

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Authorizing the Tohono O'odham Nation and Tohono O'odham Nation Health Care to Enter into a P.L. 93-638 Title V Construction Project Agreement for the Sells Alternative Rural Health Center Off-Site Water and Sewer Project, Appointing Marc Fleetwood to Serve as an Environmental Certification Officer, and Acknowledging and Accepting the Jurisdiction of the Federal District Court as Specified in this Resolution)**

**RESOLUTION NO. 24-207**

1 **WHEREAS,** the Constitution of the Tohono O'odham vests the Legislative Council with the  
2 authority "to promote, protect, and provide for the public health, morals,  
3 education and general welfare of the Tohono O'odham Nation and its members"  
4 and "to consult, negotiate and conclude agreements and contracts on behalf of  
5 the Tohono O'odham Nation with Federal, State and local governments"  
6 (Constitution of the Tohono O'odham Nation, Article VI, Section 1(c)(2) and  
7 Section 1(f)); and

8 **WHEREAS,** the Secretary of the United States Department of Health and Human Services,  
9 through its delegated representatives, the Indian Health Service ("IHS"), and the  
10 Tohono O'odham Nation and Tohono O'odham Nation Health Care, through their  
11 authorized representatives, desire to enter into a Title V Construction Project  
12 Agreement ("TVCPA") for the purposes of completing the design and construction  
13 of off-site water and sewer in support of the new Sells Alternative Health Rural  
14 Health Center ("Sells ARHC")(IHS Identification No. DES-24-V-0032) (the  
15 "Project"), pursuant to Title V of the Indian Self-Determination and Education  
16 Assistance Act ("ISDEAA") (25 U.S.C. § 5381 et seq.), and the Self-Governance federal  
17 regulations at Title 42, Code of Federal Regulations, Part 137, Subpart N (42 C.F.R.  
18 Part 137); and

19 **WHEREAS,** the scope of work for the Project involves providing all professional engineering  
20 design services and construction services to complete the design and  
21 construction of the Sells ARHC off-site water and sewer facilities; and

22 **WHEREAS,** the total budget for the Sells ARHC Off-Site Water and Sewer Project is  
23 \$8,698,000.00 (amount will be updated annually until construction begins); and

24 **WHEREAS,** receipt of funding for the Project requires that the Nation assume certain  
25 environmental responsibilities as well as agree with certain jurisdictional  
26 language for civil enforcement actions; and

27 **WHEREAS,** in particular, in accordance with 25 U.S.C. § 5389 of the ISDEAA, the Nation must  
28 assume all federal responsibilities under the National Environmental Policy Act  
29 ("NEPA"), the National Historic Preservation Act ("NHPA"), and related provisions  
30 of law that would apply if the Secretary of the Department of Health and Human



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1 Services were to undertake the Project (42 C.F.R. §137.285), subject to the  
2 limitations set forth in 42 C.F.R. Part 137, Subpart N, regarding retained and  
3 inherent federal responsibilities; and

4 **WHEREAS,** the Nation must also appoint an individual to serve as its Environmental  
5 Certification Officer to represent the Nation and assume the status of a  
6 responsible federal official (42 C.F.R. §§137.292(a)(1) and 137.329(a)); and

7 **WHEREAS,** additionally, the Nation must grant a limited waiver of its sovereign immunity by  
8 acknowledging and accepting the jurisdiction of the federal district court for the  
9 purposes of civil enforcement actions brought against the Nation's  
10 Environmental Certification Officer in his or her official capacity for declaratory  
11 and injunctive relief that is substantially equivalent to an Administrative  
12 Procedures Act enforcement action against a federal agency, but only to the  
13 extent strictly required by 42 C.F.R. §§137.292(a)(2) and 137.329(b), and only with  
14 respect to NEPA and NHPA responsibilities the Nation is required to assume  
15 under 25 U.S.C. §§ 5381-5399 and 42 Part 137, Subpart N; and

16 **WHEREAS,** the Health and Human Services, Agricultural and Natural Resources, Budget and  
17 Finance, and Commerce Committees have reviewed the Sells Alternative Rural  
18 Health Center Off-Site Water and Sewer Project, P.L. 93-638 Title V Construction  
19 Project Agreement, in the amount of \$8,698,000.00, and recommends that: (1) the  
20 Tohono O'odham Nation and Tohono O'odham Nation Health Care enter into the  
21 Title V Construction Project Agreement with the U.S. Indian Health Service, (2)  
22 Marc Fleetwood of Fleetwood Engineering, Inc., be appointed to serve as the  
23 Nation's Environmental Certification Officer, and (3) the Nation grant a limited  
24 waiver of its sovereign immunity by acknowledging and accepting the  
25 jurisdiction of the federal district court as specified in the resolved clause.

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

- 27 1. Authorizes the Tohono O'odham Nation and Tohono O'odham Nation Health  
28 Care to enter into the Sells Alternative Rural Health Center Off-Site Water and  
29 Sewer Project, P.L. 93-638 Title V Construction Project Agreement, in the  
30 amount of \$8,698,000.00 (amount will be updated annually until construction  
31 begins); and



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2. **In accordance with 25 U.S.C. § 5389 of the ISDEAA, the Nation assumes all federal responsibilities under the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), and related provisions of law that would apply if the Secretary of the Department of Health and Human Services were to undertake the Project (42 C.F.R. §137.285), subject to the limitations set forth in 42 C.F.R. Part 137, Subpart N, regarding retained and inherent federal responsibilities; and**
3. **Appoints Marc Fleetwood of Fleetwood Engineering, Inc., to serve as the Nation's Environmental Certification Officer and assume the status of a responsible federal official (42 C.F.R. §§137.292(a)(1) and 137.329(a)); and**
4. **Grants a limited waiver of the Nation's sovereign immunity by acknowledging and accepting the jurisdiction of the federal district court for purposes of civil enforcement actions brought against the Nation's Environmental Certification Officer in his or her official capacity for declaratory and injunctive relief that is substantially equivalent to an Administrative Procedures Act enforcement action against a federal agency, but only to the extent strictly required by 42 C.F.R. §§137.292(a)(2) and 137.329(b), and only with respect to NEPA and NHPA responsibilities the Nation is required to assume under 25 U.S.C. §§ 5381-5399 and 42 Part 137, Subpart N.**

**BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council authorizes the Nation's chairperson and Tohono O'odham Nation Health Care to execute all documents and to take all actions necessary to implement this resolution.**

**The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10<sup>TH</sup> day of JULY 2024 at a meeting at which a quorum was present with a vote of 3,027.10 FOR; -0- AGAINST; -0- NOT VOTING; and 236.2[04] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(c)(2) and Section 1(f) 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).**



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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

*Wavalene M. Saunders*  
Wavalene M. Saunders, Legislative Chairwoman

12<sup>th</sup> day of July, 2024

ATTEST:

*Evonne Wilson*  
Evonne Wilson, Legislative Secretary

12 day of July, 2024

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 12<sup>th</sup> day of July, 2024 at 12:07 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**

*Wavalene M. Saunders*  
Wavalene M. Saunders, Legislative Chairwoman

APPROVED on the 12 day of July, 2024

DISAPPROVED at 1:55 o'clock, P.m.

*Verlon M. Jose*  
VERLON M. JOSE, CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 12 day of July, 2024, at 3:41 o'clock, P.m.

*Evonne Wilson*  
Evonne Wilson, Legislative Secretary

**ACTION:** AUTHORIZING THE TOHONO O'ODHAM NATION AND TOHONO O'ODHAM NATION HEALTH CARE TO ENTER INTO A P.L. 93-638 TITLE V CONSTRUCTION PROJECT AGREEMENT FOR THE SELLS ALTERNATIVE RURAL HEALTH CENTER OFF-SITE WATER AND SEWER PROJECT, APPOINTING MARC FLEETWOOD TO SERVE AS AN ENVIRONMENTAL CERTIFICATION OFFICER, AND ACKNOWLEDGING AND ACCEPTING THE JURISDICTION OF THE FEDERAL DISTRICT COURT AS SPECIFIED IN THIS RESOLUTION

**MOVED:** COUNCILWOMAN VIVIAN JUAN-SAUNDERS

**SECOND:** COUNCILMAN DANIEL L.A. PRESTON III

**DATE:** JULY 10, 2024

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 394.2	1. LEANDER MASE ( <i>Absent</i> ) (Francine Schooling) ( <i>Present</i> )	197.1	X			X
	2. JESSE NAVARRO (Alberta J. Ray)	197.1	X			
CHUKUT KUK 354.7	1. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	177.35	X			
	2. MARLAKAY HENRY ( )	177.35	X			
GU ACHI 282.7	1. VICTORIA HOBBS (Tonya L. Joaquin)	141.35	X			
	2. JEROME F. JOAQUIN ( )	141.35	X			
GU VO 276.0	1. DALLAS LEWIS ( )	138.0	X			
	2. LESLIE LUNA ( )	138.0	X			
HICKIWAN 220.5	1. DELMA M. GARCIA ( )	110.25	X			X
	2. LOUIS R. LOPEZ (Loretta A. Ortega)	110.25	X			
PISINEMO 236.2	1. EDWARD D. MANUEL (Monica Morgan)	118.1				X
	2. PAMELA J. BENAVIDEZ ( <i>Absent</i> ) (Nora J. Ruelas) ( <i>Present</i> )	118.1				
SAN LUCY 257.6	1. ROGER MANUEL ( <i>Absent</i> ) (Christina Andrews) ( <i>Present</i> )	128.8	X			
	2. GLORIA M. RAMIREZ (Lorraine M. Eiler)	128.8	X			
SAN XAVIER 244.5	1. JANICE FELIX ( )	122.25	X			
	2. DANIEL L.A. PRESTON III ( )	122.25	X			
SCHUK TOAK 191.8	1. DELISA M. RAMON ( <i>Absent</i> ) (Sharon A. Francisco) ( <i>Present</i> )	95.9	X			X
	2. THEORIA CAMPILLO (Rebecca Ann Valentine)	95.9	X			
SELLS 558.0	1. EVELYN JUAN MANUEL (Arvada Liston)	279.0	X			
	2. JANET B. ELEANDO ( )	279.0	X			
SIF OIDAK 247.1	1. LUCINDA ALLEN (Francis Homewytewa)	123.55	X			
	2. WAVALENE M. SAUNDERS (Mary Lopez)	123.55	X			
<b>TOTAL</b>		<b>3,263.30</b>	<b>3,027.10</b>	<b>-0-</b>	<b>-0-</b>	<b>236.2 [05]</b>