

## **TITLE 17 – HEALTH AND SAFETY**

### **CHAPTER 2 – TOHONO O’ODHAM NURSING CARE AUTHORITY**

*Legislative History: The Amended and Restated Charter of the Tohono O’odham Nursing Care Authority was adopted by Resolution No. 04-122 effective April 16, 2004. The first Amendment to the Amended and Restated Charter of the Tohono O’odham Nursing Care Authority was adopted by Resolution No. 06-748 (veto overridden by Resolution No. 06-778 effective November 29, 2006). The Second Amendment to the Amended and Restated Charter of the Tohono O’odham Nursing Care Authority was adopted by Resolution No. 08-180 effective April 18, 2008. By Resolution No. 16-391 and effective August 10, 2016, the Tohono O’odham Nursing Care Authority Charter was amended to clarify the roles and authorities of the Nursing Care Authority Board of Directors and Administrator.*

*Related History: Resolution No. 04-122 repealed the provision of Resolution No. 98-512, “Adopting the Charter of the Tohono O’odham Nursing Care Authority,” and any other resolutions inconsistent with Resolution No. 04-122.*

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#### **PREAMBLE**

Guided by Tohono O'odham values and traditions, it shall be the mission of the Tohono O'odham Nursing Care Authority to take a leadership role in providing a continuum of care for elder members of the Tohono O’odham Nation and services designed to enhance the physical, spiritual, emotional, social, and intellectual qualities of life for aging O'odham and other members of the Nation in need of skilled nursing care, assisted living and hospice. The Tohono O'odham Nursing Care Authority shall be guided in its mission by the following values:

All people deserve to live and die in dignity. Life, death, and dignity are uniquely defined by one's own culture.

Health is more than the absence of disease. It is a complete combination of intellectual, physical, psychological, social, and spiritual states which form the condition of wellness we call health.

The Tohono O'odham culture is important to the health and well being of the elderly.

Elderly members of the Nation should maintain contact with their communities rather than being relocated off the Nation's lands to non-O'odham facilities for health care services.

It is essential that health care be delivered in a language the resident understands. Individual autonomy and self-determination of the resident must be respected.

Health care should be provided in harmony with the cultural values and customs of the O'odham Himdag.

The nursing care facility operated by the Tohono O'odham Nursing Care Authority shall be resource efficient, and, where possible, it shall return resources to the Tohono O'odham Nation.

#### **ARTICLE I**

##### **ESTABLISHMENT AND PURPOSES**

- 1.1. Establishment. The Tohono O'odham Nursing Care Authority is hereby established by the Tohono O'odham Nation pursuant to Article VI, Section 1(b) of the Nation's Constitution as an exercise of the Nation's sovereign right of self-government. The Authority is organized as an enterprise of the Nation and shall have and may exercise all those powers set forth herein. The Authority shall have the same tax status and immunities under federal law as the Nation.

- 1.2. Purposes. The Authority is authorized to establish, operate and maintain a skilled nursing care facility (“Facility”), assisted living residence and hospice for all persons with admission preference granted to members of the Tohono O’odham Nation, in accordance with applicable standards and requirements of licensing, accrediting and funding agencies and to provide other ancillary services, consistent with a continuum of care for elder members of the Tohono O’odham Nation and the preamble to this Charter. In addition, the Authority is authorized to establish, operate and maintain a child care program and to construct, operate and maintain rental housing for employees, including tribal members, nonmember Indian and non-Indian employees of the Facility.

## **ARTICLE II**

### **DEFINITIONS**

As used in this Charter,

- 2.1. Annual Meeting means the one Regular Meeting per year at which the officers of the Board are elected; the date of which shall be determined by the Board and published in the Governance Manual.
- 2.2. Authority means the Tohono O’odham Nursing Care Authority established by this Charter.
- 2.3. Board means the board of directors of the Authority established in accordance with Article IV of this Charter.
- 2.4. 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 Interior on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 476).
- 2.5. Director means a member of the Board of the Authority appointed pursuant to Article IV of this Charter.
- 2.6. Emergency Meeting means a meeting called upon the occurrence of an event which creates a significant risk of immediate harm to the health or welfare of the residents or the employees or significant risk of immediate and substantial damage to the Facility and only for purposes of dealing with the emergency event.
- 2.7. Facility means the Archie Hendricks Sr. Skilled Nursing Facility located within the Gu Achi District of the Tohono O’odham Nation or such other name as may be given to the Facility.
- 2.8. Finance Committee means one of the Standing Committees of the Board.

- 2.9. Governance Manual means the Board of Directors Governance Manual as adopted and revised by the Board, and which shall be consistent with the terms of this Charter.
- 2.10. Legislative Council means the Tohono O'odham Council, in which the legislative powers of the Nation are vested pursuant to Articles IV, V, and VI of the Constitution.
- 2.11. Nation means the Tohono O'odham Nation, a federally recognized Indian tribe, organized under the Constitution.
- 2.12. Oversight Committee means the Health and Human Services Committee of the Legislative Council or such subsequently named committee of the Legislative Council responsible for oversight of this Authority and the Facility.
- 2.13. Regular Meeting means one of the regularly scheduled meetings of the Board which shall occur not less frequently than once each quarter as further provided for in the Governance Manual.
- 2.14. SNF means a skilled nursing care facility.
- 2.15. Special Meeting means a meeting held for specific purposes and outside of the times scheduled for Regular Meetings.
- 2.16. Standing Committee means a committee formed by the Board and composed of no more than three (3) Directors formed in accordance with the Governance Manual.
- 2.17. Tribal Employment Rights Ordinance means the Tribal Employment Rights Ordinance of the Nation, Ord. No. 01-85, enacted by the Papago Council, predecessor to the Legislative Council, as such ordinance may be amended from time to time.

### **ARTICLE III**

#### **PLACE OF BUSINESS**

- 3.1. The principal place of business and the principal office of the Authority shall be at the Facility. The Authority may also have offices at such other places as the Board may from time to time direct and as the operations of the Authority may require.

### **ARTICLE IV**

#### **BOARD OF DIRECTORS**

- 4.1. Role. The ultimate accountability for the management of the Authority resides with the Board.
- 4.2. Voting Membership.

- 4.2.1. Composition. The Board shall be comprised of five voting Directors.
- 4.2.2. Qualifications. Each Director shall be a member of the Nation, shall be at least 21 years of age, and shall have sufficient experience, education and dedication to the improvement of elderly health care for the O'odham to make sound judgments concerning that care. A Director may not be a current employee or have been an employee within the past twelve months of appointment as a Director.
- 4.2.3. Appointment. The Directors shall be nominated by the Chairperson of the Nation and confirmed by the Legislative Council in accordance with the Nation's regulations regarding Board Appointments. Each Director shall hold office until his or her successor has been confirmed, including the satisfaction of any post-confirmation qualifications and requirements.
- 4.2.4. Term; Staggered; Length. Directors shall serve staggered terms. All terms shall be for four years, expiring on the 30th day of October of the fourth year. No term shall expire except on the 30th day of October, notwithstanding the month in which the Legislative Council confirms the appointment. Directors shall be eligible for reappointment upon expiration of their terms of office.
- 4.3. Removal, Resignation and Vacancies.
- 4.3.1. Removal. A Director may be removed by the Chairperson of the Nation if (a) the Chairperson, in his or her discretion, determines that the best interest of the Nation shall be served by such removal and (b) such removal does not adversely impact on the ability of the Authority to operate in accordance with the state or federal regulatory requirements applicable to the certification and operation of a SNF.
- 4.3.2. Resignation. A Director may resign at any time by giving written notice to the Chairperson of the Board and to the Chairperson of the Nation. Resignations shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Any Director who fails to attend three consecutive properly called and noticed meetings of the Board or who fails to attend six Board meetings properly noticed in any fiscal year shall, unless excused from attendance by majority vote of the Board during the meeting at which the Director is absent, be considered to have resigned.
- 4.3.3. Vacancy. The Chairperson of the Board shall promptly notify the Chairperson of the Nation concerning any vacancy to be filled. Vacancies shall be filled for the unexpired portion of the term in accordance with the Nation's regulations regarding Board Appointments.
- 4.4. Meetings of the Board.

- 4.4.1. Regular, Annual, Special and Emergency Meetings. Regular Meetings of the Board shall be held at least once during each fiscal quarter. An Annual Meeting shall be held once a year. Special Meetings of the Board may be held upon notice given by the Chairperson of the Board or by three (3) Directors. Emergency Meetings may be called by the Chairperson without compliance with notification requirements so long as each Director is notified.
- 4.4.2. Notice. Notice of meetings stating the time, date, place and agenda shall be given in writing to each Director and officer of the Board by mailing (or by electronic communication including facsimile or electronic mail) such notice not less than ten (10) days nor more than thirty (30) days prior to the meeting, excluding the day of the meeting, provided that Special Meetings may be called upon no less than forty-eight (48) hours notice. Notice may be waived in writing by a Director entitled to such notice; attendance of a Director at a Board meeting shall constitute waiver of notice. Notice of the date, time and location of Regular Meetings shall be provided to the Offices of the District Chairpersons, the Chairperson of the Oversight Committee, and the Chairperson of the Nation.
- 4.4.3. Agenda. An agenda for each Board meeting shall be distributed with the meeting notification to all Directors. An agenda may be modified by the Directors at the meeting.
- 4.4.4. Quorum. The presence at any meeting of three (3) Directors shall constitute a quorum of the Board for the transaction of any business.
- 4.4.5. Actions. The act of a majority of the Directors present and voting at a meeting at which a quorum is present shall be recorded in writing as a resolution of the Board and shall be considered the act of the Board. An official written record accurately describing each Board meeting and all formal actions of the Board shall be maintained in the form of written minutes.
- 4.4.6. Unanimous Consent in Lieu of Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized by a written resolution commencing with the caption “Unanimous Consent in Lieu of Meeting” and is approved of and signed by all of the Board Members entitled to vote. Any act taken without a meeting and approved of and signed by less than all of the Board Members entitled to vote is not an act of the Board and has no effect.
- 4.4.7. Rules. The Board may adopt such rules as it may determine necessary for the orderly conduct of its business.
- 4.4.8. Minutes. The Secretary/Treasurer shall make arrangement for the written recording of the minutes of the Board’s meeting. Copies of the minutes of each meeting shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by the Directors, officers of the Authority,



the Chairperson of the Nation, the Chairperson of the Legislative Council, the Chairperson of the Oversight Committee or any person designated by such Chairpersons in writing.

- 4.4.9. Compensation and Expenses. In accordance with this Charter and the established policies and procedures in the Governance Manual, Directors shall be reimbursed for mileage expenses and paid a per diem solely for attending Board meetings, not to exceed four compensated meetings per month. All payments of any kind to each Director shall be detailed in the Authority's annual report to Legislative Council and reported to the oversight committee on a quarterly basis. Per diem and mileage shall be paid only for a meeting at which a quorum is present and that is conducted in accordance with the requirements of this Section 4.4, and no stipend or other compensation shall be paid to a Director. The amount of the per diem will be at the rate adopted by vote of the Board and reflected in the Governance Manual.
- 4.5. Powers and Duties. The Board shall act only as a Board of Directors and individual Directors 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 Authority, and within the limits of responsible business judgment. Subject to the foregoing, the Board may exercise the following powers and duties:
  - 4.5.1. Engage in any lawful business consistent with the purposes of the Authority.
  - 4.5.2. Exercise authority and responsibility for oversight of the management and operation of the Authority, including operations both within and without the lands of the Nation and exercise the powers set forth in this Charter without previous authorization or subsequent approval except as provided herein; provided that the Administrator and employees under the Administrator's supervision shall be responsible for day-to-day management of the Facility and its business activities.
  - 4.5.3. Establish policies for the organization, management and operation of the Authority.
  - 4.5.4. Establish policies for the delivery of quality resident care.
  - 4.5.5. Establish and maintain effective operating and fiscal policies for the Authority.
  - 4.5.6. Adopt rules for the orderly conduct of the business of the Board.
  - 4.5.7. Adopt the use of a seal.
  - 4.5.8. Select, supervise and direct the Administrator.

- 4.5.9. Utilize, improve, maintain, operate and manage all interests in real property held by the Authority, plan for and construct improvements thereon, negotiate and hold leases or subleases of the real property, subject to the approval of the Legislative Council; provided that nothing in this Charter shall be construed as authorizing the Authority to mortgage or encumber trust or restricted real property of the Nation without the prior consent of the Legislative Council.
- 4.5.10. Acquire, hold, own, manage, operate, exchange, deal in and dispose of all Authority personal property in the ordinary course of business.
- 4.5.11. Subject to the limitations on waivers of immunity in Article VIII, pledge or grant security interests in the Authority's personal property, cash, accounts receivables and other assets (exclusive of any leasehold interests) as collateral for any contractual obligation.
- 4.5.12. Acquire, hold, own, use, license, and lease any interest in and to inventions, patents, licenses, formulas, processes, copyrights, trade names, trademarks and all applications therefor, provided that title of all such acquisitions shall be taken in the name of the Nation and such interests may be sold only with the prior consent of the Legislative Council.
- 4.5.13. Enter into, make, perform and carry out or cancel and rescind contracts for any lawful purpose pertaining to the Authority's business; provided that no contract or other transaction between the Authority and any one of the Directors, officers or employees of the Authority or an elected officer or employee of the Nation or any District, or between the Authority 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 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.
- 4.5.14. Borrow funds, subject to the express limitation that the Authority shall not incur obligations in excess of its ability to pay as required and that the Nation shall not be liable for the debts or obligations of the Authority.
- 4.5.15. Apply for grants consistent with the mission of the Authority.
- 4.5.16. Designate and approve all depositories used for the deposit of funds of the Authority.
- 4.5.17. Take all actions necessary to form subdivisions and subordinate entities of the Authority found to be necessary to advance the expressed mission of the Authority; provided, however, that any such newly-formed subdivision shall be wholly owned by the Authority.

- 4.5.18. Elect officers, establish standing committees, task groups and subsidiary governing boards consisting exclusively of Directors of the Board, appoint agents, and select independent auditors, independent legal counsel, management companies and other consultants as may be needed from time to time by the Authority, define their duties and fix their compensation.
- 4.5.19. Set a reasonable per diem rate to be paid Directors solely for attendance at Board meetings conducted in accordance with Section 4.4, and to authorize payment to Directors of reasonable travel expenses or reimbursement for travel expenses for an authorized purpose in furtherance of TONCA's mission.
- 4.5.20. Approve an annual budget prior to the commencement of the subsequent fiscal year and provide a copy of the approved budget to the Chairpersons of the Nation, the Oversight Committee and the Legislative Council.
- 4.5.21. Make an annual written and oral report regarding the Authority's operations to the Legislative Council within 120 days after the close of the Authority's fiscal year. The report shall include an annual financial audit report and program detail of the Authority's major activities for the year just completed with projections for the succeeding year.
- 4.5.22. Confer fully and freely with the Legislative Council in the performance of its duties and continue to provide information regarding the Authority to the Legislative Council.
- 4.5.23. Recommend amendment or revision of this Charter to the Legislative Council whenever deemed appropriate to improve the operation and management of the Authority.
- 4.5.24. Have and exercise all other powers necessary, proper, advisable or incidental to affect any or all of the powers and responsibilities of the Authority.

## **ARTICLE V**

### **OFFICERS, STANDING COMMITTEES AND KEY EMPLOYEES**

- 5.1. Officers, Powers and Duties. The principal officers of the Board shall be the Chairperson, the Vice Chairperson, and the Secretary/Treasurer. The Board may appoint such other officers and agents as it deems necessary and may determine their duties, terms and compensation. The Board shall elect officers at the Annual Meeting.
  - 5.1.1. Chairperson. The Chairperson of the Board shall be a Director and shall have the following responsibilities:
    - 5.1.1.1. Provides leadership to the Board of Directors and presides at all Board meetings;

- 5.1.1.2. Develops the agendas in collaboration with Board members and the Administrator;
  - 5.1.1.3. Ensures that meetings are participatory, attentive to time constraints and effective;
  - 5.1.1.4. Assures that Board meetings and deliberations occur within the parameters of the Authority Charter and policies;
  - 5.1.1.5. Works in partnership with the Administrator to achieve the Authority's mission and goals;
  - 5.1.1.6. Executes 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 to some other officer or agent of the Authority, or shall be required by law to be otherwise signed or executed;
  - 5.1.1.7. Initiates annual review of the Administrator; and
  - 5.1.1.8. Discusses issues confronting the organization with the Administrator and reviews any issues of concern to the Board.
- 5.1.2. Vice Chairperson. The Vice-Chairperson of the Board shall be a Director and shall have the following responsibilities:
- 5.1.2.1. Performs the duties and exercises the powers of the Chairperson during his/her absence;
  - 5.1.2.2. In the event of a vacancy in the office of the Chairperson, Vice Chairperson fills the position of Chairperson until the end of the Chairperson's term; and
  - 5.1.2.3. Chairs committees and assumes other responsibilities as requested.
- 5.1.3. Secretary/Treasurer. The Secretary/Treasurer shall be a Director and shall have the following responsibilities:
- 5.1.3.1. Performs the duties and exercises the powers of the Chairperson during the absence of both the Chairperson and the Vice Chairperson;
  - 5.1.3.2. Takes Board minutes or delegates that responsibility to a person designated by the Administrator;

- 5.1.3.3. Sees that all notices are appropriately given in accordance with the provisions of the Charter;
- 5.1.3.4. Is sufficiently familiar with the Charter and tribal ordinances to note applicability during meetings;
- 5.1.3.5. Ensures that all Authority governing documents including the seal, Charter and Charter amendments, policies and Board minutes are appropriately maintained and filed;
- 5.1.3.6. Provides oversight for the Authority's financial management and practices;
- 5.1.3.7. Works with Business Office Manager to develop and implement financial policies and procedures;
- 5.1.3.8. Presents financial policies for Board approval;
- 5.1.3.9. Ensures that appropriate financial reports are made available to the Board and regularly reports to the Board on key financial events and trends;
- 5.1.3.10. Reviews the Authority's financial records at least quarterly; and
- 5.1.3.11. Chairs the Finance Committee one of the standing committees of the Board established and operated in accordance with the Governance Manual.

5.2. Elections; Term of Offices. The officers shall be elected annually by the Board for one-year terms at the Annual Meeting.

5.3. Removal; Resignation; Vacancies.

5.3.1. Removal. Any officer elected by the Board may be removed from office by the Board at any time, with or without cause.

5.3.2. Resignation. Any officer may resign as an officer at any time by giving written notice to the Chairperson of the Board. Resignations shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt.

5.3.3. Vacancies. Any vacancy in any office shall be filled for the unexpired portion of the term by the Board at a regular or special meeting, except that a vacancy in the office of Chairperson shall be filled by the individual serving as the Vice-Chairperson and the office of Chairperson shall be filled by the Board.

- 5.4. Standing Committees. In accordance with the Governance Manual the Board shall establish a Finance Committee as a standing committee of the Board and may establish other standing committees to address the ongoing issues of the Authority and special ad hoc task groups to work for a specified time to accomplish a specific assignment.
- 5.5. Administrator. The Board shall employ a full-time, on-site Administrator who shall be the chief executive officer of the Facility. The Administrator shall be responsible for the day-to-day management of the Facility and its business activities and shall be knowledgeable in such operations. The Administrator shall be a non-voting member of the Board. The Administrator shall have the following specific duties and responsibilities, which duties may be delegated to other employees of the Facility under the supervision of the Administrator:
- 5.5.1. Recommend policies to the Board and propose changes to the Board to improve Facility operations;
  - 5.5.2. Implement the policies adopted by the Board and direct the operations of the Facility;
  - 5.5.3. Prepare operating plans and budgets for the Facility;
  - 5.5.4. Prepare written policies and procedures for resident care in accordance with applicable standards and requirements of licensing, accrediting and funding agencies;
  - 5.5.5. Recruit and hire the employees of the Facility in a manner consistent with the Tribal Employment Rights Ordinance and Regulations and with the goal of providing employment opportunities for members of the Nation;
  - 5.5.6. Establish and implement a performance improvement plan for the Facility;
  - 5.5.7. Monitor, review and audit the management systems of the Facility and meet all applicable standards and requirements of licensing, accrediting and funding agencies;
  - 5.5.8. Hold regular meetings of the senior staff;
  - 5.5.9. Provide regular reports to the Board as required; and
  - 5.5.10. Perform such other duties as assigned by the Board of Directors.
- 5.6. Director of the Business Office. The Director of the Business Office shall be a qualified accountant who shall supervise the Facility's accounting practices including maintenance of fiscal records, preparation of financial reports and projections and supervision of accounting staff; develop and implement accounting policies, systems, controls and procedures to assure compliance with applicable standards and protection of the

Facility's assets; supervise the Facility's finance function, including design and implementation of policies, controls, and procedures; and supervise the Business Office staff.

- 5.7. Director of Nursing. The Director of Nursing shall be a qualified registered nurse who shall administer and supervise nursing services; ensure that standards of resident care are consistent with nationally recognized professional standards; and develop resident care programs which describe resident population needs and how resident care is assessed, evaluated and met.

## ARTICLE VI

### OPERATIONS

- 6.1. Fiscal Year. The fiscal year of the Authority shall commence October 1 and end September 30 of the following year.
- 6.2. Contracts. Except as otherwise provided in this Charter, the Board may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority, and such authorization may be general or confined to specific instances. No person shall be authorized to bind the Authority through contract or otherwise absent prior formal consent, recorded in writing, by the Board.
- 6.3. Checks: Drafts: Orders. The Board will establish by resolution a policy for the payment of money by check, draft, or other order, and for the issuance of notes, bonds, or other evidences of indebtedness issued in the name of the Authority; any such policy shall include the requirement of two signatories who may, by approved policy, be officer(s), agent(s), or employee(s) of the Authority, provided that the Directors shall not be signatories for checks or other forms of payments.
- 6.4. Deposits. All funds, except cash on hand, shall be deposited from time to time to the credit of the Authority in such financial institutions as the Board may select.
- 6.5. Accounting. An appropriate accounting system shall be established and installed in conformity with generally accepted accounting principles. The accounting system shall insure the availability of information as may be necessary to comply with all applicable operational requirements of the Authority.
- 6.6. Records and Inspections. The books and records of the Authority, including current financial and operating statements, shall be kept on file in the principal place of business of the Authority and shall be available for inspection at all reasonable times by Directors and officers of the Authority and their designated agents, and, with prior written notice to the Chairperson of the Board, by the Chairperson of the Nation and members of the Legislative Council, or their employees and agents, with appropriate authorization.

- 6.7. Budgets. A budget of the Authority for each year shall be prepared for approval by the Board prior to the end of the fiscal year. The budget shall include a profit and loss projection, a cash flow projection and a budget for capital expenditures. The draft budget shall be presented to the Board not later than August 15 of each year. The Administrator shall be responsible for preparation of the budget and for business operations in accordance with the budget and will provide the Board with a comparison of actual results against the budget for each month.
- 6.8. Insurance. The Authority shall maintain appropriate liability and property insurance for its operations and facilities sufficient to protect the interests of the Authority and the Nation. Such policies shall designate the Nation as an additional named insured. The Authority shall maintain workers' compensation insurance, unemployment compensation insurance, fidelity bond or employee theft and dishonesty insurance covering the Directors, officers, Administrator and employees who handle funds or property, and such other forms of insurance as the Board deems appropriate.
- 6.9. Indemnification. The Authority shall indemnify any Director, officer or employee of the Authority or any former Director, officer or employee, for reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any civil action, suit or proceeding in which s/he is made a party by reason of being, or having been such Director, officer or employee except in relation to matters as to which s/he 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 Authority shall also indemnify any such Director, 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 Directors involved in the matter or controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Nation that such settlement be made and that such Director, officer or employee was not guilty of gross negligence, willful misconduct or other conduct beyond the scope of his or her duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such Director, officer or employee may have.

## ARTICLE VII

### FUNDS AND DISTRIBUTIONS

- 7.1. Advancements by the Nation. All funds appropriated for capital expenditures by the Legislative Council in Resolution Nos. 93-275, 93-424, 93-471, 94-324, 95-388, 95-574, 96-006, 96-417, and 97-394, for the establishment of the Facility shall be designated as an advancement of expenses to the Authority by the Nation and shall be shown on the Authority's accounting records as such.
- 7.2. Operating Reserve. The Authority is authorized to create an operating reserve to pay for operating expenses. The operating reserve shall not exceed three (3) months of operating cash flow. The operating reserve may be increased with the prior consent of the Legislative Council.



- 7.3. Capital Expenditures. The Authority is authorized to create a fund for capital expenditures such as remodeling or additions, equipment acquisitions, expansion and new construction.
- 7.4. Distributions. The Board shall formulate a policy for declaring dividends from the surplus profits of the Authority for repayment of the Nation's advancement of expenses to the Authority. Such policy shall take into account the Authority's ability to pay its debts as they come due in the usual course of business and the balance of the Authority's assets and liabilities. The policy shall be approved by the Legislative Council. All distributions declared by the Board shall be paid to the Nation. Within one hundred and eighty (180) days after the close of the first fiscal year in which the Authority shows a profit as confirmed in audited financial statements, if the Board has not proposed a distribution policy for the Authority, the Legislative Council may direct the Board to propose a distribution policy and present the distribution policy to the Legislative Council for its review and approval within an additional sixty (60) days.

## **ARTICLE VIII**

### **IMMUNITY FROM SUIT**

- 8.1. Immunity 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 Article VIII or the Charter shall be construed as a waiver of or limitation on the sovereign immunity of the Nation.
- 8.2. Limited Waiver of Immunity. The Authority may be sued in the courts of the Nation and in other courts of competent jurisdiction, and only in the following limited circumstances:
- 8.2.1. 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 6.8 of this Charter, as acknowledged by the insurer under such policy, the Authority's immunity is waived to the lesser of the extent of such coverage or One Million Dollars (\$1,000,000), provided that any judgment, order or award may only be satisfied pursuant to:
- 8.2.1.1. the express provisions of the policy or policies of insurance which are in effect at the time of each such judgment, order or award; and
  - 8.2.1.2. an action, if necessary, brought by the prevailing party against the insurer under such policy.

8.2.2. Contract Claims.

8.2.2.1. 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 6.8 of this Charter, as acknowledged by the insurer under such policy, the Authority's immunity is waived for an amount not to exceed the amount of the Authority's obligation under the contract, the value of the assets of the Authority as specified in Section 8.2.2.2 below, or Five Hundred Thousand Dollars (\$500,000), whichever is the smallest sum.

8.2.2.2. 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:

8.2.2.2.1. Execution on any such collateral shall be limited to the assets of the Authority and shall not extend to the assets of the Nation.

8.2.2.2.2. Execution on any such collateral shall be solely by judicial process pursuant to a judgment, order or award of a court of competent jurisdiction.

8.2.3. 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.

8.2.4. 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.

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

8.3.1. A waiver of the sovereign immunity of the Authority beyond the limits set forth in this Article VIII;

- 8.3.2. A waiver of the sovereign immunity of the Authority from the imposition in any judgment, order or award of punitive, double, treble, incidental or consequential damages;
- 8.3.3. A waiver of the sovereign immunity of the Authority from a levy on any judgment, or a lien, attachment, execution or other judicial or non-judicial process upon the real property assets of the Authority; or
- 8.3.4. Creating any liability for the Nation with respect to any claims or other obligations asserted against the Authority or arising out of its operations.

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.

## **ARTICLE IX**

### **APPLICABILITY OF THE LAWS OF THE NATION**

- 9.1. The Authority shall be subject to and comply with all laws of the Nation of general applicability in existence as of the effective date of this Charter or subsequently enacted.
- 9.2. Indian Preference in Employment and Contracting.
  - 9.2.1. The Authority shall give preference to qualified Indians, with first preference to local Indians in all hiring, promotion, training, layoffs and all other aspects of employment; and
  - 9.2.2. The Authority, when awarding contracts in the amount of \$5,000 or more for supplies, service, 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 or will award contracts according to the standards set forth by the Tohono O'odham Nation.
  - 9.2.3. The Authority is not subject to the rules, regulations, guidelines and orders of the Papago Employment Rights Commission as it is a tribal enterprise that performs essential governmental functions, is not a commercial enterprise and, therefore, is not a "covered employer" as described in Section 3 of the Papago Tribal Employment Rights Ordinance.
  - 9.2.4. Nothing in this Section or this Charter exempts those entities who do business with the Authority from being subject to the Papago Employment Rights Ordinance or the rules, regulations, guidelines and orders of the Papago Employment Rights Commission.

## ARTICLE X

### DISSOLUTION AND LIQUIDATION

- 10.1. Dissolution by Legislative Council. The Authority can only be dissolved by action of the 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.
- 10.2. Duties of the Board.
  - 10.2.1. Within sixty (60) days after the date the Legislative Council adopts the Resolution prescribed in Section 10.1 above, or such other period of time as may be fixed in such Resolution, the 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:
    - 10.2.1.1. a plan for relocating all of the residents in the Facility, notifying the families of the residents, informing any nonresidents using the services at the Facility, including, where available, the locations of similar services, and the notification, as required, of all licensing agencies;
    - 10.2.1.2. the form and procedure for giving notice of the intent to dissolve to every known creditor of the Authority;
    - 10.2.1.3. an identification of Authority cash and accounts receivable and steps for collecting such assets;
    - 10.2.1.4. 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 Nation in kind, and the methods for disposition of all other assets;
    - 10.2.1.5. an identification of Authority liabilities and obligations and steps for satisfying or discharging such debts and obligations;
    - 10.2.1.6. an identification of uncollected or unasserted claims and liabilities of the Authority and steps for making adequate provision for such claims;
    - 10.2.1.7. 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

10.2.1.8. any other acts required to liquidate the Authority's assets and wind up its business.

10.2.2. 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.

10.3. Notice of Dissolution. The Board shall notify the Chairperson of the Nation, the Chairperson of the Legislative Council and the Chairperson of the oversight committee of the 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.

10.4. Effective Date of Dissolution. The Authority shall be dissolved upon formal acceptance of the notice of dissolution by the Legislative Council, and this Charter shall be repealed.

## **ARTICLE XI**

### **STATUTORY AGENT**

11.1. The Secretary/Treasurer of the Board of the Authority is hereby appointed the lawful agent of the Authority upon whom service of any process, notice, or demand required or permitted by law to be served on the Authority may be served, and which, who so served, shall be the lawful personal service on the Authority; the Board of Directors of the Authority may revoke this appointment and appoint another resident of the Nation as such agent by filing the name and address of such appointee with the Secretary of the Legislative Council.