

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Granting a Limited Waiver of the Sovereign Immunity of San Xavier District for  
the Purpose of Issuing District Revenue Bonds for a Federal Detention and  
Support Center)**

**RESOLUTION NO. 08-122**

1 **WHEREAS, the San Xavier District (the "District") of the Tohono O'odham Nation (the "Nation") is**  
2 **a political subdivision of the Nation and is governed by its District Council; and**

3 **WHEREAS, the District's sovereign immunity can only be waived by the Legislative Council of the**  
4 **Nation; and**

5 **WHEREAS, the District, by Resolution No. 02-08-15, has requested that the Nation waive the**  
6 **District's sovereign immunity for the purpose of the District's issuance of revenue**  
7 **bonds known as the " San Xavier District of the Tohono O'odham Nation, Detention**  
8 **and Support Center Project Revenue Bonds, Series 2008", in an amount not to exceed**  
9 **\$38,000,000 (the "Bonds"), to finance a detention and support center within the**  
10 **boundaries of the District (the "Project"); and**

11 **WHEREAS, the Nation desires to grant a limited waiver of the District's sovereign immunity for the**  
12 **purpose of issuance of the Bonds.**

13 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby grants**  
14 **a limited waiver of San Xavier District's sovereign immunity with the following terms**  
15 **and conditions:**

16 **(a) The Nation hereby expressly waives the sovereign immunity of the San**  
17 **Xavier District and any defense based thereon from any suit, action or proceeding**  
18 **(including those related to arbitration) or from any legal process (whether through**  
19 **service of notice, attachment prior to judgment, attachment in an aid of execution,**  
20 **execution, exercise of contempt powers, or otherwise) in any forum listed in**  
21 **subparagraph (b), with respect to actions arising under or relating to the Bonds or the**  
22 **Indenture governing the Bonds and any document, agreement or transaction relating**  
23 **thereto or delivered in connection therewith; PROVIDED THAT any recovery upon any**  
24 **judgment resulting therefrom shall be limited to recovery against the Trust Estate**  
25 **(i.e., bond proceeds and revenues of the operation held in trust pursuant to the**  
26 **Indenture), and shall not extend to any other assets of the District.**

27 **(b) The waivers and consents described herein shall inure to the benefit of**  
28 **the Trustee, the Bondholders and the placement agents for the Bonds and shall not,**  
29 **under any circumstances, extend to any other person or entity. The Trustee, the**  
30 **Bondholders and the placement agents for the Bonds shall have and be entitled to**

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bring all available actions for legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief.

(c) The District is authorized to submit to the jurisdiction of the United States District Court for the District of Arizona for the purposes of any controversy or claim between or among the Trustee, the Bondholders or the placement agents for the Bonds, on the one hand and the District, on the other, including but not limited to those arising out of or relating to the Bonds, the Indenture governing the Bonds and any document, agreement or transaction relating thereto or delivered in connection therewith. If the United States District Court lacks jurisdiction over such dispute, then the District is hereby authorized to submit to the jurisdiction of the courts of the State of Arizona.

(d) The District is hereby expressly authorized to waive any right to trial by jury of any claim, demand, action or cause of action arising hereunder or in any way connected with or related or incidental to the dealings of the parties or any of them with respect to the Project, or the transactions related thereto, in each case whether now existing or hereafter arising; and the District is authorized to agree and consent that any such claim, demand, action or cause of action shall be decided by court trial without a jury.

(e) The District is hereby authorized to waive any claim, right or requirement for the Bondholders, the Trustee or the placement agents for the Bonds to exhaust any remedies available in any court or other forum of the Nation prior to commencing any such suits, actions, or proceeding in any state or federal court, provided that the Nation's court shall have jurisdiction to enforce a court judgment or arbitration award, as provided below.

(f) At the option of either the District or the Trustee, the District is hereby authorized to submit any controversy or claim between or among the District and the Trustee, the Bondholders or the placement agents, including but not limited to those arising out of or relating to the Bonds, the Indenture governing the Bonds or any agreements or instruments relating thereto or delivered in connection therewith, to be determined by arbitration. The arbitration shall be conducted in accordance with the United States Arbitration Act (Title 9, U.S. Code), notwithstanding any choice of law provision herein and under the Commercial Rules of the American Arbitration

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1 Association ("AAA"). The arbitrators shall give effect to statutes of limitation in  
2 determining any claim. Any controversy concerning whether an issue is arbitrable  
3 shall be determined by the arbitrators. Judgment upon the arbitration award may be  
4 entered in any court having jurisdiction. The institution and maintenance of an  
5 action for judicial relief or pursuit of a provisional or ancillary remedy shall not  
6 constitute a waiver of the right of any party, including the plaintiff, to submit the  
7 controversy or claim to arbitration if any other party contests such action for judicial  
8 relief.

9 **BE IT FURTHER RESOLVED** that this Resolution shall be effective upon full execution.

10 **BE IT FURTHER RESOLVED** that nothing contained in this Resolution shall be construed as a  
11 waiver of the sovereign immunity of the Nation.

12 **BE IT FINALLY RESOLVED** that under no circumstance shall the assets of the Nation be subjected  
13 to attachment to fulfill any debt or judgment arising from the Project.

14 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 12<sup>TH</sup> Day  
15 of MARCH, 2008 at a meeting at which a quorum was present with a vote of 1,557.5 FOR; 672.6  
16 AGAINST; 304.4 NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by  
17 Section 1 (d)(6) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the  
18 Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant  
19 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June  
20 18, 1934 (48 Stat. 984).

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22 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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25   
26 Verlon M. Jose, Legislative Chairman

27  
28 17<sup>th</sup> day of March, 2008

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30 **ATTEST:**

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34 Lucille Lopez, Acting Legislative Secretary

35  
36 17<sup>th</sup> day of March, 2008.

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38 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham  
39 Nation on the 17<sup>th</sup> day of March, 2008 at 1:20 o'clock, P.M.,  
40 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective  
41 upon his approval or upon his failure to either approve or disapprove it within 48 hours of  
42 submittal.

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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

*Felicia Nunez for*  
Verlon M. Jose, Legislative Chairman

APPROVED

on the 19<sup>th</sup> day of March, 2008

DISAPPROVED

at 2:31 o'clock, P.M.

*Ned Norris, Jr.*  
\_\_\_\_\_  
NED NORRIS, JR., CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 19<sup>th</sup> day of

March, 2008, at 2:38 o'clock, P.M.

*Juliana Saraficio for:*  
\_\_\_\_\_  
Lucille Lopez, Acting Legislative Secretary

**ACTION: GRANTING A LIMITED WAIVER OF THE SOVEREIGN IMMUNITY OF SAN XAVIER DISTRICT FOR THE PURPOSE OF ISSUING DISTRICT REVENUE BONDS FOR A FEDERAL DETENTION AND SUPPORT CENTER**

**MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON**

**SECOND: VICE CHAIRWOMAN FELICIA NUNEZ**

**DATE: MARCH 12, 2008**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>BABOQUIVARI</b> <b>316.9</b>	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			
<b>CHUKUT KUK</b> <b>264.8</b>	1. ETHEL GARCIA ( )	132.40	X			
	2. VERLON M. JOSE ( )	132.40			X	
<b>GU ACHI</b> <b>227.9</b>	1. TIMOTHY L. JOAQUIN ** (Louis L. Johnson)	113.95		X		
	2. CYNTHIA E. MANUEL ( )	113.95		X		
<b>GU VO</b> <b>199.2</b>	1. GRACE MANUEL ( )	99.60	X			
	2. MICHAEL FLORES ( )	99.60	X			X
<b>HICKIWAN</b> <b>172.0</b>	1. MICHELLE ORTEGA ( )	86.00			X	
	2. SANDRA ORTEGA ** ( )	86.00			X	
<b>PISINEMO</b> <b>182.4</b>	1. CHESTER ANTONE ( )	91.20	X			X
	2. GERALD FAYUANT ( )	91.20	X			
<b>SAN LUCY</b> <b>181.1</b>	1. LORRAINE EILER ( )	90.55	X			X
	2. GLORIA RAMIREZ ( )	90.55	X			
<b>SAN XAVIER</b> <b>196.5</b>	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			
<b>SCHUK TOAK</b> <b>154.6</b>	1. FRANCES B. CONDE (Fredrick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			
<b>SELLS</b> <b>444.7</b>	1. KIMBERLY LISTO ( )	222.35		X		
	2. EVELYN B. JUAN MANUEL ( )	222.35		X		
<b>SIF OIDAK</b> <b>194.4</b>	1. WAVALENE ROMERO ( )	97.20	X			X
	2. MARY LOPEZ ( )	97.20	X			
<b>TOTAL</b>		<b>2,534.5</b>	<b>1,557.5</b>	<b>672.6</b>	<b>304.4</b>	<b>[04]</b>

\*\*PASSED VOTES