

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Authorizing the Tohono O'odham Nursing Care Authority to Contract with**  
**Indian Health Service pursuant to the Indian Self Determination and**  
**Education Assistance Act ("ISDEAA"))**

**RESOLUTION NO. 18-464**

1 **WHEREAS,** the Tohono O'odham Legislative Council is vested with the authority "to promote,  
2 protect, and provide for public health, peace, morals, education and general  
3 welfare of the Tohono O'odham Nation and its members" and to "consult,  
4 negotiate and conclude agreements and contracts on behalf of the Tohono  
5 O'odham Nation with Federal, State and local governments and other Indian  
6 tribes or their departments, agencies, or political subdivisions. . ." (Constitution  
7 of the Tohono O'odham Nation, Article VI, Section 1(c)(2) and Article VI, Section  
8 1(f)); and

9 **WHEREAS,** the Constitution of the Tohono O'odham Nation also authorizes the Legislative  
10 Council to authorize, charter and regulate public or private corporations and  
11 associations whether organized for profit, or for non-profit or charitable  
12 purposes (Constitution, Article VI, Section 1(e)); and

13 **WHEREAS,** the Tohono O'odham Nation has a continuing commitment to enhance the  
14 quality of life for all O'odham members and their families; and

15 **WHEREAS,** the formation of the Tohono O'odham Nursing Care Authority ("TONCA") by the  
16 adoption of its charter and the construction of the Archie Hendricks Sr. Skilled  
17 Nursing Facility (the "Facility") were integral components of the commitment of  
18 the Nation's resources to the health of its members (Resolution No. 98-512,  
19 "Adopting the Charter of the Tohono O'odham Nursing Care Authority"); and

20 **WHEREAS,** TONCA is a legally established organization chartered by the Nation that includes  
21 the maximum participation of Indians in all phases of its activities and TONCA is  
22 therefore a "tribal organization" that is eligible to contract for services pursuant  
23 to the Indian Self-Determination and Education Assistance Act ("ISDEAA"), Pub. L.  
24 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended (25 U.S.C. § 450b); and

25 **WHEREAS,** Section 10221 of the Patient Protection and Affordable Care Act, Pub. L. 111-148,  
26 March 23, 2010, enacted into law the Indian Health Care Improvement Act  
27 ("IHCIA"), pursuant to which section 205(b) provides new authorizations to Indian  
28 Health Service ("IHS") for certain services, including but not limited to assisted  
29 living services and long-term care services; and

30 **WHEREAS,** approximately 75% of TONCA's residents are Medicaid eligible; and

31 **WHEREAS,** the Centers for Medicare & Medicaid Services ("CMS") pays each state a  
32 percentage of its total Medicaid expenditures, referred to as the Federal Medical  
33 Assistance Percentage or FMAP; and

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1 **WHEREAS, in Arizona the FMAP Rate is approximately 69.8%, except that the state receives**  
2 **100% for Indian Health Service facilities, including tribal facilities under**  
3 **contract or compact with IHS; and**

4 **WHEREAS, if TONCA qualified as an IHS facility it would be in a position to negotiate a higher**  
5 **daily rate from the state; and**

6 **WHEREAS, the TONCA presented its self-determination contract proposal to the Health and**  
7 **Human Services Committee, which recommended approval, and consulted with**  
8 **the Department of Health and Human Services.**

9 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:**

- 10 1. **Recognizes that TONCA is a "tribal organization" as defined in Section 4 of**  
11 **the ISDEAA (25 U.S.C. §450(b)) eligible and qualified to contract for**  
12 **services, which the IHS is statutorily enacted to perform;**
- 13 2. **Grants and authorizes TONCA, pursuant to the provisions of the DOI/HHS**  
14 **Joint Internal Agency Handbook of the ISDEAA to (i) contract for services**  
15 **related to Section 205(b) of IHCIA, including, but not limited to, assisted**  
16 **living services and long-term care services as those services are defined in**  
17 **Section 205(a) and (ii) such other related long-term services and support**  
18 **activities and authorities as may be statutorily authorized to IHS by**  
19 **amendment or future authorization and are able to be contracted to tribal**  
20 **organizations pursuant to the ISDEAA;**
- 21 3. **Authorizes TONCA to negotiate and execute a Title I contract with the**  
22 **Indian Health Service under the ISDEAA for authorities authorized under**  
23 **Section 205; and**
- 24 4. **Authorizes TONCA to further investigate with the Nation and IHS, as an**  
25 **alternative to Title I contracting, an amendment to the Nation's Title V**  
26 **compact to include TONCA as a separate organizational entity in**  
27 **accordance with TONCA's current Charter.**

28 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 04<sup>TH</sup>**  
29 **day of DECEMBER, 2018 at a meeting at which a quorum was present with a vote of 1,800.4 FOR;**  
30 **1,284.2 AGAINST; [01] NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the**  
31 **Council by Article VI, Section 1 (c)(2), Section 1(f), and Section 1(e) of the Constitution of the**  
32 **Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and**  
33 **approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6,**  
34 **1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.984).**  
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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy C. Ypsay for  
Timothy Joaquin, Legislative Chairman  
12 day of December, 2018

ATTEST:

Evonne Wilson  
Evonne Wilson, Legislative Secretary  
11 day of December, 2018

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 12 day of December, 2018 at 8:45 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.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy C. Ypsay for  
Timothy Joaquin, Legislative Chairman

APPROVED

on the 18 day of December, 2018

DISAPPROVED

at 9:10 o'clock, A .m.

Edward D. Manuel EXCEEDED 48 HOURS  
EDWARD D. MANUEL, CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 18 day of

December, 2018, at 10:46 o'clock, A .m.

Evonne Wilson for  
Evonne Wilson, Legislative Secretary

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**ACTION:** AUTHORIZING THE TOHONO O'ODHAM NURSING CARE AUTHORITY TO CONTRACT WITH INDIAN HEALTH SERVICE PURSUANT TO THE INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT ("ISDEAA")

**MOVED:** COUNCILMAN ANTHONY J. FRANCISCO, JR.

**SECOND:** COUNCILWOMAN SANDRA ORTEGA

**DATE:** DECEMBER 04, 2018

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 235.8	1. MARY LOPEZ ( )	117.9	X			X
	2. LUCINDA ALLEN (Yolonda Garcia)	117.9	X			
SELLS 527.2	1. ARTHUR WILSON (Evelyn Juan Manuel)	263.6		X		
	2. ADRIANNE TILLER (Idaleen Reyes)	263.6	X			
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. (Teresa F. Donahue)	92.85	X			
	2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85		X		
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (Felicia Nunez)	116.15	X			
	2. JANICE FELIX ( )	116.15	X			X
SAN LUCY 231.1	1. JANA MONTANA ( <i>Absent</i> ) (Diana Manuel) ( <i>Present</i> )	115.55		X		X
	2. GLORIA RAMIREZ (Lorraine Eiler)	115.55		X		
PISINEMO 225.9	1. CHESTER ANTONE (Caroline D. Garcia)	112.95	X			
	2. MONICA K. MORGAN ( )	112.95	X			X
HICKIWAN 209.0	1. LOUIS R. LOPEZ (Shirley Molina)	104.5	X			
	2. SANDRA D. ORTEGA ( )	104.5	X			
GU VO 256.9	1. GRACE MANUEL ( )	128.45		X		
	2. DALLAS LEWIS (Nacho Flores)	128.45		X		
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	135.45		X	X	
	2. LORETTA LEWIS ( <i>Absent</i> ) (Victoria Hobbs) ( <i>Present</i> )	135.45		X		
CHUKUT KUK 337.7	1. BILLMAN LOPEZ ( <i>Absent</i> ) (Patricia Antone) ( <i>Present</i> )	168.85		X		
	2. VIVIAN JUAN-SAUNDERS (Juanita Homer)	168.85	X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL (Roberta E. Harvey)	186.05	X			
	2. LEANDER MASE (Francine Schooling)	186.05	X			
<b>TOTAL</b>		<b>3,084.6</b>	<b>1,800.4</b>	<b>1,284.2</b>	<b>[01]</b>	<b>[04]</b>