

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 Design 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. 24-230

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 of the new Sells**
13 **Alternative Health Rural Health Center ("Sells ARHC")(IHS Identification No. DES-**
14 **24-V-0031) (the "Project"), pursuant to Title V of the Indian Self-Determination**
15 **and Education Assistance Act ("ISDEAA") (25 U.S.C. § 5381 et seq.), and the Self-**
16 **Governance federal regulations at Title 42, Code of Federal Regulations, Part 137,**
17 **Subpart N (42 C.F.R. Part 137); and**

18 **WHEREAS, the scope of work for the Project involves providing all professional architectural**
19 **and engineering design services to complete the design of the Sells ARHC**
20 **including, but not limited to, the design for all site work, data connection,**
21 **connections to off-site water and sewer and other utilities, any improvements**
22 **and permits for highway access to the site, all demolition design services for the**
23 **existing facilities on the site, and all medical equipment planning services for the**
24 **310,000 SF state of the art new health care facility as more specifically described**
25 **in the associated TVCPA; and**

26 **WHEREAS, the total budget for the Sells ARHC Design Project is \$33,328,000.00 (amount will**
27 **be updated annually until construction begins); and**

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

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1 **WHEREAS, in particular, in accordance with 25 U.S.C. § 5389 of the ISDEAA, the Nation must**
2 **assume all federal responsibilities under the National Environmental Policy Act**
3 **("NEPA"), the National Historic Preservation Act ("NHPA"), and related provisions**
4 **of law that would apply if the Secretary of the Department of Health and Human**
5 **Services were to undertake the Project (42 C.F.R. §137.285), subject to the**
6 **limitations set forth in 42 C.F.R. Part 137, Subpart N, regarding retained and**
7 **inherent federal responsibilities; and**

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

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

20 **WHEREAS, the Health and Human Services, Commerce, Agricultural and Natural Resources,**
21 **and Budget and Finance Committees have reviewed the Sells Alternative Rural**
22 **Health Center Design Project, P.L. 93-638 Title V Construction Project Agreement,**
23 **in the amount of \$33,328,000.00, and recommend that: (1) the Tohono O'odham**
24 **Nation and Tohono O'odham Nation Health Care enter into the Title V**
25 **Construction Project Agreement with the U.S. Indian Health Service, (2) Marc**
26 **Fleetwood of Fleetwood Engineering, Inc., be appointed to serve as the Nation's**
27 **Environmental Certification Officer, and (3) the Nation grant a limited waiver of**
28 **its sovereign immunity by acknowledging and accepting the jurisdiction of the**
29 **federal district court as specified in the resolved clause.**

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

- 31 **1. Authorizes the Tohono O'odham Nation and Tohono O'odham Nation Health**
32 **Care to enter into the Sells Alternative Rural Health Center Design Project,**

RESOLUTION NO. 24-230

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1 P.L. 93-638 Title V Construction Project Agreement, in the amount of
2 \$33,328,000.00 (amount will be updated annually until construction begins);

3 2. In accordance with 25 U.S.C. § 5389 of the ISDEAA, the Nation assumes all
4 federal responsibilities under the National Environmental Policy Act
5 ("NEPA"), the National Historic Preservation Act ("NHPA"), and related
6 provisions of law that would apply if the Secretary of the Department of Health
7 and Human Services were to undertake the Project (42 C.F.R. §137.285),
8 subject to the limitations set forth in 42 C.F.R. Part 137, Subpart N, regarding
9 retained and inherent federal responsibilities;

10 3. Appoints Marc Fleetwood of Fleetwood Engineering, Inc., to serve as the
11 Nation's Environmental Certification Officer and assume the status of a
12 responsible federal official (42 C.F.R. §§137.292(a)(1) and 137.329(a)); and

13 4. Grants a limited waiver of the Nation's sovereign immunity by acknowledging
14 and accepting the jurisdiction of the federal district court for purposes of civil
15 enforcement actions brought against the Nation's Environmental
16 Certification Officer in his or her official capacity for declaratory and
17 injunctive relief that is substantially equivalent to an Administrative
18 Procedures Act enforcement action against a federal agency, but only to the
19 extent strictly required by 42 C.F.R. §§137.292(a)(2) and 137.329(b), and only
20 with respect to NEPA and NHPA responsibilities the Nation is required to
21 assume under 25 U.S.C. §§ 5381-5399 and 42 Part 17, Subpart N.

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

25 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 05TH**
26 **day of AUGUST 2024 at a meeting at which a quorum was present with a vote of 3,263.3 FOR; -0-**
27 **AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by**
28 **Article VI, Section 1(c)(2) and Section 1(f) the Constitution of the Tohono O'odham Nation,**
29 **adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy**
30 **Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the**
31 **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

12th day of August, 2024

ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary

9 day of August, 2024

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 12th day of August, 2024 at 11:32 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

Wavalene M. Saunders
Wavalene M. Saunders, Legislative Chairwoman

APPROVED

on the 14 day of August, 2024

DISAPPROVED

at 10:46 o'clock, a.m.

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

Returned to the Legislative Secretary on the 14 day of

August, 2024, at 11:35 o'clock, A.m.

Evonne Wilson
Evonne Wilson, Legislative Secretary

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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 DESIGN 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 EVELYN JUAN MANUEL

Second: VICE CHAIRWOMAN MARLAKAY HENRY

DATE: AUGUST 05, 2024

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 394.2	1. LEANDER MASE (Francine Schooling) 2. JESSE NAVARRO (Alberta J. Ray)	197.1 197.1	X X			X
CHUKUT KUK 354.7	1. VIVIAN JUAN-SAUNDERS (Cornelius Antone) 2. MARLAKAY HENRY ()	177.35 177.35	X X			
GU ACHI 282.7	1. VICTORIA HOBBS (Tonya L. Joaquin) 2. JEROME F. JOAQUIN ()	141.35 141.35	X X			X
GU VO 276.0	1. DALLAS LEWIS () 2. LESLIE LUNA ()	138.0 138.0	X X			X
HICKIWAN 220.5	1. DELMA M. GARCIA () 2. LOUIS R. LOPEZ (Loretta A. Ortega)	110.25 110.25	X X			X
PISINEMO 236.2	1. EDWARD D. MANUEL (Monica Morgan) 2. PAMELA J. BENAVIDEZ (Nora J. Ruelas)	118.1 118.1	X X			
SAN LUCY 257.6	1. ROGER MANUEL (Christina Andrews) 2. GLORIA M. RAMIREZ (Lorraine M. Eiler)	128.8 128.8	X X			
SAN XAVIER 244.5	1. JANICE FELIX () 2. DANIEL L.A. PRESTON III ()	122.25 122.25	X X			
SCHUK TOAK 191.8	1. DELISA M. RAMON (Sharon A. Francisco) 2. THEORIA CAMPILLO (Rebecca Ann Valentine)	95.9 95.9	X X			
SELLS 558.0	1. EVELYN JUAN MANUEL (Arvada Liston) 2. JANET B. ELEANDO ()	279.0 279.0	X X			
SIF OIDAK 247.1	1. LUCINDA ALLEN (Francis Homewytewa) 2. WAVALENE M. SAUNDERS (Mary Lopez)	123.55 123.55	X X			
TOTAL		3,263.30	3,263.3	-0-	-0-	[04]