

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
Modifying and Superceding All Prior Inconsistent Laws)

RESOLUTION NO. 06-429

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 7 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 execution by a duly**
23 **authorized representative of the Nation of joinder agreements formally reflecting**
24 **agreement by the Nation to be bound by the State System; and**

25 **WHEREAS, the Legislative Council has been informed, and fully understands, that (i) the State**
26 **System does not currently contemplate the Nation's ability to terminate its**
27 **participation in the State System, and may not at any time in the future allow the**
28 **Nation to terminate its participation in the State System, and (ii) that participation**
29 **in the State System is a permanent delegation to the State of Arizona of authority to**
30 **increase, decrease, or modify benefits provided to Nation employees under the State**

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1 System, and the Nation's contribution costs therefore, without the consent of the
2 Nation, and over the objection of the Nation; and

3 **WHEREAS, Legislative Council Resolution No. 06-084, passed on February 9, 2006, approved the**
4 **Nation's joinder in the State System under Joinder Agreements which were presented**
5 **to the Legislative Council that day, which approval was subject to final negotiation of**
6 **the Joinder Agreements and approval of the required sovereign immunity waiver;**
7 **and**

8 **WHEREAS, the Joinder Agreements have been negotiated to the satisfaction of the Nation, and**
9 **the Legislative Council now desires to approve the Joinder Agreements,**
10 **acknowledging agreement by the Nation to be bound by the State System, approving**
11 **the limited waiver of the Nation's sovereign immunity required as a condition to**
12 **participation by the Nation as a participating employer in the State System; and**

13 **WHEREAS, the Legislative Council also desires to declare this Resolution as the law of the land,**
14 **superceding all prior resolutions or other actions of the Nation which would conflict**
15 **with this Resolution, or which would place additional limitations or restrictions on**
16 **the enforceability of the sovereign immunity waiver authorized herein; and**

17 **WHEREAS, the Domestic Affairs and the Budget and Finance Committees have reviewed this**
18 **proposal.**

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

- 20 **1. Modifies and supercedes all prior resolutions, laws, ordinances, regulations,**
21 **policies, judicial opinions or other authority or actions of the Nation (collectively,**
22 **"Laws and Actions") only to the extent such Laws and Actions would place**
23 **additional restrictions on the approval or enforceability of the sovereign**
24 **immunity waivers approved hereby or otherwise impair the Nation's**
25 **performance of its obligations under the Joinder Agreements.**
- 26 **2. Approves the Joinder Agreements, including the limited sovereign immunity**
27 **wavers therein, substantially in the form attached hereto as EXHIBIT A.**
- 28 **3. Authorizes the Vice-Chairman of the Nation to execute the Joinder Agreements.**
- 29 **4. Hereby clearly, expressly, and unequivocally consents to subject the Nation and**
30 **its police and its firefighter employees participating in the State System to the**
31 **exclusive jurisdiction of the laws and courts of the State of Arizona in connection**

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with any and all matters referenced in, related to, or implicated by Articles 4 and 7 of Chapter 5 of Title 38 of the Arizona Revised Statutes.

5. Hereby expressly and unequivocally commits to such further action as may be necessary to cure any present or future defect in the enforceability of the sovereign immunity provisions, including without limitation, enactment of future ordinances or resolutions as may be necessary to ensure continued enforceability of the sovereign immunity provisions of the Joinder Agreements.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 21ST Day of JUNE, 2006 at a meeting at which a quorum was present with a vote of 1,250.75 FOR; 976.2 AGAINST; 213.85 NOT VOTING; and [05] ABSENT, pursuant to the powers vested in the Council by Section 1 (d) and (f) 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


Evelyn B. Juan Manuel, Legislative Chairwoman

30 day of June, 2006

ATTEST:


Lucille Lopez, Acting Legislative Secretary

31 day of June, 2006.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 30 day of June, 2006 at 9:31 o'clock, 9 .M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Evelyn B. Juan Manuel, Legislative Chairwoman

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APPROVED

on the 30 day of June, 2006

DISAPPROVED

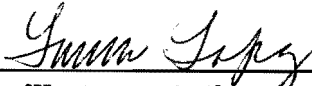
at 11:57 o'clock, A.M.



VIVIAN JUAN SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 30 day of

June, 2006, at 1:31 o'clock, P.M.



Lucille Lopez, Acting 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 MODIFYING AND SUPERCEDING ALL PRIOR INCONSISTENT LAWS

MOVED: VICE CHAIRMAN VERLON JOSE

SECOND: COUNCILWOMAN DELMA GARCIA

DATE: JUNE 21, 2006

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (<i>Absent</i>) (Vernon J. Smith) (<i>Present</i>)	155.40	X			
	2. FRANCES G. ANTONE(<i>Absent</i>) (Lucilda J. Valenzuela (Norris))(<i>Present</i>)	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 (Grace Manuel)	96.55	X			X
HICKIWAN 167.4	1. DELMA GARCIA (Mary E. Sam)	83.70	X			
	2. SANDRA ORTEGA ()	83.70	X			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			X
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	96.90	X			
SCHUK TOAK 146.9	1. FRANCES B. CONDE ()	73.45		X		X
	2. PHYLLIS JUAN ()	73.45		X		
SELLS 421.0	1. MARLENE SARAFICIO-JUAN** ()	210.50		X		
	2. EVELYN B. JUAN MANUEL (Kimberly Listo)	210.50		X		
SIF OIDAK 186.7	1. WAVALENE SAUNDERS (Isidro Lopez)	93.35		X		X
	2. DARLENE ANDREW (Rita Martinez)	93.35		X		
TOTAL		2,440.80	1,250.75	976.2	213.85	[05]

**PASSED VOTES