

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Delegating Authority to Enter a Joint Project Agreement Between the San Xavier District and the Arizona Department of Transportation and Approving a Limited Waiver of the San Xavier District's Sovereign Immunity for the Mission Gateway Pathway Project)**

RESOLUTION NO. 15-459

1 **WHEREAS, the SAN XAVIER DISTRICT has been approved to receive Federal Transportation**
2 **Enhancement funding through the Arizona Department of Transportation**
3 **(ADOT) and the Regional Transportation Authority (RTA) for the design review**
4 **and construction of the project named Mission Gateway Pathway, at a projected**
5 **cost of \$700,100; and**

6 **WHEREAS, the Transportation Enhancement program is administered by the Federal**
7 **Highway Administration (FHWA) and application is made to ADOT through the**
8 **Pima Association of Governments (PAG), in which an Agreement is entered into**
9 **between ADOT and the District; and**

10 **WHEREAS, the District has negotiated an Agreement denominated JPA 11-048-I attached**
11 **hereto, using ADOT's standard form of Intergovernmental Agreement which**
12 **calls for dispute resolution by arbitration, with a limited waiver of the District's**
13 **sovereign immunity in connection with that procedure; and**

14 **WHEREAS, the Tohono O'odham Legislative Council must give approval to the District to**
15 **include a limited waiver of the District's sovereign immunity in any contract to**
16 **which the District is a party; and**

17 **WHEREAS, the San Xavier District Council, in its Resolution 10-15-6, requests approval from**
18 **the Tohono O'odham Legislative Council to waive its sovereign immunity as**
19 **limited by the terms of the JPA; and**

20 **WHEREAS, the Legislative Council considered and approved similar language in an ADOT**
21 **contract with the San Xavier District in Resolution No. 15-402; and**

22 **WHEREAS, this matter has been reviewed by the Legislative Agricultural and Natural**
23 **Resources Committee, which recommends that the Legislative Council confirm**
24 **San Xavier District's authority to enter into the JPA.**

25 **NOW, THEREFORE, BE IT RESOLVED:**

- 26 **1. The Nation approves a limited waiver of the District's sovereign**
27 **immunity to support the dispute resolution and indemnification**
28 **provisions in the Joint Project Agreement JPA 11-0048-I between the San**

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Xavier District and ADOT for the design review and construction of the project named Mission Gateway Pathway, which the District is hereby authorized to enter.

2. The Tohono O'odham Nation is not waiving the District's right to assert the defense of sovereign immunity except as expressly set forth, referred to, and provided for, in this resolution.

BE IT FINALLY RESOLVED that nothing in this resolution shall be construed as a waiver of the sovereign immunity of the Tohono O'odham Nation and any responsibility and liability, including financial liability, related to this project and the Agreement, shall remain with San Xavier District, and no responsibility or liability including financial liability shall fall upon the Tohono O'odham.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 18TH day of NOVEMBER, 2015 at a meeting at which a quorum was present with a vote of 3,021.4 FOR; 0 AGAINST; 0 NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(f) 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



Timothy Joaquin, Legislative Chairman

20 day of November, 2015

ATTEST:



Evonne Wilson, Legislative Secretary

20 day of November, 2015

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 20 day of November, 2015 at 10:48 o'clock, a.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.

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TOHONO O'ODHAM LEGISLATIVE COUNCIL




Timothy Joaquin, Legislative Chairman

APPROVED

on the 20 day of November, 2015

DISAPPROVED

at 2:28 o'clock, P.m.



EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 20 day of

November, 2015, at 3:35 o'clock, P.m.



Evonne Wilson, Legislative Secretary

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ACTION: DELEGATING AUTHORITY TO ENTER A JOINT PROJECT AGREEMENT BETWEEN THE SAN XAVIER DISTRICT AND THE ARIZONA DEPARTMENT OF TRANSPORTATION AND APPROVING A LIMITED WAIVER OF THE SAN XAVIER DISTRICT'S SOVEREIGN IMMUNITY FOR THE MISSION GATEWAY PATHWAY PROJECT

Moved: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILMAN LOUIS R. LOPEZ

DATE: NOVEMBER 18, 2015

| DISTRICT | LEGISLATIVE REPRESENTATIVES | # OF VOTES | FOR | AGAINST | NOT VOTING | ABSENT |
|----------------------|---|----------------|----------------|------------|------------|-------------|
| BABOQUIVARI 367.2 | 1. FRANCES MIGUEL (Roberta E. Harvey) | 183.60 | X | | | |
| | 2. VERNON J. SMITH (Gloria Zazueta) | 183.60 | X | | | |
| CHUKUT KUK 332.1 | 1. ETHEL GARCIA (Marlakay K. Henry) | 166.05 | X | | | |
| | 2. BILLMAN LOPEZ (<i>Absent</i>) (Patricia Vicenti) (<i>Present</i>) | 166.05 | X | | | |
| GUACHI 265.0 | 1. TIMOTHY L. JOAQUIN (Louis L. Johnson) | 132.50 | X | | | |
| | 2. LORETTA LEWIS () | 132.50 | X | | | |
| GU VO 250.6 | 1. GRACE MANUEL (Dallas Lewis) | 125.30 | X | | | X |
| | 2. PAMELA ANGHILL (Jeffery Antone, Sr.) | 125.30 | X | | | |
| HICKIWAN 205.8 | 1. LOUIS R. LOPEZ (Shirley Molina) | 102.90 | X | | | |
| | 2. SANDRA ORTEGA () | 102.90 | X | | | |
| PISINEMO 219.9 | 1. CHESTER ANTONE () | 109.95 | X | | | |
| | 2. MONICA K. MORGAN () | 109.95 | X | | | |
| SAN LUCY 226.5 | 1. DIANA MANUEL () | 113.25 | X | | | |
| | 2. JANA MONTANA (Gloria Ramirez) | 113.25 | X | | | |
| SAN XAVIER 228.6 | 1. DANIEL L.A. PRESTON III () | 114.30 | X | | | X |
| | 2. RACHEAL VILSON-STONER (<i>Absent</i>) (Olivia Villegas-Liston) (<i>Present</i>) | 114.30 | X | | | |
| SCHUK TOAK 180.6 | 1. ANTHONY J. FRANCISCO JR. () | 90.30 | X | | | |
| | 2. QUINTIN C. LOPEZ (John Fendenheim) | 90.30 | X | | | X |
| SELLS 513.5 | 1. ARTHUR WILSON (Beverly Rivas) | 256.75 | X | | | |
| | 2. BARBARA HAVIER () | 256.75 | X | | | |
| SIF OIDAK 231.6 | 1. LUCINDA ALLEN (<i>Absent</i>) (Nicholas Jose) (<i>Present</i>) | 115.80 | X | | | X |
| | 2. MARY LOPEZ () | 115.80 | X | | | |
| TOTAL | | 3,021.4 | 3,021.4 | -0- | -0- | [04] |