

## **TITLE 11 - EDUCATION**

### **CHAPTER 1 – TOHONO O’ODHAM COMMUNITY COLLEGE**

*Legislative History: The “Charter of the Tohono O’odham Community College,” Ordinance No. 98-01, was approved and adopted pursuant to Resolution No. 98-006 on January 13, 1998. Amended by Resolution No. 18-199 (adopts 2018 amendments to reflect current structure of TOCC, change legal name and seal to Tohono O’odham Kekel Ha-maşcamakuđ, eliminates unnecessarily detailed job descriptions, and elaborates on the duties of the Board) effective June 19, 2018.*

**TOHONO O’ODHAM KEKEL HA-MAŞCAMAKUD  
(TOHONO O’ODHAM COMMUNITY COLLEGE)**

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**AMENDED CHARTER  
OF TOHONO O’ODHAM KEKEL HA-MAŞCAMAKUĐ  
(TOHONO O’ODHAM COMMUNITY COLLEGE)**

**Article I**

**NAME, ESTABLISHMENT, PURPOSE, LOCATION AND PLACE OF BUSINESS,  
INITIAL DESIGNATED AGENT, SEAL**

- A. NAME. The legal name of the Nation’s Community College is *Tohono O’odham Kekel Ha-maşcamakud* (hereinafter “TOCC”).
- B. ESTABLISHMENT. Tohono O’odham Community College is established by the Tohono O’odham Nation pursuant to Article VI, Section 1(b), 1(c)(2), (c)(8) and (e) of the Nation’s Constitution and its inherent sovereign right of self-government to establish, fund, and to provide for the education and general welfare of the Tohono O’odham Nation and its members. Tohono O’odham Community College is organized as a higher education institution of the Nation and shall have and may exercise all those powers set forth under this Charter. Tohono O’odham Community College shall have the same tax status and immunities as the Nation as education is an essential government function of the Nation.
- C. PURPOSE. Tohono O’odham Community College is established for the purpose of conducting any and all lawful affairs relating to the operation of a successful educational institution that will serve as the Tohono O’odham Nation’s center for higher education, research, culture and tradition.
- D. LOCATION AND PLACE OF BUSINESS. The principal place of business and the office of the Tohono O’odham Community College shall be at such place within the territorial jurisdiction of the Tohono O’odham Nation as the Trustees may authorize, upon approval of the Tohono O’odham Legislative Council.
- E. INITIAL DESIGNATED AGENT. The name and address of the initial designated statutory agent of the Tohono O’odham Community College is: Chairperson, Board of Trustees, Tohono O’odham Community College.
- F. SEAL. The seal of the Tohono O’odham Community College shall bear the full name, “*Tohono O’odham Kekel Ha-maşcamakud*” and the figure “1998.”

**Article II  
DEFINITIONS**

1. “College” means the *Kekel Ha-maşcamakud* - Tohono O’odham Community College

established by this Charter.

2. “Board” means the Board of Trustees of the College appointed in accordance with Article V of this Charter.
3. “Constitution” means the Constitution of the Tohono O’odham Nation adopted by the qualified voters of the Tohono O’odham Nation and approved by the Secretary of the Interior on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 476).
4. “Trustee” means a member of the Board of the College appointed pursuant to Article V of this Charter.
5. “Legislative Council” means the Tohono O’odham Legislative Council, in which the legislative powers of the Nation are vested pursuant to Article VI of the Constitution.
6. “Nation” means the Tohono O’odham Nation.
7. “Tribal Employment Rights Ordinance” means the Tribal Employment Rights law of the Nation, 13 Tohono O’odham Code Chapter 1.

### **Article III MISSION OF THE BOARD**

- A. Mission. The mission of the Board of Trustees is to establish and operate a college that will serve as the Tohono O’odham Nation’s center for higher education, research, culture and tradition, with authority to grant post-secondary degrees and certificates, especially that of the Associates Degree, to enter into agreements with public or private agencies to offer higher education on the lands of the Tohono O’odham Nation, and to generally coordinate and regulate all higher education within the lands of the Tohono O’odham Nation.
- B. Ancillary. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes set forth in this Article, and to do all things incidental thereto or connected therewith, which are not forbidden by law, this Charter for the College or the Constitution of the Tohono O’odham Nation.

### **Article IV BOARD OF TRUSTEES, POWERS AND DUTIES**

- A. General Powers and Duties. The affairs of the College shall be managed by the Board of the College. The Board shall act only as a Board of Trustees and the individual Trustees shall have no power as such except at a duly called meeting of the Board. The Board shall exercise all powers and responsibilities in accordance with applicable law, consistent with the best interests of the College and its students, and within limits of responsible business judgment. Subject to the foregoing, the Board may, unless the

context otherwise requires:

1. Engage in any lawful business consistent with the purposes of the College.
2. Exercise general authority and responsibility for the management and the operation of the College.
3. Engage in the formulation of those policies that serve to establish and maintain the College's organization, including the identification of a mission and vision for the College, specifying key goals, and ensuring that college management implements strategies for attaining these goals.
4. Adopt written management and administrative policies and procedures that provide for the effective management and administration of the College. Those shall include but are not limited to policies and procedures for purchasing, accounting, grants and contracts, equipment, personnel, financial aid, registration and student policies and procedures. These shall be interpreted to give essential latitude to the College President and the President's delegated employees.
5. Adopt a ceiling on the amount of funds which may be expended without specific prior written approval of the Board.
6. The Board shall exercise full authority and shall be responsible for the custody, utilization, maintenance and operation of all College property and facilities set aside therefor by the Tohono O'odham Legislative Council, or otherwise acquired; for said purpose. The Board shall plan for, develop and/or operate such lands for College purposes, plan for and construct improvements subject to approval of the Legislative Council, negotiate and hold leases or sublease real property, and take any and all usual, necessary and convenient actions incidental thereto, provided that nothing in this Charter shall be construed as authorizing the College to mortgage or encumber trust or restricted real property of the Nation without the prior approval by resolution of the Legislative Council.
7. Select, employ, supervise, direct, evaluate and remove the College President.
8. Adopt rules for the orderly conduct of the business of the Board, evaluate the effectiveness and efficiency of the Board and provide for training and evaluation of individual Board members.
9. Make investment decisions, subject to the limitations contained herein or in any advance of funding.
10. Borrow funds subject to the express limitation that the Board shall not incur obligations on behalf of the College in excess of its ability to pay as required and on the condition that the Nation shall not be liable for the debts or obligations of

the College incurred by the Board.

11. Acquire by gift, purchase, exchange, lease, hire or otherwise and to hold, own, manage, operate, mortgage, pledge, exchange, sell, deal in and dispose of, either alone or in conjunction with others, all College personal property and interests therein, and commodities of every kind, character and description necessary or incidental to the purposes set forth in this Charter and in the ordinary course of business therefore.
12. Acquire by gift, application, assignment, purchase, exchange, lease, hire or otherwise and to hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, provided that title of all such acquisitions shall be taken in the name of the Nation and such interest may be sold only with the prior consent of the Legislative Council.
13. Make any guaranty, respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the College, to the extent that such guaranty is made in furtherance of the purposes set forth in this Charter.
14. Enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purposes pertaining to its business of the College to the extent that such contract is necessary or incidental to the purposes of this Charter, provided that:
  - a. no contract or other transaction between the College and any one of the Board, officers or employees of the College or an elected officer or employee of the Nation or any District, or between the College and any corporation, partnership, firm or other legal entity in which one or more of the foregoing persons has a financial interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of such persons is fully disclosed beforehand to the Board and the proposed contract or transaction is approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Board who have no interest in the transaction. Any Board member with the foregoing described conflict of interest shall not vote on the subject transaction.
  - b. the Board shall not incur contract obligations in excess of the ability of the College to fully perform when due.
15. Designate and approve all depositories used for the deposit of funds of the College.
16. Approve and adopt budgets prior to the commencement of the subsequent fiscal year and take action with reference to the use of funds under the exclusive

control of the College for operating and capital addition purposes.

17. Delegate executory authority by appointment and through formal action, recorded in written form, to not less than two persons who shall be authorized for a specific term to execute all checks, drafts, or other orders for payment of money, contracts, notes, bonds or other evidence of indebtedness, financial instruments and similar documents on behalf of and in the name of the College, provided that:
    - a. the college shall require a background investigation of and may require an adequate fidelity bond for all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the College prior to, or as a condition of the appointment.
  18. Undertake an annual fiscal and management audit of the College's operations through the services of an independent and certified public accounting firm.
  19. Actively monitor management and administrative systems, policies and procedures described at Article IV (A)(4) herein, through internal reviews and audits. The Board shall have ultimate responsibility to ensure that these systems serve the best interests of the students, the College, and the Nation.
  20. Approval authority over any and all policies and procedures as required, through formal board action.
  21. Maintain sound accounting and financial systems in accordance with generally accepted accounting practices.
  22. Set a reasonable per diem rate to be paid to Trustees for attendance at Board meetings at which there is a quorum, to authorize payment of a reasonable travel per diem, travel allowance, or reimbursement for authorized travel expenditures and for other authorized purposes.
  23. Recommend amendments or revisions of this Charter to the Legislative Council whenever the Board deems appropriate to improve the operation and management of the College.
  24. Have and exercise all powers necessary, proper, advisable, incidental and convenient to affect any or all of the powers, responsibilities, and purposes for which the College is established.
- B. Reservation of Powers. Until such time as duly authorized Administrators of the College listed in Article IX of this Charter are selected and appointed, or if vacancies occur due to death, resignation, or termination of employment of the Administrators, the Board shall have plenary authority to employ, supervise, and direct consultants to fulfill the functions necessary for the day-to-day management and administration of the

College.

**Article V**  
**BOARD OF TRUSTEES MEMBERSHIP, ROLE, COMPOSITION, APPOINTMENT,  
NUMBER, QUALIFICATIONS, TERM OF OFFICE**

- A. Role. The business affairs of the College shall be directed by the Board in accordance with the provisions of this Charter.
- B. Composition of the Board. The Board shall be composed of Trustees as provided in this Charter.
- C. Appointment. The Trustees shall be appointed by the Chairperson of the Nation with the approval of the Legislative Council. Candidates for the position of Trustee may be recommended by any Nation's member. The name of candidates recommended for the position of Trustee shall be forwarded to the Chairperson of the Nation for review to ensure that every candidate meets the minimum qualifications provided in this Article. Every candidate that meets the minimum qualifications shall be subject to a background investigation in accordance with applicable requirements of the Legislative Council. No employee of the College, or elected official of the Nation, or any District elected official shall be eligible to serve as a Trustee.
- D. Number of Trustees. The Board shall consist of no less than five (5) nor more than eleven (11) Trustees at least two of whom shall be recognized O'odham elders.
- E. Qualifications. Trustees, other than the two recognized O'odham elder Trustees, shall have the following qualifications:
  - a. be an enrolled member of the Nation;
  - b. have sufficient experience and dedication to higher education to make sound judgments concerning the operation of the College;
  - c. have a minimum of a Bachelor of Arts or Sciences degree from an accredited institution of higher education; and
  - d. is a recognized professional within his or her field of endeavor.
- F. Term. Trustees shall serve staggered terms. Of the initial Trustees, half shall serve a term of two years, half shall serve a term of three years, and, in the event that there exists an odd number of Trustees, those remaining shall serve a term of four years. Thereafter, all terms shall be for four years. A Trustee shall be eligible for reappointment upon expiration of their terms of office. Each Trustee shall hold office

until his or her successor has been appointed and qualified.

**Article VI**  
**REMOVAL, RESIGNATION, ATTENDANCE AND VACANCIES**

- A. Removal. A formal action by a majority of the Board to remove a Trustee shall constitute cause for removal. The Chairperson of the Board shall promptly notify the Chairperson of the Nation concerning any such removal or action.
- B. Resignation. Any Trustee may resign at any time by giving written notice of such resignation to the Board Secretary and to the Chairperson of the Nation. Any such resignation shall take effect at the time specified in the notice, or if no time is stated, it shall be effective when received. Any Trustee who fails to attend three (3) consecutive properly called and noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board meetings properly called and noticed in any fiscal year shall, unless excused from attendance for justifiable cause, be considered to have resigned as a Trustee and may be removed accordingly by the Board through formal action. The Chairperson of the Board shall promptly notify the Chairperson of the Nation of any such resignation and removal.
- C. Vacancies. Any vacancy in the Board of Trustees, either arising from death, resignation, removal, an increase in the number of Trustees, or any other cause, shall be filled for the unexpired portion of the term in the manner prescribed in Article V(C) for appointment and approval of Trustees.

**Article VII**  
**MEETINGS, VOTING**

- A. Annual Meeting. A regular, annual meeting of the Board shall be held on the second Thursday of March each year, or on a date noticed by the Board, or, if such date shall be a legal holiday on the next succeeding business day at the same time, at the principal office of the College, wherever located, or at such time or place as shall be determined by the Board of Trustees and designated in the Notice or Waiver of Notice of the meeting. Thirty days advance notice of such annual meeting shall be provided to each District, the Legislative Council, and the Nation's Chairperson. The Annual meetings shall include and allow for participation by the Chairperson of the Nation, the Legislative Council, the Districts and the public.
- B. Monthly Meetings. There shall be monthly meetings of the Board of Trustees, with the date, time and location to be determined by the Board, unless insufficient business would not warrant a meeting. The Board Chairperson shall determine whether a monthly Board Meeting is not warranted.
- C. Special Meetings. Special Meetings of the Board may be held upon notice given by the Chairperson of the Board, or its Secretary, or by a majority of members of the Board.

Special meetings may be held at such place as the Board shall direct.

- D. Emergency Meetings. Upon the occurrence of any event which creates a significant risk of immediate harm to the health or welfare of the students or staff, or significant damage to any facilities of the College, the Chairperson may call an Emergency Meeting without the standard meeting notification process, provided that each member shall be notified in some manner. Emergency meetings shall only address the emergency situation(s).
- E. Notice. Notice of meetings stating the time, date, place and agenda shall be given in writing to each Trustee by mailing or emailing such notice not less than seven days prior to the meeting, excluding the day of the meeting, provided that special meetings may be called upon with no less than five days' notice. Notice of meetings shall be posted at public places within the Nation not less than five days prior to the meeting, excluding the day of the meeting.
- F. Quorum. A majority of the Trustees in office, present in person, or through a telecommunications link when required due to exceptional or emergency circumstances, shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Trustees. For the minimum number of members, which is five, the quorum shall be three (3), and for the maximum number of members, which is eleven, the quorum shall be six (6).
- G. Action by Consent. Unless restricted by this Charter or any amendment, any action required or permitted to be taken by the Board of Trustees or any Committee thereof may be taken without a meeting if members of the Board or Committee, consent thereto in writing, or by email. Said written or emailed consents are to be filed with the minutes of the proceedings of the Board or Committee.
- H. Action by Majority Vote. Except as otherwise expressly required by law or this Charter, the act of a simple majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees. The Board Chairperson has full voting rights on all Board matters.
- I. Voting on Personnel; Conflict of Interest. If an immediate family member, which is defined to include children, grandparents, parents, uncles and aunts, first cousins, brothers and sisters of a Trustee applies for a college position, the Trustee must first disclose to the Board the relationship and not participate in the deliberation or vote on the selection of such relative. The voting on the selection shall be by secret ballot. Each Trustee is under an on-going and continuous obligation to disclose any official matters involving that Trustee's relatives.
- J. Proxy Voting Is Not Allowed. The Board of Trustees shall not permit proxy voting, and

no one other than the Trustees shall be allowed to vote on issues at the Board meeting.

K. Motions, Minutes, and Records.

1. An official written record accurately describing the Board's discussion and all formal action of the Board shall be maintained in the form of written minutes.
2. Written minutes of each meeting of the Board of Trustees shall be kept on file in the College and shall be available to the public for inspection at all reasonable times. Copies of minutes of all Board meetings shall be made available to all Trustees and to members of the public upon request.
3. Motions passed by a majority of the Board at a duly constituted meeting and duly recorded in the minutes shall constitute the legal action and legal record of the Board.

L. Committees. The Board of Trustees may, by vote of a majority of the entire Board membership, establish one or more committees, composed of Board members, to assist in carrying out the work of the Board. The Board of Trustees may designate one or more Trustees as alternate members of any committee, or may replace any absent or disqualified member at any meeting of the committee. Each such committee shall serve at the pleasure of the Board of Trustees and have such name as may be determined from time to time by resolution adopted by the Board of Trustees. Each committee will keep regular written minutes of its meetings and report the same to the Board of Trustees. The Committees shall prepare recommendations for final approval by the entire Board.

**Article VIII  
PRINCIPAL OFFICERS OF THE BOARD**

A. Officers of the Board. The principal officers of the Board of Trustees of the College shall consist of a Chairperson, a Vice-Chairperson, and a Secretary. All officers must be Trustees of the Board.

B. General Duties. Officers of the Board of the College shall have the following specific duties defined in this Article and such other duties as may be determined by Board action.

1. Chairperson of the Board. The Chairperson of the Board shall preside at all meetings of the Board, and shall perform all duties associated with the office of the Chairperson and such other duties as from time to time may be assigned to the Chairperson by the Board. The Chairperson and the Secretary shall sign any instruments which have been authorized by the Board to be executed on behalf of the College, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Charter to some other officer or agent of

the College, or shall be required by law to be otherwise signed or executed.

2. The Vice-Chairperson. The Vice-Chairperson shall act in the capacity of the Chairperson in the absence of the Chairperson, or in the event of the inability or refusal of the Chairperson to act and when so acting shall have all the powers and be subject to all the restrictions which pertain to the Chairperson until such time as either the term of the Chairperson has expired or a Chairperson is elected by a quorum of the Board at a duly noticed meeting. The Vice-Chairperson shall be responsible for any additional duties as designated by the Chairperson of the Board.
  3. The Secretary. The Secretary shall have the responsibility to:
    - a. Sign any instruments provided for in Article VIII(B)(1).
    - b. Keep or cause to be kept the written minutes of each meeting of the Board of Trustees of the College which shall be certified by the Secretary.
    - c. Ensure that all required notices are duly given.
    - d. Act as the official custodian of the College seal and all records, reports, statements and other documents required by law to be properly kept and filed, including electronically filed.
    - e. Perform all duties incidental to the office of the Secretary, and such other duties as from time to time may be assigned to the Secretary by the Board, or the Chairperson. The Secretary may delegate the recording of the minutes and may be provided clerical assistance to perform such duties.
- C. Election, Term of Office, and Qualification of Officers of the Board. The officers of the Board shall be chosen annually by a majority vote of Trustees at a duly noticed meeting. The term of appointment shall be one year from the date of appointment. Each officer shall hold office until a successor is chosen, or until death, or until said officer shall have resigned or shall have been removed from office. Officers may be elected for additional terms in the manner prescribed herein for choosing Board officers.
- D. Removal of Officers of the Board. Any officer appointed by the Board may be removed by the Board with or without cause.
- E. Resignation of Officers of the Board. Any officer may resign at any time by giving written notice to the Board Chairperson or the Secretary; such resignation shall take effect at the time specified therein or if no time is specified, when received.
- F. Vacancies of Officers of the Board. Any vacancy in any office, because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the

term in the manner prescribed herein for election or appointment to such office. A vacancy in the office of Chairperson shall be filled by the Vice-Chairperson.

- G. Other Officers and Agents. The Board may appoint such other officers and agents as it deems necessary or expedient and may determine their duties, terms, and compensation.

## **Article IX ADMINISTRATORS OF THE COLLEGE**

- A. Administrators of the College. The Administrators of the College shall provide the day-to-day management and administration of the College, which shall include, but not be limited to, Accounting, Education, and Student Services.
- B. Administrative Duties and Functions. Each Administrator shall have such duties and functions as the Board of Trustees and President may determine. The Board of Trustees shall approve Administrators and assistant administrators, as it may from time to time determine are needed. In the event of a vacancy, one person may hold any two or more administrative positions, except for the office of President, provided however, that nothing in this paragraph shall prohibit the Board from appointing an acting President.
- C. Selection and Terms of Employment.
1. The Administrators of the College shall only be hired pursuant to formal selection by the Board of Trustees.
  2. Each Administrator shall be employed under a written employment contract specifying the conditions of employment, including as applicable, the term of employment, salary, surety bond, leave and amount of liquidated damages.
  3. The President shall be responsible to the Board. All other Administrators shall be responsible to the President.
  4. Each Administrator shall exercise his or her best judgment in the determination of the ways and means by which general policy set forth by the Board is to be effectuated and execute Board policies and manage the College only as authorized and directed by the Board and/or the President.
  5. Each Administrator shall render required reports to the Board and/or the President, and perform all other lawful functions and duties specified by the Board or President.
- D. President. The President shall be the Chief Executive Officer of the College and shall have direction over actual operations and general supervision over the affairs of the College, subject, however, to the authority delegated by the Board of Trustees. In general, the President shall perform such duties as are provided for in this Charter and as from time to time may be assigned by the Board of Trustees. The functions and duties

of the President shall include, but not be limited to, the following:

1. The President shall be present at all meetings of the Board of Trustees unless excused by the Board.
  2. The President shall render monthly reports to the Board and perform all other functions and duties specified in this section and in the employment contract between the College and the President.
  3. The President shall not be a voting member, Trustee, or Officer of the Board.
  4. The President shall have the full authority and control over all employees of the College, with the exception of authority reserved to the Board herein, and shall be responsible for all administrators, managers, department heads or other staff carrying out their respective job assignments and responsibilities.
- E. Absence of the President. An administrator, appointed by the President, shall be present at the meeting of the Board of Trustees when the President is not present, and shall act on behalf of the President when the President is not available. If the President resigns or leaves his office, another administrator will be appointed by the Board to fill the position in an “acting” capacity until such time as the position is filled.
- F. Other Administrators. Other administrators approved by the Board of Trustees shall perform such duties as assigned to them by the President or the Board of Trustees.

## **Article X OPERATIONS**

- A. Records, Audits, and Inspections. There shall be kept at the principal office of the College correct and current records of accounts of all the business and transactions of the College, which shall be kept on file in the offices of the College and shall be available for inspection at all reasonable times by Trustees and officers of the College and with prior written 10 day notice to the Chairperson of the Board, by authorized representatives of the Tohono O’odham Nation. The records of the College shall be audited by an independent Certified Public Accountant within 120 days of the close of each College fiscal year. The results of such audit shall be included in the reports by the Chairperson of the Board of Trustees to the Chairperson of the Nation and Legislative Council.
- B. Fiscal year. The fiscal year of the College shall be determined by formal action of the Board of Trustees.
- C. Inventories. An annual physical inventory of assets shall be taken by the College President prior to the completion of the annual audit and at such other times as may be

directed by the Board of Trustees.

- D. Budgets. A budget of the College for each ensuing year shall be prepared by the President no less than 60 days prior to the start of each fiscal year. The President and the Board shall discuss the proposed budget at a Board meeting prior to the commencement of the current fiscal year for each ensuing year. The budget shall govern expenditures for the ensuing fiscal year. Pending approval of the budget, expenditures may be made for normal operations at the same rate as the previous year. Capital investment items shall be shown separately from operating items in the annual report. The President shall be responsible for enforcing the approved budget and shall compare actual budget expenditures against the approved budget on a quarterly basis and as necessary. Amendments to the approved budget may be made with the approval of the President and the Board. All budgets shall contain:
- a. the estimated income and expenditures for the ensuing year by office, division or sub-entity; and
  - b. any additional information required by the Board.
- E. Contracts. Except as otherwise provided in the Charter and in Article IV(A)(14) above, the Board may authorize not less than two individuals (officers, administrators or agents), in the name of and on behalf of the College, to enter into negotiations for contracts or execute and satisfy any instrument, and any such authority may be general or confined to specific instances. Any contract or act that is approved or ratified by the vote of the majority of the Board of Trustees shall be valid and binding upon the parties. No contract may be entered into or is binding on the College or Board without the prior, formal approval of the Board of Trustees or those officer or officers, administrator or administrators, agent or agents so authorized by the Board to contract for and bind the College thereto.
- F. Loans. In accordance with Article IV(A)(10) above, the Board of Trustees may authorize not less than two individuals (officers, administrators or agents):
1. to effect loans and advances at any time for the College from any bank, trust company or other institution, or from any firm, corporation or individual,
  2. for such loans and evidences of the College, and
  3. when authorized to do so to pledge or transfer any securities or other property of the College (excluding leasehold interests) as security for any such loan or advances. Such authority conferred by the Board of Trustees may be general or confined to specific instances. No loans shall be made by the College to any Trustee or officer, or employee.
- G. Check, Drafts, etc. In accordance with Article IV(A)(17), all checks, drafts and other orders for payment of money out of the funds of the College, and all notes and other

evidences of indebtedness of the College shall be signed on behalf of the College by those individuals appointed by the Board of Trustees for said purpose, and in such manner as shall from time to time be determined by this Charter or the Board of Trustees.

- H. Bank Accounts. The Board may establish and maintain such bank accounts as may be necessary and convenient. The Board shall in accordance with Article IV(A)(15) above, authorize any two individuals (officers, administrators or agents) to serve as joint signatories on all bank accounts and shall notify the Legislative Council and the Chairperson of the Nation within thirty (30) days of such appointments. Such appointments shall be for a fixed term and shall be revocable at will through formal Board action.
- I. Deposits. The funds of the College not otherwise employed shall be deposited from time to time to the order of the College in such bank, trust companies or other depositories as the Board of Trustees may select or as may be selected by any two individuals (officers, administrators or agents) to whom such power may from time to time be delegated by the Trustees through formal Board action in accordance with Article IV(A)(15).
- J. Insurance. The College shall maintain appropriate liability, property, and error and omissions insurance for its operations and facilities sufficient to protect the interests of the College, the Board of Trustees, and the Nation. Such policies shall designate the Nation as an additional named insured. The College shall maintain workers' compensation insurance, unemployment compensation insurance, fidelity bond or employee theft and dishonesty insurance covering the President and employees, Trustees and officers who handle funds or property, and such other forms of insurance as the Board deems appropriate.
- K. Indemnification Immunity. The College shall indemnify any Trustee, officer or employee of the College or any former Trustee, officer or employee, for reasonable expenses actually and necessarily incurred by with the defense of any civil action, suit or proceeding in which a person is made a party by reason of being, or having been such Trustee, officer or employee except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence, willful misconduct in the performance of duty, or otherwise acting beyond the scope of his or her duties. The College shall also indemnify any such Trustee, officer, or employee for reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Board, other than Trustees involved in the matter or controversy (whether or not a quorum exists), that it is in the best interest of the College, its students and the Nation that such settlement be made and that such Trustee, officer or employee was not guilty of gross negligence, willful misconduct or other conduct beyond the scope of his or her duties. Such indemnification shall not be deemed exclusive of any other rights which such Trustees, officer or employee may have. Members of the Board and Board officers are immune from personal liability with respect to all acts done and actions taken in good faith within the scope of their authority during duly constituted

regular, special and emergency meetings.

- L. Voting of Securities Held by the College. Stocks and other securities owned by the College may be voted, in person or by proxy, as the Board of Trustees may authorize from time to time.
- M. Gifts. The Board of Trustees may accept on behalf of the College any donation, contribution, gifts, bequest, or devise for the general purposes or for any special purpose of the College.
- N. Indian Preference in Employment and Contracting. The College shall give preference to qualified Indians, with first preference to local Indians, in all hiring, promotion, training, layoffs and all other aspects of employment.

### **Article XI COMPENSATION OF OFFICERS AND BOARD OF TRUSTEES**

- A. Compensation of Officers. Salaries or other compensation of the officers may be fixed from time to time by formal action of the Board of Trustees provided that such salaries and compensation shall not be excessive in amount, and only for services which are reasonable and necessary for performance of the College's mission.
- B. Compensation of Trustees. Trustees shall be reimbursed for expenses incurred in attending meetings and performing duties of the Board. The Board may, at its discretion, set a reasonable fee to be paid to its members on a per-meeting-attendance of a Board meeting at which there is a quorum or other basis. Such fixed sum, expenses and compensation shall be reasonable and not excessive in amount, and the services performed therefore, must be reasonable and necessary for the College's mission.

### **Article XII IMMUNITY FROM SUIT**

- A. College Immune from Suit. The College is an entity of the Nation and is established for the benefit of the Nation. As such, it has the same immunity from suit as the Nation possesses. Notwithstanding the fact that the College is immune from suit, the College is expressly granted the right to sue in its own name, and a limited right to be sued in its own name as more fully set out below. The College is not immune from suits, actions or proceedings initiated by the Nation or its regulatory agencies and departments. Nothing in this Article or in this Charter shall be construed as a waiver of or limitation on the sovereign immunity of the Nation.
- B. Limited Waiver of Immunity. The College may be sued only in Courts of the Nation, and only in the following limited circumstances:
  - 1. Claims within Insurance Coverage. With respect to claims against the College for any personal injury or property damage, the amount and nature of which are

within the express coverage of a policy of insurance procured and maintained pursuant to Section X(J) of this Charter, as acknowledged by the insurer under such policy, the College's immunity is waived to the lesser of the extent of such coverage or \$1,000,000, provided that any judgment, order or award may only be satisfied pursuant to:

- a. the express provisions of the policy(ies) of insurance which are in effect at the time of each such judgment, order or award; and
- b. an action, if necessary, brought by the prevailing party against the insurer under such policy.

2. Contract Claims.

- a. With respect to claims against the College:
  - i. arising out of any written contract to which the College is a party, and
  - ii. the amount and nature of which are not within the express coverage of a policy of insurance procured and maintained pursuant to Section X(J) of this Charter, as acknowledged by the insurer under such policy, the College's immunity is waived to the lesser of the amount of the College's payment obligation under the contract or \$500,000.
- b. The College's immunity from execution on any judgment, award or order is hereby waived only with respect to a pledge of, or security interest in, the College's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interests) granted by the College as collateral for any payment obligations under such contract, provided that:
  - i. Execution on any such collateral shall be limited to that amount which, when added to amounts received from other sources in satisfaction of such judgment, award or order, does not exceed \$500,000.
  - ii. Execution on any such collateral shall be solely by judicial process pursuant to a judgment, order, or award of a court of competent jurisdiction.
  - iii. For purposes of applying the provisions of this subsection (B)(2), all contracts entered into with the same party on the same subject matter shall be deemed to be a follow-on contract.

3. Claims Tried in Court. Any claims for which the College's immunity is

waived shall be tried in Tohono O’odham Judicial Court. Nothing herein shall be construed as consent to trial by jury.

4. Suits Brought in College’s Name. All claims arising out of the College operations shall be brought against the College directly and in the name of the College. Trustees, officers, agents and employees of the College, when acting within the scope of their authority, are immune from suit.

C. Section Strictly Construed. Except as otherwise expressly provided in this Article, nothing contained in this Charter shall be interpreted or construed as:

1. A waiver of the sovereign immunity of the College beyond the limits set forth in this Article;
2. A waiver of sovereign immunity of the College from the imposition in any judgment, order or award of interest prior or subsequent to judgment, attorney fees, court costs, civil penalties, or punitive, double, treble, incidental or consequential damages;
3. A waiver of the sovereign immunity of the College from a levy on any judgment, or a lien, attachment, execution or other judicial or non-judicial process upon the assets of the College; or
4. Creating any liability for the Nation with respect to any claims or other obligations asserted against the College or arising out of its operations.
5. The Legislative Council reserves the authority to prospectively modify this limited waiver of the College’s immunity either generally or with respect to specific circumstances.

### **Article XIII DISSOLUTION AND LIQUIDATION**

A. Dissolution by Legislative Council. The College can only be dissolved by action of the Legislative Council pursuant to a plan of dissolution approved by the Legislative Council. Dissolution proceedings shall be initiated by the adoption of a Resolution by the Legislative Council expressing the Council’s intent to dissolve the College. The College shall continue in existence during dissolution proceedings to permit proper closure of the College’s affairs by a Dissolution Management Board appointed by the Legislative Council.

B. Powers and Duties of the Dissolution Management Board. The Dissolution Management Board shall proceed as follows:

1. Within 60 days after the date the Legislative Council adopts a Dissolution Resolution as prescribed in this Article, or such other period of time as may be

fixed in such Resolution, the Dissolution Management Board shall submit a plan of dissolution for review and approval by the Legislative Council. The plan of dissolution shall include an anticipated timeframe for execution of the plan and provide the following:

- a. the form and procedure for giving notice of intent to dissolve to every known creditor of the College;
  - b. an identification of College cash and accounts receivable and steps for collecting such assets;
  - c. an inventory of the College's personal property and other assets identifying which, if any, of the College's personal property is to be distributed to the Districts in kind, and the methods for disposition of all other assets;
  - d. an identification of College liabilities and obligations and steps for satisfying or discharging such debts and obligations;
  - e. provision for completion of the program of studies for students enrolled in the College;
  - f. an identification of uncollected or unasserted claims and liabilities of the College and steps for making adequate provisions of such claims;
  - g. steps for identifying and distributing the remainder of the College's assets, both in cash or in kind, to the Nation after all claims have been satisfied or otherwise provided for;
  - h. any other acts required to liquidate the College's assets and wind down the College's business;
  - i. close out audit.
2. The College, during dissolution proceedings, shall have only those powers and duties which are authorized in the approved plan of dissolution necessary to wind down the College's business.
- C. Notice of Dissolution. The Dissolution Management Board shall notify the Chairperson of the Nation and the Legislative Council in writing when, in accordance with an approved plan of dissolution, all debts, liabilities and obligations of the College have been paid and discharged, or adequate provision has been made therefore, and all remaining property and assets of the College have been distributed.
- D. Dissolution and Repeal of Charter. The College shall be dissolved and this Charter repealed upon formal acceptance of the Notice of Dissolution by the Legislative

Council.

**Article XIV**  
**REPEAL; SAVINGS CLAUSE**

Ordinance No. 98-01 is hereby repealed. Such repeal shall not affect any act done under Ordinance No. 98-01 prior to this repeal, and such act or acts done pursuant thereto shall have the same effect as if this Amended Charter had not been passed by the Legislative Council.

**Article XV**  
**NO WAIVER OF NATION'S SOVEREIGN IMMUNITY**

Nothing in this Charter shall be deemed to constitute a waiver of the sovereign immunity of the Tohono O'odham Nation.