

AMENDED AND RESTATED
BY-LAWS
OF

TEXAS SOUTHMOST FOUNDATION, INC.

A NONPROFIT CORPORATION

ARTICLE 1
OFFICES AND AGENT

1.1 **Principal Office.** The principal office of Texas Southmost College Foundation, Inc. (the "Corporation") shall be located in the City of Brownsville, County of Cameron, State of Texas. The Corporation may have such other offices, either within or without the State of Texas, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

1.2 **Registered Office and Registered Agent.** The Corporation shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the Corporation in the State of Texas. The address of the registered office and the identity of the registered agent may be changed from time to time by the Board of Directors.

ARTICLE 2
BOARD OF DIRECTORS

2.1 **General Powers.** The business and affairs of the Corporation shall be managed by and under the direction of its Board of Directors except as the board of Directors may delegate specific powers in the management of the Corporation to the Executive Committee or other committees. In the management and control of the property of the Corporation, the Board of Directors is hereby vested with all of the powers possessed by the Corporation itself so far as this delegation of authority is not inconsistent with the laws of the State of Texas, the Articles of Incorporation of the Corporation or with these By-laws.

2.2 **Number, Tenure, and Qualifications.** The total number of Directors on the Board of Directors shall be a number which is no less than four (4) and not more than twenty-five (25), as designated by affirmative vote of a majority of the members of the Board of Directors then in office. Four (4) of such positions on the Board of Directors shall be reserved for the persons who hold the following positions (the "Qualifying Positions"): (i) the current chief executive officer of Texas Southmost College; (ii) the current chairperson of the board of Trustees of Southmost Union Junior College District; (iii) the immediate past Chairperson of the Board of Trustees of Southmost Union Junior College District; and (iv) the current vice-Chairperson of the Board of Trustees of Southmost Union Junior College District. Such four directors shall hold office for the terms described below; provided, however, in the event and on the date that any such person ceases to serve for any reason in a Qualifying Position, such person shall be deemed to have resigned from the Board of Directors of the Corporation. In the event such person is deemed to have so resigned, the remaining members of the Board of Directors shall act promptly to elect the successor to the Qualifying Position as Director of the Corporation to fill any unexpired term. At any annual, regular or special meeting of the Board of Directors may, by affirmative vote, increase or decrease the number of Directors on the Board of Directors as previously designated by action of the Board of Directors; provided, however, no decrease shall have the effect of shortening the term of any incumbent director. The Board of Directors, by affirmative vote of a majority of the members of the Board of Directors then in office, shall (a) divide the members of the Board of Directors into three groups which are substantially equal in number, and (b) designate into a group each incumbent Director and from time to time, any newly created directorship. After the initial adoption of these By-laws, the Board shall set the terms of each of the three designated groups of Directors to expire in two (2) year intervals in order to achieve the staggering of the terms of the Directors on the Board. Therefore, the term of the first group of Directors shall be from the date of election through the date of the annual meeting of Directors in December, 1991. Similarly, the terms of the second and third group shall expire on the date of the annual meeting in December 1993 and December 1995, respectively. After such initial terms, the terms of each group of Directors shall be for six (6) years. Directors may serve no more than two (2) consecutive terms, including, if applicable, a shortened initial term.

2.3 **Advisory Board.** The Board of Directors may resolve to establish an Advisory Board of Directors. There shall be as many Advisory Directors on the Advisory Board as may be determined by the vote of not less than a majority of the Directors on the Board of Directors then in office. Advisory Directors shall have no power to vote on any matters brought before the Board of Directors. Advisory Directors, if any, shall be appointed by the action of the

Board of Directors and shall hold office for the term fixed by the Board or until his or her earlier death, resignation or removal. Former members of the Board of Directors to the Advisory Board. The purpose of the Advisory Board, if established, shall be to assist the Corporation in the manner designated from time to time by the Board, including without limitation, by acting as an information, fund raising and referral resource of the Board of Directors. The Advisory Board will meet from time to time by the Board, including without limitation, by acting as an information, fund raising and referral resource of the Board of Directors. The Advisory Board will meet from time to time as deemed necessary or appropriate by the Board of Directors.

2.4 Nomination. At least thirty (30) calendar days prior to the annual meeting of the Board of Directors, a majority of the members of the Board of Directors, or the Executive Committee, if established, shall designate a nominating committee composed of at least three (3) Directors, one of whom shall be a member of the Executive Committee. The nominating committee shall make nominations of persons for election to serve as officers or Directors of the Corporation at the upcoming annual meeting of the Board of Directors or at any special meeting held in its place. The recommendations of the nominating committee shall be set forth on the notice of the annual meeting to be delivered to all Directors. Upon the announcement of the recommendations of the nominees from the nominating committee at the annual meeting, nominations from the floor may be made.

2.5 Rules for Director's Meetings. Director's meetings shall be presided over by the Chairperson, or in the Chairperson's absence, the Vice-Chair, or any other member of the Executive Committee, or if no such officer is present, by any Director chosen by a majority of the Directors present. The Secretary, or Assistant Secretary, shall attend and take minutes of those meetings. In the absence of the Secretary or Assistant Secretary, the presiding officer shall designate a Director present to take minutes of the meeting.

2.6 Annual Meetings. The annual meeting of the Board of Directors shall be held in December or at any other time, date and place as may be determined by resolution of the Board of Directors, for the purpose of (a) electing Directors and officers, (b) approving the Annual Report of the Corporation to be presented by the Board of Directors to the Board of Trustees of Southmost Union Junior College District; and (c) transacting such other business as may come before the meeting. If the election of officers or Directors shall not be held on the day designated for the annual meeting of the Board of Directors or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Board of Directors as soon thereafter as may be convenient.

2.7 **Regular Meetings.** The Board of Directors may provide by resolution the date, time and place (within Cameron County, Texas) for the holding of regular meetings of the Board.

2.8 **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the Chairperson or a majority of the members of the Executive Committee or a majority of all the Directors duly elected and serving on the Board of Directors. Such person or persons authorized to call special meetings of the Board of Directors may fix the time, date and place (within Cameron County, Texas) of such meetings.

2.9 **Notice.** Except as provided below, notice of any annual, regular or special meeting of the Board of Directors shall be given at least seven (7) calendar days in advance of the scheduled meeting date by mail or at least four (4) calendar days in advance of the scheduled meeting date by telephone, telex, telecopy or personal delivery to each Director at his or her address as shown by the records of the Corporation. In the event any meeting of the Board of Directors is scheduled to be held outside the city of Brownsville, Texas, the notice of such meeting shall be given in writing by mail at least fourteen (14) calendar days prior to the date of such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed with postage therein prepaid. Any Director may waive at any time notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Notice of any regular meeting of the Board may, but is not required to be given as described above. The business to be transacted at, or the purpose of, any annual, regular or special meeting of the Board may, but is not required to, be specified in the notice or waiver of notice of such meeting.

2.10 **Meetings Without Notice.** Any meeting at which every Director is present of which those not present have waived notice, shall be a legal meeting for the transaction of business, notwithstanding the fact that notice has not been given as herinabove provided.

2.11 **Quorum of Directors.** A majority of the members of the Board of Directors fixed in accordance with Section 2.2 of these By-laws shall constitute a quorum for the transaction of business at any meeting of the Board. However, if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice other than the announcement at the meeting. When a quorum is present at any meeting, a majority vote of the Directors in attendance in person shall be the

act of the Board of Directors in the absence of an express provision to the contrary in these By-laws.

2.12 Voting. Each Director of record shall be entitled to only one (1) vote and vote at any meeting.

2.13 Resignation of Directors. Any Director may at any time resign from his or her position as a member of the Board of Directors of the Corporation or any committee thereof by giving written notice of resignation to the President, the Secretary, the Board of Directors, or Chairperson of the Corporation. Unless otherwise stated in a Director's written resignation as a member of the Board of Directors, such resignation also shall be deemed to be a resignation by such Director from all positions he or she may hold as a representative or agent and all committees of the Board of Directors. Any Director who, without excuse acceptable to the Board, fails to attend any two (2) consecutive meetings (whether annual, special or regular meetings) of the Board of Directors shall be deemed to have resigned from his or her position as a member of the Board of Directors.

2.14 Removal of Directors. Any Director may be removed by the affirmative vote of a majority of the members of the Board of Directors then in office, at any annual, special or regular meeting, whenever in the judgment of the Board of Directors the best interests of the Corporation will be served thereby. The notice of the annual, regular or special meeting of the Board of Directors, at which removal of the Director is to be acted upon, shall state that the removal of a certain Director or Directors shall be considered for action at such meeting. In the event that any Director is so removed, a new Director may be elected at the same meeting for the unexpired term of the Director so removed. Failure to elect a Director to fill the unexpired term of any Director so removed shall be deemed to create a vacancy in the Board of Directors.

2.15 Manner of Acting.

(A) Actions at a Meeting. Except as provided in Section 6, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these By-laws.

(B) Actions Without a Meeting. Any action required by law to be taken at a meeting of the Board of Directors or the Executive Committee, or any action which may be taken at a meeting of Directors or the Executive Committee, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Directors or members of the Executive Committee, as the case may be. Such consent shall have the same force and effect

as a unanimous vote at a meeting. Such voting, which may be in counterparts, shall be manually executed if convenient; provided, however, that if circumstances so require, effect shall be given to written consent transmitted by telegraph, telex, telecopy, or similar means of visual data transmission.

(C) Meetings by Telephone. Subject to the provisions required or permitted by the Texas Non-Profit Corporation Act, members of the Board of Directors, the Executive Committee or members of any committee appointed by the Board may participate in and hold a meeting by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Participation in the meeting shall constitute presence in person at the meeting except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

2.16 Vacancies. A vacancy in the Board of Directors shall be deemed to exist by reason of the death or resignation of a Director or upon the failure of the remaining Directors to elect a Director to fill the unexpired term of any Director removed in accordance with the provisions of Section 2.14. Any vacancy occurring in the Board of Directors may be filled by a majority of the remaining Directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office. A Directorship to be filled by reason of an increase in the number of directors may be filled by the Board of Directors for the term designated by the Board of Directors as set forth in Section 2.2 above.

2.17 Compensation. Directors or members of any committee of the Board of Directors shall not be paid compensation for their services.

2.18 Executive Committee. The Board of Directors may establish an Executive Committee by resolution adopted by a majority of the number of Directors of the Board of Directors then in office as fixed in accordance with Section 2.2 of these By-laws. Such Executive Committee shall consist of the Chairperson, President, Vice-Chair, Secretary and Treasurer of the Corporation. The Executive Committee may meet at stated times, or pursuant to a written notice delivered to all members of the Executive Committee by the Secretary or the President which notice shall be issued by the President or the Secretary at the direction of the Chairperson or any two members of the Executive Committee. Vacancies in the membership of the Executive Committee shall be filled by the Board of Directors at a regular meeting or at a special meeting called for that purpose. During the intervals between meetings of the Board of Directors, the Executive Committee may advise and aid the President in all matters concerning the interests of the Corporation and the management of the Corporation's business

and affairs, and shall generally perform such duties and exercise such powers as may be directed or delegated to it by the Board of Directors from time to time. The Board of Directors may delegate to the Executive Committee the authority to exercise all the powers of the Board of Directors, except where action of the full Board of Directors is required by the Texas Non-Profit Corporation Act. The designation of and delegation of power to the Executive Committee shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law upon the Board or any such member.

ARTICLE 3 OFFICERS

3.1 Officers. The officers of the Corporation shall be a Chairperson, a President, a Vice-Chair, a Secretary, a Treasurer, and such other officers, including assistant officers and agents, with such duties as the Board of Directors may designate from time to time. Any two or more offices may be held by the same person, except the offices of President and Secretary.

3.2 Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified, or until his or her death, resignation or removal. All officers, except as described below, must also serve as members of the Board of Directors of the Corporation.

3.3 Removal. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the members of the Board of Directors then in office, with or without cause, whenever in the Board's judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of any officer, representative or agent shall not of itself create any contract rights.

3.4 Vacancies. A vacancy in any office because of death, resignation, disqualification, removal or otherwise, may be filled by a majority vote of the Board of Directors at any meeting for the unexpired portion of the term.

3.5 Chairperson. The Chairperson when present shall preside at all meetings of the board of Directors. In general, the Chairperson shall perform all duties incident to the office of Chairperson and such other duties as may be

prescribed by the Board of Directors, from time to time. The Chairperson of the Board of Directors shall be elected by the Board of Directors and shall serve for one (1) year and until his or her successor shall have been elected and qualified, unless he or she earlier resigns, dies or is removed. The Chairperson may sign, with the Vice-Chair, Secretary, Treasurer or any other proper officer of the corporation authorized by the Board of Directors, any deed, mortgage, bond, contract, or other instrument which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws or by the stature to some other officer or agent of the corporation.

3.5 President. The President shall be the principle Executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The President and/or his/her designee who holds the rank of Vice-President of an institution of Higher Education shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for monies due and payable tot he corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provision of Article 6 of these By-Laws. The President shall act as a liaison between the Board of Directors and the Executive Committee and all other committees of the corporation. The President shall be responsible to the Board of Directors and shall report to the Chairperson of the Board of Directors. The President shall perform such other duties as are assigned to the President by the Chairperson, the Executive Committee, and the Board of Directors.

3.7 Vice-Chair. In the absence of the Chairperson or in the event of his or her inability or refusal to act, the Vice-Chair shall perform the duties of the Chairperson, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson. The Vice-Chair shall perform such other duties as from time to time may be assigned by the Executive Committee or the Board of Directors.

3.8 Treasurer. The Treasurer shall review the financial reports of the Corporation prepared under the direction of the UTB/TSC President and oversee the UTB/TSC President in the maintenance of the Corporation's financial records and periodic financial statements and the custody and care of the Corporation's funds and securities. The Treasurer shall perform such other duties as from time to time may be assigned to him or her by the Board of Directors or the Executive Committee.

3.9 Secretary. The Secretary shall keep the minutes of the meetings of the board of Directors and the Executive Committee and give or cause to be given all notices of meeting in accordance with the provisions of these By-laws or as required by law. The Secretary also shall be custodian of the corporate records and of the seal of the Corporation, and affix the seal of the Corporation to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these By-laws. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Executive Committee or by the Board of Directors.

3.10 Assistant Treasurers and Assistant Secretaries. The Assistant Treasurers and Assistant Secretaries in general shall perform such duties as shall be assigned to them by the Treasurer or the Secretary or by the Chairperson, the Executive Committee, or the Board of Directors.

ARTICLE 4 INDEMNIFICATION

4.1 Texas Southmost College Foundation, Inc., will pay indemnification damages, court costs, and reasonable attorney fees adjudged against any director of the foundation, whether sued in his or her individual or official capacity, or both, or any director who was a director when the act or omission on which the damages are based occurred, or the estate of such a person in the course and scope of his duties if:

1. The damages arise out of a cause of action for negligence, except a willful or wrongful act or an act of gross negligence; or
2. The damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the united states, except when the court in its judgment or the jury in its verdict finds that the officer or employee acted in bad faith; or
3. The damages arise out of a cause of action for personal injury or death.

4.2 This article shall not be construed as a waiver of any defense, immunity or jurisdictional bar available to the Foundation or its Directors. The Foundation shall not pay damages under this article to the extent that such damages are recoverable under a contract of insurance. (liability under the

insurance article is limited to \$1,000,000.00 for a single occurrence, \$2,000,000.00 annual maximum, in the case of personal injury or death, and to \$1,000,000.00 for a single occurrence of negligence or the deprivation of a right, privilege, or immunity.)

4.3 The Foundation shall defend a present or former director or his estate, in a cause of action covered by this article. The Foundation shall not pay damages, court costs, or attorney's fees unless either the Foundation has been served in the suit or the person sued has delivered to the UTB/TSC President all processes served on him not later than five days after the service. The Foundation may settle or compromise the portion of a lawsuit that may result in liability to the foundation.

ARTICLE 5 COMMITTEES

5.1 **Committees of Directors.** The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more committees, each of which shall consist of three (3) or more persons, the majority of whom shall be Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Corporation. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed on any of them by law.

5.2 **Special Committees.** The Board of Directors or the Executive Committee by resolution adopted by a majority of their members present at a meeting at which a quorum is present may designate and appoint one or more other committees which shall not have or exercise any of the authority of the Board of Directors in the management of the Corporation. Except as otherwise provided in such resolution, members of each such committee may, but need not, be Directors of the Corporation; provided, however, the Chairperson may be appointed as a member of any such committee. Any member of any committee thereof may be removed by act of the Board of Directors or the Executive Committee whenever in their judgment of the best interests of the Corporation shall be served by such removal.

5.3 **Term of Office.** Each member of any committee, (including, without limitation, the Executive Committee) shall continue as such until the next annual meeting of the Directors of the Corporation and until such member's successor is appointed, unless such committee shall be sooner terminated, or

unless such member be removed from such committee by action of the Board of Directors, or unless such member shall cease to qualify as a member thereof.

5.4 Committee Chairpersons. One member of each committee shall be appointed chairperson of such committee by the Chairperson of the corporation; provided, however, that the Chairperson of the Board of Directors shall be the chairperson of the Executive Committee.

5.5 Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

5.6 Quorum. Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

5.7 Resignation. Any Director, officer, representative or agent of the Corporation may resign by giving written notice thereof to the Chairperson, the Board of Directors, the President or the Secretary. The resignation shall take effect at the time specified therein. Unless otherwise specified therein, the acceptance of such resignation by the Corporation shall not be necessary to make the resignation effective. The resignation of any Director from the Board of Directors shall be deemed to be a resignation from all committees of which such Director was otherwise a member.

ARTICLE 6

CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

6.1 Contracts. The Board of Directors may authorize by written resolution any officer or officers or the President of the Corporation, in addition to the officers so authorized by these By-laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances.

6.2 Checks and Drafts. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or the President of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or Assistant Treasurer and countersigned by the President or a Vice-Chair of the Corporation.

6.3 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

6.4 Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation.

6.5 Liability for Debts. The liability for debts of the Corporation shall be limited to the property of the Corporation.

ARTICLE 7 ANNUAL REPORT OF THE CORPORATION

Each calendar year the Corporation shall prepare an Annual Report of the Corporation which shall contain audited financial statements of the Corporation for the preceding fiscal year, the Corporation's business plan and projected budget for the next succeeding fiscal year, and such other information deemed appropriate by the Board of Directors or otherwise reasonable requested by the Board of Trustees of Southmost Union Junior College District. The form and substance of the Annual Report shall be approved by the Board of Directors at the Annual Meeting of the Board and then presented by the Board of Directors to the Board of Trustees of Southmost Union Junior College District.

ARTICLE 8 BOOKS AND RECORDS

8.1 The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors, and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected by any Director or his or her agent or attorney for any lawful proper purpose at any reasonable time upon five (5) calendar days prior written notice to the Corporation.

ARTICLE 9 FISCAL YEAR

9.1 The fiscal year of the Corporation shall begin on the first day of September and end on the last day of August in each year.

**ARTICLE 10
SEAL**

10.1 The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation. To the date here of, the Board of Directors has not authorized a seal.

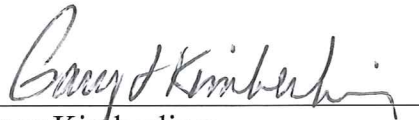
**ARTICLE 11
WAIVER OF NOTICE**

11.1 Whenever any notice is required to be given under the provisions of the Texas Non-Profit Corporation Act or under the provisions of the Articles of Incorporation or the By-laws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**ARTICLE 12
AMENDMENT TO BY-LAWS**

12.1 These By-laws may be altered, amended, or repealed and new By-laws may be adopted by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors present and voting at any regular meeting or at any special meeting, if at least fourteen (14) calendar days written notice is given of an intention to alter, amend, or repeal these By-laws or to adopt new By-laws at such meeting.

Adopted by the Board of Directors on February 10, 1998.



Gary Kimberling
The duly elected and acting
Secretary of Texas Southmost
College Foundation, Inc.