

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Limited Waiver of Sovereign Immunity of the San Lucy
District Regarding Zachary Development, LLC)**

RESOLUTION NO. 24-382

1 **WHEREAS, the Tohono O'odham Nation ("Nation") predates the existence of the United States**
2 **and possesses inherent powers of sovereignty and self-governance; and**

3 **WHEREAS, the Nation accordingly possesses sovereign immunity from suit, which extends to**
4 **the Nation's districts, officials, employees, and agents (1Tohono O'odham Code,**
5 **Chapter 2, Section 2101(B)); and**

6 **WHEREAS, the Nation's sovereign immunity "cannot be waived except by a resolution or**
7 **other official action of the Tohono O'odham Legislative Council expressly**
8 **waiving, or authorizing a waiver of, sovereign immunity; provided that such a**
9 **waiver shall be limited in accordance with its terms." (1 Tohono O'odham Code,**
10 **Chapter 2, Section 2101(C)); and**

11 **WHEREAS, the San Lucy District is developing a plan to rebuild and replace homes within the**
12 **San Lucy Village; and**

13 **WHEREAS, the District has worked with an architect to provide several models for**
14 **Community members to review; and**

15 **WHEREAS, the District has the opportunity to demolish a home owned and controlled by the**
16 **District and build a model that can be used by Community members to evaluate**
17 **options in developing a large plan for the San Lucy Village; and**

18 **WHEREAS, the construction of a model home will also provide better information to the**
19 **District in developing the financial plan for addressing the overall plan for the**
20 **Community; and**

21 **WHEREAS, the District may be able to use ARPA funds to build the model home; and**

22 **WHEREAS, by San Lucy District Council Resolution No. SL 09-214-24, the San Lucy District**
23 **Council approved the Construction Contract with Zachary Development, LLC and**
24 **authorized and directed the San Lucy District "Chairman, Planner and legal**
25 **counsel . . . to proceed to seek the limited waiver of sovereign immunity from the**
26 **Tohono O'odham Legislative Council . . ."; and**

27 **WHEREAS, the District has entered into a Construction Contract with Zachary Development,**
28 **LLC to demolish the building on site and to build a 3-bedroom 2-bathroom home**
29 **on the site; and**

30 **WHEREAS, the District entered into the Contract on September 29, 2024, subject to the**
31 **Legislative Council's approval of a limited sovereign immunity waiver, in order to**
32 **comply with the internal obligation deadline of September 30, 2024; and**

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1 **WHEREAS, the Contract provides that “[u]ntil such time as the limited waiver of sovereign**
2 **immunity has been granted, the Contractor shall have no obligations to perform**
3 **services under this Contract.” Art. II (B)(1).; and**

4 **WHEREAS, the Contract provides for a specific and limited waiver of immunity in Art. XII(B)**
5 **which provides:**

6 **the DISTRICT expressly waives its immunity from suit only as to binding**
7 **arbitration proceedings as described herein, and to actions to enforce**
8 **such arbitration decisions brought in the Tohono O’odham Court. This**
9 **waiver is specifically limited to the enforcement of an award of money**
10 **damages by arbitration; provided the arbitrator(s) and/or the court shall**
11 **have no authority or jurisdiction to order execution against any assets or**
12 **revenues of the DISTRICT except (a) the funds budgeted for this Project,**
13 **including funds for modifications authorized under Section IV, and (b)**
14 **any proceeds of applicable insurance policies. In no instance shall any**
15 **enforcement of any kind whatsoever be allowed against any assets of the**
16 **DISTRICT other than the limited assets of the DISTRICT specified in [the**
17 **Contract].**

18 **WHEREAS, the Housing Committee has reviewed the draft Contract, and recommends that**
19 **the Legislative Council approves the limited waiver of sovereign immunity in**
20 **favor of Zachary Development, LLC as provided in the Contract, provided that the**
21 **Nation’s immunity is not waived.**

22 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O’odham Legislative Council approves a**
23 **limited waiver of the San Lucy District’s sovereign immunity in accordance with**
24 **the dispute resolution and arbitration provisions in Article XII of the Contract,**
25 **provided that nothing in this resolution shall be construed as a waiver of or**
26 **limitation on the sovereign immunity of the Nation.**

27 **BE IT FINALLY RESOLVED by the Tohono O’odham Legislative Council that the San Lucy District**
28 **shall promptly inform the Nation’s attorney general in the event that this**
29 **Contract results in arbitration or litigation.**

30 **The foregoing Resolution was passed by the Tohono O’odham Legislative Council on the 13TH**
31 **day of NOVEMBER 2024 at a meeting at which a quorum was present with a vote of 2,587.2 FOR;**
32 **676.1 AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council**
33 **by Article VI, Section 1(c)(2) and 1(e) of the Constitution of the Tohono O’odham Nation, adopted**
34 **by the Tohono O’odham Nation on January 18, 1986; and approved by the Acting Deputy**
35 **Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the**
36 **Act of June 18, 1934 (48 Stat.984).**

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Wavalene M. Saunders
Wavalene M. Saunders, Legislative Chairwoman

22nd day of *November*, 2024

ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary

21 day of *November*, 2024

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the *22nd* day of *November*, 2024 at *12:40* 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

Wavalene M. Saunders
Wavalene M. Saunders, Legislative Chairwoman

APPROVED on the *22nd* day of *November*, 2024

DISAPPROVED at *2:06* o'clock, *p*.m.

Verlon M. Jose
VERLON M. JOSE, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the *22* day of *November*, 2024, at *2:20* o'clock, *p*.m.

Evonne Wilson
Evonne Wilson, Legislative Secretary

ACTION: APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE SAN LUCY DISTRICT REGARDING ZACHARY DEVELOPMENT, LLC**MOVED: COUNCILMAN ROGER MANUEL****SECOND: COUNCILWOMAN LORRAINE EILER****DATE: NOVEMBER 13, 2024**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 394.2	1. LEANDER MASE (Francine Schooling) 2. JESSE NAVARRO (<i>Absent</i>) (Alberta J. Ray) (<i>Present</i>)	197.1 197.1	X X			X
CHUKUT KUK 354.7	1. VIVIAN JUAN-SAUNDERS (Cornelius Antone) 2. MARLAKAY HENRY ()	177.35 177.35	X X			
GU ACHI 282.7	1. VICTORIA HOBBS (Tonya L. Joaquin) 2. JEROME F. JOAQUIN ()	141.35 141.35	X X			
GU VO 276.0	1. DALLAS LEWIS () 2. LESLIE LUNA ()	138.0 138.0	X X			
HICKIWAN 220.5	1. DELMA M. GARCIA () 2. LOUIS R. LOPEZ (<i>Absent</i>) (Loretta A. Ortega) (<i>Present</i>)	110.25 110.25	X X			
PISINEMO 236.2	1. EDWARD D. MANUEL () 2. PAMELA J. BENAVIDEZ (Nora J. Ruelas)	118.1 118.1	X	X		
SAN LUCY 257.6	1. ROGER MANUEL (Christina Andrews) 2. GLORIA M. RAMIREZ (<i>Absent</i>) (Lorraine M. Eiler) (<i>Present</i>)	128.8 128.8	X X			
SAN XAVIER 244.5	1. JANICE FELIX () 2. DANIEL L.A. PRESTON III ()	122.25 122.25	X X			
SCHUK TOAK 191.8	1. DELISA M. RAMON (Sharon A. Francisco) 2. THEORIA CAMPILLO (Rebecca Ann Valentine)	95.9 95.9	X X			X
SELLS 558.0	1. EVELYN JUAN MANUEL (Arvada Liston) 2. JANET B. ELEANDO ()	279.0 279.0		X X		X
SIF OIDAK 247.1	1. FRANCIS HOMEWYTEWA () 2. WAVALENE M. SAUNDERS (Mary Lopez)	123.55 123.55	X X			X
	TOTAL	3,263.30	2,587.2	676.1	-0-	[04]