

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Authorizing Settlement of Contract Disputes between the**  
**Tohono O'Odham Nation and Franzoy-Corey Engineering Company)**

**RESOLUTION NO. 92-344**

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4 **WHEREAS, in 1984 the Tohono O'Odham Nation entered into an Agreement**  
5 **(1984 Agreement) with Franzoy-Corey Engineering Company**  
6 **(F/C) to provide, engineering, design and project related services**  
7 **for implementation of the Nation's Farm projects located within**  
8 **the San Xavier and Schuk Toak Districts authorized and provided**  
9 **for in the Southern Arizona Water Rights Settlement Act**  
10 **(SAWRSA): and**

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13 **WHEREAS, in 1989 the Chairman's Designee directed that work stop under**  
14 **the 1984 Agreement due to contract disputes with F/C and since**  
15 **that time efforts have been undertaken to resolve the contract**  
16 **disputes; and**

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18 **WHEREAS, by Resolution 91-487 the Legislative Council of the Nation**  
19 **authorized and directed the termination of the 1984 Agreement**  
20 **between the Nation and F/C, and further provided in that**  
21 **Resolution terms of settlement of the dispute with F/C; See**  
22 **Exhibit A and**

23  
24  
25 **WHEREAS, meetings between the Nation's Executive Branch and F/C have**  
26 **occurred attempting to resolve all outstanding issues between the**  
27 **Nation and F/C through negotiation; and**  
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**WHEREAS, The various claims asserted by the parties include:**

**A. Claims asserted by F/C**

- 1. F/C has asserted claims that invoices for work completed and properly presented under the 1984 Agreement have not been paid by the Nation in the amount of \$288,154.06.**
- 2. F/C has asserted claims for the wrongful cessation of work and for damages incurred by that cessation in the amount of \$289,973.83.**
- 3. F/C has asserted a claim in the Amount of \$6,856.81 under the 1984 Agreement and chargeable to the "Planning Contract" (Contract No. 7-CS-30-05900) between the Nation and BOR. The latter contract contains a provision for cost sharing between the Nation and the BOR.**
- 4. F/C has asserted claims pursuant to a separate contract for the preparation of a Small Reclamation loan application for the Schuk Toak District farm project in the amount of \$19,050.53.**

**B. Claims Asserted by the Nation**

- 1. The Nation has claims for breach of the 1984 Agreement**

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*arising from F/C's performance of unauthorized work.*

*2. The Nation has a damage claim against F/C for delay in performance resulting from F/C's withholding of deliverables.*

*3. The Nation has asserted claims in the nature of an offset in the amount of \$3,618.00 for costs incurred under the 1984 Agreement by F/C and later disallowed by an audit of F/C conducted by the Office of Inspector General-- Department of the Interior in Audit No. W-FC-AZ-BOR-030-87.*

*WHEREAS, the Nation made a proposal for settlement to F/C in June, 1992 which F/C agreed to in principle at a meeting on July 14, 1992; and*

*WHEREAS, the Settlement Agreement addresses the claims asserted by F/C which arose after work cessation in 1989 in the amount of \$289,973.83 by providing that F/C will provide documentation to the Nation on these claims, the Nation will in turn submit the claims to BOR for payment and the parties will be bound by the decision of BOR on such claims; and*

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4 **WHEREAS, the Chairman of the Nation has participated in the negotiations**  
5 **of these terms and conditions and recommends approval of the**  
6 **settlement agreement; and**

7  
8 **WHEREAS, the Water Resources Committee of the Legislative Council has**  
9 **been advised of and reviewed the proposed settlement agreement**  
10 **and recommends approval of the settlement agreement,**

11 **NOW, THEREFORE, BE IT RESOLVED by the Legislative Council of the**  
12 **Tohono O'Odham Nation that the Chairman of the Nation is**  
13 **authorized to execute a Settlement Agreement with Franzoy-Corey**  
14 **Engineering Company to resolve and settle all aspects of the**  
15 **contractual agreement between the Nation and F/C provided that:**

16  
17  
18 **A.) F/C shall, deliver to the Nation, if it has not previously done**

19  
20 **so:**

21 **1) The deliverables, products and computer disks associated**  
22 **with the 1984 Agreement, See Exhibit B;**

23  
24 **2) The executed modification to the Small Reclamation Loan**  
25 **contract;**

26 **3) The supplemental documentation for Authorization of**  
27 **Services 9 (photogrammetry); and**

28 **4) the supplemental documentation on the work cessation claims.**

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**B.) The Nation shall deliver to F/C a check in the amount of  
\$282,333.61 in satisfaction of all claims relating to:**

**1) the Small Reclamation Loan contract;**

**2) The 1984 Agreement, with the following exceptions;**

**a) the Photogrammetry invoice in the amount of  
\$22,729.27,**

**b) the work cessation claims in the amount of \$289,973.83,  
and**

**c) the Planning Contract invoices reimbursable by BOR in  
the amount of \$2,141.71. The parties agree that the  
determination by the BOR Arizona Projects Office (APO)  
as to allowability of costs associated with the  
photogrammetry, work cessation and planning contract  
claims shall be final and binding upon the Nation and  
F/C, that the Nation shall have no obligation to appeal  
the decision of the APO, and that F/C shall have no  
recourse against the Nation for those claims beyond the  
amounts approved by the BOR.**

**C.) That the parties will execute a mutual waiver and release of  
contract claims.**

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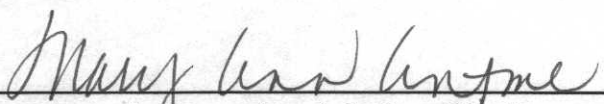
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**BE IT FURTHER RESOLVED** that any Settlement Agreement shall include  
terms and provisions consistent with the principles set forth  
herein.

**BE IT FINALLY RESOLVED** that any Settlement Agreement which requires an  
increase in funds provided from the Nation's SAWRSA Trust  
Fund or other General Fund Accounts must be reviewed and  
approved by this Legislative Council prior to execution.

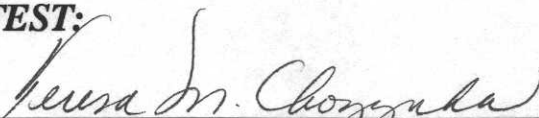
The foregoing Resolution was passed by the Tohono O'Odham Legislative  
Council on the 12TH. day of AUGUST, 1992 at a meeting at which a quorum  
was present with a vote of 1,286.0 FOR; 158.0 AGAINST; -0- NOT VOTING;  
and 280.0 [09] ABSENT, pursuant to the powers vested in the Council by  
Section 1 (d) & (f) 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).

**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

  
\_\_\_\_\_  
Mary Ann Antone, Legislative Chairwoman

14<sup>th</sup> day of August, 1992

**ATTEST:**

  
\_\_\_\_\_  
Teresa M. Choyguha, Legislative Secretary

14<sup>th</sup> day of August, 1992.

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 14<sup>th</sup> day of August, 1992, at 3:50 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**

Mary Ann Antone  
Mary Ann Antone, Legislative Chairwoman

APPROVED on the 18 day of August, 1992

DISAPPROVED) at 8:07 o'clock, A.M.

Josiah Moore  
JOSIAH MOORE, Chairman  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 18<sup>th</sup> day of August,  
1992, at 9:35 o'clock, A.M.

Teresa M. Choyguha for:  
Teresa M. Choyguha, Legislative Secretary

MOVED: COUNCILWOMAN JOANN FRANCISCOSUBJECT: AUTHORIZING SETTLEMENT OF CONTRACT DISPUTESSECOND: COUNCILMAN EARL A. FRANCISCOBETWEEN THE TOHONO O'ODHAM NATION AND FRANZOY-DATE: AUGUST 12, 1992COREY ENGINEERING COMPANY

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
CHUKUT KUK 163.0	1. Kenneth Williams (Harriet Toro)	81.5	X			
	** 2. Alberta M. Lopez (Berdella Jose)	81.5	X			
HICKIWAN 125.0	1. Lloyd Francisco (Billy C. Manuel)	62.5	X			
	2. Manuel Osequeda, Jr. ( )	62.5	X			X
GU VO 114.0	1. Michael Flores	57.0				X
	2. Emilio Lewis (Anthony Flores)	57.0				X
SAN LUCY 106.0	1. Albert Manuel, Jr. (Max P. Jose)	53.0	X			
	2. John Reno ( )	53.0	X			
PISINEMO 119.0	1. Johnson Jose ( )	59.5	X			
	2. Chester Antone (Fernando Valentine)	59.5	X			
GU ACHI 166.0	1. Alex Ramon (Fernando Joaquin)	83.0				X
	2. Willard Anita ( )	83.0				X
BABOQUIVARI 229.0	1. Earl A. Francisco (Kenneth Chico, Sr.)	114.5	X			
	2. Frances Miguel ( )	114.5	X			
SAN XAVIER 127.0	1. Joanne C. Preston (Carmelita Mattias)	63.5	X			X
	2. Eugene Enis, Sr. (Michael R. Rios)	63.5	X			
SCHUK TOAK 107.0	1. JoAnn Francisco (David Valenzuela Sr.)	53.5	X			
	2. Frances Francisco (Joseph Juan)	53.5	X			X
SELLS 310.0	1. Joseph T. Joaquin (Larry Garcia)	155.0	X			X
	2. Andrew Patricio (Lucille Encinas)	155.0	X			
SIF OIDAK 158.0	1. Mary Ann Antone (Nina Jose)	79.0	X			
	2. Willard Juan, Sr. (Delbert Thomas)	79.0	X			X
TOTAL		1,724.0	1,286.0	158.0	-0-	280.0 [09]

\*\*PASSED VOTES