

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Rescinding Resolution No. 07-057 and Approving the Nation to Enter into a P.L. 93-638
Title V Construction Project Agreement to Pre-Plan and Engineer the New Sells
Alternative Rural Health Care Facility on Existing Sells Hospital and Department of
Health and Human Services Grounds)

RESOLUTION NO. 19-180

- 1 **WHEREAS,** the Tohono O'odham Legislative Council has the authority "to promote, protect
2 and provide for public health, peace, morals, education and general welfare of
3 the Tohono O'odham Nation and its members" and "[t]o consult, negotiate and
4 conclude agreements and contracts on behalf of the Tohono O'odham Nation
5 with Federal, State and local governments" (Constitution of the Tohono O'odham
6 Nation, Article VI, Section 1(c)(2) and Section 1(f)); and
- 7 **WHEREAS,** the United States Congress has recognized, "Federal health services to maintain
8 and improve the health of the Indians are consonant with and required by the
9 Federal Government's historical and unique legal relationship with, and
10 resulting responsibility to, the American Indian people." (25 U.S.C. Section 1601
11 (1)); and
- 12 **WHEREAS,** on April 3, 2018, the Indian Health Service ("IHS") distributed its FY 2020 Annual
13 Facilities Planning (Five-Year Plan), which allocates up to \$750,000.00 to the
14 Nation to pre-plan and conduct a study for a new health care facility project; and
- 15 **WHEREAS,** the use of funds will require the Nation to enter into a Title V Agreement with IHS
16 for the planning phase of the project; and
- 17 **WHEREAS,** in the best interests of Nation's members, the Nation determined Sells would be
18 suitable for the new hospital location rather than the selected site for the
19 Alternative Rural Health Care ("ARHC") Facility in the Schuk Toak District and as
20 recognized in Resolution No. 07-057 "Designating San Isidro Community Site for
21 the Alternative Rural Hospital"; and
- 22 **WHEREAS,** the San Isidro Community and Schuk Toak District Council are in agreement to
23 the recommendation to build the ARHC Facility on the existing Sells Hospital and
24 on the Department of Health and Human Services ("DHHS") grounds located in
25 the Sells Community of Sells District; and
- 26 **WHEREAS,** Schuk Toak District has rescinded Resolution No. ST-11-28-06-45 with Resolution
27 No. ST-10-27-18-081; and
- 28 **WHEREAS,** the Sells Community passed Resolution No. SC-215-18 and the Sells District
29 Council passed Resolution No. SD-100-18 supporting the ARHC Facility to be
30 studied, planned and built on the existing Sells Hospital and DHHS grounds
31 located in the Sells Community of the Sells District; and
- 32 **WHEREAS,** the Title V Agreement between the Nation and IHS, which is incorporated by this
33 reference, allows the Nation to conduct the required environmental surveys and

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the pre-planning and engineering studies for the ARHC Facility in Sells, on the existing Sells Hospital and DHHS grounds, with reimbursement funding of up to \$750,000.00 provided by IHS; and

WHEREAS, the Tohono O’odham Nation has chosen to be responsible for all the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”) reporting requirements for the planning phase of the project; and

WHEREAS, the Executive Director of the Department of Planning and Economic Development will serve as the Environmental Certification Officer (“ECO”) to represent the Nation and assume the status of a responsible federal official for the Title V Agreement; and

WHEREAS, entering into the Title V Agreement with IHS requires a limited waiver of sovereign immunity by the Nation in favor of IHS, granting the federal district court jurisdiction for civil enforcement declaratory and injunctive relief actions that are substantially equivalent to an Administrative Procedures Act enforcement action against a federal agency to be brought against the Nation’s ECO in his or her official capacity; and

WHEREAS, the Agricultural and Natural Resources, Commerce, Budget and Finance, Appropriations, and Health and Human Services Committees have reviewed the Title V Agreement, including the limited waiver of sovereign immunity and recommend its approval.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O’odham Legislative Council rescinds Resolution No. 07-057 and designates the existing Sells Hospital and DHHS grounds as the new Sells ARHC Facility site.

BE IT FURTHER RESOLVED that the Tohono O’odham Legislative Council:

1. authorizes the Nation’s Chairman to enter into a P.L. 93-638 Title V Construction Project Agreement with IHS for the planning phase of the new Sells ARHC Facility with the contract amount of \$750,000 but with funding available of up to \$750,000.00 from IHS;
2. approves the Nation to be the responsible party for all the NEPA and NHPA reporting requirements for the planning phase of the Sells ARHC Facility; and
3. approves the designation of the Nation’s Department of Planning and Economic Development Executive Director to serve as the Environmental Certification Officer and to assume the status of a responsible federal official for the planning phase of the Sells ARHC Facility.

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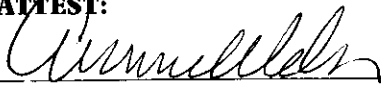
1 **BE IT FINALLY RESOLVED** that the Tohono O'odham Legislative Council grants a limited waiver
2 of the Nation's sovereign immunity in favor of IHS, solely to grant the federal
3 district court jurisdiction for declaratory and injunctive relief enforcement
4 actions that are substantially equivalent to an Administrative Procedures Act
5 enforcement action against a federal agency, brought by IHS against the Nation's
6 Environmental Certification Officer in his or her official capacity.

7 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 24TH
8 day of MAY, 2019 at a meeting at which a quorum was present with a vote of 3,084.6 FOR; -0-
9 AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by
10 Article VI, Section 1(c)(2) and Section 1(f) of the Constitution of the Tohono O'odham Nation,
11 adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy
12 Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the
13 Act of June 18, 1934 (48 Stat.984).

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15 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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19 Timothy Joaquin, Legislative Chairman
20 29 day of May, 2019

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23 **ATTEST:**

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25 _____
26 Evonne Wilson, Legislative Secretary
27 29 day of May, 2019

28 Said Resolution was submitted for approval to the office of the Chairman of the Tohono
29 O'odham Nation on the 29 day of May, 2019 at 9:22 o'clock, a.m.,
30 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
31 effective upon his approval or upon his failure to either approve or disapprove it within 48
32 hours of submittal.

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37 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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40 Timothy Joaquin, Legislative Chairman
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APPROVED

on the 29 day of May, 2019

DISAPPROVED

at 4:51 o'clock, p.m.



EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 30 day of

May, 2019, at 8:55 o'clock, a.m.



Evonne Wilson, Legislative Secretary

ACTION: RESCINDING RESOLUTION NO. 07-057 AND APPROVING THE NATION TO ENTER INTO A P.L. 93-638 TITLE V CONSTRUCTION PROJECT AGREEMENT TO PRE-PLAN AND ENGINEER THE NEW SELLS ALTERNATIVE RURAL HEALTH CARE FACILITY ON EXISTING SELLS HOSPITAL AND DEPARTMENT OF HEALTH AND HUMAN SERVICES GROUNDS

MOVED: VICE CHAIRMAN QUINTIN C. LOPEZ SECOND: COUNCILWOMAN GRACE MANUEL

DATE: MAY 24, 2019

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 235.8	1. MARY LOPEZ () 2. LUCINDA ALLEN (Yolonda Garcia)	117.9 117.9	X X			
SELLS 527.2	1. ARTHUR WILSON (Evelyn Juan Manuel) 2. ADRIANNE TILLER ()	263.6 263.6	X X			X
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. (Teresa F. Donahue) 2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85 92.85	X X			
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (Felicia Nunez) 2. JANICE FELIX (Adam Andrews)	116.15 116.15	X X			
SAN LUCY 231.1	1. JANA MONTANA (Diana Manuel) 2. GLORIA RAMIREZ (Lorraine Eiler)	115.55 115.55	X X			
PISINEMO 225.9	1. CHESTER ANTONE (Caroline D. Garcia) 2. MONICA K. MORGAN ()	112.95 112.95	X X			
HICKIWAN 209.0	1. LOUIS R. LOPEZ (<i>Absent</i>) (Shirley Molina) (<i>Present</i>) 2. SANDRA D. ORTEGA ()	104.5 104.5	X X			X
GU VO 256.9	1. GRACE MANUEL () 2. DALLAS LEWIS (<i>Absent</i>) (Nacho Flores) (<i>Present</i>)	128.45 128.45	X X			
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson) 2. LORETTA LEWIS (Victoria Hobbs)	135.45 135.45	X X			
CHUKUT KUK 337.7	1. BILLMAN LOPEZ (<i>Absent</i>) (Patricia Antone) (<i>Present</i>) 2. VIVIAN JUAN-SAUNDERS (Juanita Homer)	168.85 168.85	X X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL (Roberta E. Harvey) 2. LEANDER MASE (Francine Schooling)	186.05 186.05	X X			
TOTAL		3,084.6	3,084.6	-0-	-0-	[02]