

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a P.L. 93-638 Title V Construction Project Agreement for the FY 2020, 2021
and 2022 Backlog of Essential Maintenance and Alteration and Repair Pool Projects
for the Sells Hospital and San Xavier Health Center, 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. 24-231

- 1 **WHEREAS,** the Tohono O'odham Legislative Council has the authority "to promote, protect,
2 and provide for the public health, morals, education and general welfare of the
3 Tohono O'odham Nation and its members" and "to consult, negotiate and
4 conclude agreements and contracts on behalf of the Tohono O'odham Nation
5 ("Nation") with Federal, State and local governments" (Constitution of the Tohono
6 O'odham Nation, Article VI, Section 1(c)(2) and Section 1(f)); and
- 7 **WHEREAS,** the Secretary of the United States Department of Health and Human Services,
8 through its delegated representatives, the Indian Health Service ("IHS"), and the
9 Tohono O'odham Nation and Tohono O'odham Nation Health Care, through their
10 authorized representatives, desire to enter into a Title V Construction Project
11 Agreement for the FY 2020, 2021 and 2022 Backlog of Essential Maintenance and
12 Alteration and Repair Pool Projects for the Sells Hospital and San Xavier Health
13 Center ("TVCPA"), pursuant to Title V of the Indian Self-Determination and
14 Education Assistance Act (ISDEAA) (25 U.S.C. 5321 et seq.), the Self-Governance
15 regulations at Title 42, Code of Federal Regulations, Part 137, Subpart N (42 C.F.R.
16 Part 137); and
- 17 **WHEREAS,** the scope of work for these projects include: (1) Generators for the Sells
18 Emergency Medical Services Building, Sells Dental Clinic and San Xavier Dental
19 Clinic (Tribal Identification No. TON20SH01); (2) Replacing Electrical Distribution
20 Systems at Sells Hospital and San Xavier Clinic (Tribal Identification No.
21 TON20SH02); (3) Replacing the Water Main and Parking Lot at San Xavier (Tribal
22 Identification No. TON21SX01); and (4) Sells Hospital Fire Alarm and Painting
23 (Tribal Identification No. TON22SH01) (hereinafter, collectively referred to as the
24 "Projects" and as IHS Identification No. DES-24-V-0046); and
- 25 **WHEREAS,** the total budget for the Projects is \$1,932,643.00, which will be funded by the
26 Indian Health Service; and
- 27 **WHEREAS,** receipt of funding for the Projects requires that the Nation assume certain
28 environmental responsibilities as well as agree with certain jurisdictional
29 language for civil enforcement actions; and
- 30 **WHEREAS,** in particular, in accordance with 25 U.S.C. § 5389 of the ISDEAA, the Nation must
31 assume all federal responsibilities under the National Environmental Policy Act

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1 (“NEPA”), the National Historic Preservation Act (“NHPA”), and related provisions
2 of law that would apply if the Secretary of the Department of Health and Human
3 Services were to undertake the Projects (42 C.F.R. §137.285), subject to the
4 limitations set forth in 42 C.F.R. Part 137, Subpart N, regarding retained and
5 inherent federal responsibilities; and

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

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

17 **WHEREAS,** the Health and Human Services has reviewed the P.L. 93-638 Title V Construction
18 Project Agreement for the FY 2020, 2021 and 2022 Backlog of Essential
19 Maintenance and Alteration and Repair Pool Projects for the Sells Hospital and
20 San Xavier Health Center and recommend that: (1) the Tohono O'odham Nation
21 and Tohono O'odham Nation Health Care enter into the Title V Construction
22 Project Agreement with the U.S. Indian Health Service; (2) Marc Fleetwood of
23 Fleetwood Engineering, Inc., be appointed to serve as the Nation's Environmental
24 Certification Officer; and (3) the Nation acknowledge and accept the jurisdiction
25 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 P.L. 93-638 Title V Construction Project Agreement for
29 the FY 2020, 2021 and 2022 Backlog of Essential Maintenance and Alteration
30 and Repair Pool Projects for the Sells Hospital and San Xavier Health Center
31 (collectively referred to as the “Projects” and as IHS Identification No. DES-24-
32 V-0046);

RESOLUTION NO. 24-231

(Approving a P.L. 93-638 Title V Construction Project Agreement for the FY 2020, 2021 and 2022 Backlog of Essential Maintenance and Alteration and Repair Pool Projects for the Sells Hospital and San Xavier Health Center, 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)

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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 Projects (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;
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 05TH day of AUGUST 2024 at a meeting at which a quorum was present with a vote of 3,263.3 FOR; -0- AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(c)(2) and Section 1(f) 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).

RESOLUTION NO. 24-230

(Approving a P.L. 93-638 Title V Construction Project Agreement for the FY 2020, 2021 and 2022 Backlog of Essential Maintenance and Alteration and Repair Pool Projects for the Sells Hospital and San Xavier Health Center, 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)

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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 10:49 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: APPROVING A P.L. 93-638 TITLE V CONSTRUCTION PROJECT AGREEMENT FOR THE FY 2020, 2021 AND 2022 BACKLOG OF ESSENTIAL MAINTENANCE AND ALTERATION AND REPAIR POOL PROJECTS FOR THE SELLS HOSPITAL AND SAN XAVIER HEALTH CENTER, 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]