

OPERATING AGREEMENT BETWEEN SAN CARLOS APACHE COLLEGE AND TOHONO O'ODHAM COMMUNITY COLLEGE FOR THE ESTABLISHMENT OF SAN CARLOS APACHE COLLEGE AS A BRANCH CAMPUS OF TOHONO O'ODHAM COMMUNITY COLLEGE

This Operating Agreement (hereinafter, the "Agreement") is entered into by and between SAN CARLOS APACHE COLLEGE ("SCAC"), a subsidiary education and economic development enterprise chartered by the San Carlos Apache Tribe ("Tribe"), and TOHONO O'ODHAM COMMUNITY COLLEGE ("TOCC"), chartered by the Tohono O'odham Nation and accredited by the Higher Learning Commission ("HLC"), collectively the "Parties". This Agreement shall become effective as of the last date on the signature page(s) to this Agreement (the "Effective Date").

WHEREFORE, in consideration of the mutual promises, conditions, and terms contained herein, the Parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to set forth the understanding of the Parties as to the terms and conditions under which TOCC will provide educational services and programs of study for SCAC as an affiliated, branch campus of TOCC that will operate geographically apart and independent of the main campus of TOCC, in accordance with the Higher Learning Commission ("HLC") definition of a "branch campus." SCAC will initiate the process of attaining independent accreditation from the HLC within three months after SCAC has been formally designated by HLC as a branch campus of TOCC. The parties further understand and agree that SCAC intends to become a tribally controlled college as defined in the Tribally Controlled Community College Act, 25 U.S.C. Section 1801 *et seq.*, renamed the Tribally Controlled College or University Assistance Act (TCCUA) in 1998, to serve the San Carlos Apache Tribe once it attains independent accreditation from HLC.

ARTICLE II. TOCC OBLIGATIONS

TOCC shall:

1. Provide educational programs for eligible SCAC students to pursue the Associate degrees and Certificates listed in Exhibit A to this Agreement incorporated by reference herein;
2. Provide oversight and guidance for establishment of the SCAC branch campus in compliance with requirements for accreditation by the HLC;
3. Ensure that any TOCC employees and faculty who may be assigned to SCAC participate in an orientation provided by SCAC on Apache culture and SCAC's mission and goals;
4. Designate the TOCC President or designee to facilitate the carrying out of the terms of this Agreement;

5. Be responsible for the general supervision of courses including monitoring instructor qualifications to ensure compliance with TOCC and HLC standards, and this responsibility does not imply day-to-day supervision or determination of the teaching methods and procedures;
6. Make official transcripts available for all SCAC students within one month of receipt of final grades, provided that written authorization from SCAC for release of the transcript has been received by TOCC within such time;
7. Confer upon SCAC graduates, a signed Associate Degree or Certificate, as the case may be, but only after all final grades are posted on the student transcript in the TOCC Director of Records and Admissions Office;
8. Direct the TOCC Financial Aid Office to access and process federal financial aid and other student aid as it is available for SCAC students who are eligible for federal Pell grant, federal SEOG and federal work-study funding; provided that:
 - a) Private scholarships for SCAC students must result from fundraising by SCAC staff and Board of Directors, and TOCC shall have no responsibility therefor; and
 - b) The Parties acknowledge that TOCC does not participate in any Federal Loan Programs and will not process any loan applications for SCAC students;
 - c) TOCC assumes no liability or responsibility for any Federal Loans or other programs previously participated in by SCAC students; and
 - d) TOCC shall verify VA eligibility for veterans enrolled in the programs under this Agreement. TOCC's Financial Aid Director will serve as the official sign-off authority for VA benefits;
9. Undertake financial aid audits;
10. Maintain the highest, accredited academic standards, and provide SCAC the protocols for these assessments; and
11. Review and comment on SCAC's application for candidacy for HLC accreditation and related documents.

ARTICLE III: SCAC OBLIGATIONS

San Carlos Apache College shall:

1. Establish such policies and procedures as are necessary to ensure that SCAC will be prepared to, and will be able to carry out its operations in accordance with HLC requirements for a branch campus of TOCC;

2. Conduct all programs and student development functions in an open and direct manner to facilitate communication and to assure effective delivery of services;
3. Comply with the policies, procedures and standards of the HLC and TOCC, as a branch campus of TOCC;
4. Ensure that its faculty, staff and students meet the standards described in the policies and procedures of TOCC, and the accreditation standards of the HLC;
5. Offer SCAC branch location courses to TOCC students;
6. Disburse all financial aid in accordance with TOCC policies;
7. Submit semester course schedules to the TOCC Director of Admissions and Records not later than two months prior to the first day of classes;
8. Within one week after completion of registration, electronically (online) submit all registration materials to the TOCC Director of Admissions and Records and final grades to the Director not later than the date for submission of final grades specified on the TOCC academic calendar;
9. Inform TOCC of any affiliation or articulation agreements developed with other educational institutions and to seek TOCC's written concurrence;
10. Deliver Certification of Instructor forms and all related documentation to TOCC's Vice President of Education not later than two weeks prior to the beginning of each semester, which includes, but is not limited to, the following:
 - a) Instructional Personnel Information and needs assessment data;
 - b) Current Resumes and summaries of instructor evaluations;
 - c) Official Transcripts;
 - d) Certification of Instructor Forms;
 - e) Signed Instructor Contracts; and
 - f) Syllabi for all courses offered through this Agreement;
11. Maintain files for all instructors containing the same information provided to TOCC, plus the following:
 - a) Syllabi for all courses offered through this Agreement; and
 - b) Summaries of instructor evaluations;
12. Employ instructors and staff as employees of SCAC;
13. Designate its President to administer and implement this Agreement, while day-to-day coordination will be carried out by the appropriate departments;
14. Establish salaries and benefits for SCAC employees and pay said employees accordingly;
15. Provide equipment, supplies, and facilities necessary for program offerings;

16. SCAC shall recruit, counsel, and advise SCAC students in accordance with TOCC procedures;
17. Ensure annual financial audits and reporting thereof to applicable federal agencies; and
18. Adhere to TOCC protocols, procedures and policies.

ARTICLE IV. MUTUAL OBLIGATIONS OF THE PARTIES

It is mutually agreed that:

1. TOCC shall have oversight over the SCAC branch location and authority to review records pertaining to the finances, administration, and hiring, firing and retention of personnel at SCAC branch location in order to ensure compliance with TOCC and HLC standards;
2. SCAC, as a branch location of TOCC seeking separate accreditation from the HLC, shall, under SCAC Board policy:
 - a) Maintain substantial financial and administrative independence from TOCC, including matters related to personnel, provided that SCAC adheres to TOCC and HLC standards;
 - b) Be responsible for the selection and hiring of all SCAC faculty and staff, including any faculty and staff hired to perform services pursuant to this Agreement; and
 - c) Provide library resources, student support, and instructional support necessary to meet the needs of students and the community.
3. TOCC course credits provided by SCAC shall be listed on all transcripts and related documents under the name of SCAC and TOCC for all purposes, including accreditation;
4. SCAC will discuss with TOCC and obtain prior written approval of those news releases and promotional materials of publicity relevant to TOCC offerings;
5. The use of the name of Tohono O'odham Community College or TOCC in any literature produced by SCAC is subject to written approval by TOCC, and likewise the use of the name of San Carlos Apache College or SCAC in any literature produced by TOCC is subject to written approval by SCAC;
6. The formal lines of communication shall be between the SCAC President and the TOCC President or their respective designees;
7. Student Status. SCAC branch location students will be considered students of TOCC with all attendant rights and privileges;
8. Meetings. The SCAC Board of Regents and TOCC Board of Trustees shall jointly meet at least annually, first on the San Carlos Apache Reservation and then at TOCC, and rotating

thereafter, on such places, dates and at such times to be mutually agreed upon. Other joint meetings shall take place as desired and agreed upon;

9. Class size. TOCC and SCAC will have the same protocol in regards to minimum class size;
10. Grants. The SCAC branch location may apply for grants or other funding and will follow the same internal process as TOCC does. For those grants where SCAC and TOCC shall be co-applicants, the parties may mutually determine a formula to calculate shares of said grant funds; and
11. Non-Profit Foundation. SCAC may establish a non-profit foundation, independent from TOCC, to solicit and manage donations to SCAC, which money shall be managed solely by and for SCAC and its related programs.

ARTICLE V. FINANCIAL CONSIDERATIONS, INDIAN STUDENT COUNT (ISC) AND BASIS

1. SCAC students will be considered TOCC students for Integrated Post-Secondary Education Data System, American Indian Higher Education Consortium, Arizona Instrument to Measure Standards, and Indian Student Count (hereinafter "ISC") for Tribally Controlled Community College Act reporting purposes;
2. The ISC calculation will be conducted upon the completion of the initial two weeks of classes within a given semester. The student enrollment information that has been submitted to the TOCC Director of Admissions and Records by SCAC will constitute the data that is utilized for the ISC calculation;
3. A Pell Grant Summary Report that indicates the student's name, amount of award, fees deducted, and remaining balance for each student will be provided to SCAC by the TOCC Finance Office;
4. Cost Reimbursement – Tuition. Full Time Student Equivalence ("FTSE") funding shall be computed according to the Bureau of Indian Education formula. The parties agree that:
 - a) TOCC's tuition and fees schedule shall apply to SCAC students; however, SCAC may, upon application from the SCAC Board of Directors, and with the written agreement of TOCC's Board of Trustees, adopt a different tuition cost rate;
 - b) All SCAC student tuition payments shall be made to payable to SCAC. SCAC shall remit twenty-eight percent (28%) of the student tuition payments for purposes of TOCC's administrative costs, but no more, to TOCC within thirty (30) days of receipt;
 - c) Seventy-five percent (75%) of Tribally Controlled Community College Act funds resulting from the enrollment of SCAC students in TOCC courses will be disbursed to SCAC. That share will be reviewed and determined by TOCC on an annual basis prior to July 1st of each year. Payment to SCAC of the seventy-five percent (75%) will be made within two weeks of receipt of said funds by TOCC; and

- d) SCAC will remit Thirty-Six Thousand Dollars (\$36,000) to TOCC once per annum or Three Thousand (\$3,000) per month, starting within one month of the effective date of this Agreement and annually thereafter until such time as SCAC achieves independent accreditation, and such payment shall be used by TOCC to cover the costs of providing needed oversight and liaison functions between TOCC and the SCAC Branch Campus for SCAC's application for candidacy for HLC accreditation and related documents. After six months, the Parties shall review the actual costs of the oversight and liaison functions, and renegotiate the monthly cost not to exceed Four Thousand One Hundred Sixty-Six Dollars (\$4,166) per month, or Fifty Thousand Dollars (\$50,000) per annum.

ARTICLE VI. TERMINATION OF THIS AGREEMENT

1. This Agreement shall terminate:
 - a) At the end of the designated academic year, provided that any termination of this Agreement for any other reason provided in this Agreement shall not be in the middle of, or before the end of a semester, and in such event neither Party shall have any continued obligation of any kind to the other Party after the effective termination date of the Agreement, except for the payment by SCAC to TOCC of any expenses or costs incurred by TOCC pursuant to this Agreement during its term; or
 - b) If SCAC is precluded by the Tribal Council of the San Carlos Apache Tribe from fulfilling its obligations under this Agreement; or
 - c) If applicable law allows SCAC to provide degrees and certificates and SCAC gives 90 days written notice to TOCC of its intention to terminate the Agreement; or
 - d) If this Agreement is terminated for the convenience of either Party upon ninety (90) days written notice to the other Party.
2. A Party shall be deemed to be precluded by law from fulfilling its obligations under this Agreement if a court of competent jurisdiction makes such a determination;
3. The parties understand and agree that in the event that SCAC is dissolved and ceases to exist at any time during the term of this Agreement, either by a change in law or otherwise, pursuant to SCAC's charter, the San Carlos Apache Tribe will assume all obligations, responsibilities, duties and rights of SCAC pursuant to this Agreement, and will honor all terms and provisions of this Agreement as if SCAC had not been dissolved or otherwise ceased to exist.

ARTICLE VII. GENERAL PROVISIONS

1. Insurance. SCAC shall be responsible for insuring against personal injury and wrongful death liability and loss or damage to all real and personal property and facilities of SCAC used by TOCC to provide programs and services under this Agreement which are located or rendered on the San Carlos Apache Reservation and further agrees to include TOCC as a

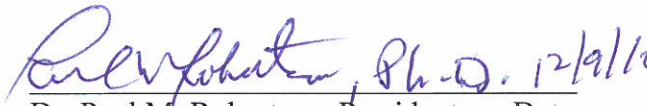
named insured on such insurance policies. TOCC shall not be responsible or liable for any personal injury and wrongful death or loss or damage to SCAC's personal or real property or facilities not caused by TOCC staff or faculty. SCAC may, at its sole option and expense, request that TOCC obtain insurance coverage for personal injury and wrongful death liability and for any loss or damage to all real and personal property and facilities rented by SCAC to TOCC, and for those TOCC staff who may be assigned to SCAC, if any;

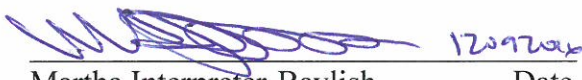
2. Students, instructors, and TOCC staff participating in this Agreement shall not be considered as employees of SCAC, and students, instructors, agents or employees of SCAC shall not be considered employees of the TOCC. Accordingly, employees of one Party shall not be entitled to employee benefits normally provided to bona fide employees of the other Party;
3. Indemnification. To the extent allowed by law, the Parties agree to indemnify, defend, and hold harmless each other from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims arise out of the respective Parties' activities under this Agreement and which are caused by the act, omission, negligence, misconduct, or other fault of the indemnifying Party, its officers, officials, agents, employees, or volunteers. This indemnification provision shall survive termination of the Agreement and remain in effect;
4. Dispute Resolution. The Parties recognize that, disagreements may arise over either or both of the respective Parties' responsibilities pursuant to this Agreement. Accordingly, in the event any such disagreement does arise, the Parties will attempt to informally and amicably resolve the dispute first between the SCAC President and the TOCC President, and then by a meeting of the SCAC Board of Regents and the TOCC Board of Trustees at a date and time the Parties mutually determine;
5. Sovereign Immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the Tohono O'odham Nation, the TOCC, the San Carlos Apache Tribe, or the SCAC from suit in any jurisdiction for any reason;
6. No Joint Venture. Each Party shall retain complete control and jurisdiction over such programs of its own that are outside of this Agreement, and nothing in the execution of this Agreement or in its performance shall be construed to establish a joint venture of the Parties hereto;
7. Entire Agreement. This document contains the entire Agreement between the Parties and may not be modified, amended, altered or extended except through a written amendment by the Parties;
8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

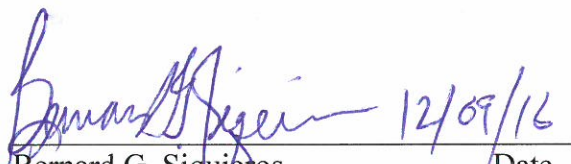
ARTICLE VIII. AGREEMENT TERM

This Agreement shall commence on the last date of the signatures to this Agreement below and shall terminate upon the event of SCAC's accreditation, unless sooner terminated by either Party as provided for in this Agreement. This Agreement shall be reviewed annually and may be renewed with appropriate revisions by mutual agreement of the Parties. The continuation and renewal of this Agreement shall be subject to approval by the respective governing boards of the Parties and subject to the appropriation and receipt of sufficient funds by the Parties to administer and support the programs described in this Agreement. Any such renewal will be made in writing.

WE, THE UNDERSIGNED, AS AUTHORIZED BY OUR RESPECTIVE GOVERNING BOARDS, HEREBY AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.



Dr. Paul M. Robertson, President Date
Tohono O'odham Community College


Martha Interpreter-Baylish Date
Chair Board of Regents
San Carlos Apache College


Bernard G. Siquieros Date
Chair Board of Trustees
Tohono O'odham Community College

REVIEWED AND APPROVED AS TO FORM

The undersigned attorney for each of the Parties has determined that the foregoing Agreement is in proper form and is within the powers and authority granted under the respective laws and charters of the Party, which such attorney represents.


Alexander B. Ritchie Date
SCAC Legal Counsel


Robert C. Brauchli Date
TOCC Legal Counsel

Exhibit A
SCAC Course Offerings

Associate of Fine Arts (AFA)

Associate of Arts in the Liberal Arts – Open Pathway (AA-OP)

Associate of Arts in the Liberal Arts – Studies in Indigenous Borderlands (AA-SIB)

Associate of Arts in the Liberal Arts – Tohono O’odham Studies (AA-TOS)

Associate of Arts in Early Childhood Education (AA-ECE)

Associate of Arts in Social Services (AA-SSE)

Associate of Business Administration (ABUS)

Associate of Science with three options for concentration (AS-LS, AS-TOANR, AS-SIB)

Basic Certificate in Carpentry (BCRT-CAR)

Advanced Certificate in Carpentry (ACRT-CAR)

Associate of Applied Science in Carpentry (AAS-CAR)

Basic Certificate in Construction Painting (BCRT-PNT)

Advanced Certificate in Construction Painting (ACRT-PNT)

Basic Certificate in Electrical (BCRT-ELE)

Advanced Certificate in Electrical (ACRT-ELE)

Associate of Applied Science in Electrical (AAS-ELE)

Basic Certificate in Plumbing (BCRT-PLM)

Advanced Certificate in Plumbing (ACRT-PLM)

Associate of Applied Science in Plumbing (AAS-PLM)

Tohono O'odham Agriculture and Natural Resources—Associate of Applied Science (AAS-TOANR)

Business Administration—Associate of Applied Science (AAS-BUS)

Casino Gaming Certificate (CRT-CAG)

Early Childhood Education – Associate of Applied Science (AAS-ECE)

Environmental Studies in Indigenous Borderlands – Associate of Applied Science (AAS-ESIB)

Office & Administrative Professions—Associate of Applied Science (AAS-OAP)

Social Services—Basic Social Services Certificate (CRT-SSE)

Social Services—Basic Certificate in Substance Abuse (CRT-SAB)
