

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving a Limited Waiver of Sovereign Immunity of the Tohono O'odham**  
**Nursing Care Authority)**

**RESOLUTION NO. 11-376**

1 **WHEREAS, the Federal Transit Administration has funds available to meet the special needs of**  
2 **elderly individuals; and**

3 **WHEREAS, the Federal Transit Administration has designated the Arizona Department of**  
4 **Transportation ("ADOT") as the responsible agency to evaluate and select proposed**  
5 **projects and to coordinate the grant applications; and**

6 **WHEREAS, the Tohono O'odham Nursing Care Authority ("TONCA") has applied for and received**  
7 **approval of funding from ADOT for the purchase of two vans modified with wheelchair**  
8 **lifts for a grant of \$102,422.16, subject to execution of a Grant Agreement by and**  
9 **between ADOT and TONCA ("ADOT-TONCA Grant Agreement"); and**

10 **WHEREAS, the form of agreement which ADOT has used with other tribes and tribal entities**  
11 **including the Tohono O'odham Nation provides for a limited waiver of immunity to**  
12 **arbitrate disputes and to enforce any resulting arbitration award; and**

13 **WHEREAS, the Tohono O'odham Legislative Council has approved similar immunity waiver an**  
14 **arbitration provisions in other agreements with the State of Arizona or state agencies**  
15 **(Resolution Nos. 09-637, 09-638, and 09-639); and**

16 **WHEREAS, Section 8.2.2 of the TONCA Charter provides for a limited waiver of immunity for a**  
17 **contract claim up to \$500,000 but only provides for such waiver if disputes are brought**  
18 **in court but not in arbitration (TONCA Amended and Restated Charter, subsection**  
19 **8.2.3); and**

20 **WHEREAS, pursuant to Section 8.1 of the TONCA Charter, nothing in the Charter "shall be**  
21 **construed as a waiver of or limitation on the sovereign immunity of the Nation."; and**

22 **WHEREAS, the ADOT-TONCA Grant Agreement dispute resolution provisions require a limited**  
23 **waiver of TONCA's sovereign immunity to allow the State of Arizona to enforce an**  
24 **arbitrator's award in court; and**

25 **WHEREAS, TONCA cannot execute the ADOT-TONCA Grant Agreement and receive the benefit of**  
26 **the two vehicles unless the Legislative Council authorizes TONCA to waive TONCA's**  
27 **immunity in a manner that allows an arbitration award against TONCA to be enforced;**  
28 **and**

29 **WHEREAS, the Health and Human Services Committee has met with the TONCA Board, has**  
30 **reviewed the draft ADOT-TONCA Grant Agreement and recommends that the**

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**Page 2 of 3**

1                   **Legislative Council authorize TONCA to enter the ADOT-TONCA Grant Agreement with**  
2                   **the arbitration provision, provided that the Nation's immunity is not waived.**

3 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council approves a**  
4                   **limited waiver of TONCA's sovereign immunity in accordance with the dispute**  
5                   **resolution and arbitration provisions in sections 13-18 of the ADOT-TONCA Grant**  
6                   **Agreement, provided that nothing in this resolution shall be construed as a waiver of**  
7                   **or limitation on the sovereign immunity of the Nation.**

8 **BE IT FINALLY RESOLVED that TONCA shall promptly inform the Nation's Attorney General in the**  
9                   **event that this ADOT-TONCA Grant Agreement results in arbitration or litigation.**

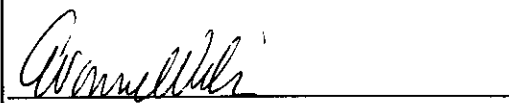
10 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 03<sup>RD</sup> Day**  
11 **of AUGUST, 2011 at a meeting at which a quorum was present with a vote of 2,553.90 FOR; -0-**  
12 **AGAINST; -0- NOT VOTING; and 226.70[03] ABSENT, pursuant to the powers vested in the Council**  
13 **by Section 1 (f) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by the**  
14 **Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**  
15 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**  
16 **18, 1934 (48 Stat. 984).**

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19                   **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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21                     
22                   **Timothy Joaquin, Legislative Chairman**

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24                   15 day of August, 2011

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27 **ATTEST:**

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29                     
30                   **Evonne Wilson, Legislative Secretary**

31  
32                   11 day of August, 2011

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35 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham**  
36 **Nation on the 15 day of August, 2011 at 10:22 o'clock, A.M.,**  
37 **pursuant to the provisions of Section 4 of Article VII of the Constitution and will become effective**  
38 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**  
39 **submittal.**

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**Page 3 of 3**

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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

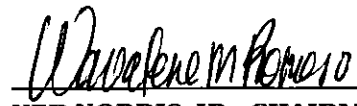
  
**Timothy Joaquin, Legislative Chairman**

**APPROVED**

on the 15 day of August, 2011

**DISAPPROVED**

at 11:45 o'clock, a.M.

  
**NED NORRIS, JR., CHAIRMAN**  
**TOHONO O'ODHAM NATION**  
*Vice Chairwoman*

Returned to the Legislative Secretary on the 15 day of

August, 2011, at 2:14 o'clock, p.M.

  
**Evonne Wilson, Legislative Secretary**

**ACTION: APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE TOHONO O'ODHAM NURSING CARE AUTHORITY**

**MOVED: COUNCILMAN CHESTER ANTONE**

**SECOND: COUNCILWOMAN SANDRA ORTEGA**

**DATE: AUGUST 03, 2011**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>BABOQUIVARI</b> <b>342.0</b>	1. FRANCES MIGUEL (Roberta Harvey)	171.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
<b>CHUKUT KUK</b> <b>302.2</b>	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILLMAN LOPEZ ( )	151.10	X			
<b>GU ACHI</b> <b>244.9</b>	1. TIMOTHY L. JOAQUIN (Rose Johnson Antone)	122.45	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45	X			
<b>GU VO</b> <b>226.7</b>	1. GRACE MANUEL (Floyd Flores)	113.35				X
	2. PAMELA ANGHILL (Angela Ortiz)	113.35				X
<b>HICKIWAN</b> <b>186.3</b>	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			X
	2. SANDRA ORTEGA ( )	93.15	X			
<b>PISINEMO</b> <b>200.7</b>	1. CHESTER ANTONE ( )	100.35	X			
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
<b>SAN LUCY</b> <b>204.6</b>	1. LORRAINE EILER ( )	102.30	X			
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
<b>SAN XAVIER</b> <b>215.8</b>	1. HILARION CAMPUS ( )	107.90	X			
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	107.90	X			
<b>SCHUK TOAK</b> <b>169.8</b>	1. FRANCES B. CONDE ( )	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X			
<b>SELLS</b> <b>475.7</b>	1. ARTHUR WILSON ( <i>Absent</i> ) (Kimberly Mull) ( <i>Present</i> )	237.85	X			
	2. EVELYN B. JUAN MANUEL ( )	237.85	X			
<b>SIF OIDAK</b> <b>211.9</b>	1. NICHOLAS JOSE ( )	105.95	X			
	2. MARY LOPEZ ( )	105.95	X			
<b>TOTAL</b>		<b>2,780.60</b>	<b>2,553.90</b>	<b>-0-</b>	<b>-0-</b>	<b>226.70</b> <b>[03]</b>