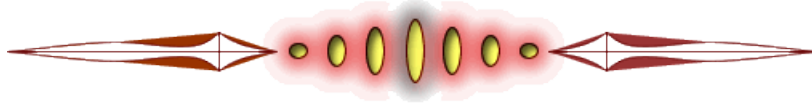


Constitution of the Modoc Nation



Preamble

We, the Modoc People (*Mowatocknie Maklaksûm*), in order to preserve our unique and separate national identity and culture; protect the various rights granted to us by our Creator; recover and restore our ownership, control and right to exercise good stewardship over the lands, resources and wildlife granted to our ancestors by our Creator; preserve and protect our status as a federally recognized indigenous people (tribe); exercise our rights to sovereignty and self-determination; establish direct government-to-government relationships with other governments; and provide for the physical, mental, spiritual and economic well-being of our people and descendants, do hereby establish and ordain this Constitution.

Article 1. Name of Organization

The name of this organization, formerly known as the Modoc Tribe, shall be the “Modoc Nation,” hereinafter referred to as “Nation.”

Article 2. Federal Recognition

The Modoc Nation reaffirms its inherent sovereignty and the mutually beneficial government-to-government relationship it has established with the United States of America.

Article 3. Authority of Government

Section 1. Jurisdiction. The sovereign powers, authority and jurisdiction of the Modoc Nation shall extend, to the fullest extent possible under Federal Law, to every citizen thereof, regardless of the place of his or her residence; to the territory of the Modoc Nation; and to every person and activity within the territory of the Modoc Nation.

Section 2. Territory. The territory of the Modoc Nation shall include all lands, waters, property, airspace, minerals and other natural and cultural resources, and any interest therein:

- (a) Contained within the ancestral territory of the Modoc people that was included within the boundaries of the former Klamath Reservation; and
- (b) Such lands and associated resources and interests, which are either now owned, or which may be acquired in the future, by the Modoc Nation or individual members held in trust status by the Federal Government; and
- (c) Such lands and associated resources and interests located within the boundaries of any reservation which may be established by an Act of Congress for the Modoc Nation; notwithstanding the issuance of any existing or future patent or right-of-way.

Section 3. Land and Water Policy. It shall be the policy of the Modoc Nation:

- (a) To seek the return to the Modoc Nation of all lands, natural and cultural resources, including mineral and water rights that become available and which were historically and/or prehistorically a part of the Modoc People’s ancestral homelands and territory; and

- (b) To regard all waters, standing or flowing, surface or subsurface, originating in or flowing into or through the territorial jurisdiction and the ancestral homelands and territory of the Modoc Nation to be a vital economic, cultural and spiritual resource of the Modoc Nation; as such, the Modoc Nation shall do everything within its power to protect such waters for the present and future use of the Modoc Nation and People.

Section 4. Hunting, Fishing and Gathering Rights. Nothing in this Article shall be construed as restricting the exercise of hunting, fishing or gathering rights of the citizens of this nation, consistent with the Valentine's Day Treaty of February 14, 1864, the Lakes Treaty of October 14, 1864, Federal Law and any consent decrees issued or which may be issued by the State of Oregon and/or the State of California.

Article 4. Citizenship

Section 1. Citizenship in the Modoc Nation shall be limited to the following persons:

- (a) Any person, regardless of blood quantum, who can show by a preponderance of evidence that he or she is lineally descended from any person who is now or, if deceased, was Modoc.
- (b) Any person who, prior to the ratification and adoption of this Constitution, was adopted into the Modoc Tribe in accordance with ancient Modoc tradition, or, subsequent to the ratification and adoption of this Constitution is adopted into the Modoc Nation in accordance with Modoc law; and
- (c) Any person who completes a process of naturalization in accordance with Modoc law.

Section 2. All citizens of the Nation, regardless of the classifications set forth in Section 1 of this Article shall enjoy the same rights, privileges and immunities.

Section 3. No person who is a citizen of another Indian tribe or nation may hold dual citizenship in the Modoc Nation.

- (a) Any person who applies for citizenship in the Nation must affirm:
 - i. That he or she is not currently a citizen or enrolled member of any other tribe or nation, or
 - ii. Upon being granted citizenship, simultaneously give up his or her citizenship or enrollment in any other tribe or nation.
- (b) Any citizen of this Nation who is discovered to have retained, enrolled in or obtained citizenship in another Indian tribe or nation shall have his or her citizenship revoked by the Citizenship Committee. Any person whose citizenship has been revoked under this Paragraph may not reapply for citizenship for a period of two years.

Section 4. There is hereby established in the Executive Branch a permanent Citizenship Committee, whose members shall be nominated and appointed by the Chief Executive with the advice and consent of the Legislative Council.

- (a) The Citizenship Committee shall permanently maintain a current roll of all citizens of the Nation.
- (b) The Citizenship Committee shall receive applications for citizenship and decide to grant or deny such applications according to the standards of proof set for each classification of citizenship by law or ordinance enacted by the Legislative Council and signed into law by the Chief Executive.
- (c) Any person denied citizenship may appeal to the Legislative Council.
- (d) The Citizenship Committee shall preserve all papers and other documents associated with each application for or revocation of citizenship.

Section 5. Nothing in this Article shall be construed to prohibit any citizen of the Nation from holding citizenship in the United States or any other nation state recognized by the United Nations.

Article 5. Incorporation of the Modoc Declaration of Rights

The inherent, natural and innate rights granted to the Modoc People by the Creator are fundamental to the governance and well-being of the Modoc Nation and its people and shall not be abridged. Accordingly, the *Declaration of the Rights of the Free and Sovereign People of the Modoc Indian Tribe (Mowatocknie Maklaksûm)*, dated November 20, 2008, having been ratified by those Modoc People who also have voted to ratify this Constitution, is hereby adopted and incorporated into this Constitution as if fully set forth herein.

Article 6. Bill of Rights

Section 1. The Modoc Nation, in exercising its powers of self-government, shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances;
- (b) Infringe the right of the people to keep and bear arms;
- (c) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized;
- (d) Put any person in jeopardy twice for the same offense; nor compel any person in any criminal case to be a witness against himself; nor deprive any person of liberty or property without due process of law; nor take any private property for a public use without just compensation;
- (e) Deny to any person in a criminal prosecution the rights: to a speedy and public trial by an impartial jury of no fewer than six (6) members; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him or her; to have compulsory process for obtaining witnesses in his or her favor; to have the assistance of counsel for his or her defense, and to have these rights explained at the time of arrest;
- (f) Require excessive bail, impose excessive fines, or inflict cruel or unusual punishments;
- (g) Deny to any person within its jurisdiction the equal protection of its laws; or
- (h) Pass any bill of attainder or ex post facto law.

Article 7. Rights of the Earth and Her Creatures

The Modoc Nation shall pass no law, nor sign any treaty, nor enter into any contractual relationship, either directly or through any of its corporations, partnerships, commissions, or agencies that, in the preponderance of current scientific opinion, as determined by the Nation, is detrimental to the well-being of Mother Earth, Her environment, or any of Her creatures.

Article 8. Sovereignty and Delegation of powers

The sovereign powers of the Modoc Nation reside collectively in its citizens, who hereby delegate and exercise those powers to and through the branches of government described hereinbelow. All powers not specifically delegated herein are reserved to the people collectively.

Article 9. General Council

Section 1. Establishment and Membership. There is hereby established a General Council, the membership of which shall consist of all citizens of the tribe who have reached the age of majority, which shall be eighteen (18) years or older.

Section 2. Powers Reserved to the General Council. The General Council, acting as a collective body through the individual citizen's right to vote, reserves to itself the following powers:

- (a) To vote in all elections of government officials;
- (b) To retain or remove all judges appointed and confirmed to the Circuit Court, Family Court and Peacekeeper Court in accordance with the respective referendum provisions of Article 13, Sections 3, 4 and 5 of this Constitution,;
- (c) To remove any elected official in accordance with the recall provisions of Article 19 of this Constitution;
- (d) To introduce and adopt legislation through the process of *Initiative* in accordance with the provisions of Article 20, Section 1 of this Constitution;
- (e) To affirm or negate legislation or resolutions enacted by the Legislative Council and signed by the Chief Executive through the process of *Referendum* in accordance with the provisions set forth in Article 20, Section 2 of this Constitution.
- (f) To ratify or reject all treaties by and between the Modoc Nation and other nations;
- (g) To ratify or reject all Economic Development Plans or their revisions; and
- (h) All powers not specifically delegated to the government of this Nation by this Constitution or the laws and treaties enacted and entered into in accordance with this Constitution.

Section 3. Meetings of the General Council.

- (a) **Regular Meetings.** The citizens of the nation shall meet in General Council at least three (3) times each year, the dates of which shall be fixed by law. Each meeting shall be for the purpose of hearing one of the addresses described below:
 - i. The Chief Executive shall deliver his or her annual address describing the state of the Nation, as required by Article 12, Section 4, Paragraph (e) of this Constitution.
 - ii. The Chief Executive Officer, or, if he or she is unavailable, the Deputy Chief Executive Officer of the Economic Development Commission shall deliver his or her annual address describing the state of the Nation's economic development, as required by Article 15, Section 3, Paragraph (b) of this Constitution.
 - iii. The Chairperson of the Council of Elders shall deliver his or her annual address expressing the collective wisdom of the Council of Elders as to the Nation's overall path to the future, its stability, and the development and protection of its core beliefs, values and traditions, as required by Article 16, Section 6 of this Constitution.
 - iv. The General Council may increase the number of regular meetings and set the dates for such meetings by a majority vote of a quorum of its members.
- (b) **Special Meetings.** Special meetings of the General Council may be called by the Chief Executive, by a majority vote of the Legislative Council, or by petition of at least twenty (20) percent of the Nation's eligible voters. Notice of such meetings shall be given by the Chief Executive in accordance with the provisions of law, or as otherwise set forth in this Constitution.

Section 4. Quorum and Voting. Except as provided elsewhere in this Constitution, twenty (20) percent of the Nation’s eligible voters present in a meeting shall constitute a quorum. No action shall be taken by the General Council unless a quorum is present at the time the action is voted upon. All votes shall be decided by a simple majority unless otherwise required by this Constitution or law.

Section 5. Procedure of Meetings. The Chief Executive or, in his or her absence, the Deputy Chief Executive shall preside over any meeting of the General Council. The conduct of the meeting will conform to Robert’s Rules of Order Revised. The Secretary of the Legislative Council shall keep minutes of the meeting in accordance with the provisions of Article 11, Section 6, Paragraph (c) of this Constitution.

Article 10. Branches of Government and Separation of Powers

Section 1. There shall be four (4) separate branches of government: Legislative, Executive, Judicial and Oversight.

Section 2. Separation of Powers. No branch of the government shall exercise the powers or functions delegated to another branch.

Section 3. With the single exception of the Chairperson of the Council of Elders, who shall simultaneously hold a seat on the Legislative Counsel, no person holding government office, whether by election or appointment and confirmation, shall hold more than one such office at a time; nor shall such person hold a position of employment in any other capacity by the Nation.

Section 4. Obligation of Good Faith Dealings and Diligence. Every elected and appointed official and every employee or agent of the Modoc Nation shall at all times adhere to the highest ethical standards, act in good faith and in a manner which promotes the well-being of the Modoc People, and diligently strive to achieve for the Modoc Nation the highest possible level of respect and standing within the community of nations and among the public at large.

Section 5. Compensation of Elected and Appointed Officials. All elected and appointed officials of the government of the Modoc Nation shall receive reasonable compensation commensurate to the Nation’s ability to pay, as, from time to time, shall be determined by the Legislative Council. No increase or decrease in compensation for any office shall take effect until after the next election for said office.

Section 6. A vacancy of an elective or appointive office by reason of death, disability, resignation or removal of the official, for which this Constitution does not provide a process for seating a replacement to serve out the term, shall be filled by appointment by the Chief Executive with confirmation by the Legislative Council.

Article 11. Legislative Branch

Section 1. The Legislative Branch shall consist of a single body to be called the “Legislative Council of the Modoc Nation.”

Section 2. Powers. The Legislative Council shall have the power to:

- (a) Determine the rules of its credentials, decorum and proceedings;
- (b) Establish such laws, codes, ordinances and resolutions as required by this Constitution or as it deems necessary and proper to the well-being of the Nation, which enactments shall not be contrary to the provisions of this Constitution;
- (c) Override by a two-thirds (2/3) vote of all its members, the Chief Executive's veto of the Legislative Council's legislation;
- (d) Appoint and/or dissolve legislative committees and/or commissions to assist the Council in the performance of its functions and duties
- (e) Confirm or reject all treaties with other nations proposed by the Chief Executive and submit them by referendum to the General Council for ratification. No treaty shall be valid unless and until it has been ratified by a majority vote of a quorum of the General Council;
- (f) Authorize and approve any trusts formed and operated for the benefit of the Modoc Nation by the Chief Executive;
- (g) Confirm or deny confirmation to the Chief Executive's nominees for appointment to judgeships for the Circuit Court, Family Court and the Peacemaker Court;
- (h) Confirm or deny confirmation to the Chief Executive's nominees for appointment to the Cabinet level positions of Secretary of State, Secretary of Treasury and Secretary of Natural Resources;
- (i) Approve or reject the Chief Executive's proposed Cabinet positions, Executive Branch Departments and special commissions not already required by this Constitution;
- (j) Confirm or deny confirmation to the Chief Executive's nominees for appointment to Cabinet positions and Executive Director positions for Executive Branch Departments;
- (k) Establish any inferior or special courts not already provided for in this Constitution, provided that all such courts shall be subordinate to the Supreme Court and its general supervision, as provided in Article 13, Section 2, Paragraph (g); and
- (l) Determine, commensurate to the Nation's ability to pay, the compensation of all elected and appointed officials of the government of the Modoc Nation.

Section 3. Specific Duties of the Legislative Council. The Legislative Council shall:

- (a) Authorize expenditures and appropriate funds to the various branches of government, and its departments and commissions through the enactment of an annual budget that balances revenues with expenditures, and assets with liabilities and surplus funds, in accordance with Generally Accepted Accounting Principles (GAAP), as they apply to the principles of fund accounting. The budget shall not exceed estimated revenues;
- (b) In a timely manner, confirm or deny confirmation to all persons whose appointment to positions in the government of the Modoc Nation requires the confirmation of the Legislative Council;
- (c) Consult in good faith with the Chief Executive of the Nation and with the Chief Executive Officer of the Economic Development Commission, or his or her delegate, in the development of an Economic Development Plan and any revisions of such plan as may be prudent and necessary; and
- (d) In a timely manner, approve or reject the Economic Development Plan or any revisions of such plan submitted to it by the Chief Executive Officer of the Economic Development Commission, or his or her delegate, pursuant to the provisions of Article 15, Section 4, Paragraph (b). If the Plan is approved, it shall be enacted as legislation and referred to the electorate for ratification in accordance with the referendum provisions of Article 20, Section 2 of this Constitution. No Economic Development Plan or its revision shall be valid unless and until it has been ratified and adopted by a majority vote of a quorum of the General Council.

Section 4. Membership.

- (a) There shall be nine (9) members of the Legislative Council:
 - i. Eight (8) members shall be elected by a majority of the eligible voters of the Modoc Nation in accordance with the election provisions of Article 17 of this Constitution.
 - ii. One member shall be the Chairperson of the Council of Elders, elected by the Nation's elders in accordance with the provisions of Article 16 Section 3, Paragraph (b), below.
- (b) All Legislative Council members must be citizens of the Nation who have attained the age of twenty-five (25) years or older.
- (c) Staggered Terms of Office. All members of the Legislative Council shall serve staggered 3-year terms without limit to the number of consecutive terms served. In the initial election following the ratification and adoption of this Constitution:
 - i. At-Large Positions 7, 8 and 9 shall serve a term of one (1) year, until their successors are elected for three (3) year terms;
 - ii. Position 4 (Secretary of the Legislative Council) and At-Large Positions 5 and 6 shall serve a term of two (2) years, until their successors are elected for three (3) year terms;
 - iii. Positions 1 (Speaker of the Legislative Council), 2 (Deputy-Speaker of the Legislative Council) and 3 (Council of Elders Chairperson) shall serve a term of three (3) years, until their successors are elected for three (3) year terms;

Section 5. Vacancies in Office.

- (a) **At-Large-Members.** In the event of the death, disability, resignation or removal of any At-Large Member of the Council, his or her position shall be filled by the person who received the next largest number of votes in the election for the position that has fallen vacant. In the event that such person is unwilling or unable to serve, the position shall be filled by appointment by a majority vote of the remaining members of the Council and confirmed by the Chief Executive. If the Chief Executive fails or refuses to confirm the appointment, such failure or refusal shall be resolved in the same manner as for legislation, as provided in Section 8 of this Article. The person filling the vacant position shall serve the remainder of the position's term, at which time he or she may stand for election to said position or any other open position.
- (b) **Speaker.** In the event of the death, disability, resignation or removal of the Speaker of the Council, his or her position shall be filled by the Deputy Speaker, whose position shall be filled in the same manner as described in Paragraph (a), above.
- (c) **Deputy Speaker.** In the event of the death, disability, resignation or removal of the Deputy Speaker of the Council, his or her position shall be filled in the same manner as described in Paragraph (a), above.
- (d) **Chairperson of the Council of Elders.** In the event of the death, disability, resignation or removal of the Chairperson of the Council of Elders, his or her position shall be filled by the Vice-Chairperson of the Council of Elders.
- (e) **Secretary.** In the event of the death, disability, resignation or removal of the Secretary of the Council, his or her position shall be filled in the same manner as described in Paragraph (a), above.

Section 6. Officers.

- (a) **Speaker.** The Speaker of the Legislative Council shall preside over all meetings of the Council, and shall have the right to vote in all matters for which a vote is taken. The Speaker is third (3rd) in the

line of succession to the Chief Executive, behind the Deputy Chief Executive and the Secretary of State.

- (b) **Deputy-Speaker.** The Deputy Speaker of the Legislative Council shall assume the duties of the Speaker in his or her absence and shall advise and assist the Speaker and carry out specifically assigned tasks or projects.
- (c) **Secretary.**
 - i. The Secretary of the Legislative Council shall record all meetings of the Council and summarize the meetings by producing a set of minutes for approval or amendment at the next Council meeting. He or she shall make the minutes a part of the Council's Journal, and both the recordings and the Council's Journal shall be maintained and preserved as part of the official records of the Nation. These records shall be available for inspection or copying by any citizen of the Nation in accordance with the provisions of the Nation's Code governing access to public records.
 - ii. The Secretary shall also record all meetings of the General Council and summarize the meetings by producing a set of minutes for approval or amendment at the next General Council Meeting. He or she shall make the minutes a part of the General Council's Journal, and both the recordings and the General Council's Journal shall be maintained and preserved as part of the official records of the Nation. These records shall be available for inspection or copying by any citizen of the Nation in accordance with the provisions of the Nation's Code governing access to public records.

Section 7. Meetings.

- (a) **Regular Meetings.** The Legislative Council shall meet at least six (6) times a year approximately two (2) months apart, or more frequently as it may determine.
- (b) Special meetings of the Legislative Council may be called:
 - i. By the Chief Executive;
 - ii. By the Deputy Chief Executive, when he or she is acting with the full powers of the Chief Executive as elsewhere provided in this Constitution;
 - iii. Upon the written request of a simple majority of the members of the Council; or
 - iv. Upon the written request of ten (10) percent of the members of the General Council, so long as that number is no fewer than fifty (50).
- (c) The purposes of any special meeting called for under Section 7, Paragraph (b), above, shall be set forth with particularity in a notice published no fewer than ten (10) days prior to the date scheduled for the meeting. The Legislative Council shall not take up any matter other than those listed on the notice.
- (d) **Quorum.** No business may be conducted at any meeting of the Legislative Council unless a quorum of two thirds (2/3) of its members is present. For purposes of this Paragraph, a member shall be considered present if he or she attends the meeting by telephone conference or through the use of Internet conferencing tools.
- (e) **Open Meetings.** All meetings of the Council and of its committees shall be open to the public except:
 - i. When the discussion shall concern employment, retention or discharge of personnel;
 - ii. When the question of the moral turpitude of any citizen is discussed; and
 - iii. When the decorum of the audience shall prejudice the orderly administration of Council business. In the event that consideration of a matter shall take place in *executive session*, the vote to resolve such matter shall take place in an open meeting.

Section 8. Legislative Process.

- (a) The style of all bills shall be “Be It Enacted by the Modoc Nation”. The style of all resolutions shall be “Be It the Resolution of the Modoc Nation”;
- (b) Every legislative act or resolution which has been approved by a majority of the members in attendance at a meeting of the Legislative Council shall, before it becomes effective, be presented to the Chief Executive, who may approve the act or resolution by signing it.
- (c) If the Chief Executive does not approve of the act or resolution, he or she shall return it with written objections to the Council, which shall enter the objections in the Council’s Journal and proceed to reconsider it. If, after such reconsideration, two-thirds (2/3) of the entire Council vote to pass the act or resolution, it shall become fully effective and operational notwithstanding the objections of veto returned by the Chief Executive. In all such cases, the vote of the Council shall be determined by yeas and nays, and the names of the members voting shall be entered in the Council's Journal.
- (d) If any legislative act or resolution shall not be returned by the Chief Executive within ten (10) days (Sundays and holidays excepted) after it shall have been presented, the same shall become law in like manner as if it had been approved by the Chief Executive.

Section 9. No laws passed by the Legislative Council shall have retroactive effect or operation.

Section 10. Mandatory Codes. The Legislative Council shall enact Codes governing: Citizenship, Elections, Access to Public Records, Ethics for Elected and Appointed Officials, Employment, Rules of Civil and Criminal Procedure in the Circuit Court, and other Codes, as it deems necessary.

Section 11. Systematization of Laws and Judicial Opinions. The Legislative Council shall establish a continuing system of permanent publication for all laws of the Modoc Nation and judicial opinions of the Supreme Court. The system shall provide for regular updating, indexing and digesting and shall be of public record at all times. The text of all laws, resolutions, judicial opinions and orders, except otherwise protected by law, and all other governmental publications, except those by Nation-owned entities, shall be in the public domain and free from encumbrances against use by the Nation’s citizens. This shall not prevent the Nation from copyrighting other aspects of governmental publications, except that the Nation’s citizens shall always have license for personal use of the copyrighted work without notice or fee.

Article 12. Executive Branch

Section 1. The Executive Branch shall consist of the Office of the Chief Executive, a Deputy Chief Executive, a Cabinet, and all Executive Departments and Special Commissions required by this Constitution or as may be established by the Chief Executive with the advice and consent of the Legislative Council.

Section 2. Powers of the Chief Executive. The Chief Executive shall have the power to:

- (a) Faithfully execute and administer the laws, ordinances and policies of the Modoc Nation;
- (b) Represent the Modoc Nation on matters that concern its interests and welfare;
- (c) Propose legislation, resolutions and an annual budget to the Legislative Council;
- (d) Sign into law legislation and authorize resolutions presented to him by the Legislative Council;
- (e) Veto legislation or resolutions presented to him by the Legislative Council;

- (f) Issue *Executive Orders* so long as they are not in contravention of the laws, treaties and Constitution of the Modoc Nation;
- (g) Form and operate trusts, the beneficiary of which shall be the Modoc Nation, which shall be granted such powers and obligations as trusts under public law, provided that all such trusts must be authorized and approved by the Legislative Council, and provided also that nothing in this Paragraph shall be construed to intrude upon the powers of the Economic Development Commission or its Chairperson;
- (h) Enter into treaties with other nations and submit them to the Legislative Council for confirmation and subsequent submission by referendum to the General Council for ratification. No treaty shall be valid unless and until it has been ratified by a majority vote of a quorum of the General Council;
- (i) Propose nominees for appointment to judgeships for the Circuit Court and the Family Court and submit them to the Legislative Council for confirmation;
- (j) Propose nominees for appointment to judgeships for the Peacekeeper Court and submit them to the Council of Elders for confirmation;
- (k) Propose nominees for appointment to the Cabinet level positions of Secretary of State, Secretary of Treasury and Secretary of Natural Resources, and submit said nominations to the Legislative Council for confirmation;
- (l) Propose the creation of or abolish any Cabinet level Departments, other Executive Branch departments and special commissions not required by this Constitution, and submit such proposals to the Legislative Council for approval;
- (m) Propose nominees for appointment to Cabinet Positions and Director positions for Executive Branch departments and Chairperson positions for Special Commissions and submit said nominations to the Legislative Council for confirmation;
- (n) Remove and/or reassign Cabinet Members or Directors of Executive Department positions, provided that any such reassignment shall be submitted to the Legislative Council for confirmation;
- (o) Under extraordinary circumstances, convene special meetings of the Legislative Council, according to the notice provisions of Article 11, Section 7, Paragraph (c);
- (p) Preside over meetings of the General Council; and
- (q) Select and hire personnel for the administration of the Executive Branch in accordance with budget constraints and applicable law.

Section 3. Qualifications, Election and Terms of Office for the Chief Executive.

- (a) **Qualifications.** The Chief Executive shall be at least thirty-five (35) years old and shall be a citizen of the Modoc Nation.
- (b) The Chief Executive shall be elected by a majority of the eligible voters of the Modoc Nation in accordance with the election provisions of Article 17 of this Constitution to no more than two (2) consecutive four (4) year terms; provided, however, that after one or more terms out of office, a former Chief Executive shall be eligible to stand for election to the position again.

Section 4. Specific Duties of the Chief Executive. The Chief Executive shall:

- (a) Faithfully execute and administer the laws, ordinances and policies of the Modoc Nation without regard to any person's blood quantum, familial relationship, political or religious views or affiliation;
- (b) Administer all of the Modoc Nation's programs with the exception of those administered by the Economic Development Commission under an approved and ratified Economic Development Program;

- (c) Present a proposed annual budget to the Legislative Council for approval;
- (d) Nominate in a timely manner persons to fill vacancies that occur in the Nation's courts and in the Chief Executive's Cabinet and Departments; and
- (e) At one meeting of the General Council each year, the Chief Executive shall deliver an address describing the state of the Nation and recommending such policies and legislation as he or she deems to be in the best interest of the Nation.

Section 5. Succession to the Office of Chief Executive.

- (a) In the event of the death, disability, resignation or removal of the Chief Executive, the full powers of the Office of the Chief Executive shall devolve to the Deputy Chief Executive, who shall serve as the Acting Chief Executive until the disability is removed or until the term of the Chief Executive expires, and a new Chief Executive is elected.
- (b) In the event of the death, disability, resignation or removal of the Deputy Chief Executive, while he or she is serving as the Acting Chief Executive, the Secretary of State shall become the Acting Chief Executive, inheriting the same powers and limitations as set forth in Paragraph (a) of this Section.
- (c) In the event of the death, disability, resignation or removal of the Secretary of State, while he or she is serving as the Acting Chief Executive, the Speaker of the Legislative Council shall become the Acting Chief Executive, inheriting the same powers and limitations as set forth in Paragraph (a) of this Section.

Section 6. Deputy Chief Executive.

- (a) The Deputy Chief Executive shall assume the duties of the Speaker in his or her absence and shall advise and assist the Chief Executive and carry out specifically assigned tasks or projects.
- (b) **Qualifications.** The Deputy Chief Executive shall be at least thirty-five (35) years old and shall be a citizen of the Modoc Nation.
- (c) The Deputy Chief Executive shall be elected by a majority of the eligible voters of the Modoc Nation in accordance with the election provisions of Article 17 of this Constitution to no more than two (2) consecutive four (4) year terms; provided, however, that after one or more terms out of office, a former Deputy Chief Executive shall be eligible to stand for election to the position again.

Section 7. Cabinet-level Departments, in General.

- (a) There are hereby established three (3) Cabinet-level Departments: the Department of State, the Department of the Treasury and the Department of Natural Resources. Each Department shall be headed by a Secretary, all of whom shall be nominated by the Chief Executive and confirmed by the Legislative Council.
- (b) The Chief Executive may create additional Cabinet-level Departments with the approval of the Legislative Council, and he or she may nominate Secretaries to head such Departments and submit those nominees to the Legislative Council for confirmation.
- (c) Acting with the approval of the Legislative Council, the Chief Executive may eliminate Cabinet-level Departments not mandated in Paragraph (a) of this Section, and remove and/or reassign Secretaries to other Cabinet-level Departments.
- (d) All Secretaries of Cabinet-level Departments shall be citizens of the Modoc Nation and have attained the age of twenty-five (25) years or older.
- (e) The Secretaries of Cabinet-level Departments shall have the authority to organize their Departments and to hire and fire the members of their immediate staffs in accordance with the Nation's employment laws and regulations.

Section 8. Secretary of State

- (a) The Secretary of State shall speak for and represent the Modoc Nation on any occasion in which the Chief Executive is not personally present or inclined to do so, including, but not limited to the following areas:
- i. In meetings and negotiations with federal, state and local governments and their various agencies;
 - ii. In meetings and negotiations with the governments of other nations, including those of indigenous tribes and nations, and their various agencies;
 - iii. In meetings, hearings, and negotiations with the United Nations, the Organization of American States, the International Indian Treaty Council, and other international bodies and programs; and
 - iv. In any other forum or with any other group or organization the Chief Executive authorizes the Secretary of State to do so.
- (b) In order that the Modoc Nation shall speak with one voice with respect to its external relations, The Secretary of State shall approve all press releases and be in charge of media relations concerning matters of State.

Section 9. Secretary of the Treasury. The Secretary of the Treasury shall receive and expend funds and safeguard the Nation's assets in accordance with the provisions of this Section and Article 21 of this Constitution.

- (a) The fiscal year of the Modoc Nation shall begin on January 1 and end on December 31, unless otherwise provided by law.
- (b) ***Duties of the Secretary of the Treasury.*** The Secretary of the Treasury shall carry out the following duties.
- i. At least forty-five (45) days prior to the beginning of the fiscal year, provide the Chief Executive, for his or her presentation to the Legislative Council, a proposed annual budget that balances revenues with expenditures, and assets with liabilities and surplus funds, in accordance with Generally Accepted Accounting Principles (GAAP), as they apply to the principles of fund accounting. The budget shall not exceed estimated revenues.
 - ii. In accordance with Generally Accepted Accounting Principles (GAAP), as they apply to the principles of fund accounting, develop and maintain a system of financial books and records that accounts for all financial transactions of the Nation, excepting those of the Economic Development Commission.
 - iii. Ensure that monthly and annual financial statements that comply with Generally Accepted Accounting Principles (GAAP), as they apply to the principles of fund accounting, are provided to the Chief Executive and the Legislative Council.
 - iv. Ensure that an annual certified external audit is performed on the books and records of the Nation and presented to the Chief Executive and the Legislative Council within six (6) months following the end of the fiscal year. This audit shall become a part of the Nation's permanent records and shall be available for viewing or copying by any citizen of the Nation. The provisions of this Paragraph shall not apply until the annual net revenues of the Nation exceed one million dollars (\$1,000,000).
 - v. Accept all grants, donations of money, interest on funds of the Modoc Nation, distributions of monies from the Economic Development Commission, judgments and any and all other sources of monies, for uses and purposes and upon the conditions and limitations for which

the same are granted, donated, or distributed. The faith of the Modoc Nation is hereby pledged to preserve such grants, donations and distributions as a sacred trust, and, if or when designated, to keep the same for the use and purposes for which they were granted, donated or distributed.

- vi. Invest funds or money of the Modoc Nation, excepting those within the purview and control of the Economic Development Commission, and determine the preference to be given to the security for such investments, the manner of selecting the securities, prescribing the rules, regulations, restrictions and conditions upon which the funds shall be loaned or invested, provide that no investments shall be in mortgages other than first mortgages only, and do all things necessary for the safety of the funds and permanence of the investments. If required by law, such investments shall be subject to the approval of the Secretary of the Interior.

Section 10. Secretary of Natural Resources. The Secretary of Natural Resources shall protect and preserve the land and natural resources of the Modoc Nation, as described in Article 3, Section 2 of this Constitution, from destruction, despoliation, pollution, plunder or other forms of loss or degradation. He or she also shall be charged with the implementation of the Land and Water Policy of the Modoc Nation, as set forth in Article 3, Section 3 of this Constitution.

Section 11. Attorney General. There is hereby established the Office of the Attorney General.

- (a) The Attorney General shall represent the Nation in all criminal prosecutions in the courts of the Nation, and in all civil actions in which the Modoc Nation is named as a party, and shall have such other duties as may be prescribed by law.
- (b) The Attorney General shall have the authority to conduct his or her own criminal and civil investigations and to designate such prosecutors or other assistants as he or she deems necessary to carry out the duties of office.
- (c) The Attorney General shall be a citizen of the Modoc Nation, have attained the age of twenty-five (25) years or older, a member of the Modoc Nation Bar Association and be admitted to practice law before the highest court of any state of the United States; provided, however, that membership in the Modoc Nation Bar Association shall not be required until such Association has been established in accordance with the provisions of Article 13, Section 2, Paragraph (h) of this Constitution.
- (d) The Attorney General shall be appointed by the Chief Executive and confirmed by the Legislative Council to a term of four (4) years. The Attorney General may be removed from office only in accordance with the provisions of Article 19 of this Constitution.

Section 12. Marshal. There is hereby established the office of Marshal.

- (a) The Marshal shall be a citizen of the Modoc Nation, have attained the age of twenty-five (25) years or older and possess such training and experience in law enforcement as prescribed by law.
- (b) The duties and authority of the Marshal shall be prescribed by law. The Marshal shall be authorized to deputize such officers as necessary to carry out the law enforcement needs of the Modoc Nation. Such Deputy Marshals shall have attained the age of twenty-five (25) years or older and possess such training and experience in law enforcement as prescribed by law.
- (c) The Marshal shall be appointed by the Chief Executive and be confirmed by the Legislative Council to a term of four (4) years. The Marshal may be removed from office only in accordance with the provisions of Article 19 of this Constitution.

Section 13. The terms of the Attorney General and the Marshal shall not be concurrent.

Article 13. Judicial Branch

Section 1. The Judicial Power of the Modoc Nation shall be vested in a Supreme Court, a Circuit Court, a Family Court, a Peacemaker Court, and any inferior courts the Legislative Council may establish by law. The purpose of the Judicial Branch is to resolve controversies and disputes and administer justice with impartiality in both civil and criminal proceedings in accordance with the Constitution and laws of the Modoc Nation.

Section 2. Supreme Court.

- (a) There is hereby established the Supreme Court of the Modoc Nation.
- (b) **Composition.** The Supreme Court shall consist of one (1) Chief Justice and two (2) Associate Justices.
- (c) **Jurisdiction.** The Supreme Court shall have original jurisdiction:
 - i. In all cases in which there is a dispute between two or more branches of the government of the Modoc Nation;
 - ii. Cases involving Treaties to which the Nation is party;
 - iii. Appeals from the adverse decisions of the Oversight Commission;
 - iv. Challenges to the Economic Development Commission's implementation of the Nation's Economic Development Plan;
 - v. Challenges to a proposed initiative measure prior to a vote by the Nation's eligible voters;
 - vi. and in such other matters as may be provided by this Constitution or by law.The Supreme Court shall have appellate jurisdiction in all other cases arising at law or in equity.
- (d) **Powers.** The Supreme Court shall have the following powers:
 - i. To interpret the constitution and laws of the Modoc Nation;
 - ii. To decide both the facts and the law in cases brought on appeal from an adverse decision of the Oversight Commission; to decide only the law on appeals brought from any other inferior court; and
 - iii. To issue, hear and determine writs of mandamus, habeas corpus, quo warranto, prohibition, certiorari and such other remedial writs as may be provided by law.
- (e) **Election and Terms of Office.**
 - i. Supreme Court Justices shall be elected by a majority of the eligible voters of the Modoc Nation in accordance with the election provisions of Article 17 of this Constitution.
 - ii. Justices of the Supreme Court shall serve six (6) year staggered terms, with no limit to the number of consecutive terms they may serve.
 - iii. In the initial election following adoption of this Constitution, the candidate receiving the largest number of votes will be designated as the Chief Justice of the Supreme Court. The Justice elected with the fewest number of votes will serve an initial term of office two (2) years in length, and the other Justice will serve an initial term of office four (4) years in length.
 - iv. An election to the Supreme Court shall take place once every two (2) years, except in the case of filling a vacated seat on the Court for the remainder of that term.
 - v. In the event of a vacancy on the Supreme Court due to death, disability, resignation, or removal from said office, a successor shall be appointed or elected to serve the remaining term of office. If the term remaining is less than three (3) years, the successor shall be appointed by the Chief Executive of the Modoc Nation and confirmed by the Legislative

Council. If the term of office remaining for the vacancy is three (3) or more years, the successor shall be elected by the General Council in a special election called by the Legislative Council in accordance with the provisions of the *Election Code* enacted pursuant to Article 17 of this Constitution. Any person filling such a vacancy shall be eligible to run for election when the term he or she is holding expires.

- vi. The Legislative Council shall, within one (1) year of this Constitution taking effect, pass such laws as are necessary for carrying into effect the provisions of this Paragraph.
- (f) The Supreme Court shall promulgate rules of procedure to ensure that any litigant appearing before it receives due process of law and impartial justice, together with prompt and speedy relief.
- (g) **Supervision Over the Lower Courts.** The Supreme Court shall exercise general supervisory control over all lower courts. General supervisory control does not include suspension, removal, or disciplinary action of any member of the judiciary. These powers are specifically reserved for the Court on the Judiciary as prescribed in Section 7 of this Article and/or Article 19 of this Constitution. The Supreme Court shall employ an Administrator, who shall have general administrative duties in the judicial branch. The Justices of the Supreme Court shall have supervisory authority over the Administrator.
- (h) The Supreme Court shall promulgate rules establishing the Modoc Nation Bar Association and setting forth the qualifications to practice before the Modoc Nation courts, provided such rules are consistent with the laws of the Modoc Nation.
- (i) Decisions of the Supreme Court shall be final and shall be published and indexed in accordance with the provisions of Article 11, Section 11 of this Constitution.

Section 3. Circuit Court.

- (a) There is hereby established the Circuit Court of the Modoc Nation.
- (b) **Composition.** The Circuit Court shall consist of one (1) Chief Judge and other Associate Judges as deemed necessary by the Legislative Council.
- (c) **Jurisdiction.** The Circuit Court shall have original jurisdiction in all cases and controversies, both criminal and civil, arising in law or in equity, arising under the Constitution, laws, customs and traditions of the Modoc Nation, including cases in which the Nation, or its officials and employees, shall be a party. With the exception of cases falling within the original jurisdiction of the Supreme Court, civil cases falling within the original jurisdiction of the Family Court, and cases filed in the Peacemaker Court as an alternative to civil litigation, any case or controversy arising within the jurisdiction of the Nation shall be filed in Circuit Court before it is filed in any other court.
- (d) **Powers.** The Circuit Court shall the following powers:
 - i. To declare the laws and administrative regulations of the Modoc Nation void if such laws and regulations are not in agreement with this Constitution;
 - ii. To make findings of fact and conclusions of law, and to issue all remedies in law and in equity, including injunctive and declaratory relief and all writs, including attachment and mandamus;
 - iii. In appropriate circumstances, to refer cases and controversies to the Peacemaker Court of the Modoc Nation;
 - iv. To convene in different communities when doing so balances the Nation's interest in judicial efficiency and Its interest in accommodating the geographical diversity of Its citizens; and
 - v. To exercise such other powers as may be provided by law.
- (e) **Appointment and Terms of Office.**

- i. The judges of the Circuit Court shall be appointed by the Chief Executive of the Modoc Nation and confirmed by the Legislative Council to six (6) year staggered terms, with no limit to the number of consecutive terms they may serve.
- ii. Two years from the date of appointment, each judge shall retain or lose his or her position based upon a referendum vote of the General Council. The Legislative Council shall, within one (1) year of this Constitution taking effect, pass such laws as are necessary for carrying into effect the provisions of this Paragraph.
- iii. In the event of a vacancy in the Circuit Court due to death, disability, resignation, or removal from said office, a judge *pro tempore* shall be appointed by the Chief Executive and confirmed by the Legislative Council to serve the remainder of the term that is vacant; provided, however, that such judge may be reappointed and confirmed to the position as a regular judge upon the expiration of the *pro tempore* appointment.

Section 4. Family Court.

- (a) There is hereby established the Family Court of the Modoc Nation.
- (b) **Composition.** The Family Court shall consist of one (1) Chief Judge and other Associate Judges as deemed necessary by the Legislative Council;
- (c) **Jurisdiction.**
 - i. The Family Court shall have original jurisdiction in all civil cases and controversies at law or in equity, arising under the Constitution, laws, customs and traditions of the Modoc Nation concerning adoption, foster care, domestic abuse and violence, child abuse, elder abuse, divorce, the custody and care of children and elders, and other family related issues, as may be provided by law. It shall not have criminal jurisdiction in any matter.
 - ii. All cases and controversies before the Family Court shall be considered *hearings* rather than *trials*. There is no right to a trial by jury in the Family Court.
- (d) **Powers.** The Family Court shall have the following powers:
 - i. To make findings of fact and conclusions of law, and to issue all remedies in law and in equity, including injunctive and declaratory relief and all writs necessary to ensure the physical, mental, emotional and spiritual safety and wellbeing of the parties and families that come before the Court, including but not limited to restraining orders, orders of support, and orders of removal of children and/or elders from the custody and care of one or more parties or entities and their placement with other parties or entities;
 - ii. To levy civil fines in accordance with law and award civil damages as the facts and law warrant; and
 - iii. To exercise such other powers as may be provided by law.
- (e) **Appointment and Terms of Office.** The judges of the Family Court shall be appointed and confirmed, serve the same terms in office, and have vacancies filled in the same manner as those of the Circuit Court, as set forth in Section 3, Paragraph (e), of this Article.
- (f) Any Judge of the Family Court who receives evidence of the commission of a crime by any party who is before the Court shall refer the matter and supporting evidence to the Office of the Attorney General for potential prosecution in the Circuit Court.

Section 5. Peacemaker Court.

- (a) There is hereby established the Peacemaker Court of the Modoc Nation.

- (b) **Purpose.** The purpose and mission of the Peacemaker Court is to provide a forum and the means necessary to resolve disputes and violations of the law with the goal of achieving healing, reparation, rehabilitation and restoration for the good of the Nation and all its citizens.
- (c) **Composition.** The Peacemaker Court shall consist of one (1) Chief Judge and other Associate Judges as deemed necessary by the Council of Elders;
- (d) **Jurisdiction.** The Peacemaker Court shall have jurisdiction over all cases referred to it by the Circuit Court, referred to it by the Office of the Attorney General as an alternative to criminal prosecution; and filed by individual parties as an alternative to civil litigation.
- (e) **Powers.** The Peacemaker Court shall have the following powers:
 - i. To compel the appearance and testimony of witnesses, and to issue subpoenas for the production of records and things;
 - ii. To compel the appearance of necessary parties and their good faith participation in discussions of issues, negotiations, mediation and/or binding arbitration of disputes;
 - iii. To issue such orders as shall formalize the agreements reached by and between the parties; and
 - iv. To exercise such other powers as may be provided by law.
- (f) **Appointment and Terms of Office.** The judges of the Peacemaker Court shall be appointed and confirmed, serve the same terms in office, and have vacancies filled in the same manner as those of the Circuit Court, as set forth in Section 3, Paragraph (e), of this Article, except that all nominees for appointment shall be submitted to the Council of Elders for confirmation.

Section 6. Qualifications for Office. In addition to the restrictions set forth in Article 17, Section 6 of this Constitution, the following qualifications for office shall apply to the Justices and Judges of the Modoc Nation.

- (a) The Chief Justice of the Supreme Court of the Modoc Nation shall have reached the age of forty (40) years or older. The judges of all other courts of the Modoc Nation shall have reached the age of thirty (30) years or older.
- (b) With the exception of the judges of the Peacemaker Court, all judges shall be admitted to practice law before the highest court of any state in the United States, be a member of the Modoc Nation Bar Association, and possess all other qualifications required by the laws of the Modoc Nation; provided, however, that membership in the Modoc Nation Bar Association shall not be required until such Association has been established in accordance with the provisions of Section 2, Paragraph (h) of this Article.

Section 7. Special Procedure for the Removal of Judges.

- (a) There is hereby created a Special Court on the Judiciary.
- (b) Each branch of the government shall select two (2) members of the Court, one of whom shall be a member of the Modoc Nation Bar Association, and the other of whom shall be a non-lawyer. The eight (8) members shall appoint a ninth (9th) member. All members of the Court shall be citizens of the Modoc Nation, but no member shall be an employee of the Modoc Nation or any entity thereof.
- (c) The Special Court on the Judiciary shall promulgate its own rules of procedure ensuring due process, to be submitted to the Legislative Council for review and approval.
- (d) The authority of the Special Court shall include suspension, sanction, discipline or removal from office. Any such ruling by the Special Court shall be final and non-appealable.

- (e) Members of the judiciary shall be subject to removal from office only for failure to recuse, willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any conviction of a felony, a crime under the laws of the Modoc Nation that if committed in some other jurisdiction would be a felony, or a misdemeanor involving moral turpitude, or offenses against the Modoc Nation committed while in office.
- (f) The Legislative Council shall pass such laws as are necessary for carrying into effect the provisions of this Section.
- (g) Nothing in this Section shall be construed to restrict the power of the citizens of the Nation to remove a member of the Judiciary through the power of recall, in accordance with the provisions of Article 19, Section 7 of this Constitution.

Section 8. Compensation. Neither the compensation nor term of office of any Judge may be diminished while such judge continues his or her term in office.

Section 9. Conflict of Interest. Any Justice or Judge with a direct personal or financial interest in any matter before the Court shall recuse; failure to recuse shall constitute cause for removal in accordance with Section 7 of this Article.

Section 10. Right of Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with a final judgment or verdict may appeal to the Supreme Court. All appeals before the Supreme Court shall be heard by the full Court.

Section 11. No decision of any court may be appealed to the Legislative Branch of Executive Branch of government.

Section 12. The jurisdiction established by this Constitution shall not be construed to be a waiver of the Modoc Nation's sovereign immunity.

Article 14. Oversight Branch

Section 1. The Oversight Branch shall consist of a single body to be called the "Oversight Commission" and shall be charged with the task of ensuring that those persons elected or appointed to government office, or employed by the government, adhere to a strict code of ethics that defines and prohibits political corruption.

Section 2. Membership and Election.

- (a) The Oversight Commission shall consist of three (3) Commissioners elected by the General Council to six (6) year terms. The terms of the Commissioners shall be staggered, and no Commissioner shall serve more than two (2) consecutive terms in office; provided, however, that after one or more terms out of office, a former Commissioner shall be eligible to stand for election to the position again.
- (b) In the initial election following adoption of this Constitution, the person receiving the largest number of votes will be designated as the Oversight Commission Chairperson. The Commissioner elected with the fewest number of votes will serve an initial term of office two (2) years in length, and the other Commissioner will serve an initial term of office four (4) years in length.

- (c) An election to the Oversight Commission shall take place once every two (2) years, except in the case of filling a vacated seat on the Commission for the remainder of that term. The Legislative Council shall, within one (1) year of this Constitution taking effect, pass such laws as are necessary for carrying into effect the provisions of this Section.

Section 3. The Oversight Commission shall work with the Council of Elders to draft a “*Code of Ethics for Elected and Appointed Officials of the Modoc Nation*” and present it for enactment to the Legislative Council and Chief Executive. The purpose of the *Code of Ethics* shall be to define, prevent and eliminate corruption in government which flows from such evils as self-dealing, nepotism, cronyism, patronage, influence peddling, embezzlement, bribery, kick-backs and electoral fraud.

Section 4. Powers. The Commission shall have the power and funding necessary to:

- (a) Conduct professional audits and investigations on its own initiative or upon receiving a complaint that the *Code of Ethics* has been violated;
- (b) Employ temporary or permanent legal counsel, accountants, forensic auditors, fraud examiners and investigators as a part of its staff;
- (c) Issue subpoenas, examine books and records, and hold *in camera* hearings in which it can compel testimony;
- (d) Order the censure, fine or removal from office of any elected or appointed official of government, or the termination of any government employee, it finds to be guilty of political corruption as defined by and in accordance with the provisions of the *Code of Ethics*; provided, however, that if the official is a Justice or Judge, the investigative findings and recommendations of the Commission shall be presented to the Special Court on the Judiciary for appropriate action in accordance with Article 13, Section 7 of this Constitution; and
- (e) Defend the actions it takes under this Article should those actions be appealed to the Supreme Court.

Section 5. Censure, Fine.

- (a) If, after full investigation, the Commission finds that a government official has committed an act or acts that constitute/s *political corruption* as defined by the *Code of Ethics*, but that the act or acts of the official do not rise to a level of seriousness necessary to require the official’s removal from office, the Commission shall issue a *Letter of Censure* against the official, setting forth the grounds for censure and the specific facts supporting the issuance of the censure. A copy of the *Letter of Censure* shall be placed in the permanent records of the Nation and be available for viewing or copying by any citizen of the Nation.
- (b) In addition to the *Letter of Censure*, the Commission may levy a fine in an amount not to exceed one thousand dollars (\$1,000).
- (c) In the event that a *Letter of Censure* is rescinded on appeal, it shall not be expunged from the records of the Nation.

Section 6. Removal from Office.

- (a) If, after full investigation, the Commission finds that a government official has committed an act or acts that constitute/s *political corruption* as defined by the *Code of Ethics*, and that the act or acts are sufficiently numerous or serious, the Commission shall issue *an Order of Removal from Office*.

- (b) Attached to the *Order of Removal from Office* shall be a written *Statement of Grounds and Facts* that sets forth the grounds upon which the *Order of Removal* is based and a detailed statement of facts supporting the decision to remove the official from office.
- (c) An *Order of Removal from Office* and attached *Statement of Grounds and Facts* shall be served on the elected or appointed official who is the subject of the Order by the chief law enforcement officer of the Nation and/or one of his deputies, who shall immediately help the official collect his or her personal belongings and escort him or her from the building and off its grounds.
- (d) A copy of the *Order of Removal from Office* and attached *Statement of Grounds and Facts* shall be placed in the permanent records of the Nation and be available for viewing or copying by any citizen of the Nation. In the event the Order is rescinded on appeal, it shall not be expunged from the records of the Nation.

Section 7. Official's Right to Appeal.

- (a) Any elected or appointed official who has been censured, fined, or removed from office under this Article may, within ten (10) days of receiving notice of such action, file an appeal to the Supreme Court, which shall expedite the hearing on its calendar and hear the case *en banc*.
- (b) The appeal of any adverse decision of the Oversight Commission to the Supreme Court shall be conducted as a *trial de novo*, in which the Oversight Commission shall bear the burden of proof by a preponderance of the evidence.
- (c) In no case in which an *Order of Removal from Office* has been issued shall the appellant be allowed to remain in office or to receive the salary of his or her office during the pendency of the appeal.
- (d) In all appeals taken under this Article, the Oversight Commission shall be the Respondent, and shall be represented by its own staff counsel, or if it has no staff counsel, by the Attorney General of the Modoc Nation.
- (e) In all appeals taken under this Article, the prevailing party shall be entitled to an award of costs and attorneys fees.
- (f) In the event that the Appellant prevails on appeal, the Supreme Court shall, in accordance with the nature of the action that was appealed:
 - i. Rescind the *Letter of Censure*;
 - ii. Extinguish or reduce the amount of any fine that has been levied;
 - iii. Rescind the *Order of Removal from Office* and reinstate the Appellant to the office from which he or she was removed unless his or her term of office has expired; and
 - iv. Order the payment of back salary to the appellant along with appropriate interest.
- (g) In no event shall the Appellant be entitled to an award of damages other than the payment of back salary and appropriate interest.

Section 8. Referral to Attorney General. The remedies for political corruption provided by this Article are not exclusive. Accordingly, the Oversight Commission shall provide the Attorney General of the Modoc Nation a copy of every *Letter of Censure* or *Order of Removal from Office* and attached *Statement of Grounds and Facts* that it issues so that the Attorney General may determine whether a civil or criminal prosecution also is warranted.

Section 9. Application to Government Employees. The provisions of this Article shall apply in the same manner to any employee of the Modoc Nation.

Article 15. Economic Development Commission (EDC)

Section 1. There is hereby established the Economic Development Commission (EDC). The Commission shall be a permanent, autonomous agency of the Modoc Nation. Its mission shall be to develop, implement and manage an Economic Development Plan (EDP) that will produce long-term economic growth leading to economic self-sufficiency through the generation of net revenues that can be used for the benefit of the Nation and its citizens.

Section 2. Membership of Commission.

- (a) The Commission shall consist of three (3) officers and no fewer than two (2) and no more than ten (10) Commissioners. The three (3) officers shall be a Chief Executive Officer, a Deputy Chief Executive Officer, and a Chief Financial Officer.
- (b) Both the Commission's Chief Executive Officer and its Deputy Chief Executive Officer shall be elected by a majority of the eligible voters of the Modoc Nation, in accordance with the election provisions of Article 17 of this Constitution, to a term of four (4) years, with no limit on the number of terms that they can serve. The Chief Executive Officer and Deputy Chief Executive Officer shall be citizens of the Nation and have attained the age of twenty-five (25) years or older. With the exception of the persons elected immediately following the adoption of this Constitution, both the Chief Executive Officer and Deputy Chief Executive Officer shall have earned at least a Baccalaureate Degree in Business or a related field from an accredited college or university, and have at least five (5) years of experience in upper level management of business or related enterprises.
- (c) The Chief Financial Officer shall be appointed by and serve at the discretion of the Chief Executive Officer. The Chief Financial Officer need not be a citizen of the Nation but shall have attained the age of twenty-five (25) years or older and earned at least a Baccalaureate Degree in Business, Accounting, Finance, or a related field from an accredited college or university, and have at least five (5) years of experience in upper level financial management of business or related enterprises
- (d) No fewer than two (2) and no more than ten (10) Commissioners shall be appointed by and serve at the discretion of the Chief Executive Officer. These Commissioners need not be citizens of the Nation but shall have attained the age of twenty-five (25) years or older and shall possess the education and experience necessary to carry out the functional duties of the positions to which they have been appointed.
- (e) Within the limits set forth in Paragraph (a) of this Section, the Chief Executive Officer may increase or decrease the number of Commissioners in accordance with his or her discretion.

Section 3. Powers and Duties of the Commission's Officers.

- (a) ***Powers of the Chief Executive Officer.*** The Chief Executive Officer shall have the power to:
 - i. Preside over all meetings of the Commission;
 - ii. Manage the Commission and make decisions in the same manner and with the same authority as a Chief Executive Officer manages any corporate business or enterprise;
 - iii. For just cause, remove and replace the Commission's Chief Financial Officer and/or any other Commissioners; the Chief Executive Officer shall document the facts and reasons that support a finding of just cause for removal, and, upon request, the same shall be available for review by the Nation's Chief Executive, Speaker of the Legislative Council, Attorney General, and/or Chairperson of the Oversight Commission. This documentation shall become a permanent

record of the Modoc Nation but shall not be available for viewing or copying by any person other than those named hereinabove in pursuance of their official duties, unless those duties require the disclosure of the documents to others.

- iv. Employ temporary or permanent legal counsel as he or she deems necessary;
- v. Employ such investment, business or other consultants as he or she deems necessary;
- vi. Hire and fire such other support staff as he or she deems necessary, provided that the total cost of such staff does not exceed budgetary constraints;
- vii. Open or close branch or specialized offices when and where he or she deems necessary, consistent with the Economic Development Plan and budgetary constraints;
- viii. Represent and speak for the Commission before all branches of the government and the General Council of the Modoc Nation; and
- ix. Represent the Modoc Nation with third parties in all business dealings arising from and incident to the Nation's Economic Development Plan, provided that any dealings with the governments of other nations, tribes, local or state governments shall require the consent of the Nation's Chief Executive in order to ensure that such dealings are consistent with the laws, treaties and policies of the Modoc Nation.

(b) **Duties of the Chief Executive Officer.** The Chief Executive Officer shall have the duty to:

- i. Avoid all conflicts of interest and at all times act in good faith and in the best interests of the Modoc Nation;
- ii. Ensure that the Commission, in consultation with the Nation's Chief Executive and Legislative Council, develops and presents an Economic Development Plan for the Nation to the Legislative Council and Chief Executive for approval and to the General Council for ratification and adoption;
- iii. Ensure that the Commission adheres to the principles of sound strategic planning and management in its implementation of the Economic Development Plan after its ratification and adoption;
- iv. In consultation with the Nation's Chief Executive and Legislative Council revise the Economic Development Plan when necessary or prudent and present such revised Plan to the Legislative Council and Chief Executive for approval and to the General Council for ratification and adoption;
- v. Ensure that the Commission performs all research and due diligence necessary to protect the Nation's interests prior to investing in or starting any business enterprise, venture, or any other project;
- vi. Consult with the Nation's Secretary of State and Attorney General to ensure that the Commission's dealings with and representations made to other nations, tribes, local or state governments shall be consistent with the laws, treaties and policies of the Modoc Nation;
- vii. Consult with the Nation's Secretary of Natural Resources to ensure that the Commission's business activities and investments are in compliance with the environmental and ecological protections envisioned by Article 3, Section 3, Paragraph (b) and Article 7 of this Constitution.
- viii. Ensure that the Commission provides written quarterly and annual financial and operations reports to the Nation's Chief Executive and Legislative Council with respect to the implementation of the current Economic Development Plan. These reports shall be a part of the Nation's permanent records available for inspection and copying by any citizen of the Nation;
- ix. Accompanied by the Chief Financial Officer, present the Commission's quarterly financial and operations report to quarterly meetings of the Legislative Council at which the Nation's Chief

Executive is also present. On any occasion in which the Chief Executive Officer is unable to attend such a meeting in person, he may attend by telephone or Internet conferencing tools, or he may delegate this duty to the Deputy Chief Executive Officer, as provided by Paragraph (c), Subparagraph iv of this Section; and

- x. At one meeting of the General Council each year, the Chief Executive Officer shall deliver an address describing the state of the Nation's economic development and recommending such policies, legislation, and changes in economic development strategy as he or she may deem to be in the best interest of the Nation's economic development. If the Chief Executive Officer is out of the country, or other extraordinary circumstances prevent his personal attendance at this meeting, he or she may delegate this duty to the Deputy Chief Executive Officer, as provided by Paragraph (c) Subparagraph iv of this Section.

(c) Powers and Duties of the Deputy Chief Executive Officer.

- i. The Deputy Chief Executive Officer shall avoid all conflicts of interest and at all times act in good faith and in the best interests of the Modoc Nation.
- ii. In the event of the death, disability, resignation or removal of the Commission's Chief Executive Officer, the full powers of the Office of the Chief Executive Officer shall devolve to the Deputy Chief Executive Officer, who shall serve as the Commission's Acting Chief Executive Officer until the disability is removed or until the term of the Chief Executive Officer expires, and a new Chief Executive Officer is elected.
- iii. The Deputy Chief Executive Officer shall advise and assist the Chief Executive Officer and carry out specifically assigned tasks or projects.
- iv. The Deputy Chief Executive Officer shall, when required by the Chief Executive Officer, represent the Economic Development Commission in his or her stead.

(d) Powers and Duties of the Chief Financial Officer. The Chief Financial Officer shall avoid all conflicts of interest and at all times act in good faith and in the best interests of the Modoc Nation. He or she shall have the power necessary to carry out the following responsibilities:

- i. Protect and preserve the Commission's assets;
- ii. Install and monitor the effectiveness of internal financial controls;
- iii. Develop and implement standardized financial and managerial accounting and reporting systems that enable the Commission to analyze and make strategic decisions regarding its portfolio of investments, business enterprises and other projects;
- iv. Develop a budget process for planning purposes and prepare timely and periodic reports that quantify and analyze the variances between budgeted and actual amounts;
- v. Continuously analyze financial risks and rewards associated with the Commission's portfolio of investments, business enterprises and other projects;
- vi. Ensure that accurate and timely consolidated quarterly and annual financial statements of the performance of the Commission's portfolio of investments, business enterprises and other projects are prepared and presented to the Commission's Chief Executive Officer;
- vii. Ensure that an annual certified external audit is performed on the books and records of the Commission. This audit shall become a part of the Nation's permanent records and shall be available for viewing or copying by any citizen of the Nation. The provisions of this Paragraph shall not apply until the annual net revenues generated by the Commission exceed one million dollars (\$1,000,000).
- viii. Ensure that periodic audits are performed on the books and records of the Commission's portfolio of investments, business enterprises and other projects. The frequency, scope and depth of such audits, and whether they shall be certified, shall be determined on the basis of

- the Commission's level of exposure to risk associated with each investment, business enterprise or other project in its portfolio;
- ix. Ensure that all taxes are paid and that the Commission and its portfolio of investments, business enterprises and other projects are in compliance with all financial requirements imposed by relevant regulatory agencies, banks, venture capital funds, foundations or other grant funding organizations;
 - x. Develop and implement a fund management system that tracks cash and fund flow through general and designated funds, each of which may have its own bank account/s and the ability to receive and disburse cash, issue receipts and engage in other types of bank transactions;
 - xi. Prepare on an *ad hoc* basis financial projections or other special financial reports necessary for loan or grant applications, or for interim or final reports associated therewith;
 - xii. Assist the Chief Executive Officer in carrying out the mission of the Commission as a key member of the Commission's strategic planning and management team;
 - xiii. Negotiate with banks, foundations, venture capital funds, government agencies or other lenders for loans as necessary and when requested or authorized to do so by the Chief Executive Officer;
 - xiv. Develop and manage a sound passive investment portfolio, as approved and authorized by the Chief Executive Officer;
 - xv. Continuously look for ways to improve the fiscal operating efficiency and efficacy of the Commission;
 - xvi. Open and close bank accounts as necessary and as approved and authorized by the Chief Executive Officer;
 - xvii. Ensure that net revenues received from the Commission's portfolio of investments, business enterprises and other projects are distributed and disbursed in accordance with the provisions of the current Economic Development Plan. For monies not retained by the Commission under the Economic Development Plan, this provision shall be accomplished by the issuance of checks drawn on the Commission's bank account/s made payable to the Treasurer of the Modoc Nation. A separate check shall be issued, labeled and entered on the books of the Commission for each category of distribution required by the Economic Development Plan;
 - xviii. Hire, train, manage and replace a staff of accountants, auditors, financial analysts, and other professionals necessary to carry out the duties and responsibilities listed herein; and
 - xix. Perform any other duties assigned to him or her by the Chief Executive Officer.

Section 4. Economic Development Plan (EDC).

- (a) The Economic Development Commission shall develop, in consultation with the Legislative Council and Chief Executive, the Nation's Economic Development Plan.
- (b) The Economic Development Plan and all major revisions thereto shall be submitted to the Legislative Council and Chief Executive for approval. If approved, the Economic Development Plan shall be referred to the General Council for ratification and adoption. If ratified and adopted by the General Council, the Economic Development Plan shall be put into effect immediately. If the Plan is not so ratified and adopted, the Commission shall work with the Legislative Council and Chief Executive to revise the Plan as necessary to obtain the ratification and adoption of the General Council.
- (c) ***Contents of the Economic Development Plan***

- i. The Plan shall consider and provide opportunities for both short-term and long-term economic development.
 - ii. The Plan shall consider and provide opportunities for the development of business enterprises wholly or partially owned and operated by the Nation, as well as for the development of business enterprises wholly or partially owned and operated by the Nation's individual citizens.
 - iii. The Plan may include a strategy for the investment in or the acquisition of existing businesses in any industry located anywhere in the world.
 - iv. The Plan may include the Nation's participation with other nations, tribes, state or local governments, private businesses, and even the Nation's own citizens, in business enterprises structured in the form of simple or complex contracts, partnerships, corporations, limited liability companies, or joint-ventures.
 - v. The Plan shall include the Commission's establishment of an *Investment Capital Fund* and may include the development and use of a business venture capital fund, or funds for other specialized purposes.
 - vi. The Plan shall include a provision for the distribution of net revenues derived from the implementation of the plan for the benefit of the Nation and its citizens. One of the categories of such distribution shall be for the *Investment Capital Fund* described in Subparagraph v, of this Paragraph.
 - vii. The Plan shall provide the flexibility necessary to withstand losses incurred in one or more of its investments, business enterprises, or projects.
- (d) **Authority of the Commission to Implement the Plan.** Once the Economic Development Plan or its revision has been ratified and adopted by the General Council, the Commission shall be the sole authority responsible for carrying it out. This authority extends to all business functions arising from the implementation of the Economic Development Plan, including, but not limited to, accounting; banking; marketing; operations; strategic and tactical management; human resources; payroll; taxes; public relations; investor relations, investments, mergers and acquisitions; divestments; capital acquisition; funds distribution; federal and private loans and grant research, acquisition and management. This authority is limited only by local, state or federal law, or by this constitution or the laws and treaties enacted and entered into in accordance with this Constitution. The intent of this Paragraph is to prevent political interference with the Commission's implementation of the Economic Development plan.
- (e) **Challenges to the Commission's Implementation of the Plan.** In implementing and carrying out the Economic Development Plan or its revision, the Commission's decisions and actions may be challenged only:
- i. Through the removal of the Chief Executive Officer of the Commission in accordance with the provisions of Article 19 of this Constitution, or
 - ii. By the filing of a lawsuit in the Supreme Court by the Chief Executive, Legislative Council, or ten (10) or more members of the General Council alleging that the challenged decisions and actions of the Commission are contrary to one or more provisions of the Economic Development Plan itself, or to this constitution or the laws and treaties enacted and entered into in accordance with this Constitution. Any lawsuit filed under this Subparagraph shall be in the nature of a request for declaratory and injunctive relief only and shall be tried and decided by the Supreme Court sitting *en banc*.

Article 16. Council of Elders

Section 1. There is hereby established within the General Council a Council of Elders, the purpose and mission of which is to serve as a repository of common sense and wisdom that will help guide the Nation into the future while maintaining the Nation's stability and developing and protecting its core beliefs, values and traditions.

Section 2. Membership and election of the Council

- (a) The Council of Elders shall consist of nine (9) members elected by those members of the General Council who qualify as elders. An elder is any person who has reached the age of fifty-five (55) years or older.
- (b) Members of the Council of Elders must be citizens of the Nation, who have reached the age of fifty-five (55) years or older.
- (c) Council members shall serve three (3) year staggered terms without limit to the number of consecutive terms served. These staggered terms shall coincide with those of the Legislative Council.

Section 3. Officers of the Council of Elders

- (a) The Chairperson of the Council shall preside over all meetings of the Council.
- (b) The Chairperson of the Council shall automatically hold a seat on and be a voting member of the Legislative Council.
- (c) The Vice-Chairperson shall preside over any meeting of the Council in which the Chairperson is absent. He or she shall assist and advise the Chairperson as directed.
- (d) The Secretary of the Council shall record all meetings of the Council and summarize the meetings by producing a set of minutes for approval or amendment at the next Council meeting. He or she shall make the minutes a part of the Council of Elders' Journal, and both the recordings and the Council's Journal shall be maintained and preserved as part of the official records of the Nation. These records shall be available for inspection or copying by any citizen of the Nation in accordance with the provisions of the Nation's Code governing access to Public Records.

Section 4. Powers of the Council.

- (a) The Council shall, in a timely manner, confirm or deny confirmation to the Chief Executive's nominees for appointment to judgeships on the Peacemaker Court.
- (b) Individual members of the Council may serve as voting members of any Executive or Legislative committee or commission. The Council also may appoint any of its members to sit as a non-voting "advisory member" of any Executive or Legislative committee or commission.
- (c) The Council may issue nonbinding resolutions directed to the Chief Executive and/or Legislative Council on any issue or matter of concern. Any such resolution shall be published to the General Council and become a permanent record of the Modoc Nation, available for viewing and/or copying by any citizen of the Nation.

Section 5. The Council of Elders shall work with the Oversight Commission to draft a *Code of Ethics for Elected and Appointed Officials of the Modoc Nation* and present it for enactment to the Legislative Council and Chief Executive.

Section 6. At one meeting of the General Council each year, the Chairperson shall deliver an address expressing the collective wisdom of the Council of Elders as to the Nation’s overall path to the future, its stability, and the development and protection of its core beliefs, values and traditions.

Section 7. Vacancies in Office.

- (a) **At-Large-Members.** In the event of the death, disability, resignation or removal of any At-Large Member of the Council, his or her position shall be filled by the person who received the next largest number of votes in the election for the position that has fallen vacant. In the event that such person is unwilling or unable to serve, the position shall be filled by appointment resulting from a majority vote of the remaining members of the Council and, within ten (10) business days of such majority vote, separate confirmation by the Chairperson of the Council. If the Chairperson fails or refuses to confirm the appointment, such failure or refusal may be overridden by the vote of two thirds (2/3) of the remaining members of the Council. The person filling the vacant position shall serve the remainder of the position’s term, at which time he or she may stand for election to said position or any other open position.
- (b) **Chairperson.** In the event of the death, disability, resignation or removal of the Chairperson of the Council, his or her position shall be filled by the Vice-Chairperson, whose position shall be filled in the same manner as described in Paragraph (a) of this Section.
- (c) **Vice-Chairperson.** In the event of the death, disability, resignation or removal of the Deputy Speaker of the Council, his or her position shall be filled in the same manner as described in Paragraph (a) of this Section.
- (d) **Secretary.** In the event of the death, disability, resignation or removal of the Secretary of the Council, his or her position shall be filled in the same manner as described in Paragraph (a) of this Section.

Article 17. Elections

Section 1. General Elections shall be held annually on the second Saturday of June, or as otherwise provided by law.

Section 2. Special Elections may be called by the Legislative Council, the Chief Executive, the General Council, or as otherwise provided in this Constitution, provided that timely and sufficient notice is provided to the electorate.

Section 3. The Legislative Council shall enact an *Election Code* governing election procedure. The *Election Code* and any revisions to it shall take effect no fewer than one hundred and twenty (120) days prior to an election.

Section 4. Board of Elections. There is hereby established the Modoc Nation Board of Elections, which shall be a permanent, autonomous body charged with the administration of all elections of the Nation in accordance with the laws and procedures set forth in the *Election Code*. The Board shall be constituted in accordance with the *Election Code*.

Section 5. Eligible Voters. All citizens of the nation as defined in Article 4 of this Constitution, who are members of the Modoc Nation General Council as defined in Article 9 of this Constitution, shall be eligible to vote in all elections.

Section 6. Restrictions on Eligibility for Office.

- (a) No person who has been convicted of a felony under the laws of the United States, any of its individual states or possessions, or who has been convicted of a crime against the Modoc Nation that would be classified as a felony in any other such jurisdiction, shall hold elective or appointive office, or a position of honor, profit or trust in the Modoc Nation unless that person has received a pardon of such felony or crime from the jurisdiction in which he or she was convicted of the same.
- (b) No person who holds an elective or appointive office or a position of honor, profit or trust in any other government shall hold elective or appointive office or a position of honor, profit or trust in the Modoc Nation unless approved by the Legislative Council. If the office or position falls under the jurisdiction of the Economic Development Commission, such approval shall be by the Commission's Chief Executive Officer.
- (c) For a period of five (5) years following the adoption of this Constitution, no member of the Klamath Tribes who applies for and is granted citizenship in the Modoc Nation after the election of the Nation's initial government, shall be eligible to hold elective or appointive office for a period of one (1) year following the date he or she is granted citizenship.

Section 7. All elections shall be by secret ballot. The *Election Code* enacted by the Legislative Council may include provisions for absentee balloting and/or voting by mail.

Section 8. Certification of Elections. The Modoc Nation Board of Elections shall certify an election within three (3) days after the date of an election.

Section 9. Challenges of Election Results. Any citizen of the Modoc Nation may challenge the results of any election by filing suit in Circuit Court within ten (10) days after the Board of Elections certifies the election results. The Circuit Court shall hear and decide a challenge to any election within twenty (20) days after the challenge is filed in Circuit Court. Appeal of the Circuit Court decision shall be by a *Petition for a Writ of Quo Warranto* filed with the Supreme Court.

Section 10. Special Provisions for the Initial Election. The following provisions apply only to the initial election of officers held immediately following the ratification and adoption of this Constitution.

- (a) Only those persons who have signed a Signature Sheet in ratification of the *Declaration of the Rights of the Free and Sovereign People of the Modoc Indian Tribe (Mowatocknie Maklaksûm)* shall be eligible to vote or otherwise participate in the election of persons nominated for positions in the initial government that is formed immediately following the ratification and adoption of this Constitution.
- (b) Only those persons who have signed a Signature Sheet in ratification of the *Declaration of the Rights of the Free and Sovereign People of the Modoc Indian Tribe (Mowatocknie Maklaksûm)* that has been submitted to and received by the Modoc Land Recovery Project on or before June 15, 2010 shall be eligible to hold elective or appointive office in the initial government that is formed immediately following the ratification and adoption of this Constitution.

- (c) The provisions of Sections 8 and 9 of this Article and of Section 2 of Article 18 of this Constitution shall not apply to the initial government that is formed immediately following the ratification and adoption of this Constitution.

Article 18. Oath of Office

Section 1. All officers elected or appointed shall, before entering upon the duties of their respective offices, take and subscribe to the following oath or affirmation: "I, _____, do solemnly swear [or affirm] that I will faithfully execute the duties of _____ of the Modoc Nation, and will, to the best of my ability, preserve, protect and defend the Constitutions of the Modoc Nation and the United States of America. I swear [or affirm] further, that I will do everything within my power to promote the culture, heritage and traditions of the Modoc Nation."

Section 2. The foregoing oath shall be administered by any person authorized by the *Election Code* to administer oaths. The oath shall be filed in the Office of the Secretary of State.

Article 19. Removal of Elected or Appointed Officials

Section 1. Causes for Removal. Removal of a duly elected or appointed government official is a serious proposition that is not to be taken lightly or to be used for personal or political purposes. Accordingly, removal shall occur only upon a showing of one or more of the following causes:

- (a) Conviction of a felony;
- (b) Civil or criminal fraud;
- (c) Embezzlement or deliberate misappropriation of funds;
- (d) Political corruption, as defined by the *Code of Ethics for Elected and Appointed Officials of the Modoc Nation*;
- (e) Habitual drunkenness;
- (f) Failure or refusal to perform the duties of elective or appointive office;
- (g) Gross negligence, misfeasance, or malfeasance in the performance of the duties of elective or appointive office; and/or
- (h) Intentional conduct that materially injures the reputation, political relationships, or business and business relationships of the Nation;

Section 2. Removal from office is not an exclusive remedy and shall not deprive the Nation of its right to prosecute any government official for criminal conduct committed while the official was in office or to sue for damages suffered as a result of civil or statutory torts committed by such official while in office.

Section 3. Any elected or appointed government official who is convicted of a felony, civil or criminal fraud, embezzlement, or deliberate misappropriation of funds shall, upon such conviction, be disqualified from holding office and shall be removed automatically without further legal process.

Section 4. Nothing in this Article shall be construed to restrict the power of:

- (a) The Chief Executive of the Nation to abolish any Cabinet-level Departments, other Executive Branch departments, or special commissions not required by this Constitution, in accordance with the provisions of Article 12, Section 2, Paragraph (l) of this Constitution;

- (b) The Chief Executive of the Nation to remove Cabinet Members or Directors of Executive Department positions and reassign them, in accordance with the provisions of Article 12, Section 2, Paragraph (n) of this Constitution; or
- (c) The Chief Executive Officer of the Economic Development Commission to remove and replace the Commission's Chief Financial Officer and/or any other Commissioners, in accordance with the provisions of Article 15, Section 3, Paragraph (a), Subparagraph iii.

Section 5. Cases Alleging Political Corruption. With the exception of Section 2, above, as it relates to the Attorney General of the Modoc Nation, and Article 13, Section 7, which grants the Special Court on the Judiciary the power to investigate and remove judges for political corruption, the Oversight Commission has exclusive jurisdiction to investigate and prosecute all cases in which an elected or appointed government official or government employee is alleged to have engaged in acts of political corruption, as defined by the *Code of Ethics for Elected and Appointed Officials of the Modoc Nation*. All such cases must be referred to the Oversight Commission, which shall proceed in accordance with Article 14, Sections 4 through 9, above.

Section 6. Removal by the Legislative Council.

- (a) The Legislative Council shall, upon a two thirds (2/3) vote of its members, remove any member of the Council whom it finds is guilty of a violation of one or more of the rules it has promulgated for itself, or for any of the causes set forth in Section 1, Paragraphs (e) through (h) of this Article.
- (b) Prior to voting on the removal of any Legislative Council member, the Council shall provide the member for whom removal is sought, adequate notice of the charges against him or her and a public hearing in which the member can present witnesses and evidence in his or her defense.
- (c) Any member of the Council so removed shall have the right of appeal to the Circuit Court, which shall hear the matter as a *trial de novo*.

Section 7. Removal as a Result of Recall by the General Council. Any elected or appointed government official may be recalled by the General Council for one or more of the causes set forth in Section 1, above, except for the cause of political corruption, for which the Oversight Commission has exclusive jurisdiction as provided by Section 5 of this Article. Recall of an official is accomplished by the presentation of a petition to the Legislative Council, validation of the sufficiency of the petition, and a vote of the General Council.

- (a) ***Petition for Recall.*** Citizens of the Nation seeking to recall an elected or appointed government official shall present to the Legislative Council a *Petition for Recall* bearing the signatures of at least one fourth (1/4) of the total number of citizens currently eligible to vote in a general or special election. If the recall of more than one official is sought, a separate petition must be presented for each official. If the recall of more than one member of the Legislative Council is sought, the *Petition for Recall* shall be filed with the Circuit Court.
- (b) ***Contents of the Petition for Recall.*** The *Petition for Recall* shall:
 - i. Name the official and his or her office for whom recall is sought; and
 - ii. Set forth in a *Bill of Particulars* the cause or causes specified in Section 1, above, or if the official is a Justice or Judge, Article 13, Section 7 Paragraph (e), for which recall is sought and the specific facts alleged in support of each specified cause. Each cause and its supporting facts shall be set forth separately and with particularity.

- (c) **Validation of the Petition.** Within ten (10) days of receiving a *Petition for Recall*, the Legislative Council or Circuit Court shall determine whether the Petition conforms to the requirements of Paragraphs (a) and (b) of this Section.
- i. If the official for whom recall is sought is a member of the Legislative Council, he or she shall not be allowed to attend the meeting/s in which the Council deliberates and votes as to the sufficiency of the *Petition for Recall*.
 - ii. If the Petition is deemed to conform to the requirements of Paragraphs (a) and (b) of this Section, the Council or Circuit Court shall issue to the official for whom recall is sought a *Notice of Intent to Hold a Recall Election*. The official may, within five (5) days of receiving such Notice, file an appeal in the appropriate forum as set forth in Paragraph (d) of this Section.
 - iii. If the official for whom recall is sought fails to file a timely appeal of the *Notice of Intent to Hold a Recall Election*, the Legislative Council or Circuit Court shall issue and advertise a *Notice of Recall Election*, at which the General Council shall vote on the recall. The date set for the recall election shall be no sooner than fifteen (15) days or later than thirty (30) days from the date the *Notice of Recall Election* is issued.
- (d) **Appeal of Decision to Hold Recall Election.** Any official for whom recall is sought may, within five (5) days of receiving a *Notice of Intent to Hold a Recall Election*, appeal a decision of the Legislative Council or Circuit Court to issue a *Notice of Recall Election*.
- i. An appeal from the decision of the Legislative Council is taken to the Circuit Court. An appeal from the decision of the Circuit Court is taken to the Supreme Court, by a *Petition for Certiorari*.
 - ii. The only issue to be considered on appeal is whether the Legislative Council or Circuit Court erred in its determination that the *Petition for Recall* conforms to the requirements of Paragraphs (a) and (b) of this Section.
 - iii. If the official for whom recall is sought prevails upon appeal, no recall election shall be noticed or held. If the official loses on appeal, the Legislative Council or Circuit Court shall issue and advertise the *Notice of Recall Election* in the manner set forth in Paragraph (c) Subparagraph iii of this Section.
- (e) **Conduct of the Recall Election.**
- i. **Quorum.** A removal election shall not proceed unless one third (1/3) of the Nation's eligible voters are in attendance.
 - ii. The Nation's Chief Executive shall preside over the meeting and election unless he or she is the officer for whom removal is sought. In such case, the Nation's Deputy Chief Executive shall preside. If removal is sought for both the Chief Executive and Deputy Chief Executive, the Speaker of the Legislative Council shall preside. If removal is sought for all three of these officials, a Justice of the Supreme Court shall preside.
 - iii. The official presiding over the meeting and election shall first determine if a quorum is present, and if not, the *Petition for Recall* shall be dismissed. If a quorum is present, the presiding official shall read the *Petition for Recall* to the assembled citizens of the Nation. The official for whom removal is sought, if he or she is in attendance, shall be allowed to respond to each specific cause listed in the *Bill of Particulars* set forth in the *Petition for Recall* and to present witnesses and evidence in his or her defense
 - iv. **Vote and Result.**
 - (a) The presiding official shall call for the vote, which shall be by secret ballot.

- (b) If two thirds (2/3) of the quorum established at the beginning of the meeting votes in favor of recall, the official shall be recalled and removed from office, effective immediately.
- (c) The results of a recall election are final and can only be challenged on the grounds of electoral irregularity or electoral fraud under the provisions set forth in the *Electoral Code of the Modoc Nation*.
- (d) The vacancy created by the removal shall be filled in accordance with the procedures set forth in this Constitution.

Section 8. Employee Rights. No employee, who having served in a position at least one (1) year, shall be removed from the employment of the Modoc Nation except for cause, and only after being afforded pre-termination due process. Provided, the right of such employee to seek redress in the courts of the Modoc Nation shall not be abridged.

Article 20. Initiative and Referendum

Section 1. Initiative. The citizens of the Modoc Nation shall exercise their reserved power to introduce and adopt legislation and resolutions in accordance with the following provisions.

- (a) Any initiative measure accompanied by a petition bearing the signatures of at least ten (10) percent of the eligible voters of the Nation shall be submitted to the Secretary of the Legislative Council.
- (b) If the Secretary of the Legislative Council finds that the requirements of Paragraph (a) of this Section have been satisfied, he or she shall calendar the initiative measure on the agenda of the next regularly scheduled meeting of the Legislative Council, unless such meeting is scheduled to take place in fewer than ten (10) days. In that event, the measure shall be considered by the Council at its following regularly scheduled Council meeting, unless the Council decides to hold a special meeting for the purpose of considering the initiative measure.
- (c) If the Legislative Council fails to enact the initiative measure without alteration, or is unable to overcome the veto of the Chief Executive, it shall issue a notice calling for a special meeting of the General Council for the purpose of allowing the initiative measure to be considered and voted upon. Such meeting shall be scheduled to take place no sooner than thirty (30) days or later than ninety (90) days from the date the initiative measure failed to be enacted by the Legislative Council.
- (d) Prior to the date of the special meeting, any citizen of the Nation may file a lawsuit in the Supreme Court seeking to invalidate the proposed initiative measure on one or more of the following grounds:
 - i. That the proposed initiative measure is worded in such a manner that it is likely to confuse or mislead the Nation's voters;
 - ii. That the proposed initiative measure is unconstitutional;
 - iii. That the proposed initiative measure is in conflict with a treaty to which the Nation is party; and/or
 - iv. If enacted, the proposed initiative measure would create an irreconcilable conflict in the laws of the nation.
- (e) The Supreme Court shall schedule, hear and decide any lawsuit filed under Paragraph (d) of this Section within thirty (30) days of the date it is filed. If the special meeting is scheduled to take place before the expiration of the time allowed for the Court to make its decision, the Court shall

issue an order requiring the meeting to be canceled and, if the proposed initiative measure is found to be legally valid, rescheduled to take place no sooner than thirty (30) days or later than ninety (90) days from the date of the Court's dispositive ruling on the merits of the case.

- (f) The special meeting shall be conducted in accordance with the quorum, voting and procedural requirements set forth in Article 9, Section 4 of this Constitution.
- (g) Any initiative measure approved by a majority of the eligible voters of the General Council shall become effective immediately and be published in accordance with the provisions of Article 11, Section 11 of this Constitution.

Section 2. Referendum. The citizens of the Modoc Nation shall exercise their reserved power to affirm or negate legislation or resolutions enacted by the Legislative Council and signed by the Chief Executive through the process or referendum in accordance with the following provisions.

- (a) Referendum shall not be available for any law necessary for the immediate preservation of the peace, health or safety of the citizens of the Modoc Nation or the public in general.
- (b) Referendum may be ordered by an enactment of the Legislative Council in the same manner as any other piece of legislation.
- (c) Referendum shall be ordered whenever, within ninety (90) days of the enactment of any legislation or passage of any resolution, a petition bearing the signatures of at least ten (10) percent of the eligible voters of the Nation seeking referendum on such legislation or resolution shall be submitted to the Secretary of the Legislative Council. The Secretary shall determine whether a referendum petition satisfies the signature requirements of this Paragraph.
- (d) The Legislative Council shall order a referendum by issuing a notice calling for a special meeting of the General Council for the purpose of allowing the referendum to be considered and voted upon. Such meeting shall be scheduled to take place no sooner than thirty (30) days or later than ninety (90) days from the date the notice of special meeting is issued.
- (e) The special meeting shall be conducted in accordance with the quorum, voting and procedural requirements set forth in Article 9, Section 4 of this Constitution.
- (f) Referendum may be demanded by petition against one or more parts, sections, paragraphs, or other elements of any legislative enactment in the same manner as the power of referendum is directed against a legislative enactment in its entirety. However, referendum against one or more parts, sections, paragraphs, or elements shall not operate to prevent the remainder of the legislative enactment from being put into effect.

Article 21. Fiscal Responsibility.

Section 1. The credit of the Modoc Nation shall not be given, pledged, or loaned to any individual, firm, company, corporation, or association without the approval of the Legislative Council. The Modoc Nation shall not make any donations by gift, bonus, or otherwise, to any individual, firm, company, corporation, or association without the approval of the Legislative Council. This Section shall not be construed to interfere with the implementation of an Economic Development Plan or revision that has been adopted by the Legislative Council and ratified by the General Council.

Section 2. All laws authorizing the expenditures of money by and on behalf of the Modoc Nation shall specify the purpose for which the money is to be used, and the money so designated shall be used for no other purpose. No monies or resources of the Modoc Nation or any of its entities shall be used to pay for

representation of a defendant in a criminal matter, except where a public defender is authorized under Modoc law. Annual expenditures shall not exceed the available funds.

Section 3. General laws shall be enacted by the Legislative Council providing for the deposit of funds of the Modoc Nation, and the depository thereof, and such funds shall be under the control of the Secretary of the Treasury, under such terms and conditions as shall be designated by the Legislative Council and under such laws which shall provide for the protection of said funds. This Section shall not be construed to interfere with the authority of the Chief Executive Officer or Chief Financial Officer of the Economic Development Commission in their implementation of an Economic Development Plan or revision that has been adopted by the Legislative Council and ratified by the General Council.

Section 4. No official, member or officer of the government of the Modoc Nation or subdivisions thereof, employee of any official, member or officer of the government of the Modoc Nation or subdivisions thereof, or any person employed in any capacity by the Modoc Nation shall receive from any individual, partnership, corporation, or entity doing business with the Modoc Nation directly or indirectly, any interest, profit, benefit or gratuity, other than wages, salary, per diem, or expenses specifically provided by law.

Section 5. All officers, elected or appointed, who are authorized by this Constitution or any subsequent legislation to a position of trust over any land, property, accounts or monies, shall avoid all conflicts of interest and at all times act in good faith and in the best interests of the Modoc Nation.

Section 6. All officers, elected or appointed, who are authorized by this Constitution or any subsequent legislation to a position of trust over any land, property, accounts or monies, shall execute an official surety bond in the amount as may be required by the Legislative Council. Such surety bond shall inure to the benefit of, and be paid for by, the Modoc Nation for whose protection or surety the same shall be required. In no event shall such surety bond be issued other than by a licensed insurance company authorized to do business in the State of Oregon and California. This provision shall not apply until such time as the Legislative Council determines by law that funds sufficient to pay for such bonds are available without imposing an unnecessary hardship on the overall operations of the Nation.

Article 22. Sovereign Immunity.

Section 1. Immunity of Nation from Suit. The Modoc Nation shall be immune from suit except to the extent that the Legislative Council, by an act of law, expressly waives its sovereign immunity. Officials and employees of the Modoc Nation acting within the scope of their duties or authority shall be immune from suit.

Section 2. Suit Against Officials and Employees. Other than in cases brought by the Attorney General on behalf of the Modoc Nation, officials and employees of the Modoc Nation who act outside the scope of their duties or authority shall be subject to suit in equity only for declaratory and non-monetary injunctive relief in Circuit Court by persons subject to its jurisdiction for purposes of enforcing rights and duties established by this Constitution or other applicable laws.

Article 23. Amendment.

Section 1. Amendments to or revisions of this Constitution may be proposed by either of the following two methods:

- (a) By the enactment of a resolution passed by a two thirds (2/3) vote of the Legislative Council; or
- (b) By a valid petition bearing the signatures of not less than twenty (20) percent of the registered voters of the Nation, submitted to the Legislative Council.

Section 2. No proposal for the amendment of this Constitution shall embrace more than one general subject, and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace a general subject, each proposed article shall be deemed a single proposal or proposition.

Section 3. The Legislative Council may enact a law calling for a constitutional convention for the purpose of writing a new constitution, provided, however, that said law must be approved by the registered voters of the Nation on a referendum vote. The question of such constitutional convention shall be submitted to the citizens of the Nation at least once every twenty (20) years.

Section 4. No proposed amendment, amendments, revisions, or new constitution shall be considered adopted and go into effect unless approved by a majority vote of the Nation's eligible voters in a regular or special meeting of the General Council at which no fewer than thirty (30) percent of the total number of the Nation's registered voters cast votes thereon.

Article 24. Transitional Implementation Clause.

This Constitution is established at a time in the history of the Modoc People during which they are reasserting their unique indigenous identity and culture and are separating from the body politic known as the Klamath Tribes to form their own government. It is hereby acknowledged that some period of time will be required for the Federal government to transfer responsibility for the administration of federally funded programs benefitting the Modoc People from the government of the Klamath Tribes to the government of the Modoc Nation. Accordingly, the provisions of this Constitution shall be implemented as the resources and people necessary to do so become available to the Modoc People. During said time of transition, the failure to fill all positions in the government or fund all programs and activities, as provided in this Constitution, shall not negate this Constitution or be construed as a violation of the same.

Article 25. Adoption of Constitution.

For purposes of the ratification and adoption of this Constitution, only those persons who shall have signed a Signature Sheet in ratification of the *Declaration of the Rights of the Free and Sovereign People of the Modoc Indian Tribe (Mowatocknie Maklaksûm)* that has been submitted to and received by the Modoc Land Recovery Project on or before June 15, 2010 shall be eligible to vote thereon. This Constitution shall become effective when ratified by a majority vote of the Nation's eligible voters, as just described. It shall be engrossed on parchment and signed by the Chief Executive and the Speaker of the Legislative Council, and witnessed by the Chairperson of the Council of Elders. It shall be filed in the office of the Modoc Nation and sacredly preserved as the fundamental law of the Modoc Nation.

Adopted by a vote of 45 for and 0 against, by the eligible voters of the Modoc People this 19th Day of June, 2010.

/S/ Jeff Kelley
Chief Executive of the Modoc Nation

/S/ Kathryn Murray
Speaker of the Legislative Council of the Modoc Nation

Witnessed by: /S/ Dorothy J. Carnes
Chairperson of the Council of Elders of the Modoc Nation