

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Transferring Sif Oidak District Financial Management Functions and Control
of Funds to the Tohono O'odham Nation**

RESOLUTION NO. 23-440

1 **WHEREAS,** the Constitution of the Tohono O'odham Nation vests the Legislative Council with
2 the fiscal powers to "prevent the use, disposition or encumbrance of fiscal assets
3 of the Tohono O'odham Nation," "manage any funds within the exclusive control
4 of the Tohono O'odham Nation . . . and to appropriate these funds for the benefit
5 of the nation and its members" (Constitution, Article VI, Section 1(d)(1) and (d)(2));
6 and
7 **WHEREAS,** pursuant to Article IX, Section 7 of the Constitution of the Tohono O'odham
8 Nation, "[n]o district council shall expend district funds except pursuant to
9 budgets authorized under resolutions of the district council and approved by the
10 Tohono O'odham Council"; and
11 **WHEREAS,** the Gaming Ordinance, the Tohono O'odham Nation-State of Arizona Amended
12 and Restated Gaming Compact, and the Indian Gaming Regulatory Act require
13 the Nation to ensure that net gaming revenues, including revenues allocated to
14 districts, are used exclusively to fund government operations or programs or for
15 another of the specific purposes authorized by law (Gaming Ordinance, Section
16 302; Compact, Section 16(d); 25 U.S.C. Section 2710(b)(2)(B)); and
17 **WHEREAS,** the Legislative Council is vested with substantial control over the Nation's 11 local
18 district governments and over district finances; it may by ordinance change
19 district boundaries, create a district, or disestablish a district (Constitution,
20 Article IX, Section 2); and
21 **WHEREAS,** the districts "are organizations of fairly limited power and authority which may
22 act only under the supervision of the Tohono O'odham Council" and which may
23 not expend district funds without a budget authorized by district council
24 resolution and approved by the Legislative Council (*Juan v. Juan*, 2 TOR3d 62
25 (Trial Ct., Jan. 27, 2000) *appeal disp'd*, 3 TOR3d 1 (Jan. 4, 2005); Constitution,
26 Article IX, Section 7); and
27 **WHEREAS,** the Tohono O'odham Judicial Court has recognized that even after distributing
28 funds to a district, the Nation has an ongoing fiduciary obligation to ensure that
29 district funds are expended under valid authority (*Angela Ortiz & Frances Ruiz v.*
30 *Charlene Montana, et al; consolidated with Tohono O'odham Nation v. Gu-Vo*
31 *Governing Council*, 3 TOR3d 34 (Ct.App., Aug. 24, 2011)); and
32

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1 **WHEREAS,** **the Nation elects to allocate gaming, mining, leasing, and other revenues to fund**
2 **district government budgets, and the allocations of Nation's funds are the**
3 **primary sources of funding for Sif Oidak District operations; and**
4 **WHEREAS,** **the Legislative Council established the Sif Oidak Development Authority ("SODA")**
5 **as an entity of the Sif Oidak District by Nation's Ordinance No. 01-86, "Charter of**
6 **the Sif Oidak Development Authority" ("SODA Charter"); and**
7 **WHEREAS,** **in 2012, the Sif Oidak District Council approved District Resolution No. SODC 12-**
8 **006 and requested that the Nation appropriate \$1.7 million, including \$1.2**
9 **million to purchase the 40-acre Bob's Market property and business north of the**
10 **Main Reservation (collectively, the "Property"); \$150,000 to refund the Sif Oidak**
11 **District for expenditures on a prior economic development feasibility study; and**
12 **\$350,000 to fund SODA operations, overhead, and improvements for SODA to**
13 **operate a business on the Property; and**
14 **WHEREAS,** **the Sif Oidak District Council supported its 2012 appropriation request by**
15 **submitting to the Legislative Council a "Sif Oidak District Funding Proposal,"**
16 **which represented that the Property possessed a market value of \$8.25 million;**
17 **and**
18 **WHEREAS,** **while the Sif Oidak District Council supported a \$1.2 million purchase price,**
19 **following Legislative Council questions about the valuation's accuracy, "a**
20 **subsequent independent appraisal valued the Bob's Market store, property,**
21 **improvements, and value of the business as a going concern at \$295,249"**
22 **(Resolution No. 13-185); and**
23 **WHEREAS,** **the Sif Oidak District Council then reaffirmed its request for the original \$1.7**
24 **million appropriation by District Resolution No. SODC 13-065; and**
25 **WHEREAS,** **by Resolution No. 13-185, the Legislative Council conditionally appropriated \$1.7**
26 **million for the Sif Oidak District and SODA as follows:**
27 **\$500,000 for the cost of purchasing 40 acres of property, the Bob's Market**
28 **L.I.C. store, improvements, and value of the business as a going concern;**
29 **\$150,000 to repay the Sif Oidak District for the Mile Post 21 project; \$75,000**
30 **for the SODA operating budget; \$675,000 for Bob's Market operations,**
31 **improvements, and contingency; and \$300,000 for a fuel site at Bob's Market**
32 ***provided that the funds appropriated by this resolution . . . shall not be***
33 ***loaned to any person or entity, or be used for any purpose other than those***
34 ***expressly identified in this resolution.***

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1 (Emphasis added); and

2 **WHEREAS,** by Resolution No. 13-185, the Legislative Council further amended the SODA
3 Charter to increase transparency and accountability by requiring (1) that the
4 "books and records of the Authority, including current financial and operating
5 statements and all budget information" be maintained at SODA's offices and be
6 available to Sif Oidak District officials and others; (2) that SODA's books and
7 records be "audited by an independent certified public accountant within 120
8 days of the close of each fiscal year" and (3) that, "[a] copy of the complete final
9 audit and a comprehensive, written annual report shall be provided to the Board,
10 District Council, Legislative Council, and Nation's chairperson; and the
11 accountant who prepared the audit shall present it to the Board and at a District
12 Council meeting that is open to District residents" (Resolution No. 13-185); and

13 **WHEREAS,** the Sif Oidak District Council accepted the SODA Charter amendments by
14 Resolution No. SODC 13-066; and

15 **WHEREAS,** SODA repeatedly violated Ordinance No. 86-01, Charter of the Sif Oidak
16 Development Authority, and Resolution No. 13-185 by failing to provide copies of
17 SODA's complete final audits or comprehensive, written annual reports to the
18 Legislative Council and Nation's chairperson for several years; and

19 **WHEREAS,** despite Resolution No. 13-185's prohibition on expending Nation's funds "for any
20 purpose other than those expressly identified," the SODA Board chairman, who is
21 a Sif Oidak District Council representative, reported that the \$300,000
22 appropriated by Legislative Council Resolution No. 13-185 exclusively for a fuel
23 site on the Property had been reallocated for operating expenses; no fuel site was
24 ever constructed; and

25 **WHEREAS,** the SODA Board chairman refused the request of a Nation's internal auditor to
26 provide financial records for a fraud investigation internal audit, which could
27 not be completed in the absence of adequate records; and

28 **WHEREAS,** the Sif Oidak District Council has failed to manage SODA, ensure compliance with
29 the SODA Charter, provide oversight of the Nation's \$1.7 million appropriation, or
30 timely respond to numerous Nation's requests for financial information and
31 records critical to conducting a fraud investigation and subsequent fraud
32 accounting to evaluate, in part, if Nation's funds were lawfully expended
33 consistent with Resolution No. 13-185, the SODA Charter, and the Nation's laws;
34 and

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1 **WHEREAS,** the Nation has conditioned its annual allocation of Nation's gaming revenues to
2 districts on audits, controls, and other measures, including district "budgets
3 approved in accordance with Article VI, Section 1(d)(2) of the Nation's
4 Constitution and Section 302 of the Gaming Ordinance" (Section 1304(A) of 26
5 Tohono O'odham Code Chapter 1); and

6 **WHEREAS,** the Sif-Oidak District FY 2024 Gaming Revenue Budget has not been approved by
7 Legislative Council resolution as required under Article IX, Section 7 of the
8 Constitution; and

9 **WHEREAS,** by Resolution No. 23-385, the Legislative Council extended the District's authority
10 to expend existing funds within the Sif-Oidak District FY 2023 Gaming Revenue
11 Budget, as amended, to November 9, 2023; and

12 **WHEREAS,** the Budget and Finance and Commerce Committees recommend that the Nation
13 assume control of the Sif Oidak District's finances and accounts pending the
14 completion of financial and other investigations and a resolution, which may
15 include repayment, of the misappropriation or other unlawful expenditure the
16 Nation's funds; and

17 **WHEREAS,** the Sif-Oidak District Council has authorized by resolution its Sif-Oidak District
18 FY 2024 Gaming Revenue Budget, which is incorporated by this reference, in the
19 amount of \$5,609,719.09, which shall be funded by the Sif-Oidak District's (1)
20 August 2023 District Gaming Allocation in the amount of \$5,373,205.73, (2) Hia-
21 Ced Gaming Allocation in the amount of \$126,260.07, and (3) Mining Allocation in
22 the amount of \$110,253.29; and

23 **WHEREAS,** the Budget and Finance Committee reviewed the Sif-Oidak District FY 2024
24 Gaming Revenue Budget and recommends approval of the budget consistent with
25 the terms of this Resolution.

26 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council, in order to
27 continue funding Sif-Oidak District operations and services, approves the FY
28 2024 Sif Oidak District Gaming Revenue Budget, effective October 1, 2023, in the
29 amount of \$5,609,719.09, which shall be funded by the Sif Oidak District's (1)
30 August 2023 District Gaming Allocation in the amount of \$5,373,205.73, (2) Hia-
31 Ced Gaming Allocation in the amount of \$126,260.07, and (3) Mining Allocation in
32 the amount of \$110,253.29; provided that the August 2023 District Allocation
33 apportioned for Sif Oidak District shall remain under the control and

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1 **management of the Nation in accordance with this Resolution and shall not be**
2 **disbursed to the Sif Oidak District.**

3 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council:**

- 4 **1. transfers to the Nation all financial management functions of the Sif Oidak**
5 **District, control of all Sif Oidak District funds and accounts, and authority to**
6 **expend the Sif Oidak District's funds in accordance with the FY 2024 Sif-**
7 **Oidak District Gaming Revenue Budget, the FY 2021-2024 Sif-Oidak District**
8 **American Rescue Plan Act Budget, and any other Legislative Council-**
9 **approved Sif Oidak District budgets, as amended or modified;**
10 **2. rejects any limitations or conditions proposed by the Sif Oidak District**
11 **Council for the transfer to the Nation of the District's financial management**
12 **functions, control of all Sif Oidak District funds and accounts, and authority**
13 **to expend the Sif Oidak District's funds pursuant to this Resolution;**
14 **3. authorizes and directs the Nation's Accounting Office and Treasurer's Office**
15 **to open any accounts necessary to manage the Sif Oidak District's finances**
16 **and to provide technical assistance to the Sif Oidak District in order to**
17 **comply with the Constitution of the Tohono O'odham Nation, all applicable**
18 **laws, financial policies, and procedures; and**
19 **4. amends Resolution No. 23-324, "Approving FY 2021-2024 Sif-Oidak District**
20 **American Rescue Plan Act Budget," and any other Legislative Council**
21 **resolutions approving or amending Sif Oidak District budgets that are**
22 **currently in effect, to transfer financial management and control over all Sif**
23 **Oidak District budgets and accounts to the Nation pursuant to this**
24 **Resolution.**

25 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council authorizes the**
26 **Nation's chairperson, the Nation's attorney general, and any Nation's Executive**
27 **Branch official or employee whom the Nation's chairperson designates in writing**
28 **to communicate directly with the financial institutions at which the Sif Oidak**
29 **District has financial accounts, including but not limited to operating and**
30 **investment accounts, and to obtain control of such accounts as well as financial**
31 **statements and records regarding such investments and operating accounts.**

32 **BE IT FURTHER RESOLVED by the Tohono O'odham Legislative Council that, notwithstanding**
33 **any Nation's law or resolution to the contrary, if the Sif Oidak District does not**
34 **transfer control of the Sif Oidak District's funds and financial management**

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1 functions to the Nation, no further distributions or allocations of gaming
2 revenue, mining royalties, or other funds shall be made available for expenditure
3 for the Sif Oidak District until the Nation's treasurer certifies in writing that
4 control of all Sif Oidak District funds has been transferred to the Nation.

5 **BE IT FURTHER RESOLVED** by the Tohono O'odham Legislative Council that the actions taken in
6 accordance with this Resolution shall be reported to the Budget and Finance
7 Committee monthly and upon the Committee's request, and shall be reported to
8 the Legislative Council in closed session quarterly.

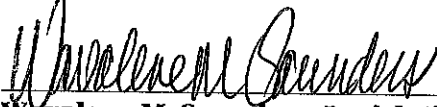
9 **BE IT FURTHER RESOLVED** by the Tohono O'odham Legislative Council that nothing in this
10 Resolution waives any civil or criminal liability of any person or entity, whether
11 or not currently established or identified or waives any obligation to produce
12 records and information.

13 **BE IT FURTHER RESOLVED** by the Tohono O'odham Legislative Council that the November 2023
14 Amendments to Ordinance No. 86-01, Charter of the Sif Oidak Development
15 Authority, which are incorporated by this reference, are approved.

16 **BE IT FINALLY RESOLVED** by the Tohono O'odham Legislative Council that, notwithstanding any
17 Nation's law or resolution to the contrary, the provisions of this Resolution are
18 not severable and if any word, clause, phrase, or other provision (collectively,
19 "provision") of this Resolution or its application to any person or circumstance is
20 held invalid by a court of competent jurisdiction, (1) this entire Resolution shall
21 be invalid, (2) the Legislative Council's approval of the FY 2024 Sif Oidak District
22 Gaming Revenue Budget shall be invalid, and (3) any authority to expend funds
23 under the FY 2024 Sif-Oidak District Gaming Revenue Budget shall be terminated.

24 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 08TH
25 day of NOVEMBER 2023 at a meeting at which a quorum was present with a vote of 3,263.3 FOR;
26 -0- AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by
27 Article V, Section 1; Article VI, Section 1; Article VI, Section 1(d)(1), (d)(2), (d)(3), and (e); Article
28 VII, Section 2(c) and 2(d), Article IX, Section 7 of 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).

32
33
34 TOHONO O'ODHAM LEGISLATIVE COUNCIL

35 
36
37 Wavalene M. Saunders, Legislative Chairwoman

38 8 day of November, 2023
39

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ATTEST:

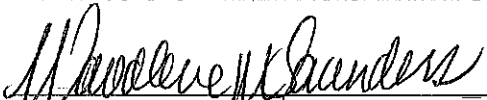


Evonne Wilson, Legislative Secretary

8 day of November, 2023

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 8 day of November, 2023 at 5:56 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



Wavalene M. Saunders, Legislative Chairwoman

APPROVED

on the 8 day of November, 2023

DISAPPROVED


at 5:57 o'clock, p.m.



**VERLON M. JOSE, CHAIRMAN
TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 8 day of

November, 2023, at 6:00 o'clock, p.m.



Evonne Wilson, Legislative Secretary

ACTION: TRANSFERRING SIF Oidak DISTRICT FINANCIAL MANAGEMENT FUNCTIONS AND CONTROL OF FUNDS TO THE TOHONO O'ODHAM NATION

MOVED: COUNCILWOMAN JANICE FELIX

SECOND: COUNCILWOMAN EVELYN JUAN MANUEL

DATE: NOVEMBER 08, 2023

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			
CHUKUT KUK 354.7	1. VIVIAN JUAN-SAUNDERS (Cornelius Antone) 2. MARLAKAY HENRY ()	177.35 177.35	X X			
GUACHI 282.7	1. VICTORIA HOBBS (Tonya L. Joaquin) 2. TIMOTHY L. JOAQUIN (Jerome L. Joaquin)	141.35 141.35	X X			
GU VO 276.0	1. DALLAS LEWIS () 2. LESLIE LUNA (Grace Manuel)	138.0 138.0	X X			
HICKIWAN 220.5	1. DELMA M. GARCIA () 2. LOUIS R. LOPEZ (Loretta A. Ortega)	110.25 110.25	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			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-	[01]