

**RESOLUTION OF THE TOHONO O’ODHAM LEGISLATIVE COUNCIL
(Granting a Right-of-Way for a Utility Alignment to the Tohono O’odham Utility
Authority for Project No. TU 18-849 – San Xavier West Sewer Upgrades)**

RESOLUTION NO. 22-123

- 1 **WHEREAS,** the Tohono O’odham Legislative Council (“TOLC”) is authorized “to manage,
2 protect, preserve and regulate the use of property...of the Tohono O’odham
3 Nation” and “to manage,,,or otherwise deal with lands, or interests in land”
4 belonging to the Nation (Constitution of the Tohono O’odham Nation, Article VI,
5 Section 1(i)(2) and Section 2 (d)); and
- 6 **WHEREAS,** the Bureau of Indian Affairs (“BIA”), Department of the Interior, promulgated
7 amended regulations at 25 CFR Part 169 Rights-of-Way Over Indian Lands, which
8 provides, in part, that an independent legal entity that is wholly owned and
9 operated by a tribe that owns 100 percent of the trust or restricted interests in
10 land does not need to obtain a BIA right-of-way but instead such tribe shall pass a
11 resolution authorizing access to the entity, without BIA approval, including a
12 legal description, and shall submit both documents to the BIA for its records (25
13 CFR §169.004); and
- 14 **WHEREAS,** on May 15, 1991, the Nation adopted the Tohono O’odham Utility Authority’s
15 (“TOUA”) Second Restated Plan of the Operation for the Tohono O’odham Utility
16 Authority,” adopted by Resolution No. 91-175 to plan, provide and furnish utility
17 services to all areas within the Nation, to acquire, construct, operate, maintain,
18 promote and expand utility systems to furnish electric, gas, water, sewer and
19 telephone services within the Nation’s lands; and
- 20 **WHEREAS,** on January 18, 2017, the TOLC approved Utility Alignment Recordation
21 Procedures for TOUA, a wholly-owned and operated tribal utility through
22 Resolution 17-032; and
- 23 **WHEREAS,** an engineering and feasibility study (“Study”) was finalized in September 2017
24 under Indian Health Services (“IHS”) Project No. TU 05-337. The report
25 recommended various repairs to approximately 69 manholes, a 655 foot sewer
26 main extension, and sewer service connections for nine existing homes that were
27 previously served with on-site septic systems; and
- 28 **WHEREAS,** based on the Study finalized in 2017, the alternatives considered were three
29 options and the recommended Preferred Alternative is to provide sewer service
30 to all homes on tribal trust land and make recommended community sewer
31 system repairs; and
- 32

RESOLUTION NO. 22-123

(Granting a Right-of-Way for a Utility Alignment to the Tohono O'odham Utility Authority for Project No. TU 18-849 – San Xavier West Sewer Upgrades)

Page 2 of 4

- 1 **WHEREAS,** **the Environmental Protection Agency (“EPA”) has made funds available under the**
2 **Clean Water Act (“CWA”) for Project TU 18-849. EPA and IHS will enter into an**
3 **Interagency Agreement (“IA”) in support of the project. The EPA has agreed to**
4 **provide funds for the construction of the project to provide manhole**
5 **repair/replacements as recommended by IHS Project TU 05-337 in the amount of**
6 **\$297,000; and**
- 7 **WHEREAS,** **the new utility alignment is 50 feet wide and is 491.29 feet long encompassing**
8 **0.564 acres more or less, which is more particularly described in Attachment 2 –**
9 **Utility Alignment & Legal Description; and**
- 10 **WHEREAS,** **the IHS consulted with the Nation’s Cultural Affairs Office to conduct a cultural**
11 **resource survey and based on the survey, while there are no cultural sites in the**
12 **proposed sewer extension project area, there are several that are in close**
13 **proximity (See attachment 3); and**
- 14 **WHEREAS,** **the Nation’s Cultural Affairs Office will require an archaeological monitor from**
15 **their office to be on site during ground disturbing activities and if buried cultural**
16 **materials are encountered, stop work at that location and contact the San Xavier**
17 **District and the Nation’s Cultural Affairs Office; and**
- 18 **WHEREAS,** **the Wildlife and Vegetation Management Program has provided clearances that**
19 **no federally-listed threatened endangered or special status species or habitat**
20 **were found. One O’odham-sensitive plant species was found consisting of barrel**
21 **cactus and recommends that salvage take place (See Attachment 4); and**
- 22 **WHEREAS,** **the San Xavier District Council approved SXDC Resolution No. SXDC 11-20-04,**
23 **attached as Exhibit B, supporting Indian Health Service’s San Xavier Sewer**
24 **Upgrade Project No. TU 18-849, and any necessary right-of-way approvals and the**
25 **service of all utilities for this project to be completed; and**
- 26 **WHEREAS,** **TOUA has submitted a complete application to the Nation’s Real Estate**
27 **Management Office for the approval and recordation of a new utility alignment**
28 **as required under the Nation’s Utility Alignment Recordation Procedures; and**
- 29 **WHEREAS,** **the Agricultural and Natural Resources and Commerce Committees have**
30 **reviewed and recommends to the Legislative Council the approval of the planned**
31 **San Xavier West Sewer Upgrades.**
- 32 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O’odham Legislative Council hereby grants
33 **to TOUA a right-of-way for a utility alignment for Project TU 18-849, for the San**
34 **Xavier West Sewer Upgrades for the San Xavier District, based on the submittal of**

RESOLUTION NO. 22-123

(Granting a Right-of-Way for a Utility Alignment to the Tohono O'odham Utility Authority for Project No. TU 18-849 - San Xavier West Sewer Upgrades)

Page 3 of 4

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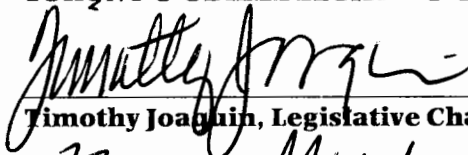
an acceptable Application for Utility Alignment with all documentation required by the Application and which includes an accurate legal description in accordance with 25 CFR 169.102(b) (1), and a survey grade Map of Definite Location, prepared in accordance with 25 CFR §169.102(b) (2) as these sections may be amended from time to time, certified by a registered professional engineer or an Arizona Registered Land Surveyor.

BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council hereby grants approval of any encroachment permits for this project, including future individual services installed on the system, which may be granted by the Bureau of Indian Affairs pursuant to federal regulations to allow the utility alignment or service lines to individual customers to cross roads constructed by the Bureau of Indian Affairs.


BE IT FINALLY RESOLVED that the Nation's chairperson, or his designee, is authorized to execute any documents reasonably necessary to implement this resolution.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 21ST day of MARCH, 2022 at a meeting at which a quorum was present with a vote of 3,218.0 FOR; -0- AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by, Article VI, Section 2(d) 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



Timothy Joaquin, Legislative Chairman
22 day of March, 2022

ATTEST:


Evonne Wilson, Legislative Secretary
22 day of March, 2022

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 22 day of March, 2022 at 8:25 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.

RESOLUTION NO. 22-123

(Granting a Right-of-Way for a Utility Alignment to the Tohono O'odham Utility Authority for Project No. TU 18-849 - San Xavier West Sewer Upgrades)

Page 4 of 4

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TOHONO O'ODHAM LEGISLATIVE COUNCIL



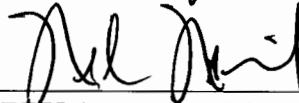
Timothy Joaquin, Legislative Chairman

APPROVED

on the 22 day of March, 2022

DISAPPROVED

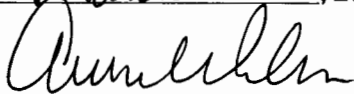
at 8:34 o'clock, 8 .m.



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

Returned to the Legislative Secretary on the 22 day of

March, 2022, at 8:34 o'clock, 8 .m.



Evonne Wilson, Legislative Secretary

ACTION: GRANTING A RIGHT-OF-WAY FOR A UTILITY ALIGNMENT TO THE TOHONO O'ODHAM UTILITY AUTHORITY FOR PROJECT NO. TU 18-849 – SAN XAVIER WEST SEWER UPGRADES

Moved: COUNCILWOMAN JANICE FELIX

SECOND: COUNCILWOMAN MARLAKAY HENRY

DATE: MARCH 21, 2022

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X			
SELLS 556.5	1. ARTHUR WILSON ()	278.25	X			
	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25	X			
SCHUK TOAK 190.5	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25	X			
	2. DELISA M. RAMON (Sharon A. Francisco)	95.25	X			
SAN XAVIER 242.6	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3	X			X
	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eiler)	121.9	X			
	2. ROGER MANUEL (Christina Andrews)	121.9	X			
PISINEMO 232.7	1. MARIETTA MARTIN ()	116.35	X			
	2. EDWARD D. MANUEL (Monica Morgan)	116.35	X			
HICKIWAN 216.6	1. LOUIS R. LOPEZ ()	108.3	X			X
	2. SANDRA D. ORTEGA (<i>Absent</i>) (Delma M. Garcia) (<i>Present</i>)	108.3	X			
GU VO 270.7	1. GRACE MANUEL ()	135.35	X			
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ()	139.25	X			
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X			
CHUKUT KUK 351.6	1. MARLAKAY HENRY (Billman Lopez)	175.8	X			
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Frances G. Antone)	194.45	X			
	2. LEANDER MASE (<i>Absent</i>) (Francine Schooling) (<i>Present</i>)	194.45	X			
TOTAL		3,218.0	3,218.0	-0-	-0-	[02]