

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Adopting a Wage Determination for Construction Projects within the boundaries
of the Tohono O'odham Nation)

RESOLUTION NO. 08-186

1 **WHEREAS, the Tohono O'odham Nation (Nation) enacted a Wage Determination pursuant to**
2 **Legislative Council Resolution No. 01-028 (Adopting a Wage Determination for**
3 **Commercial Construction, Residential Construction, and Heavy Construction projects**
4 **within the boundaries of the Tohono O'odham Nation) in 2001 to protect wages**
5 **generated from construction projects occurring within the Nation's boundaries; and**

6 **WHEREAS, the 2001 Wage Determination requires that contractors and subcontractors pay their**
7 **workers, at a minimum, the wages and cash in lieu of benefits as specified by the Wage**
8 **Determination; and**

9 **WHEREAS, the Wage Determination was also enacted to pay workers, within the Nation, wages**
10 **equivalent to those paid to similar workers outside the Nation's lands and since 2001,**
11 **wages in the Nation's surrounding geographical area have increased while the**
12 **Nation's wages have remained the same; and**

13 **WHEREAS, the Tribal Employment Rights Commission (TERO Commission), advised by the Tribal**
14 **Employment Rights Office (TERO Office) has researched and evaluated the prevailing**
15 **wages in the surrounding counties and has determined that the wages in the attached**
16 **wage determination are the prevailing wages for the Nation's geographical area; and**

17 **WHEREAS, the federal Davis-Bacon Act (40 U.S.C. 276a et seq.) which protects the wages of**
18 **construction workers employed under federal contracts has limited applicability for**
19 **projects within the Nation; and**

20 **WHEREAS, the Domestic Affairs Committee of the Legislative Council has reviewed this wage**
21 **determination proposal and recommends its approval by the Legislative Council.**

22 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council adopts the**
23 **attached wage determination and Attachment "A" and Attachment "B" for**
24 **Construction projects within the exterior boundaries of the Tohono O'odham Nation**
25 **as follows:**

- 26 **1. Wage Determination. The wage determination attached hereto is adopted.**
27 **Contractors and subcontractors in projects covered by this wage determination**
28 **are required to pay their workers, at a minimum, the wages and cash in lieu of**
29 **benefits specified herein.**

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2. All wages pursuant to the wage determination will be paid at the hourly wagedescribed herein. No other method of payment is permitted.
3. Effective Date. The effective date of this wage determination shall be the date of approval of the Chairperson of the Tohono O'odham Nation of the resolution adopting the wage determination. This wage determination will not apply to projects where the bid solicitation was distributed before the effective date.
4. Definitions.
 - A. "Apprentice" means either: (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with an Apprenticeship Agency administered by a state or Indian Tribe and recognized by the Bureau; or (2) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State or Tribal Apprenticeship Agency to be eligible for probationary employment as an apprentice.
 - B. "Construction" means all construction activity which relates to: the erection or building of new structures or improvements and the acquisition, replacement, expansion, remodeling, alteration, modernization or extension of existing structures and improvements; drilling, blasting, excavating, earth moving, clearing and landscaping, painting and decorating; the manufacturing or finishing of materials, articles, supplies or equipment at the construction site; and road construction and repair. All construction activity previously included with the terms "Commercial Construction," "Residential Construction," and "Heavy Construction" as defined in Resolution No. 01-028 is included in this definition of "Construction."
 - C. "District" means any of the 11 districts of the Nation as described in Article IX of the Constitution of the Tohono O'odham Nation and any district hereafter added.

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- D. **“Certified Journeyman” an individual who has served as an apprentice to learn his/her skill and certified by a bona fide apprenticeship program as a Journeyman.**
- E. **“Nation” means the Tohono O'odham Nation, a federally recognized Indian tribe organized under the Constitution of the Tohono O'odham Nation.**
- F. **“Person” means any individual, company, public or private corporation, trust, firm, association, partnership, Indian Nation or any subordinate entity or political subdivision thereof, any business chartered by any Indian Nation, any State or county or municipal government or any of their departments, commissions or political subdivisions, the United States or any department, agency or instrumentality of the United States, interstate body, industry, any legal entity or private enterprise, and includes members and non-members of the Tohono O'odham Nation.**
- G. **“Trainee” means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, certified as meeting its standards for on-the-job training programs; or employed and/or receiving on-the-job training under a public employment or work experience program which is approved and funded by the Nation.**
- H. **“Worker” means any employee on a construction project occurring within the Tohono O'odham Nation.**
- I. **“Natural Person” means a natural person is usually a human being as distinguished from an artificial person that most often is created by operation of law (as a corporation).**

5. Scope of Coverage.

Except as otherwise exempted by Section 3 or Section 6 herein, this wage determination shall apply to all persons performing business within the boundaries of the Tohono O'odham Nation, including the Tohono O'odham Nation and all of its branches, departments, programs, districts, and subordinate enterprises and authorities.

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6. Exemptions.

The following categories of projects shall be exempt from this wage determination:

- A. Projects in which one of the Districts of the Tohono O'odham Nation is a contracting party, unless that District adopts the wage determination of the Nation.**
- B. Projects where the United States government or any of its departments, agencies or instrumentalities is a contracting party.**
- C. Projects where the State of Arizona or any of its departments, agencies, or instrumentalities is a contracting party.**
- D. Projects where wages are established by a collective bargaining agreement except that no collective bargaining agreement shall prevent employees referred by TERO from exercising the option to either: 1) accept cash in lieu of benefits; or 2) receive benefits in accordance with the provisions of a collective bargaining agreement as modified.**
- 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 for that entity's own construction projects.**
- G. Trainee registered with the TERO Office in which case the TERO Office will develop a trainee wage scale base on this wage determination. The trainee wage scale will be approved by the TERO Commission by Resolution.**
- H. Projects where the total cost of construction is \$5,000.00 or less.**

7. Procedure for Requesting a Wage Determination.

If a given occupation is not listed in this wage determination, the following procedure to obtain a project specific wage determination shall be followed.

The contracting company for the project requesting a wage determination shall submit a Wage Determination Request Form to the TERO Office.

In completing the form the requesting party must furnish:

- A. The title of the occupation.**

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B. A sufficiently detailed description of the project to indicate the type(s) of construction involved. Separate attachments, may be submitted, if necessary for identification of the type of project.

The TERO Office will provide a wage determination for the unlisted occupation within 20 calendar days, unless additional information is requested by the TERO Office, in which case, a determination will be issued within 20 calendar days from the time the additional information is received by the TERO Office.

Wage determinations issued pursuant to this section will become part of the Nation's wage determination scale.

8. Posting.

The wage determination (including any additional classifications and wage rates, decided by the TERO Office) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and easily accessible place where it can be easily seen. The wage determination may be obtained at no charge from the TERO Office. In the absence of such posted information, any person who wants to determine if the project is covered by this wage determination should contact the TERO Office.

9. 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 % 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 APRIL, 2008 at a meeting at which a quorum was present with a vote of 2,353.4 FOR; -0- AGAINST; 181.1 NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Section 1(c)(2)(e)(1) 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).

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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Verlon M. Jose, Legislative Chairman

16 day of April, 2008

ATTEST:


Lucille Lopez, Acting Legislative Secretary

10 day of April, 2008.

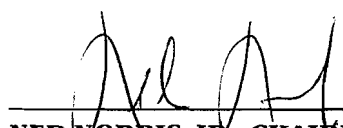
Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 16 day of April, 2008 at 5:18 o'clock, P..M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Verlon M. Jose, Legislative Chairman

APPROVED on the 18 day of April, 2008

DISAPPROVED at 3:40 o'clock, P..M.


NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 18th day of
APRIL, 2008, at 4:00 o'clock, P..M.


Lucille Lopez, Acting Legislative Secretary

ACTION: ADOPTING A WAGE DETERMINATION FOR CONSTRUCTION PROJECTS WITHIN THE BOUNDARIES OF THE TOHONO O'ODHAM NATION

MOVED: COUNCILMAN TIMOTHY JOAQUIN

SECOND: COUNCILWOMAN EVELYN JUAN MANUEL

DATE: APRIL 10, 2008

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 316.9	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			
CHUKUT KUK 264.8	1. ETHEL GARCIA ()	132.40	X			
	2. VERLON M. JOSE ()	132.40	X			
GU ACHI 227.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95	X			
	2. CYNTHIA E. MANUEL ()	113.95	X			
GU VO 199.2	1. GRACE MANUEL ()	99.60	X			
	2. MICHAEL FLORES ()	99.60	X			X
HICKIWAN 172.0	1. MICHELLE ORTEGA ()	86.00	X			X
	2. SANDRA ORTEGA ()	86.00	X			
PISINEMO 182.4	1. CHESTER ANTONE ()	91.20	X			
	2. GERALD FAYUANT ()	91.20	X			X
SAN LUCY 181.1	1. LORRAINE EILER** ()	90.55			X	
	2. GLORIA RAMIREZ ()	90.55			X	
SAN XAVIER 196.5	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			X
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			
SCHUK TOAK 154.6	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			
SELLS 444.7	1. KIMBERLY LISTO ()	222.35	X			
	2. EVELYN B. JUAN MANUEL ()	222.35	X			
SIF OIDAK 194.4	1. WAVALENE ROMERO ()	97.20	X			
	2. MARY LOPEZ ()	97.20	X			
TOTAL		2,534.5	2,353.4	-0-	181.1	[04]

**PASSED VOTES