

CONSTITUTION  
OF THE  
MODOC NATION

PREAMBLE

We, the members of the Modoc Nation<sup>1</sup>, formally known as the Modoc Tribe of Oklahoma, in order to establish a tribal organization, maintain the traditions of the Modoc Nation, promote the general welfare and exercise the powers of self-government, do hereby ordain and establish this constitution for the Modoc Nation pursuant to the Oklahoma Indian Welfare Act of June 26, 1936, (49 Stat. 1967) and Section 2 of the Act of May 25, 1978, (92 Stat. 246).<sup>2</sup>

ARTICLE I - DEFINITION OF TERMS

SECTION 1. ARTICLE I – DEFINITION OF TERMS

SECTION 1. The Modoc Nation shall be the name of this tribe and shall be composed of all persons who qualify for membership pursuant to Article II of this constitution.<sup>3</sup>

SECTION 2. The Modoc Tribal Council shall be the governing body of the Modoc Nation and shall consist of all enrolled members of the tribe who are at least eighteen (18) years of age and over.

SECTION 3. The Modoc Elected Council shall be a five (5) member representative duly elected by the Modoc Tribal Council empowered to act on behalf of the Modoc Nation on those matters set forth in this constitution.

ARTICLE II - TRIBAL MEMBERSHIP

SECTION 1. The membership of Modoc Nation shall consist of the following persons, provided, that they are citizens of the United States:

- (a) All persons named on the 1878 Modoc Census of Subsistence and Ration as approved by the Acting Deputy Assistant Secretary - Indian Affairs on October 14, 1981. All persons named on that roll are hereby declared to be fullblood members of the tribe for the purpose of computing the degree of blood of their descendants.
- (b) All direct lineal descendants of persons named on the 1878 Census designated as the base roll in Section 1(a) above who did not return to Klamath, Oregon, pursuant to the Act of March 9, 1909, (35 Stat. 751), and the descendants of such Indians who otherwise meet the requirements adopted by the tribe.
- (c) For purposes of identification and association, those individuals listed on the final roll of the members of the Klamath Tribe of Indians as published in the Federal Register of May 13, 1955 (20 F.R. 3269), pursuant to Section 3 of the

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<sup>1</sup> Official Name Change amended by Secretarial Election held January 30, 2019. Amendment number 9.

<sup>2</sup> Preamble amended by Secretarial Election held January 30, 2019. Amendment 10.

<sup>3</sup> Article I, Section 1 amended by Secretarial Election held January 30, 2019. Amendment number 11.

Act of August 13, 1954, (68 Stat. 718) shall be deemed members of Modoc Nation. Provided, that they meet the requirements in Section 1 (b).

- (d) Upon the approval of this amendment, persons, not already on the Modoc Roll, that are enrolled with another Federally Recognized Tribe shall be ineligible for membership in the Modoc Nation. This Section shall be interpreted to prohibit dual tribal enrollment and membership transfers<sup>4</sup>.

SECTION 2. The Modoc Tribal Council shall have the power to prescribe rules and regulations governing future membership, including adoptions, loss of membership and/or relinquishment.

SECTION 3. Any person who has been rejected for membership may file or have filed in his/her behalf an appeal to the Modoc Tribal Council whose decision shall be final.

SECTION 4. The Modoc Elected Council shall serve as the Enrollment Committee.

### ARTICLE III - MODOC TRIBAL COUNCIL

SECTION 1. The Tribal Council shall consist of all enrolled members of the Modoc Nation who are at least eighteen (18) years of age or older.

SECTION 2. The Tribal Council shall exercise those specific powers reserved to it by this constitution.

### ARTICLE IV - MODOC EXECUTIVE DEPARTMENT

SECTION 1. The representative governing body of the Modoc Nation shall be the Modoc Elected Council. The Elected Council shall consist of a Chief, Second Chief, Secretary/Treasurer, and two (2) Council Members elected by secret ballot of the Tribal Council.

SECTION 2. The term of office for the Modoc Elected Council shall be for a period of four (4) years or until a successor is duly elected and installed in office.

SECTION 3. Any member of the Modoc Nation eighteen (18) years of age or older on the date of election shall be eligible to run for and serve on the Modoc Elected Council, provided, that, any member who has been convicted of violent felony by a court of competent jurisdiction or who is delinquently indebted to the Modoc Nation shall not run nor serve on the Modoc Elected Council. Further, any member who has been convicted of a non-violent felony shall not be eligible until seven (7) years after release from custody.<sup>5</sup>

### ARTICLE V - EXECUTIVE POWER

SECTION 1. The Modoc Elected Council is empowered by the Modoc Tribal Council to represent the Modoc Nation in all official matters pertaining to tribal business in accordance with this constitution and shall exercise all powers of the tribe not reserved to the Tribal Council.

<sup>4</sup> Article II, Section D added by Secretarial Election held March 20, 2007. Amendment number 5.

<sup>5</sup> Article IV, Section 3 amended by Secretarial Election held \_\_\_\_\_. Amendment number 12

SECTION 2. The Modoc Elected Council shall have the power to appoint subordinate committees and representatives, enact resolutions and ordinances and to employ legal counsel.<sup>6</sup>

SECTION 3. The Modoc Elected Council has no authority to sell Tribal Trust land. <sup>7</sup>

SECTION 4. The exercise of the aforementioned powers shall be subject to any limitations imposed by Federal law.

#### ARTICLE VI - EXECUTIVE DUTIES

SECTION 1. The Chief shall serve as executive officer and spokesman for the Modoc Nation and perform such other duties as the Modoc Elected Council may prescribe by appropriate tribal resolution or ordinance.

SECTION 2. The Second Chief shall assume all duties and responsibilities of the Chief if the Chief dies, resigns or is removed from office.

SECTION 3. The Secretary/Treasurer shall be responsible for recording the proceedings of all meetings of the Modoc Tribal Council and the Modoc Elected Council. He/She shall notify all committees of appointment, make out the order of business for the Chief, and shall have custody of the records and all papers of the Modoc Tribal Council and the Modoc Elected Council. All official records of the Secretary/Treasurer shall be open to inspection during normal working hours by members of the Modoc Tribal Council and/or the Modoc Elected Council at their request in his/her presence. In the event a member is refused access to such records, the member may request the Judicial Department to so order. Upon such order, the Secretary/Treasurer shall provide access to the requested records. These records and papers shall remain the property of the Modoc Nation. He/She shall keep a correct list of all members of the Modoc Nation, shall authenticate all accounts or orders, and in the absence of the Chief and Second Chief, shall call the meeting to order until a Chairman Pro Tem is selected. He/She shall render a written report at the annual meeting and at the expiration of term of office, and shall turn over all records and papers in his/her possession to the successor of the position or to the Modoc Elected Council. He/She shall issue notice of all meetings and transact all general correspondence as directed by the Modoc Tribal Council or the Modoc Elected Council. The Secretary/Treasurer shall be the custodian of all monies in possession of the Modoc Tribal Council and/or the Modoc Elected Council. He/She shall keep an accurate account of all receipts and shall disburse the same as directed by the appropriate action of the Modoc Tribal Council and/or the Modoc Elected Council. The Secretary/Treasurer shall keep all tribal monies entrusted in his/her care in a special account and all disbursements therefrom shall be made by check with dual authorized signatures. He/She shall be bonded, and the cost of such bond shall be paid from tribal monies. He/She shall have an audit of tribal monies conducted by a certified public accountant at least once a year or as directed by action of the Modoc Tribal Council or the Modoc Elected Council. The cost of such audit shall come from tribal funds.

#### ARTICLE VII- JUDICIAL DEPARTMENT

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<sup>6</sup> Article V, Section 2 amended by Secretarial Election held March 20, 2007. Amendment number 6.

<sup>7</sup> Article V, Section 3 amended by Secretarial Election held March 20, 2007. Amendment number 7.

SECTION 1. The Judicial authority of the Modoc Nation shall consist of a one (1) member court elected by popular vote of the Modoc Tribal Council.

SECTION 2. The Tribal Judge must be an enrolled member of the Modoc Nation, a qualified voter of the Modoc Tribal Council, and reside within a fifty (50) mile radius of Miami, Oklahoma during the tenure of office.

SECTION 3. The Tribal Judge shall be elected for a term of four (4) years and shall serve until the successor is duly elected and installed. The initial election of a Tribal Judge shall take place within ninety (90) days of approval of these constitutional amendments. The term of office shall expire in conjunction with Article IX - Elections, of the constitution.

SECTION 4. The Tribal Judge shall not be a member of the Modoc Elected Council.

SECTION 5. No person who has been convicted of a felony by a court of competent Jurisdiction shall be eligible for a Judicial office.<sup>8</sup>

#### ARTICLE VIII - PRIVILEGES, DUTIES AND POWERS OF THE JUDICIAL DEPARTMENT

SECTION 1. The Judicial Department shall have Jurisdiction to decide disputes on issues arising under any provision of this constitution or any legislation enacted by the Modoc Tribal Council and/or the Modoc Elected Council and such other Jurisdiction as may be conferred upon it by the Modoc Tribal Council.

SECTION 2. Rules of procedure for the Judicial Department shall be prescribed by the Judicial Department within sixty (60) days of its member taking office and shall insure that citizens receive due process of law and a prompt and speedy trial. Those procedures shall be presented to the Modoc Elected Council which must act on those procedures within sixty (60) days after such presentation, otherwise, the procedures will become effective.

SECTION 3. Decisions of the Judicial Department shall be final.<sup>9</sup>

#### ARTICLE IX - ELECTIONS

SECTION 1. The first regular election of officers under this constitution shall take place at the first annual meeting of the Modoc Tribal Council following the effective date of this constitution.

SECTION 2. Elections of the Modoc Elected Council shall take place during the annual meeting of the Modoc Tribal Council.

SECTION 3. All tribal elections shall be conducted in accordance with an election ordinance enacted by the Modoc Elected Council within six (6) months of adoption of this constitution and which is consistent with this constitution. Such ordinance shall provide for secret balloting, majority election, tie votes, and procedures for handling protests, resolving election disputes,

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<sup>8</sup> Article VII amended by Secretarial Election held March 26, 1997. Amendment number 1.

<sup>9</sup> Article VIII amended by Secretarial Election held March 26, 1997. Amendment number 2.

and registration of voters. Provisions shall also be made for the conduct of recall, referendum and initiative elections and uniform procedures for submitting and validating petitions.

SECTION 4. Any member of the Modoc Nation shall be eligible to vote, Provided, That member is at least eighteen (18) years of age on election day and is properly registered according to the election ordinance.

#### ARTICLE X - MEETINGS

SECTION 1. The annual Modoc Tribal Council meeting shall be held the first Saturday of May. Appropriate notice of time and place of all annual and special meetings shall be given by the Secretary/Treasurer of the Modoc Elected Council through communication such as radio or television at least ten (10) days prior to the date of the meeting.

SECTION 2. Special meetings of the Modoc Tribal Council may be called at the discretion of the Chief and shall be called by him/her upon written request of the majority of the Modoc Elected Council or the written request of ten (10) members of the Modoc Tribal Council.

SECTION 3. The regular meetings of the Modoc Elected Council shall be held quarterly during the first week in January, April, July and October of each year unless otherwise provided by resolution of the Modoc Elected Council.

SECTION 4. Special meetings of the Modoc Elected Council may be called by the Chief at his/her discretion and shall be called by him/her upon the written request of three (3) members of the Modoc Elected Council. If the Chief fails to call such meeting within five (5) days setting the date, time and place after receipt of a written request, any three (3) members of the Modoc Elected Council shall be empowered to call such meeting.

SECTION 5. The principal purpose of a special meeting, either of the Modoc Tribal Council or the Modoc Elected Council, must be stated in the call for the same and may include the words "and for the transaction of other business that may be presented." Unless these words are added to the call for either a Modoc Tribal Council or Modoc Elected Council special meeting, no business can be transacted other than that stated in the call for the meeting.

#### ARTICLE XI - QUORUM

SECTION 1. Ten (10) members of the Modoc Tribal Council shall constitute a quorum to conduct business.

SECTION 2. Three (3) members of the Modoc Elected Council shall constitute a quorum to conduct business.<sup>10</sup>

#### ARTICLE XII- VACANCIES

Vacancies in any elective office shall be filled by appointment of the majority vote of the Modoc Elected Council until the annual meeting of the Modoc Tribal Council at which time a successor shall be elected to serve the unexpired term.

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<sup>10</sup> Article XI amended by Secretarial Election held March 26, 1997. Amendment number 4.

## ARTICLE XIII- RECALL AND REMOVAL

### SECTION 1. Recall.

- (a) Any member of the Modoc Elected Council or the Modoc Tribal Judge may face recall from office should a petition signed by at least ten (10) members of the Modoc Tribal Council be filed with the Chief requesting such action.<sup>11</sup>
- (b) The Chief, or Second Chief, should the Chief be named in the recall action, shall call a special meeting of the Modoc Tribal Council within twenty (20) days of receipt of the petition.
- (c) The accused shall be furnished with all evidence at least ten (10) days prior to the special meeting and shall have the right to present an opposing argument.
- (d) After hearing the evidence from both sides, the Modoc Tribal Council, by a majority vote of those present, may recall the official if the vote reflects such action and declare the position vacant.
- (e) No more than one (1) member of the Modoc Elected Council shall face recall at any one time, and no member shall be subject to recall more than one time in any one term of office.

### SECTION 2. Removal.

- (a) The Modoc Elected Council may initiate action to remove one of its members by calling a special meeting of the Modoc Tribal Council specifically for that purpose.
- (b) The Chief, or Second Chief, should the Chief be named in the removal action, shall call a special meeting of the Modoc Tribal Council within twenty (20) days.
- (c) The accused shall be furnished with all evidence at least ten (10) days prior to the special meeting and shall have the right to present an opposing argument.
- (d) After hearing the evidence presented from both sides the Modoc Tribal Council may remove the official from office and declare the position vacant if the vote dictates such action.

## ARTICLE XIV - INITIATIVE PETITION

The members of the Modoc Tribal Council may propose legislation by submitting to the Modoc Elected Council a petition signed by at least one-third (1/3) of the registered voters. Each page of the petition shall contain a description of the proposed enactment.

Within thirty (30) days from the Modoc Elected Council's receipt of a valid petition, the Chief shall call an election to be held in conjunction with a special meeting of the Modoc Tribal

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<sup>11</sup> Article XIII amended by Secretarial Election held March 26, 1997. Amendment number 3.

Council, Provided, That if an initiative petition is received within ninety (90) days before the annual meeting of the Modoc Tribal Council, the initiative election shall be delayed until that time. A majority of those who vote shall decide the issue, Provided, That at least one-third (1/3) of the registered voters cast ballots on the proposed legislation. The decision of the voters shall be binding on the Modoc Tribal Council and the Modoc Elected Council and shall remain in force until amended or rescinded by subsequent action by the voters or expire by its own terms.

#### ARTICLE XV - REFERENDUM

The Modoc Elected Council, by an affirmative vote of three (3) of its members, shall call an election to be conducted within forty-five (45) days of such action of the Modoc Elected Council by the Modoc Tribal Council, for the purpose of deciding issues or questions that are either within the authority of the Modoc Tribal Council or those powers vested in the Modoc Elected Council. An affirmative vote by at least a majority of those who vote shall be necessary to decide the issue or question, Provided, That no less than one-third (1/3) of the registered voters cast ballots in that election. The decision of the voters shall be binding on the Modoc Tribal Council and the Modoc Elected Council and shall remain in force until amended or rescinded by subsequent action by the voters or expire by its own terms.

#### ARTICLE XVI - BILL OF RIGHTS

The Modoc Nation, in exercising its powers of self-government, shall not take any action which is in violation of the laws of the United States as the same shall exist from time to time respecting civil rights and civil liberties of persons. This article shall not abridge the concept of self-government or the obligations of the members of the Modoc Nation to abide by this constitution and the ordinances, resolutions and other legally instituted actions of the Modoc Nation. The protections guaranteed by the Indian Civil Rights Act of 1968 (82 Stat. 78) shall apply to all members of the Modoc Nation.

#### ARTICLE XVII- AMENDMENTS

This constitution may be amended by a majority vote of the qualified voters of the Modoc Nation voting in an election called for that purpose by the Secretary of the Interior, Provided, That at least thirty percent (30%) of those entitled to vote shall cast ballots in such election.<sup>12</sup>

Amendments to this constitution shall be proposed by a petition, signed by at least ten (10) members of the Modoc Tribal Council, or by a majority vote of the Modoc Elected Council.

#### ARTICLE XVIII- SAVINGS CLAUSE

All previous ordinances and resolutions passed by the Modoc Elected Council or Modoc Tribal Council shall remain in full force and effect to the extent they are consistent with this constitution.

#### ARTICLE XIX - SEVERABILITY CLAUSE

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<sup>12</sup> Article XVII amended by Secretarial Election held March 20, 2007. Amendment number 8.

If any provision of this constitution shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provision, or provisions, shall be severed and the remaining provisions shall continue in full force and effect.

#### ARTICLE XX - ADOPTION

This constitution, when adopted by a majority vote of the adult members of Modoc Nation voting in an election called for that purpose by the Secretary of the Interior pursuant to Federal regulations, Provided, That at least thirty percent (30%) of the qualified voters vote in such election, shall be submitted to the Secretary of the Interior for his approval and shall be effective from the date of such approval.