

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Granting a Limited Waiver of the Nation's Sovereign Immunity in Favor of
Waste Management of Arizona, Inc.)**

RESOLUTION NO. 22-377

1 **WHEREAS,** the Constitution of the Tohono O'odham Nation ("Nation") vests the Legislative
2 Council with the authority to "promote, protect and provide for public health,
3 peace, morals, education and general welfare of the Tohono O'odham Nation and
4 its members" (Constitution, Article VI, Section 1(c)(2); and

5 **WHEREAS,** for the Nation's Solid Waste Management Program ("SWM Program") to fulfill its
6 mission of providing waste collection, recycling and other services throughout
7 the Nation in order keep the Nation's environment clean for now and future
8 generations, SWM Program must enter into a contract for services with Waste
9 Management of Arizona, Inc.; and

10 **WHEREAS,** This contract for services requires the Nation to agree to a limited waiver of its
11 sovereign immunity in favor of Waste Management of Arizona, Inc., in order to
12 allow the Nation to fulfill its obligations under the contract; and

13 **WHEREAS,** As such, the SWM Program is proposing that the Nation consider approving the
14 following contract language granting a limited waiver of the Nation's sovereign
15 immunity in favor of Waste Management of Arizona, Inc.:

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17 **Limited Waiver of Sovereign Immunity.** The Nation expressly agrees to a limited
18 waiver of its sovereign immunity in favor of Contractor in order to enter into this
19 Agreement so long as all of the conditions set forth herein are met. This limited
20 waiver of the Nation's sovereign immunity shall: (1) only be effective during the
21 period of time that work under the Agreement is actively being performed by
22 Contractor. However, with regard to Unacceptable Waste received from the
23 Nation, there shall be no time limit; (2) be granted solely in favor of Contractor
24 and shall not be enforceable by or create any additional third-party beneficiary
25 rights to suits or private causes of action in favor of third parties; (3) be available
26 to Contractor only for the explicit purposes of enforcing a Nation breach of the
27 Agreement and for no other purpose whatsoever; (4) only permit injunctive or
28 declaratory relief or money damages; and (5) be limited to actual damages only.
29 The venue for any litigation under this Agreement shall occur in Federal courts in
30 the State of Arizona.

31 **WHEREAS,** the Agricultural and Natural Resources Committees finds that it is in the best
32 interests of the Nation to grant this limited waiver so that the SWM Program can

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1 contract for this important service and recommends that the Nation agree to the
2 limited waiver.

3 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council agrees to
4 grant a limited waiver of the Nation's sovereign immunity in favor of Waste
5 Management of Arizona, Inc., so that the SWM Program can procure waste
6 collection, recycling and other services so long as all of the conditions set forth
7 herein are met. This limited waiver of the Nation's sovereign immunity shall: (1)
8 only be effective during the period of time that work under the Agreement is
9 actively being performed by Contractor. However, with regard to Unacceptable
10 Waste received from the Nation, there shall be no time limit; (2) be granted solely
11 in favor of Contractor and shall not be enforceable by or create any additional
12 third-party beneficiary rights to suits or private causes of action in favor of third
13 parties; (3) be available to Contractor only for the explicit purposes of enforcing a
14 Nation breach of the Agreement and for no other purpose whatsoever; (4) only
15 permit injunctive or declaratory relief or money damages; and (5) be limited to
16 actual damages only. The venue for any litigation under this Agreement shall
17 occur in Federal courts in the State of Arizona.

18 **BE IT FINALLY RESOLVED** by the Tohono O'odham Legislative Council that the Tohono O'odham
19 Nation chairperson or any designated official is authorized to execute any
20 documents necessary to implement this resolution.

21 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11TH
22 day of **OCTOBER, 2022** at a meeting at which a quorum was present with a vote of **2,354.95 FOR;**
23 **863.05 AGAINST;** -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council
24 by, Article VI, Section 1(c)(2) of the Constitution of the Tohono O'odham Nation, adopted by the
25 Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
26 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
27 18, 1934 (48 Stat.984).

28 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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32 Timothy Joaquin, Legislative Chairman 

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34 19 day of October, 2022
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ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary

12 day of October, 2022

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 12 day of October, 2022 at 1:14 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 Joaquin
Timothy Joaquin, Legislative Chairman

APPROVED

on the 17 day of October, 2022

DISAPPROVED

at 8:50 o'clock, P.m.

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

Returned to the Legislative Secretary on the 12 day of

October, 2022, at 4:20 o'clock, P.m.

Evonne Wilson
Evonne Wilson, Legislative Secretary

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ACTION: GRANTING A LIMITED WAIVER OF THE NATION'S SOVEREIGN IMMUNITY IN FAVOR OF WASTE MANAGEMENT OF ARIZONA, INC.

MOVED: COUNCILWOMAN MARY LOPEZ

SECOND: COUNCILWOMAN TERESA F. DONAHUE

DATE: OCTOBER 11, 2022

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDA 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 (<i>Absent</i>) (Shelia Espino) (<i>Present</i>)	278.25	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 (<i>Absent</i>) (Racheal Vilson-Stoner) (<i>Present</i>)	121.3	X			
	2. JANICE FELIX (<i>Absent</i>) (Adam P. Andrews) (<i>Present</i>)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (<i>Absent</i>) (Lorraine M. Eiler) (<i>Present</i>)	121.9		X		
	2. ROGER MANUEL (<i>Absent</i>) (Christina Andrews) (<i>Present</i>)	121.9		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			X
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ()	139.25	X			X
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X			
CHUKUT KUK 351.6	1. MARIKAY HENRY (<i>Absent</i>) (Billman Lopez) (<i>Present</i>)	175.8	X			X
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Frances G. Antone)	194.45	X			
	2. LEANDER MASE (Francine Schooling)	194.45	X			
	TOTAL	3,218.0	2,354.95	863.05	-0-	[03]