

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Webcasting Performance Agreement and a Limited Waiver of
Sovereign Immunity)

RESOLUTION NO. 10-448

- 1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to "consult,**
2 **negotiate and conclude agreements and contracts on behalf of the Tohono O'odham**
3 **Nation with ...private persons or organizations on all matters within the authority of**
4 **the Tohono O'odham Council" (Constitution of the Tohono O'odham Nation, Article VI,**
5 **Section 1(f)); and**
- 6 **WHEREAS, KOHN FM is a non-commercial terrestrial radio broadcast station licensed to the**
7 **Tohono O'odham Nation (the "Nation") and is a qualified public radio station able to**
8 **receive funding from the Corporation for Public Broadcasting ("CPB"); and**
- 9 **WHEREAS, KOHN FM's signal only reaches some areas within the exterior boundaries of the**
10 **Nation; and**
- 11 **WHEREAS, the Nation has long desired to provide the broadcast programming of KOHN FM to all**
12 **of its members within and beyond its exterior boundaries; and**
- 13 **WHEREAS, CPB, on behalf of public radio stations, has successfully negotiated and executed a**
14 **Webcasting Performance Agreement ("Agreement") with SoundExchange, Inc., for the**
15 **term of January 1, 2005, through December 31, 2010; and**
- 16 **WHEREAS, the Agreement provides that CPB will pay the license fees for all Covered Entities so as**
17 **to permit them to make public performances of sound recordings by means of digital**
18 **audio transmissions through one or more authorized web sites; and**
- 19 **WHEREAS, a Covered Entity is defined as an eligible Originating Public Radio Station which is a**
20 **noncommercial terrestrial radio broadcast station that i) is licensed as such by the**
21 **Federal Communications Commission; ii) originates programming and is not solely**
22 **a repeater station; iii) is a member or affiliate of National Public Radio, American**
23 **Public Media, Public Radio International, or Public Radio Exchange, a member of the**
24 **National Federation of Community Broadcasters, or another public radio station that**
25 **is qualified to receive funding from the Corporation for Public Broadcasting pursuant**
26 **to its criteria; and**
- 27 **WHEREAS, KOHN FM is a noncommercial terrestrial radio broadcast station licensed to the**
28 **Tohono O'odham Nation (Nation), and a qualified public radio station receiving**
29 **funding from the CPB, which meets the definition of a Covered Entity as defined in the**
30 **Agreement; and**

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1 **WHEREAS, Section 8.1 of the Agreement requires that the Agreement be governed by the laws of**
2 **the District of Columbia, that any actions or proceedings arising from this Agreement**
3 **be litigated in the United States District Court for the District of Columbia; and**

4 **WHEREAS, the Legislative Cultural Preservation and Domestic Affairs Committees have reviewed**
5 **a limited waiver of the Nation's sovereign immunity in accordance with, and subject**
6 **to the limitations of, the Webcasting Performance Agreement; and**

7 **WHEREAS, the interests of the Nation will be served by the Legislative Council approving a limited**
8 **waiver of the Nation's sovereign immunity in accordance with, and subject to the**
9 **limitations of, the terms of the Webcasting Performance Agreement.**

10 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby grants**
11 **a limited waiver of the sovereign immunity of the Nation, in accordance with, and**
12 **subject to the limitations of, the terms of the Webcasting Performance Agreement, and**
13 **shall not extend to any other transactions or subjects.**

14 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 03RD Day**
15 **of NOVEMBER, 2010 at a meeting at which a quorum was present with a vote of 2,408.40 FOR; -0-**
16 **AGAINST; -0-NOT VOTING; and 187.10[07] ABSENT, pursuant to the powers vested in the Council by**
17 **Article VI, Section 1 (f) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono**
18 **O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**
19 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**
20 **Stat. 984).**

21 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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25 **Verlon M. Jose, Legislative Chairman**

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27
28 9 day of November, 2010

31 **ATTEST:**

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35 **Evonne Wilson, Legislative Secretary**

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37 8 day of November, 2010.

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39 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham**
40 **Nation on the 9 day of November, 2010 at 1:46 o'clock, P.M.,**
41 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective**
42 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**
43 **submittal.**
44

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Verlon Jose
Verlon M. Jose, Legislative Chairman

APPROVED

on the 09 day of November, 2010

DISAPPROVED

at 2:50 o'clock, P.M.

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

Returned to the Legislative Secretary on the 9 day of

November, 2010, at 3:25 o'clock, P.M.

Evonne Wilson
Evonne Wilson, Legislative Secretary

ACTION: AUTHORIZING THE WEBCASTING PERFORMANCE AGREEMENT AND A LIMITED WAIVER OF SOVEREIGN IMMUNITY

MOVED: COUNCILMAN TIMOTHY JOAQUIN

SECOND: COUNCILWOMAN SANDRA ORTEGA

DATE: NOVEMBER 3, 2010

| DISTRICT | LEGISLATIVE REPRESENTATIVES | # OF VOTES | FOR | AGAINST | NOT VOTING | ABSENT |
|------------------------------------|--|-----------------|-----------------|------------|------------|------------------------------|
| SIF Oidak 198.7 | 1. WAVALENE ROMERO (<i>Absent</i>) (Nicholas Jose) (<i>Present</i>) | 99.35 | X | | | |
| | 2. MARY LOPEZ () | 99.35 | X | | | |
| SELLS 449.6 | 1. KIMBERLY LISTO () | 224.80 | X | | | |
| | 2. EVELYN B. JUAN MANUEL () | 224.80 | X | | | X |
| SCHUK TOAK 159.0 | 1. FRANCES B. CONDE (Fredrick Jose) | 79.50 | X | | | |
| | 2. LINDA PARLEY (Agnes Joaquin) | 79.50 | X | | | X |
| SAN XAVIER 204.7 | 1. FELICIA NUÑEZ () | 102.35 | X | | | X |
| | 2. OLIVIA VILLEGAS-LISTON (Eugene Enis) | 102.35 | X | | | |
| SAN LUCY 187.1 | 1. LORRAINE EILER () | 93.55 | | | | X |
| | 2. GLORIA RAMIREZ () | 93.55 | | | | X |
| PISINEMO 184.5 | 1. CHESTER ANTONE (Tony Murrietta) | 92.25 | X | | | |
| | 2. EDWARD MANUEL (Gerald Fayuant) | 92.25 | X | | | |
| HICKIWAN 174.5 | 1. MICHELLE ORTEGA () | 87.25 | X | | | X |
| | 2. SANDRA ORTEGA () | 87.25 | X | | | |
| GU VO 206.3 | 1. GRACE MANUEL () | 103.15 | X | | | |
| | 2. PAMELA ANGHILL (<i>Absent</i>) (Angela Ortiz) (<i>Present</i>) | 103.15 | X | | | |
| GU ACHI 230.1 | 1. TIMOTHY L. JOAQUIN () | 115.05 | X | | | |
| | 2. CYNTHIA E. MANUEL (Louis J. Johnson) | 115.05 | X | | | |
| CHUKUT KUK 277.0 | 1. ETHEL GARCIA (Sara Mae Williams) | 138.50 | X | | | |
| | 2. VERLON M. JOSE () | 138.50 | X | | | |
| BABOQUIVARI 324.0 | 1. FRANCES MIGUEL (Roberta Harvey) | 162.0 | X | | | |
| | 2. FRANCES G. ANTONE (Vernon Smith) | 162.0 | X | | | X |
| TOTAL | | 2,595.50 | 2,408.40 | -0- | -0- | 187.10 [07] |