

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing Limited Waiver of Sovereign Immunity Within a Construction Services
Agreement Between the San Xavier District and RDS DEVCO, LLC to Build
Two Solar Photovoltaic Systems)**

RESOLUTION NO. 21-067

1 **WHEREAS, the Tohono O'odham Nation is a sovereign and federally recognized Indian tribe**
2 **possessing powers of self-government and sovereign immunity; and**

3 **WHEREAS, the Nation's sovereign immunity extends to its 11 local district governments, and**
4 **a district's immunity may not be waived "except by a resolution or other official**
5 **action of the Tohono O'odham Legislative Council expressly waiving, or**
6 **authorizing a waiver of, sovereign immunity" 1 Tohono O'odham Code Chapter 2,**
7 **Section 2101(B) and (C); *Juan v. Juan*, 2 TOR3d 62 (Trial Ct., Jan. 27, 2000) appeal**
8 **dism'd, 3 TOR 3d 1 (Jan. 4, 2005); and**

9 **WHEREAS, the San Xavier District applied for and received grant funds from the Department**
10 **of Energy to construct two Solar PV Systems in the San Xavier District; and**

11 **WHEREAS, a Construction Services Agreement (hereafter, "Agreement") between the San**
12 **Xavier District and RDS DEVCO, LLC, which is incorporated by this reference,**
13 **states that the Tohono O'odham Nation has authorized a limited waiver of San**
14 **Xavier District's sovereign immunity and that the San Xavier District consents to**
15 **be sued to enforce arbitration or an arbitration award; and**

16 **WHEREAS, paragraph 34(i) of the Agreement further states that the San Xavier District is not**
17 **waiving its right, or that of the Nation, to assert the defense of sovereign immunity**
18 **except as expressly set forth, referred to, and provided for, in the Agreement; and**

19 **WHEREAS, the Commerce Committee has reviewed the limited waiver of sovereign**
20 **immunity within the Agreement between the San Xavier District and RDS DEVCO,**
21 **LLC, and recommends its authorization.**

22 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council authorizes**
23 **the limited waiver of sovereign immunity contained within the Construction**
24 **Services Agreement between the San Xavier District and RDS DEVCO, LLC;**
25 **provided that the Tohono O'odham Legislative Council is not waiving the Nation's**
26 **sovereign immunity or the San Xavier District's right to assert the defense of**
27 **sovereign immunity except as expressly set forth, referred to, and provided for in**
28 **this resolution and the Construction Services Agreement.**

29 **BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that the limited waiver of**
30 **sovereign immunity applies only to claims against the San Xavier District arising**
31 **out of the Construction Services Agreement, which shall in no way be construed**
32 **or interpreted as a waiver of the sovereign immunity of the Tohono O'odham**

RESOLUTION NO. 21-067

(Authorizing Limited Waiver of Sovereign Immunity Within a Construction Services Agreement Between the San Xavier District and RDS DEVCO, LLC to Build Two Solar Photovoltaic Systems)

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Nation or any of its officers, agents, or employees regarding any legal action taken against non-parties to the Agreement.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 19TH day of FEBRUARY, 2021 at a meeting at which a quorum was present with a vote of 3,175.7 FOR; -0- AGAINST; [01] NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Article I, Article VI, Section 1(c) 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 C. Joaquin for
Timothy Joaquin, Legislative Chairman
24 day of February, 2021

ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary
24 day of February, 2021

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 24 day of February, 2021 at 10:24 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

Timothy C. Joaquin for
Timothy Joaquin, Legislative Chairman

APPROVED

DISAPPROVED

on the 25 day of February, 2021
at 10:16 o'clock, A.M.

Ned Norris, Jr.
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

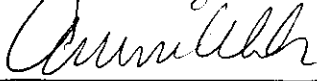
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1 Returned to the Legislative Secretary on the 25 day of

2
3 July, 2021, at 11:00 o'clock, a.m.

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7 **Evonne Wilson, Legislative Secretary**

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ACTION: AUTHORIZING LIMITED WAIVER OF SOVEREIGN IMMUNITY WITHIN A CONSTRUCTION SERVICES AGREEMENT BETWEEN THE SAN XAVIER DISTRICT AND RDS DEVCO, LLC TO BUILD TWO SOLAR PHOTOVOLTAIC SYSTEMS

Moved: COUNCILMAN DANIEL L.A. PRESTON III

SECOND: COUNCILWOMAN JANICE FELIX

DATE: FEBRUARY 19, 2021

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 384.8	1. LEANDER MASE (Francine Schooling)	192.40	X			
	2. ALBERTA J. RAY (Frances G. Antone)	192.40	X			
CHUKUT KUK 347.5	1. VIVIAN JUAN-SAUNDERS (Juanita Homer)	173.75	X			
	2. MARLAKAY HENRY (Billman Lopez)	173.75	X			
GUACHI 279.3	1. VICTORIA HOBBS ()	139.65	X			
	2. TIMOTHY L. JOAQUIN (<i>Absent</i>) (Louis L. Johnson) (<i>Present</i>)	139.65	X			X
GU VO 264.5	1. DALLAS LEWIS (Nacho Flores)	132.25	X			X
	2. GRACE MANUEL ()	132.25	X			
HICKIWAN 213.8	1. SANDRA D. ORTEGA ()	106.90	X			
	2. LOUIS R. LOPEZ (Delma M. Garcia)	106.90	X			
PISINEMO 230.7	1. MONICA K. MORGAN ()	115.35	X			
	2. MARIETTA MARTIN ()	115.35	X			
SAN LUCY 235.6	1. GLORIA RAMIREZ ()	117.80	X			
	2. JANA MONTANA (Lorraine M. Eiler)	117.80	X			
SAN XAVIER 238.9	1. JANICE FELIX (Adam Andrews)	119.45	X			
	2. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	119.45	X			
SCHUK TOAK 189.0	1. QUINTIN C. LOPEZ (Agnes V. Joaquin)	94.50	X			
	2. TERESA F. DONAHUE (Alberta Espinoza)	94.50	X			
SELLS 547.1	1. EVELYN JUAN MANUEL ()	273.55	X			
	2. ARTHUR WILSON ()	273.55	X			
SIF OIDAK 244.5	1. LUCINDA ALLEN (Yolonda Garcia)	122.25	X			
	2. MARY LOPEZ (Ann M. Garcia)	122.25	X		X	
TOTAL		3,175.7	3,175.7	-0-	[01]	[02]