

## **TITLE 2 - AGRICULTURE AND LIVESTOCK**

### **CHAPTER 1 - TOHONO O'ODHAM FARMING AUTHORITY**

*Legislative History: The "Tohono O'odham Farming Authority Second Restated Plan of Operation" was approved and adopted pursuant to Resolution No. 99-060 on February 16, 1999; amended by Resolution No. 12-490 (to clarify the authority of TOFA Management Board to negotiate interests in real property), effective December 10, 2012; amended by Resolution No. 14-128 (to reestablish a functioning Management Board by reducing the number of Directors, adjusting quorum requirements, and increasing Directors' terms), effective April 16, 2014.*

*Related Legislation: The Nation's Chairperson was authorized to assume certain authorities of the Tohono O'odham Farming Authority and its Management Board pursuant to Resolution No. 05-233, which was approved on May 6, 2005.*

**TOHONO O’ODHAM CODE**

**TITLE 2 – AGRICULTURE AND LIVESTOCK**

**CHAPTER 1 – TOHONO O’ODHAM FARMING AUTHORITY**

**TABLE OF CONTENTS**

Section 1	Establishment; Place of Business.....	1
Section 2	Seal.....	1
Section 3	Purposes .....	1
Section 4	Management Board.....	2
Section 5	Indemnification of Officers, Employees and Directors of the Management Board.....	10
Section 6	Farm Management .....	10
Section 7	Capital; Profits; Distribution of Profits.....	13
Section 8	Financial Transactions; Miscellaneous .....	14
Section 9	Immunity from Suit.....	16
Section 10	Memorandum of Agreement (“MOA”) .....	18
Section 11	Dissolution and Liquidation.....	19

**TOHONO O’ODHAM FARMING AUTHORITY**  
**SECOND RESTATED PLAN OF OPERATION**

**Section 1: ESTABLISHMENT; PLACE OF BUSINESS**

- 1.1 **Establishment.** The Tohono O’odham Farming Authority is a wholly-owned enterprise of the Tohono O’odham Nation established pursuant to Article VI Section 1(b) of the Nation’s Constitution. The Authority shall have and may exercise all those powers set forth herein effective on the date all Directors of the Management Board are appointed by the Chairperson of the Nation and approved by the Legislative Council.
- 1.2 **Place of Business.** The principal place of business and the office of the Authority shall be at such place within the territorial jurisdiction of the Nation as the Management Board may from time to time authorize.

**Section 2: SEAL**

- 2.1 The seal of the Authority shall be in the form of a circle and shall bear the full name, “TOHONO O’ODHAM FARMING AUTHORITY” and the figure “1979”.

**Section 3: PURPOSES**

- 3.1 **General.** The purposes for which the Authority is organized are as follows:
  - 3.1.1 To study, foster, encourage and promote the economic development and general welfare of the Tohono O’odham Nation and its members by utilization of the agricultural resources of the Nation.
  - 3.1.2 To make as much profit for the benefit of the Tohono O’odham Nation as possible consistent with good business ethics and this Plan of Operation.
  - 3.1.3 To provide business training and employment opportunities for members of the Tohono O’odham Nation consistent with the purposes expressed in this Plan of Operation.
  - 3.1.4 To develop the agricultural resources on lands set aside therefor by the Tohono O’odham Nation.
  - 3.1.5 To produce, process, store and sell agricultural products, consistent with accepted marketing practices.
  - 3.1.6 To purchase or otherwise acquire all supplies, services, machinery and equipment needed in its operation, and sell or otherwise dispose of surplus equipment or machinery.

- 3.2 **Ancillary.** To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein above set forth, and to do all things incidental thereto or connected therewith, which are not forbidden by law, this Plan of Operation for the Authority or the Constitution of the Tohono O’odham Nation.

**Section 4: MANAGEMENT BOARD**

- 4.1 **Composition and Qualifications.** The members of the Management Board shall be called Directors. The Management Board shall consist of five Directors comprised of the following:

- 4.1.1 **District Representatives.** One Director shall be selected from each of the Districts of the Tohono O’odham Nation in which lands have been set aside by the Tohono O’odham Legislative Council with direction to the Authority to plan, develop and/or operate such lands for farming purposes. Notwithstanding any other provision of this Plan of Operation, the term of office of a Director so selected from a particular District of the Tohono O’odham Nation shall terminate at the moment that the authority of the Authority to further plan, develop and/or operate farm lands within such District has been terminated by the Tohono O’odham Legislative Council. Each such District Representative Director shall be a member of the Nation, shall have a demonstrated interest in agriculture, and shall have sufficient education, or experience in agricultural business practices, to qualify him or her for making sound judgments in the best interests of the Authority.
- 4.1.2 **Nation’s Representative.** One Director shall be a person designated by the Chairman of the Nation. Such designee shall have a demonstrated interest in agriculture, and shall have sufficient education, or experience in agricultural business practices, to qualify him or her for making sound judgments in the best interests of the Authority.
- 4.1.3 **Professional Representative.** One Director shall be a person of substantial character having not less than ten years of experience in agriculture or business management with preference for experience in the management and operation of agricultural businesses.

- 4.2. **Appointment.** The Directors shall be appointed by the Chairman of the Tohono O’odham Nation with the approval of the Tohono O’odham Legislative Council. No employee of the Authority Bureau of Indian Affairs, members of the Tohono O’odham Legislative Council, or Chairperson of a District shall serve as a Director of the Management Board.

- 4.3 **Term of Office.** Subject to the initial time periods established in subsection 4.3.1, each Director shall be appointed for a five-year term of office and shall hold office until the qualification and selection of his or her successor.

- 4.3.1 The initial Management Board shall be appointed for the following terms: three Directors shall be appointed for terms of three years each; two Directors shall be appointed for terms of two years each; and two Directors shall be appointed for terms of one year each. Thereafter, all terms shall be for five years unless an appointing resolution designates a different period for the sole purpose of maintaining staggered terms. The terms of two or fewer Management Board Directors may expire each year.
- 4.3.2 Directors shall be eligible for reappointment. They shall hold their offices, starting on the first day of September of the year of their respective appointments, until their successors have been appointed and qualified or until their death, resignation or removal in the manner provided herein.
- 4.4 **Removal.** Directors may be removed by the Chairman of the Tohono O’odham Nation if the Chairman, in his sole discretion, determines that the best interests of the Nation shall be served by such removal.
- 4.5 **Resignation and Vacancies.** Directors may resign at any time by giving written notice to the Chairman and Secretary of the Board and to the Chairman of the Tohono O’odham Nation. Resignations shall become effective at the time specified in said notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director who fails to attend three consecutive properly called and noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board meetings properly noticed in any calendar year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his directorship. The Chairman of the Nation and respective District Council shall be so notified of the resignation. Any vacancy on the Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term by the Chairman of the Tohono O’odham Nation with the approval of the Tohono O’odham Legislative Council.
- 4.6 **Officers of the Management Board.** The principal officers of the Authority shall consist of the Chairperson, Vice-Chairperson, the Secretary, and the Treasurer.
- 4.7 **Chairperson.** The Chairperson of the Management Board shall:
- 4.7.1 preside at all meetings of the Board at which s/he is present;
- 4.7.2 sign, with the Secretary, any instruments which have been authorized by the Board to be executed on behalf of the Authority, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Plan of Operation to some other officer or agent of the Authority, or shall be required by law to be otherwise signed or executed; and
- 4.7.3 in general perform all duties incident to the office of the Chairperson and such other duties as may be prescribed by the Board from time to time.

- 4.8 **Vice Chairperson.** The Vice Chairperson of the Management Board shall:
- 4.8.1 in the absence of the Chairperson, or in the event of the Chairperson's inability or refusal to act, the Vice Chairperson shall perform the duties of the Chairman; and
  - 4.8.2 when so acting, the Vice Chairperson shall have the powers and be subject to all restrictions placed upon the Chairperson under this Plan of Operation and applicable law.
- 4.9 **Secretary.** The Secretary shall be responsible for:
- 4.9.1 keeping the minutes of the meetings of the Management Board in books and/or tapes provided for that purpose;
  - 4.9.2 seeing that all notices are duly given in accordance with the provisions of this Plan of Operation;
  - 4.9.3 the safekeeping of the books and records and the seal of the Authority, and affixing the seal of the Authority to all documents, the execution of which on behalf of the Authority under its seal is duly authorized in accordance with the provisions of this Plan of Operation;
  - 4.9.4 keeping on file at all times a complete copy of this Plan of Operation of the Authority containing all amendments thereto; and
  - 4.9.5 in general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.
- 4.10 **Treasurer.** The Treasurer shall be responsible for:
- 4.10.1 custody of all funds and securities of the Authority;
  - 4.10.2 the receipt of and issuance of receipts for all monies due and payable to the Authority, and for the deposit of all such monies in the name of Authority in such bank or banks as shall be selected in accordance with the provisions of this Plan of Operation; and
  - 4.10.3 in general performing all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board.
- 4.11 **Election of Officers; Term of Office.** The officers of the Management Board shall be chosen annually by the Management Board from its own membership at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have qualified. Each officer shall hold office until his successor is chosen and qualified, or

until his death, or until he shall have resigned, or shall have been removed in the manner provided herein.

4.12 **Removal of Officers.** Any officer of the Management Board or any agent appointed by the Management Board may be removed by the Board at any time, with or without cause.

4.13 **Resignation and Vacancies of Officers.** Any officer of the Management Board may resign at any time by giving written notice to the Management Board, or to the Chairman or Secretary. Such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. 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.

4.14 **Meetings of the Management Board.**

4.14.1 **Annual Meeting.** The annual meeting of the Management Board shall be held each year in the month of September at such time and place as the Board shall fix.

4.14.2 **Regular Meetings.** The Management Board shall meet at least quarterly upon notice fixing the time and place.

4.14.3 **Special Meetings.** Special meetings of the Board may be held upon notice given by the Chairman, or Secretary, or by any three members of the Board, at such time and place as the Board shall direct or as shall be fixed by the notice.

4.15 **Notice of Meetings of the Management Board.**

4.15.1 Notice of all meetings of the Board, stating the time and place, shall be given in writing by letter, telegram, e-mail or facsimile properly addressed to each member according to the latest available Authority records, not later than five days nor more than thirty days immediately preceding the meeting, excluding the day of the meeting.

4.15.2 Notice may be waived in writing signed by the member or members entitled to such notices, whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a meeting shall constitute a waiver of notice.

4.16 **Quorum and Voting.** Three members of the Management Board shall constitute a quorum for the transaction of any business. The vote of the majority of the quorum shall be the act of the Board. The vote shall be duly recorded in the written minutes of the Board, and shall be reduced to writing as a resolution of the Board to be considered the act of the Board.

- 4.17 **Rules.** The Management Board shall adopt such rules as it may determine necessary for the orderly conduct of its business.
- 4.18 **Minutes.** Copies of the minutes of each meeting of the Board shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by members of the Nation and authorized representatives of the Tohono O’odham Nation.
- 4.19 **Expenses.** Directors shall be reimbursed for their time and expenses associated with attendance at the meetings specified in subsection 4.20.1, and in accordance with the standards specified in subsection 4.10.2:

4.19.1 **Qualifying Meetings.**

- (A) Board meetings scheduled by the Management Board for any purpose;
- (B) General meetings relating to the interests of the Farming Authority, including, but not limited to, Legislative Council or Committee meetings, District Council meetings, or other meetings requiring official representation of the Management Board.
- (C) Other meetings with staff and vendors, field reviews, documentation review, and other activities necessary to effectively carry out the responsibilities of the Board or as directed by an act of the Board.

4.19.2 **Reimbursement Standards.**

- (A) The Management Board shall enforce strict policy controls on reimbursements and be empowered to limit or deny reimbursement for costs that, in the Board’s opinion, are excessive.
- (B) The Management Board shall maintain a fee schedule for the reimbursement of time in the above categories. Board meetings (4.19.1(A)) will be paid on a per meeting basis; general meetings (4.19.1(B)) will be paid on a per day basis; and other duties (4.19.1(C)) will be paid on an hourly basis. Payment or reimbursement shall be limited to only one category at a time. Reimbursement shall be allowed for any activity in which a Director participates at the express direction of the Board.
- (C) Actual expenses may be submitted for direct reimbursement. The Management Board shall maintain a rate schedule identifying the maximum permitted amount for specific expenses. Special travel and per diem expenses must be approved in advance by the Board.

- (D) Reimbursement of expenses incurred by Directors will be reviewed by the Board in ledger form on a monthly basis. The Board is empowered to limit reimbursement to any member.

4.20 **Powers and Duties of the Management Board.** Subject to this Plan of Operation and applicable laws and regulations of the Tohono O’odham Nation or the United States, and solely in furtherance of the limited purposes set forth in Section 3 above, the Management Board shall exercise the following powers and duties:

- 4.20.1 The Management Board shall exercise full authority and shall be responsible for the custody, management and operation of all of the Nation’s agricultural activities, including but not limited to all farms and farming property and facilities set aside therefor by the Tohono O’odham Legislative Council; for the lands which have been set aside by the Tohono O’odham Legislative Council with direction to the Authority to plan, develop and/or operate such lands for farming purposes; and for taking of any and all usual, necessary and convenient actions incident thereto.
- 4.20.2 The Management Board, without previous authorization or subsequent approval, is authorized to direct the operations of the Authority to accomplish the purposes set forth herein and all parties dealing with the Authority shall have the right to rely upon the written action of the Management Board pursuant to such authorization.
- 4.20.3 The Management Board shall exercise full power and shall be responsible for the custody and management, operation, inventory and maintenance of: (1) all farms and agricultural facilities and activities set aside therefor by the Tohono O’odham Nation; (2) lands which have been set aside by the Tohono O’odham Nation with direction to the Authority to plan, develop and/or operate such lands for farming purposes; and (3) for the taking of any and all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the Authority.
- 4.20.4 The Management Board shall be responsible for making investment decisions, subject to the limitations contained herein or in any advance of funding; for the establishment and maintenance of effective operating policies; for the selection of management personnel; and for continued supervision of performance of such personnel.
- 4.20.5 The Management Board shall exercise its authorized powers in the best interests of the Tohono O’odham Nation, within the limits of responsible business judgment and with the stipulation that it shall not incur contract obligations in excess of the ability of the Authority to make payment on the due date.

- 4.20.6 The Management Board shall make a formal oral and written report to the Chairman and Vice-Chairman of the Tohono O’odham Nation and to the Tohono O’odham Legislative Council not later than ninety (90) calendar days after the last day of the Authority’s fiscal year and in such report shall include an annual audit report for the immediately preceding fiscal year, and a summary of the budget which the Management Board approved for such fiscal year and a comprehensive operational report. A copy of the annual audit, the approved subsequent fiscal year budget and comprehensive operational report shall be provided to each of the Nation’s eleven (11) Districts.
- 4.20.7 The Management Board shall establish procurement policies and procedures, giving usual and essential latitude to Farm Management, but establishing limitations on amounts which may be expended without specific approval of the Board, consistent with the Management Board’s fiduciary obligation to manage and oversee the expenditure of Authority funds.
- 4.20.8 The Management Board shall establish and implement a sound accounting and financial system in accordance with: (i) generally accepted accounting principles; (ii) Tohono O’odham Legislative Council Resolution No. 95-223; and (iii) Section 8.4 hereof.
- 4.20.9 The Management Board shall approve the annual budget of the Authority, and shall approve the use of all funds under the exclusive control of the Authority for operating and capital addition purposes.
- 4.20.10 The Management Board shall submit any contract or act wherein an elected official or employee of the Tohono O’odham Nation may have an interest, directly or indirectly, in the matter or transaction to any regularly called or noticed meeting of the Tohono O’odham Legislative Council for prior approval.
- 4.20.11 The Management Board shall elect or appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the Board may be needed from time to time, and shall define their duties and fix their compensation.
- 4.20.12 The Management Board, at Authority expense, shall require either the bonding of, or adequate insurance protection against fraud, embezzlement or other defalcation by, the Treasurer and the Farm Management personnel responsible for the handling or safeguarding of funds, property or other assets of the Authority.
- 4.20.13 The Management Board shall have the authority, subject to the approval of the Legislative Council, to negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), all interests in real property, and, once acquired, to utilize, improve, maintain, operate and manage, in the ordinary course of

business, such interests in real property. Provided, however, that nothing herein shall be construed as authorizing the Authority to mortgage or encumber trust or restricted property of the Nation without the prior consent of the Legislative Council.

- 4.20.14 The Management Board may acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property and interests therein, and commodities of every kind, character and description necessary or incidental to the purposes set forth in Section 3 above.
- 4.20.15 The Management Board may acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), 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 therefore, and trade names, provided that title of all such acquisitions shall be taken in the name of the Tohono O'odham Nation.
- 4.20.16 The Management Board may make any guaranty, respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority, provided that such guaranty is made in pursuance of the purposes set forth in Section 3 above, and in accordance with the provisions of Section 8.2 and 9.2.2 of this Plan of Operation.
- 4.20.17 The Management Board shall designate and approve all depositories used for the deposit of funds of the Authority.
- 4.20.18 The Management Board may enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purposes pertaining to its business necessary or incidental to the purposes set forth herein, provided that no contract or other transaction between the Authority and any one of the members of the Management Board or any employee, or between the Authority and any corporation, partnership, firm or other legal entity in which one or more of the Management Board or any employee has an interest, directly or indirectly, shall be valid for any purpose.
- 4.20.19 The Management Board shall have the capacity to act and direct the officers of the Authority to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in Section 3 above.

- 4.20.20 The Management Board shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Authority is organized.

**Section 5: INDEMNIFICATION OF OFFICERS, EMPLOYEES AND DIRECTORS OF THE MANAGEMENT BOARD.**

- 5.1 The Authority shall indemnify any officer, employee or member of the Management Board or former officer, employee or member of the Management Board of the Authority, or any person who may have served at its request as an officer, employee or member of the Management Board, against reasonable expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being, or having been such officer, employee or member of the Management Board except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, or except in relation to matters in which he was acting beyond the scope of his duty. The Authority shall also reimburse to any officer, employee or member of the Management Board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Management Board, other than Directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Tohono O’odham Nation that such settlement be made and that such officer, employee or member of the Management Board was not guilty of negligence or misconduct, or acting beyond the scope of his duty. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or member of the Management Board may be entitled to receive.

**Section 6: FARM MANAGEMENT**

- 6.1 The Management Board shall select and appoint qualified persons to serve as the principal operating executives of Farm Management of the Authority. No member of Farm Management shall be a member of the Management Board.
- 6.2 Persons appointed to serve as the principal operating executives of Farm Management of the Authority may be employed under written management contracts, negotiated and approved by the Management Board specifying the conditions of employment, including the term of the contract, amount of salary, and leave.
- 6.3 Farm Management shall be structured in accordance with the following organizational chart:

MANAGEMENT BOARD

FARM MANAGEMENT/FINANCIAL OFFICER

ADMINISTRATION

PRODUCTION

MARKETING

ACCOUNTING

- 6.4 The Management Board shall structure the functions of Farm Management to assure proper segregation of duties and authorities consistent with the requirements of this Plan of Operation, generally accepted accounting principles and industry practices.
- 6.5 The Management Board shall employ a qualified accountant to serve as the Financial Officer of Farm Management. The Financial Officer shall report directly to the Management Board and shall be subject to the direction and supervision of the Management Board.
- 6.6 Finance and accounting duties of the Financial Officer shall include but not be limited to:
- 6.6.1 Supervise the Authority's accounting practices including maintenance of fiscal records, and preparation of financial reports and projections.
  - 6.6.2 Develop and implement accounting policies, systems, controls and procedures to assure compliance with applicable law and protection of the Authority's assets.
  - 6.6.3 Supervise the Authority's finance function, including design and implementation of policies, controls, and procedures.
  - 6.6.4 Perform such other duties as assigned by the Management Board.
- 6.7 Administration and production duties of Farm Management shall include but not be limited to:
- 6.7.1 Render regular reports to the Management Board.
  - 6.7.2 Execute the general policies formulated by the Management Board and organize the operation of the agricultural enterprise farms for the purpose of maximizing resources, production and revenue.

- 6.7.3 Utilize sound business judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be effectuated.
- 6.7.4 Prepare plans and annual budgets and make suggestions as to policies and any proposals for improvements.
- 6.7.5 Exercise full authority and control over all employees of the Authority, with the exception of the authority reserved to the Board herein.
- 6.7.6 Train members of the Nation to fill the positions of farm managers and department heads.
- 6.7.7 Supervise and implement the Authority's human resource management function, including but not limited to and consistent with, enforcement of any and all duly authorized human resource management policies and procedures approved by the Board.
- 6.7.8 Supervise and implement the Authority's hazardous substance management function, including but not limited to and consistent with, enforcement of any and all duly authorized hazardous substance management policies and procedures approved by the Board.
- 6.7.9 Supervise and implement the Authority's health and safety management function, including but not limited to and consistent with, enforcement of any and all duly authorized safety management policies and procedures approved by the Board.
- 6.7.10 Supervise and implement the Authority's vehicle and machinery management function, including but not limited to and consistent with, enforcement of any and all duly authorized vehicle and machinery management policies and procedures approved by the Board.
- 6.7.11 Supervise and implement the Authority's drug-free workplace management function, including but not limited to and consistent with, enforcement of any and all duly authorized drug-free workplace policies and procedures approved by the Board.
- 6.7.12 Ensure compliance with any duly authorized Authority policies and procedures approved by the Board, including but not limited to, matters concerning management of cultural resources and the use of Authority housing.
- 6.7.13 Perform such other duties assigned by the Management Board.

## **Section 7: CAPITAL; PROFITS; DISTRIBUTION OF PROFITS**

- 7.1 The capital of the Authority shall consist of the funds and other assets as shown on the audited balance sheet of the Authority as of December 31, 1988.
- 7.2 Any funds, equipment or other property thereafter acquired by the Authority from whatever sources will be taken up on the accounts of the Authority.
- 7.3 Any funds advanced to the Authority by the Tohono O’odham Nation prior to January 1, 1979, shall be considered as investments and shall be shown on the accounting records as such and shall not be repayable unless the business of the Authority is dissolved. Any funds advanced to the Authority by the Nation after that date shall be considered as a loan from the Nation, repayable as prescribed by the Tohono O’odham Legislative Council.
- 7.4 The Authority’s accounts shall show the results from operations, with profits being reflected as credits and losses as deficits.
- 7.5 Distribution of Profits: The annual net profit of the Authority shall be distributed as follows:
- 7.5.1 At the end of each fiscal year, after receipt of the audit report, the Management Board shall appear before the Legislative Council of the Tohono O’odham Nation and apprise the Legislative Council of the amount of the distribution of the net profits (if any) from the Authority’s farming operations which are to be paid to the Nation, which amount shall not exceed 50% of the net profit. In determining the distributable net profits to be paid to the Nation consideration shall include but not be limited to the following:
- (A) The Authority’s farming activities and working capitalization (current assets less current liabilities).
  - (B) Cash-on-hand.
  - (C) Funds needed to finance operating expenses, taking into consideration the estimated income of the current year and the anticipated cash flow.
  - (D) Funds needed for planned expansion and replacement of facilities and equipment.
  - (E) Maturity dates of long-term and short-term liabilities.
  - (F) The prospects for agriculture and the other related businesses under the Authority, and the economy in general.
- 7.5.2 The portion of distributable net profit, or other funds payable to the Tohono O’odham Nation under the provisions of this Section, shall be divided

equitably between and paid to the Nation and each of the Districts of the Nation in which the Authority operates agricultural enterprises.

- 7.5.3 The balance of the net profit or net loss shall be transferred to the Authority's retained earnings account.
- 7.5.4 No funds of the Authority will be expended by it for any purpose not directly connected therewith; nor shall loans or dividends be made to any person or entity from the Authority's funds.
- 7.5.5 At any time that the cash balance of the Authority exceeds the estimated expenses as determined by the budget for the ensuing year, the excess funds shall be transferred and disposed of in accordance with subsection 7.5.1.

## **Section 8: FINANCIAL TRANSACTIONS; MISCELLANEOUS**

- 8.1 **Contracts.** Except as otherwise provided in this Plan of Operation, the Management Board may authorize any officer or officers, or any agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority, and such authority may be general or confined to specific instances.
- 8.2 **Checks; drafts; etc.** An officer or agent designated by the Management Board in accordance with Section 8.1 may issue checks, drafts or other orders for the payment of money for goods or services not to exceed \$1,000.00 per item but in no event more than \$5,000.00 in the aggregate in any single month, and such officer or agent may sign such check, draft or order without further prior approval. All checks, drafts or other orders for the payment of money for goods or services in excess of \$2,500.00 per item shall require the prior approval of Farm Management and shall be signed by both the Treasurer of the Management Board and the Financial Officer of Farm Management. All checks, drafts or other orders for the payment of money for goods or services in excess of \$25,000.00 and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority shall require the prior approval of the Management Board and be signed by the Treasurer of the Management Board and the Financial Officer of Farm Management.
- 8.3 **Deposits.** All funds, except petty cash, of the Authority shall be deposited from time to time to the credit of the Authority in such bank or banks as the Management Board may select.
- 8.4 **Accounting.** A modern accounting system shall be established and installed by a reputable accounting firm in conformity with accounting principles generally accepted in the agricultural field. The accounting system shall insure the availability of information as may be necessary to comply with all applicable operational requirements of the Authority.
- 8.5 **Records; inspection; audits.** The books and records of the Authority, including current financial and operating statements, shall be kept on file in the office of the Authority and

shall be available for inspection at all reasonable times by authorized representatives of the Tohono O’odham Nation. The accounts and records of the Authority shall be audited by an independent Certified Public Accountant at the close of each fiscal year. The results of such audit shall be included in the reports by the Chairman of the Management Board to the Chairman of the Tohono O’odham Nation and the Tohono O’odham Legislative Council required by subsection 4.20.6 of this Plan of Operation.

- 8.6 **Fiscal Year.** The fiscal year of the Authority shall be the calendar year, starting January 1 and ending December 31 of each year.
- 8.7 **Inventories.** An annual physical inventory of assets shall be taken by Farm Management prior to the completion of the annual audit and at such other times as may be directed by the Management Board. A copy of the inventory shall be included in the report required by Subsection 4.20.6 of this Plan of Operation.
- 8.8 **Budgets.** A budget of the Authority for each ensuing year shall be prepared by the Farm Manager prior to the first October meeting of the Management Board. The budget shall be accompanied by a scope of work which provides a narrative detailed description of the capital expenditure, personnel and production requirements of the Authority. Farm Management and the Board shall discuss the budget and scope of work at the October meeting. The budget must be available for approval by the Board not later than December 1. The budget shall govern expenditures for the ensuing 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. Farm Management shall be responsible for enforcing the budget and will compare actual results against the budget quarterly. Amendments to the approved budget may be made with the approval of Farm Management and the Board. All budgets shall contain: (a) the estimated income and expenditures for the ensuing year by farm and by the acre; and (b) any additional information required by the Management Board.
- 8.9 **Insurance.** Farm Management shall be responsible for obtaining adequate insurance on buildings, farm-stored crops and other property of the Authority. Growing crops shall be insured against hail damage and fire where such damage might constitute a considerable loss to the Authority. Industrial compensation insurance will be carried on employees of the Authority. It shall be the responsibility of Farm Management to obtain property damage and public liability insurance in a sufficient amount to protect the Authority’s assets. All insurance coverage shall be satisfactory to the Management Board, shall name the Tohono O’odham Nation as an additional named insured and copies of all insurance policies shall be kept on file in the office of the Authority.
- 8.10 **Sales and Credits.** All agricultural products, services, or assets may be sold on the open market in accordance with generally accepted trade practices. All sales shall be F.O.B. Authority or other designated points of delivery and for cash, except as follows:

- 8.10.1 Sales to federal, state and municipal agencies may be made in accordance with the general practices of such agencies.
- 8.10.2 Sales of products and services on open account may be made to companies of known substantial net worth and satisfactory credit ratings.
- 8.11 **Policies, Rules and Regulations.** The Management Board shall have the power to make and adopt such policies, rules and regulations, not inconsistent with law and this Plan of Operation, as it may deem advisable for the management of the business and affairs of the Authority.
- 8.12 **Indian Preference in Employment and Contracting.** The Authority shall comply with all provisions of the Nation’s Tribal Employment Rights Ordinance, Or. No. 01-85, including the following requirements:
  - 8.12.1 The Authority shall give preference to qualified Indians, with first preference to local Indians, in all hiring, promotions, training, lay-offs and all other aspects of employment; and
  - 8.12.2 The Authority, when awarding contracts in the amount of \$5,000 or more for supplies, services, labor and materials in which the majority of work will occur within the Nation, shall give preference in contracting to qualified entities certified by the Tohono O’odham Employment Rights Commission as 51% or more Indian owned and controlled, with a first preference to qualified entities that are 51% or more owned and controlled by local Indians.

**Section 9: IMMUNITY FROM SUIT**

- 9.1 **Authority Immune from Suit.** The Authority 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 Authority is immune from suit, the Authority is hereby 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 Authority is not immune from suits, actions or proceedings initiated by the Nation or its regulatory agencies and departments. Nothing in this section shall be construed as a waiver of or limitation on the sovereign immunity of the Nation.
- 9.2 **Limited Waiver of Immunity.** The Authority may be sued only in the Courts of the Nation and only in the following limited circumstances:
  - 9.2.1 **Claims within Insurance Coverage.** With respect to claims against the Authority 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 8.9 of this Plan of Operation, as acknowledged by the insurer under such policy, the Authority’s immunity is

waived to the extent of such coverage, 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.

9.2.2 **Contract Claims.** With respect to claims against the Authority (i) arising out of any written contract to which the Authority 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 8.9 of this Plan of Operation, as acknowledged by the insurer under such policy, the following provisions shall apply:

- (A) For loan agreements to secure crop production and related financing, the Authority's immunity may only be waived by act of the Tohono O'odham Legislative Council. It shall be the responsibility of the Management Board and Farm Management to present annually to the Tohono O'odham Legislative Council a proposal for securing a limited waiver of sovereign immunity in connection with obtaining loan agreements to secure crop production and related financing.
- (B) For all other written contracts to which the Authority is a party, the Authority's immunity is waived to the lesser of the amount of the Authority's payment obligation under the contract or \$500,000.00.
- (C) The Authority'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 Authority's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interests) granted by the Authority 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 \$500,000.00.
  - (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 9.2.2, all contracts entered into with the same party on the same subject matter shall be deemed to be one contract.

9.2.3 **Claims Tried to Court.** Any claims for which the Authority’s immunity is waived shall be tried to the court. Nothing herein shall be construed as a consent to trial by jury.

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

9.3 **Section Strictly Construed.** Except as otherwise expressly provided in this section, nothing contained in this Plan of Operation shall be interpreted or construed as:

9.3.1 A waiver of the sovereign immunity of the Authority beyond the limits set forth in this section;

9.3.2 A waiver of sovereign immunity of the Authority 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;

9.3.3 A waiver of the sovereign immunity of the Authority from a levy on any judgment, or a lien, attachment, execution or other judicial or nonjudicial process upon the assets of the Authority; or

9.3.4 Creating any liability for the Nation with respect to any claims or other obligations asserted against the Authority or arising out of its operations.

9.4 The Legislative Council retains the power to prospectively modify this limited waiver of the Authority’s immunity either generally or with respect to particular circumstances.

### **Section 10: MEMORANDUM OF AGREEMENT (“MOA”)**

The Management Board shall have the authority to negotiate and enter into a memorandum of agreement which is consistent with the provisions of this Plan of Operation with any government or business entity on areas appropriate and related to the agricultural business of the Authority. For any government or business entity expressing a written interest in entering into such an MOA with the Authority, the Authority must respond accordingly within 15 calendar days from receipt thereof. For purposes of this Section, government entity means any political subdivision of the Tohono O’odham Nation, including any and all of the eleven Districts of the Nation and business entity means any and all entities created thereby. Failure of the Authority to negotiate in good faith or to enter into a memorandum of agreement with any government entity may be appealed to a joint meeting of the Chairman of the Nation and the Agriculture Committee of the

Tohono O’odham Legislative Council, which shall have 15 working days to review and recommend a plan of action. The plan of action approved by the Chairman of the Nation and the Agriculture Committee of the Tohono O’odham Legislative Council shall establish time frames for implementation of the plan of action. The plan of action approved by the Chairman of the Nation and the Agriculture Committee of the Tohono O’odham Legislative Council shall be binding upon the Authority and the government or business entity or entities who were parties to the joint meeting.

## **Section 11: DISSOLUTION AND LIQUIDATION**

**11.1 Dissolution the by Legislative Council.** The Authority can only be dissolved by action of the Tohono O’odham Legislative Council and 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 Authority. The Authority shall continue in existence during dissolution proceedings to permit the winding up of the Authority’s affairs.

### **11.2 Powers and Duties of the Management Board:**

11.2.1 Within 60 days after the date the Tohono O’odham Legislative Council adopts the Resolution prescribed in subsection 11.1, or such other period of time as may be fixed in such Resolution, the Management Board shall submit a plan of dissolution for review and approval by the Legislative Council. The plan of dissolution shall include an anticipated time frame for execution of the plan and provide the following:

- (A) the form and procedure for giving notice of the intent to dissolve to every known creditor of the Authority;
- (B) an identification of Authority cash and accounts receivable and steps for collecting such assets;
- (C) an inventory of all Authority personal property and other assets identifying which, if any, of the Authority’s personal property is to be distributed to the District in kind, and the methods for disposition of all other assets;
- (D) an identification of Authority liabilities and obligations and steps for satisfying or discharging such debts and obligations;
- (E) an identification of uncollected or unasserted claims and liabilities of the Authority and steps for making adequate provisions for such claims;

- (F) steps for identifying and distributing the remainder of the Authority's assets, either in cash or in kind, to the Nation after all claims have been satisfied or otherwise provided for; and
  - (G) any other acts required to liquidate the Authority's assets and wind up its business.
- 11.2.2 The Authority, during dissolution proceedings, shall have only those powers and duties which are authorized in an approved plan of dissolution and are necessary to wind up the Authority's business.
- 11.2.3 **Notice of Dissolution.** The Management Board shall notify the Chairman of the Nation and the Tohono O'odham Legislative Council in writing when, in accordance with an approved plan of dissolution, all debts, liabilities and obligations of the Authority have been paid and discharged, or adequate provision has been made therefor, and all remaining property and assets of the Authority have been distributed.
- 11.2.4 **Dissolution.** The Authority shall be dissolved upon formal acceptance of the notice of dissolution by the Tohono O'odham Legislative Council, and this Plan of Operation shall be repealed.