 5**
24 **of the Arizona Revised Statutes, to their participation in the State System; such**
25 **references are not, however, intended to be construed in a manner to reflect an**
26 **agreement by the Nation to be a participating employer in the State System in**
27 **perpetuity, should termination or withdrawal be permitted under the State System**
28 **at any time in accordance with the provisions of Title 38, Chapter 5, Articles 4 and 5**
29 **of the Arizona Revised Statutes (or the corresponding provisions of any succeeding**
30 **applicable law) and / or as provided by common law as interpreted by the courts of**

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1 the State of Arizona;

2 **H. Actions of a Covered Employee or the federal government which are beyond the**

3 **legal control of the Nation (such as initiating a claim in a non-state forum) will not be**

4 **regarded as a breach of the Joinder Agreements by the Nation; and**

5 **WHEREAS, the Opinion Letter negotiated by the Nation's attorneys, and the approval of the**

6 **Joinder Agreements by this Council, is based on all additional interpretation**

7 **assumptions expressed in the Opinion Letters, and accepted by the Fund Manager**

8 **without objection upon the Nation's joinder in the State System; and**

9 **WHEREAS, Legislative Council Resolution No. 06-084, passed on February 9, 2006, approved the**

10 **Nation's joinder in the State System under Joinder Agreements which were presented**

11 **to the Legislative Council that day, which approval was subject to final negotiation of**

12 **the Joinder Agreements and approval of the required sovereign immunity waiver and**

13 **the related outside counsel's Opinion; and**

14 **WHEREAS, the Opinion did not require any changes to the Joinder Agreements, but is based upon**

15 **certain assumptions in the interpretation and construction of the Joinder**

16 **Agreements. In light of those assumptions and the terms and conditions of the**

17 **Opinion, the Legislative Council now desires to approve the form of the documents**

18 **previously presented, based on construction and interpretation assumptions set**

19 **forth in this Resolution and in the Opinion, acknowledging agreement by the Nation**

20 **to be bound by the State System, approving the limited waiver of the Nation's**

21 **sovereign immunity required as a condition to participation by the Nation as a**

22 **participating employer in the State System, and granting certain indemnity rights,**

23 **and a limited waiver of sovereign immunity to enforce those indemnity rights, in the**

24 **event that the Nation takes action contrary to this Resolution, the Opinion, the**

25 **Tohono O'odham Nation Office of Attorney General Certificate of the Tohono**

26 **O'odham Nation in Support of Legal Opinions (the "Certificate"), or any other**

27 **representations or warranties which were provided in order to obtain the Opinion;**

28 **and**

29 **WHEREAS, the Legislative Council also desires to declare this Resolution as the law of the land,**

30 **superceding all prior resolutions or other actions of the Nation which would conflict**

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1 with this Resolution, or which would place additional limitations or restrictions on
2 the enforceability of the sovereign immunity waiver authorized herein; and

3 **WHEREAS, the Domestic Affairs and the Budget and Finance Committees have reviewed this**
4 **proposal.**

5 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:**

- 6 1. **Modifies and supercedes all prior resolutions, laws, ordinances, regulations,**
7 **policies, judicial opinions or other authority or actions of the Nation**
8 **(collectively, "Laws and Actions") only to the extent such Laws and Actions would**
9 **place additional restrictions on the approval or enforceability of the sovereign**
10 **immunity waivers approved hereby or otherwise impair the Nation's**
11 **performance of its obligations under the Joinder Agreements.**
- 12 2. **Approves the Joinder Agreements, attached hereto in their final form, including**
13 **the limited sovereign immunity waivers therein, in the form attached hereto as**
14 **EXHIBIT A.**
- 15 3. **Authorizes the Vice-Chairman of the Nation to execute the Joinder Agreements**
16 **substantially in the form attached hereto.**
- 17 4. **Hereby clearly, expressly, irrevocably, and unequivocally consents to subject the**
18 **Nation and its police and its firefighter employees participating in the State**
19 **System to the exclusive jurisdiction of the laws and courts of the State of Arizona**
20 **in connection with any and all matters referenced in, related to, or implicated**
21 **by Articles 4 and 5 of Chapter 5 of Title 38 of the Arizona Revised Statutes, subject**
22 **only to the express assumptions expressed in the Opinion and set forth in this**
23 **Resolution.**
- 24 5. **Hereby indemnifies and holds harmless attorney Robert R. Yoder, Catherine E.**
25 **Langford, Robert R. Yoder, P.C., Yoder & Langford, P.C., and any of their agents,**
26 **employees, successors or assigns (the "Attorneys"), from and against all**
27 **damages, losses, attorney's fees, costs, and liabilities of any sort suffered or**
28 **incurred by the Attorneys as a result of actions taken by the Nation or any entity**
29 **or person related to or affiliated with the Nation (1) in breach of the Joinder**
30 **Agreements, (2) to raise a legal or equitable challenge contrary to the opinions**

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1 expressed in the legal Opinion letter attached hereto as EXHIBIT B, which was
2 rendered by the Attorneys, at the request of the Nation, in order to induce the
3 State System to offer joinder agreements to Nation employees, (3) in breach of
4 any representation or warranty (including the making of a misstatement or
5 omission of fact in connection with any representation, warranty, or other
6 statement reflected in the Certificate or other similar document rendered by the
7 Nation to the Attorneys in support of facts relating to the matters that were the
8 subject of the Opinion referenced above), or (4) in breach of this Resolution.

9 6. Hereby expressly and unequivocally grants to the Attorneys, by this Resolution,
10 a limited waiver of sovereign immunity sufficient to allow the Attorneys to
11 enforce the indemnity provisions set forth in the Resolved paragraph 5 herein,
12 both in equity and at law, including reimbursement of any additional fees and
13 costs which may be reasonably incurred by or on behalf of the Attorneys, to
14 enforce such indemnity rights. The waiver of sovereign immunity shall be
15 limited to actual costs, damages, or out of pocket fees and costs, as a result of
16 events triggering indemnity, and shall in no event include punitive damages.

17 7. Hereby expressly and unequivocally commits to such further action as may be
18 necessary to cure any present or future defect in the enforceability of the
19 sovereign immunity provisions covered by the Opinion, including without
20 limitation, enactment of future ordinances or resolutions as may be necessary
21 to ensure continued enforceability of the sovereign immunity provisions of the
22 Joinder Agreements.

23 8. Has reviewed the Certificate attached hereto as EXHIBIT C, and affirms, ratifies,
24 and acknowledges the truth and accuracy of the representations and warranties
25 set forth therein, and hereby authorizes the Attorney General of the Nation to
26 execute the same.

27 **The foregoing Resolution was presented to the Tohono O'Odham Legislative Council on the 03RD.**
28 **Day of APRIL, 2006 at a meeting at which a quorum was present, and by a vote of 979.9 FOR; 1,098.1**
29 **AGAINST; 362.8 NOT VOTING; and [01] ABSENT, failed to pass because it did not receive a majority**
30 **of the votes cast as required by Section 2 of Article V of the Constitution of the Tohono O'odham**
31 **Nation.**

32

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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Evelyn Juan Manuel, Chairwoman

ATTEST:


Lucille Lopez, Legislative Secretary

ACTION: APPROVING JOINDER AGREEMENTS FOR THE ARIZONA PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM, APPROVING LIMITED WAIVERS OF SOVEREIGN IMMUNITY INCIDENT TO THE JOINDER AGREEMENTS AND REQUIRED LEGAL OPINIONS, AND MODIFYING AND SUPERCEDING ALL PRIOR INCONSISTENT LAWS

MOVED: COUNCILWOMAN FRANCES ANTONE

SECOND: COUNCILWOMAN ETHEL GARCIA

DATE: APRIL 03, 2006

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL ()	155.40	X			
	2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris))	155.40	X			
CHUKUT KUK 258.7	1. ETHEL GARCIA ()	129.35	X			
	2. VERLON M. JOSE (David Garcia)	129.35		X		
GU ACHI 221.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	110.80		X		
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	110.80		X		
GU VO 193.1	1. RAYMOND VICTOR ()	96.55	X			
	2. MICHAEL FLORES <i>(Absent)</i> (Grace Manuel) <i>(Present)</i>	96.55	X			
HICKIWAN 167.4	1. DELMA GARCIA (Mary E. Sam)	83.70	X			X
	2. SANDRA ORTEGA ()	83.70	X			
PISINEMO 171.8	1. BARBARA SALVICIO ()	85.90		X		
	2. GERALD FAYUANT ()	85.90	X			
SAN LUCY 169.0	1. JOHN W. LAWSON, SR. ()	84.50			X	
	2. GLORIA RAMIREZ ()	84.50			X	
SAN XAVIER 193.8	1. FELICIA NUÑEZ ()	96.90			X	
	2. OLIVIA VILLEGAS-LISTON ()	96.90			X	
SCHUK TOAK 146.9	1. FRANCES B. CONDE ** ()	73.45		X		
	2. PHYLLIS JUAN ()	73.45		X		
SELLS 421.0	1. MARLENE SARAFICIO-JUAN ()	210.50		X		
	2. EVELYN B. JUAN MANUEL <i>(Absent)</i> (Kimberly Listo) <i>(Present)</i>	210.50		X		
SIF OIDAK 186.7	1. WAVALENE SAUNDERS (Isidro Lopez)	93.35	X			
	2. DARLENE ANDREW (Rita Martinez)	93.35		X		
TOTAL		2,440.80	979.9	1,098.1	362.8	[01]

**PASSED VOTES