

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Second Year, 2016

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER,
AND NAABIK'ÍYÁTI' COMMITTEES; AND NAVAJO NATION COUNCIL;
APPROVING THE AMENDMENTS TO TITLE 15 N.N.C. §§ 1201 THROUGH
1209; AND AUTHORIZING THE NAVAJO TECHNICAL UNIVERSITY TO AMEND
ITS ARTICLES OF INCORPORATION

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation established the Health, Education and Human Services Committee (HEHSC) as a standing committee of the Navajo Nation Council and as such empowered HEHSC to review and recommend resolutions relating to education. 2 N.N.C. §§ 164 (A) (9), 400 (A), and 401 (B) (6) (a) (2015).
- B. The Navajo Nation established the Law and Order Committee (LOC) as a Navajo Nation standing committee and as such empowered LOC to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments. 2 N.N.C. §§ 164 (A) (9), 600 (A), and 601 (B) (14) (2015); CO-45-12.
- C. The Navajo Nation Council established the Naabik'íyáti' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee. 2 N.N.C. §§ 164 (A), 700 (A) (2015); CO-45-12.
- D. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. § 164 (A) (2015); CO-45-12.

SECTION TWO. FINDINGS

- A. The Navajo Technical University (NTU) is organized as a non-profit, non-membership corporation, wholly owned by the Navajo Nation, and organized exclusively for educational, charitable and governmental purposes. See 15 N.N.C. § 1202 (A); CJY-35-13.
- B. The Board of Regents of NTU is responsible for the administration, operations and development of policy pursuant to 15 N.N.C. §§ 1201, *et seq.*; CJY-35-13.
- C. Since 2013, NTU has increased its academic offerings from a two-year to a four-year degree granting institution; NTU employs eighteen (18) Ph.D. faculty members; one (1) graduate acquired a Master's Degree in Diné Culture, Language and Leadership, and twenty-seven (27) students acquired Bachelor degrees in the following fields: Advanced Manufacturing; Diné Culture, Language, and Leadership; Early Childhood and Multicultural Education; Electrical Engineering; Environmental Science; Industrial Engineering; and Information Technology. See Exhibit A (Resolution of the Board of Regents of Navajo Technical University).
- D. NTU's current inability to waive sovereign immunity has prevented NTU from finalizing agreements including the: Net Metering Agreement with the Continental Divide Electrical Cooperative for the NTU solar project; Dual Enrollment agreements with several Arizona public school districts. It has delayed the Department of Energy Grant through the American Indian Higher Education Consortium and the Execution of a nursing affiliation agreement with the New Mexico Department of Health. *Id.*
- E. Pursuant to 15 N.N.C. § 1209, the enabling legislation may be amended upon recommendation by a two-thirds (2/3) vote of the Board of Regents and the recommendation of the HEHSC and Naabik'iyáti' Committee of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.
- F. The NTU's current enabling legislation provides that NTU can only be sued in accordance with the Navajo Sovereign Immunity Act, codified at 1 N.N.C. §§ 551, *et seq.*, and that NTU has no authority to waive the Nation's sovereign immunity. See 15 N.N.C. §1203(C).

- G. The Board of Regents of NTU has determined that it is in the best interest of NTU to amend its enabling legislation, codified at 15 N.N.C. §§ 1201 *et seq.*, and the Articles of Incorporation. See Exhibit A (Resolution of the Board of Regents of Navajo Technical University); See also Exhibit B (Articles of Incorporation).
- H. The Navajo Nation Council finds it is in the best interest of the Navajo Nation to amend NTU's enabling legislation, codified at 15 N.N.C. §§ 1201 *et seq.*, and the Articles of Incorporation.

SECTION THREE. AMENDING NAVAJO NATION CODE TITLE 15

The Navajo Nation amends the Navajo Nation Code, Title 15 as follows:

NAVAJO NATION CODE ANNOTATED

TITLE 15. LABOR

CHAPTER 13. NAVAJO TECHNICAL UNIVERSITY

§ 1203. Purposes and Powers

- C. The Corporation shall have the power to receive and administer funds, take and hold by bequest, devise, gift, grant, purchase or otherwise, either solely or jointly with another, any property, real, personal or otherwise or any interest therein, without limitation as to amount or value, to sell, convey or otherwise dispose of such property, and to invest, reinvest or deal with the principal and income thereof in such manner as, in the judgment of the Board, will best promote and serve the interests of the Corporation; to enter into contracts and to incur debts and liabilities up to the amount of the Corporation's assets, to sue and be sued, subject to and in conformity with the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. §§ 551 *et seq.*, except as provided in Section 1209 herein,

and provided that the Corporation shall have no power to waive the sovereign immunity of the Navajo Nation; and to do any and all other acts or things, within or without the Navajo Nation, appropriate or convenient to achieve the purposes for which it is organized or for any other lawful purposes not inconsistent therewith.

§ 1205. Powers and duties of the Board of Regents

- V. To defend litigation initiated against the Corporation or against any Board member, Officer or Employee thereof for an act committed in the course of his or her official duties, subject to and in conformity with the provisions of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551 *et seq.*, and as provided in Section 1209 herein.

§ 1209. ~~Amendments~~ Sovereign Immunity

- A. The Corporation and its Board of Regents, officers, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, 1 N.N.C. §§ 551 *et seq.*, the Corporation's Board of Regents may waive the defenses identified in this Section 1209, in conformity with the procedures established in this Section, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Section 1209 must be express and must be agreed to by the Corporation's Board of Regents prior to the time any alleged cause of action accrues.
- B. The Corporation is hereby authorized to waive, as provided in this Section 1209, any defense of sovereign immunity from suit the Corporation, members of its Board of Regents, officers, employees or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation,

and to consent to alternative dispute resolution mechanisms such as arbitration, mediation or to suit in any court of competent jurisdiction for suits based upon contract claims arising under this section; provided that this consent does not preclude objections to venue, *forum non conveniens*, or subject matter jurisdiction.

C. Any waiver by the Corporation authorized by Paragraph A or B of this Section 1209 shall be in the form of a resolution duly adopted by the Corporation's Board of Regents, upon thirty (30) calendar days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted; the agreement or transaction and the claims or classes of claims for which the waiver is granted; the type of relief for which the waiver is granted that shall not include exemplary, punitive or consequential damages nor injunctive or declaratory relief; the property of the Corporation which may be subject to execution to satisfy any judgment which may be entered in the claim; and shall identify the court or courts in which suit against the Corporation may be brought and the choice of law to be applied by the court hearing the claim. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, members of its Board of Regents, officers, employees or agents, and shall be construed to effect the property and income of the Corporation.

D. Nothing in the Corporation's enabling legislation, and no waiver of the Corporation's sovereign immunity pursuant to this Section 1209 shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, members of its Board of Regents, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.

E. Nothing in the Corporation's enabling legislation and this Section 1209, and no action taken by the Corporation pursuant to the Corporation's enabling legislation, shall be construed as permitting, recognizing, or granting any state regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of Navajo Indian Country.

§ 1209 10. Amendments

This enabling legislation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, and the recommendation of the Health, Education and Human Services and Naabik'iyāti' Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.

SECTION FOUR. AMENDMENTS TO THE ENABLING LEGISLATION FOR NAVAJO TECHNICAL UNIVERSITY

The Navajo Nation hereby accepts the recommendation of the Board of Regents of the Navajo Technical University, attached hereto as Exhibit B, to amend Title 15.

SECTION FIVE. AMENDMENT OF ARTICLES OF INCORPORATION

The Navajo Nation hereby authorizes the Navajo Technical University to file an amended corporate Articles of Incorporation, consistent with the provisions of these statutory amendments.

SECTION SIX. EFFECTIVE DATE

The amendments enacted herein shall be effective pursuant to 2 N.N.C. § 221 (B).

SECTION SEVEN. CODIFICATION

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

SECTION EIGHT. SAVINGS CLAUSE

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 22 in favor and 0 opposed, this 27th day of October 2016.



LoRenzo Bates, Speaker
Navajo Nation Council

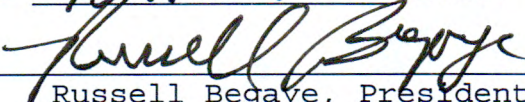
11-3-16

Date

Motion: Honorable Davis Filfred
Second: Honorable Jonathan Perry

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this 10th day of November 2016.



Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2016 for the reason(s) expressed in the attached letter to the Speaker.

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 682

NNC Special Session

10/27/2016

04:07:15 PM

Amd# to Amd#

Legislation No. 0247-16

PASSED

MOT Filfred

Navajo Technical University

SEC Perry

to amend Articles of
Incorporation

Yea : 22

Nay : 0

Not Voting : 2

Yea : 22

Begay, K

Damon

Pete

Tso

Begay, NM

Daniels

Phelps

Tsosie

BeGaye, N

Filfred

Shepherd

Witherspoon

Brown

Hale

Slim

Yazzie

Chee

Jack

Smith

Yazzie, P

Crotty

Perry

Nay : 0

Not Voting : 2

Bennett

Bates

**RESOLUTION OF THE
BOARD OF REGENTS OF
NAVAJO TECHNICAL UNIVERSITY**



Approving the Proposed Amendments to the Enabling Legislation of the Navajo Technical University, Codified at 15 N.N.C. §§1201-1209, and the Navajo Technical University Articles of Incorporation that Constitute a Limited Waiver of Sovereign Immunity Applicable to Navajo Technical University, attached hereto as Exhibit 1.

WHEREAS:

1. The Board of Regents of Navajo Technical University is responsible for the administration, operations and the development of policy as stated in Navajo Nation Council Resolution, CJY-35-13, enacted on July 29, 2013, that amended the University's enabling legislation, codified at 15 N.N.C. §§1201-1209, and the University's Articles of Incorporation; and
2. Pursuant to the University's enabling legislation, Navajo Technical University (NTU) is organized as an institution of higher learning for the primary purpose of providing post-secondary and post-graduate education programs that serve both the academic and vocational/technical needs of the Navajo Nation and its citizens, 15 N.N.C. §1203(A); and
3. Pursuant to the University's enabling legislation, the Board of Regents of Navajo Technical University is authorized to recommend amendments to the University's enabling legislation, 15 N.N.C. §1209; and
4. In 2013, the Board of Trustees of Navajo Technical College, now the Board of Regents of Navajo Technical University, sought and obtained university status from the Navajo Nation Council as confirmation of their evolution from a technical school, to a two-year and then a four-year degree granting institution; and
5. NTU is an institution of higher education wholly owned by the Navajo Nation. The University's current enabling legislation provides that NTU can only be sued in accordance with the Navajo Sovereign Immunity Act, codified at 1 N.N.C. §§551, *et seq.*, and that NTU has no authority to waive the Nation's sovereign immunity, 15 N.N.C. §1203(C); and
6. Since becoming a university, NTU has maintained a reputation as a strong leader in the tribal college movement. NTU consistently creates its future with inclusive and comprehensive planning and evaluation, while remaining agile and responsive to trends and challenges both on the Navajo Nation and among Tribal Colleges and Universities and higher education; and
7. NTU currently employs eighteen (18) faculty members who have acquired the Ph.D. in their respective fields. Among NTU graduates are one (1) student who has acquired a Master's Degree in Diné Culture, Language and Leadership, and twenty-seven (27) students who have acquired a Bachelor's degree in the following fields: Advanced Manufacturing; Diné Culture, Language, and Leadership; Early Childhood and Multicultural Education; Electrical Engineering; Environmental Science; Industrial Engineering; and Information Technology; and
8. NTU is challenged with increasing operational costs. To meet these financial challenges, NTU plans to create public-private partnerships to sustain and strengthen research and education for the future that include alliances with other colleges and universities (public or private, state or regional) to facilitate

research partnerships, shared course offerings, collective purchasing contracts, common facility usage, and collaborations on innovative programs. NTU will explore and pursue new revenue streams consistent with the fundamental values of a Navajo university that will include signaling to the business community that NTU is a willing partner by accelerating and simplifying the transfer of knowledge to the private sector; and

9. NTU recently received by donation a PR2 Robot, valued at approximately \$154,000, that will be incorporated within NTU's existing programming courses in order to provide NTU students hands-on learning. The robot will provide NTU the ability to create research partners in the area of robotics who will provide NTU with curriculum and research in the area of robotics. Other colleges and universities such as University of California at Berkeley, University of Washington, University of Oregon, and Brown University all own a PR2 Robot and will be able to provide support and research opportunities. The robot will provide NTU the opportunity to expand curriculum in the area of computer programming and robotics which will help attract more students to NTU, thereby increasing enrollment. The maintenance and software services for the robot will be provided by a Canadian company. Expediently establishing the contractual relationships with these higher education institutions and the Canadian company are hindered by NTU's current inability to waive its sovereign immunity; and

10. NTU's Center for Digital Technologies (Center) was established to foster educational and research collaborations in the synergy between digital manufacturing and engineering while providing students with unique educational opportunities. The Center continues to support the commitment of Navajo Technical University to promote experiential learning by offering students hands-on real-life experience to complement their STEM and Engineering courses. The Center has helped to provide skilled Navajo and Native American engineers and engineering support personnel to industry, national labs, and other partners. The Center is building the infrastructure to be able to manufacture using forging, subtractive and additive manufacturing techniques, and is committed to a long range plan to micro print as well as micro machine. Realizing these future plans will require expediently establishing the contractual relationships with public and private entities without being hindered by NTU's current inability to waive its sovereign immunity; and

11. NTU's current inability to waive its sovereign immunity has also prevented NTU from finalizing a Net Metering Agreement with the Continental Divide Electrical Cooperative for the NTU solar project, and Dual Enrollment agreements with several Arizona public school districts that would permit high school students to receive college credit for courses taken at NTU, and delayed the award of a Department of Energy Grant through the American Indian Higher Education Consortium and execution of a nursing affiliation agreement with the New Mexico Department of Health that have significantly impacted NTU's academic programs and revenue streams; and

12. NTU requests from the Navajo Nation Council approval of a limited waiver of sovereign immunity in order to provide NTU with the authority to waive the defense of sovereign immunity arising from any particular agreement, matter or transaction that will further the purposes of NTU, and to consent to alternative dispute resolution mechanisms such as arbitration, mediation or to suit in any court of competent jurisdiction for suits based upon contract claims, as set forth in Exhibit 1 attached hereto; and

13. On May 12, 2016, the Assistant Attorney General, Rodgerick Begay, reviewed the proposed legislation, and recommended revisions which have been made to the proposed legislation that requires NTU to provide written notice to the Navajo Nation Council thirty (30) days before NTU adopts a resolution waiving its sovereign immunity, Mr. Begay's email is attached hereto as Exhibit 2; and

14. The Board of Regents of Navajo Technical University has reviewed the Proposed Amendments to the Enabling Legislation of Navajo Technical University, codified at 15 N.N.C. §§1201-1209, and the

Navajo Technical University Articles of Incorporation that constitute a limited waiver of sovereign immunity applicable to Navajo Technical University, attached hereto as Exhibit 1, and determined that it is in the best interest of Navajo Technical University to amend its enabling legislation and Articles of Incorporation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board of Regents of Navajo Technical University hereby approves the proposed Amendments to the Enabling Legislation of Navajo Technical University, codified at 15 N.N.C. §§1201-1209, and the Navajo Technical University Articles of Incorporation that constitute a limited waiver of sovereign immunity applicable to Navajo Technical University, attached hereto as Exhibit 1, and determined that it is in the best interest of Navajo Technical University to amend its enabling legislation and Articles of Incorporation.

2. The Board of Regents of Navajo Technical University hereby directs the President of Navajo Technical University to do all things necessary to effectuate the purpose of this resolution as approved by the Board of Regents.

CERTIFICATION

I hereby confirm that that resolution was discussed and considered by the Board of Regents of Navajo Technical University at a duly called meeting held by telephone conference call at which a quorum was present and that this resolution was passed by a vote of **6** in favor, **0** opposed and **0** abstained on the 13th day of May, 2016.

Tom Platero, Chairperson
NTU Board of Regents

EXHIBIT 1

PROPOSED AMENDMENTS TO ENABLING LEGISLATION OF NAVAJO TECHNICAL UNIVERSITY, TITLE 15, CHAPTER 13, AND NAVAJO TECHNICAL UNIVERSITY ARTICLES OF INCORPORATION

§ 1203, paragraph C, is hereby amended as follows:

C. The Corporation shall have the power to receive and administer funds, take and hold by bequest, devise, gift, grant, purchase or otherwise, either solely or jointly with another, any property, real, personal or otherwise or any interest therein, without limitation as to amount or value, to sell, convey or otherwise dispose of such property, and to invest, reinvest or deal with the principal and income thereof in such manner as, in the judgment of the Board, will best promote and serve the interests of the Corporation; to enter into contracts and to incur debts and liabilities up to the amount of the Corporation's assets, to sue and be sued, subject to and in conformity with the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. §551 *et seq.*, except as provided in Section 1209 herein, and provided that the Corporation shall have no power to waive the sovereign immunity of the Navajo Nation; and to do any and all other acts or things, within or without the Navajo Nation, appropriate or convenient to achieve the purposes for which it is organized or for any other lawful purposes not inconsistent therewith.

§ 1205, paragraph V, is hereby amended as follows:

V. To defend litigation initiated against the Corporation or against any Board member, Officer or Employee thereof for an act committed in the course of his or her official duties, subject to and in conformity with the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. §551 *et seq.* and as provided in Section 1209 herein;

§ 1209 is hereby amended as follows:

§ 1209. Amendments Sovereign Immunity

~~This enabling legislation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, and the recommendation of the Health, Education and Human Services and Naa'bik'iyáti' Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.~~

A. The Corporation and its Board of Regents, officers, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that,

notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq., the Corporation's Board of Regents may waive the defenses identified in this Section 1209, in conformity with the procedures established in this Section, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Section 1209 must be express and must be agreed to by the Corporation's Board of Regents prior to the time any alleged cause of action accrues.

B. The Corporation is hereby authorized to waive, as provided in this Section 1209, any defense of sovereign immunity from suit the Corporation, members of its Board of Regents, officers, employees or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, and to consent to alternative dispute resolution mechanisms such as arbitration, mediation or to suit in any court of competent jurisdiction for suits based upon contract claims arising under this section; provided that this consent does not preclude objections to venue, *forum non conveniens*, or subject matter jurisdiction.

C. Any waiver by the Corporation authorized by Paragraph A or B of this Section 1209 shall be in the form of a resolution duly adopted by the Corporation's Board of Regents, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted; the agreement or transaction and the claims or classes of claims for which the waiver is granted; the type of relief for which the waiver is granted that shall not include exemplary, punitive or consequential damages nor injunctive or declaratory relief; the property of the Corporation which may be subject to execution to satisfy any judgment which may be entered in the claim; and shall identify the court or courts in which suit against the Corporation may be brought and the choice of law to be applied by the court hearing the claim. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, members of its Board of Regents, officers, employees or agents, and shall be construed to effect the property and income of the Corporation.

D. Nothing in the Corporation's enabling legislation and this Section 1209, and no waiver of the Corporation's sovereign immunity pursuant to this Section 1209 shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, members of its Board of Regents, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.

E. Nothing in the Corporation's enabling legislation and this Section 1209, and no action taken by the Corporation pursuant to the Corporation's enabling legislation, shall be construed as permitting, recognizing, or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of Navajo Indian Country.

Section 1210 is hereby added as follows:

§ 1210. Amendments

This enabling legislation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, and the recommendation of the Health, Education and Human Services and Naa' bik'iyáti' Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.

* * * * *

NAVAJO TECHNICAL UNIVERSITY

ARTICLES OF INCORPORATION

Article III, paragraph C is hereby amended as follows:

C. The Corporation shall have the power to receive and administer funds, take and hold by bequest, devise, gift, grant, purchase or otherwise, either solely or jointly with another, any property, real, personal or otherwise or any interest therein, without limitation as to amount or value, to sell, convey or otherwise dispose of such property, and to invest, reinvest or deal with the principal and income thereof in such manner as, in the judgment of the Board, will best promote and serve the interests of the Corporation; to enter into contracts and to incur debts and liabilities up to the amount of the Corporation's assets, to sue and be sued, subject to and in conformity with the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. §551 *et seq.*, except as provided in Article IX herein; and provided that the Corporation shall have no power to waive the sovereign immunity of the Navajo Nation; and to do any and all other acts or things, within or without the Navajo Nation, appropriate or convenient to achieve the purposes for which it is organized or for any other lawful purposes not inconsistent therewith.

Article IV, paragraph V is hereby amended as follows:

V. To defend litigation initiated against the Corporation or against any board member, officer or employee thereof for an act committed in the course of his or her official duties, subject to and in conformity with the provisions of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §551 *et seq.* and as provided in Article IX herein:

Article IX is hereby amended as follows:

Article IX. AMENDMENTS SOVEREIGN IMMUNITY

~~These Articles of Incorporation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, and the recommendation of the Health, Education and Human Services and Naabik'iyáti' Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.~~

A. The Corporation and its Board of Regents, officers, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo

Sovereign Immunity Act, 1 N.N.C. § 551 et seq., the Corporation's Board of Regents may waive the defenses identified in this Article IX, in conformity with the procedures established in this Section, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Article IX must be express and must be agreed to by the Corporation's Board of Regents prior to the time any alleged cause of action accrues.

B. The Corporation is hereby authorized to waive, as provided in this Article IX, any defense of sovereign immunity from suit the Corporation, members of its Board of Regents, officers, employees or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, and to consent to alternative dispute resolution mechanisms such as arbitration, mediation or to suit in any court of competent jurisdiction for suits based upon contract claims arising under this section; provided that this consent does not preclude objections to venue, *forum non conveniens*, or subject matter jurisdiction.

C. Any waiver by the Corporation authorized by Paragraph A or B of this Article IX shall be in the form of a resolution duly adopted by the Corporation's Board of Regents, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted; the agreement or transaction and the claims or classes of claims for which the waiver is granted; the type of relief for which the waiver is granted that shall not include exemplary, punitive or consequential damages nor injunctive or declaratory relief; the property of the Corporation which may be subject to execution to satisfy any judgment which may be entered in the claim; and shall identify the court or courts in which suit against the Corporation may be brought and the choice of law to be applied by the court hearing the claim. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, members of its Board of Regents, officers, employees or agents, and shall be construed to effect the property and income of the Corporation.

D. Nothing in the Corporation's Articles of Incorporation and this Article IX, and no waiver of the Corporation's sovereign immunity pursuant to this Article IX shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, members of its Board of Regents, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.

E. Nothing in the Corporation's Articles of Incorporation and this Article IX, and no action taken by the Corporation pursuant to the Corporation's Articles of Incorporation, shall be construed as permitting, recognizing, or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of Navajo Indian Country.

Article X is hereby added as follows:

Article X. AMENDMENTS

These Articles of Incorporation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, and the recommendation of the Health, Education and Human Services and Naa'bik'iyáti' Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.



NAVAJO TECHNICAL UNIVERSITY

ARTICLES OF INCORPORATION

Article III, paragraph C is hereby amended as follows:

C. The Corporation shall have the power to receive and administer funds, take and hold by bequest, devise, gift, grant, purchase or otherwise, either solely or jointly with another, any property, real, personal or otherwise or any interest therein, without limitation as to amount or value, to sell, convey or otherwise dispose of such property, and to invest, reinvest or deal with the principal and income thereof in such manner as, in the judgment of the Board, will best promote and serve the interests of the Corporation; to enter into contracts and to incur debts and liabilities up to the amount of the Corporation's assets, to sue and be sued, subject to and in conformity with the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. §551 *et seq.*, except as provided in Article IX herein; and provided that the Corporation shall have no power to waive the sovereign immunity of the Navajo Nation; and to do any and all other acts or things, within or without the Navajo Nation, appropriate or convenient to achieve the purposes for which it is organized or for any other lawful purposes not inconsistent therewith.

Article IV, paragraph V is hereby amended as follows:

V. To defend litigation initiated against the Corporation or against any board member, officer or employee thereof for an act committed in the course of his or her official duties, subject to and in conformity with the provisions of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §551 *et seq.* and as provided in Article IX herein;

Article IX is hereby amended as follows:

Article IX. ~~AMENDMENTS~~ SOVEREIGN IMMUNITY

~~These Articles of Incorporation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, and the recommendation of the Health, Education and Human Services and Naabik'iyáti' Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.~~

A. The Corporation and its Board of Regents, officers, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo

Sovereign Immunity Act, 1 N.N.C. § 551 et seq., the Corporation's Board of Regents may waive the defenses identified in this Article IX, in conformity with the procedures established in this Section, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Article IX must be express and must be agreed to by the Corporation's Board of Regents prior to the time any alleged cause of action accrues.

B. The Corporation is hereby authorized to waive, as provided in this Article IX, any defense of sovereign immunity from suit the Corporation, members of its Board of Regents, officers, employees or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, and to consent to alternative dispute resolution mechanisms such as arbitration, mediation or to suit in any court of competent jurisdiction for suits based upon contract claims arising under this section; provided that this consent does not preclude objections to venue, *forum non conveniens*, or subject matter jurisdiction.

C. Any waiver by the Corporation authorized by Paragraph A or B of this Article IX shall be in the form of a resolution duly adopted by the Corporation's Board of Regents, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted; the agreement or transaction and the claims or classes of claims for which the waiver is granted; the type of relief for which the waiver is granted that shall not include exemplary, punitive or consequential damages nor injunctive or declaratory relief; the property of the Corporation which may be subject to execution to satisfy any judgment which may be entered in the claim; and shall identify the court or courts in which suit against the Corporation may be brought and the choice of law to be applied by the court hearing the claim. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, members of its Board of Regents, officers, employees or agents, and shall be construed to effect the property and income of the Corporation.

D. Nothing in the Corporation's Articles of Incorporation and this Article IX, and no waiver of the Corporation's sovereign immunity pursuant to this Article IX shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, members of its Board of Regents, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.

E. Nothing in the Corporation's Articles of Incorporation and this Article IX, and no action taken by the Corporation pursuant to the Corporation's Articles of Incorporation, shall be construed as permitting, recognizing, or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of Navajo Indian Country.

Article X is hereby added as follows:

Article X. AMENDMENTS

These Articles of Incorporation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, and the recommendation of the Health, Education and Human Services and Naa'bik'iyáti' Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.

Date: Thu, 12 May 2016 19:22:55 +0000

Ms. Chato,

I will be at the Council Chambers for the rest of the day for the Nabikiyati Committee meeting. However, I did notice a substantial similarity between the proposal and NOG's waiver language. The only glaring concern I have is NTU's deletion of providing 30 days notice to Council. I'll insist on reinserting that. Otherwise, I believe the proposed language is fine. The portions of NOG's waiver language that was not used by NTU is either irrelevant to NTU or is not necessary for NTU and the Navajo Nation. Any amendments, however small, could impact DOJ's acceptance of your proposal. Thus, please share any changes that the Board makes to language. Have a good day.

Rodgerick T. Begay, *Acting Deputy Attorney General*

Office of the Attorney General

Navajo Nation Department of Justice

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