

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Approving a Limited Waiver of the Tohono O'odham Utility Authority's  
Sovereign Immunity for the Purpose of Enabling Participation in the SPPA  
Project Contract No. 2021-2 (Power Purchase Agreement Project))**

**RESOLUTION NO. 22-182**

- 1   **WHEREAS,**    **the Tohono O'odham Nation ("Nation") is a federally recognized Indian tribe,**  
2                   **organized pursuant to Section 16 of the Indian Reorganization Act of June 18,**  
3                   **1934 (48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over its members,**  
4                   **its enterprises, and its lands; and**
- 5   **WHEREAS,**    **the Constitution of the Tohono O'odham Nation vests the Legislative Council with**  
6                   **the authority to "authorize, charter and regulate public or private corporations**  
7                   **and associations whether organized for profit, or for non-profit or charitable**  
8                   **purposes" and "to promote, protect and provide for public health, peace, morals,**  
9                   **education and general welfare of the Tohono O'odham Nation and its members"**  
10                  **(Constitution, Article VI, Section 1(e) and Section 1(c)(2)); and**
- 11   **WHEREAS,**    **the Second Restated Plan of Operation of the Tohono O'odham Utility Authority**  
12                   **("TOUA Plan of Operation"), codified at 24 Tohono O'odham Code Chapter 1, was**  
13                   **adopted by Legislative Council Resolution No. 91-175; and**
- 14   **WHEREAS,**    **TOUA's purposes, as stated in the TOUA Plan of Operation, include furnishing**  
15                   **electric services within the Tohono O'odham Nation; and**
- 16   **WHEREAS,**    **TOUA does not presently generate electricity and all electricity supplied to TOUA**  
17                   **customers must be purchased through purchase power agreements; and**
- 18   **WHEREAS,**    **the stated powers of the TOUA Management Board include, among other powers,**  
19                   **the power to make "contracts or commitments necessary to the functioning of**  
20                   **[TOUA]," and the TOUA Plan of Operation authorizes the Management Board, in**  
21                   **its discretion, to submit contracts to the Legislative Council for approval or**  
22                   **ratification (TOUA Plan of Operation, Section 7.A.3. and Section 7.A.12.); and**
- 23   **WHEREAS,**    **TOUA is presently a member of the Southwest Public Power Agency, Inc. ("SPPA");**  
24                   **and**
- 25   **WHEREAS,**    **SPPA has the authority to and intends to issue various requests for proposals**  
26                   **("RFP") and subsequently enter into one or more Power Purchase Agreements**  
27                   **("PPAs") for the purchase of power and power-related attributes (the "Product");**  
28                   **and**  
29

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- 1 **WHEREAS, each SPPA Participant that desires to receive Products under the various PPAs**  
2 **negotiated must agree to pay for its respective share of the project power costs**  
3 **and project administrative costs; and**
- 4 **WHEREAS, SPPA has proposed the SPPA Project Contract No. 2021-2 (Power Purchase**  
5 **Agreement Project) (the "Project Contract") as the written agreement pursuant to**  
6 **which SPPA participants may receive Products under the various PPAs; and**
- 7 **WHEREAS, TOUA continues to require energy to supply to its customers, and it is in TOUA's**  
8 **best interest to receive Products under the Project Contract; and**
- 9 **WHEREAS, the Project Contract contains confidential business information and the parties**  
10 **have agreed to treat the Project Contract as confidential, and the Project Contract**  
11 **has been shared only among the Project Contract parties' respective attorneys**  
12 **and/or discussed in closed meetings where attorneys are present; and**
- 13 **WHEREAS, the Project Contract requires that all tribes and tribal parties to the Project**  
14 **Contract agree to irrevocably waive sovereign immunity for the purposes of any**  
15 **action or arbitration (i) arising out of or pertaining to the Project Contract, (ii)**  
16 **enforcing arbitration under the Project Contract, and (iii) enforcing any**  
17 **arbitration award rendered in an arbitration pursuant to the Agreement, as**  
18 **explained in Article 20 of the Agreement; and**
- 19 **WHEREAS, the Project Contract also includes a mutual indemnification agreement between**  
20 **SPPA and each Project Participant in Article 12 of the Project Contract; and**
- 21 **WHEREAS, the Nation's sovereign immunity extends to TOUA, a Nation's enterprise, which**  
22 **requires an express waiver by the Legislative Council; and**
- 23 **WHEREAS, the Legislative Commerce Committee has reviewed the relevant portions of the**  
24 **Project Contract, and recommends that it is in the best interests of the Nation to**  
25 **approve a limited waiver of TOUA's sovereign immunity so that TOUA may enter**  
26 **into the Project Contract with the SPPA.**
- 27 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:**
- 28 **1. Recognizes, approves, and will maintain the confidential nature of the**  
29 **Project Contract; and**
- 30 **2. Approves a limited waiver of sovereign immunity of the TOUA in favor of**  
31 **Southwest Public Power Agency, Inc., so that TOUA may enter into the SPPA**  
32 **Project Contract No. 2021-2 (Power Purchase Agreement Project) between**  
33 **Southwest Public Power Agency, Inc. and certain named Project**

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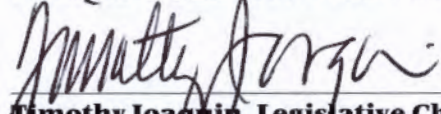
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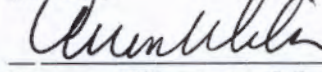
Participants, and such limited waiver must be consistent and in accordance with, and subject to the limitations of, the provisions of the Project Contract, provided that nothing in this resolution shall be construed as a waiver of the Nation's sovereign immunity.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 13<sup>TH</sup> day of MAY, 2022 at a meeting at which a quorum was present with a vote of 2,661.50 FOR; -0- AGAINST; 556.5[03] NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by, Article VI, Section 1(e) and 1(c)(2) 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

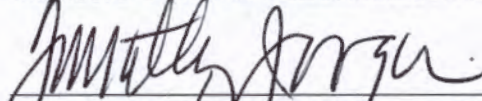
  
\_\_\_\_\_  
Timothy Joaquin, Legislative Chairman  
17 day of May, 2022

ATTEST:

  
\_\_\_\_\_  
Evonne Wilson, Legislative Secretary  
15 day of May, 2022

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 17 day of May, 2022 at 8:40 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

  
\_\_\_\_\_  
Timothy Joaquin, Legislative Chairman

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**APPROVED**

on the 17<sup>th</sup> day of May, 2022

**DISAPPROVED**

at 3:03 o'clock, P.m.

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

Returned to the Legislative Secretary on the 17 day of

May, 2022, at 3:47 o'clock, P.m.

Evonne Wilson  
**Evonne Wilson, Legislative Secretary**

**ACTION: APPROVING A LIMITED WAIVER OF THE TOHONO O'ODHAM UTILITY AUTHORITY'S SOVEREIGN IMMUNITY FOR THE PURPOSE OF ENABLING PARTICIPATION IN THE SPPA PROJECT CONTRACT NO. 2021-2 (POWER PURCHASE AGREEMENT PROJECT)**

**Moved: COUNCILWOMAN GRACE MANUEL**

**SECOND: COUNCILWOMAN JANICE FELIX**

**DATE: MAY 13, 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	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			
	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eller)	121.9	X			
	2. ROGER MANUEL (Christina Andrews)	121.9	X			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			
	2. DELMA M. GARCIA ( )	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			X
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Absent) (Frances G. Antone) (Present)	194.45	X			X
	2. LEANDER MASE (Francine Schooling)	194.45	X			
<b>TOTAL</b>		<b>3,218.0</b>	<b>2,661.50</b>	<b>-0-</b>	<b>556.5 [03]</b>	<b>[04]</b>