

**CONSTITUTION
OF THE
POKAGON BAND OF POTAWATOMI INDIANS**

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CONSTITUTION
OF THE
POKAGON BAND OF POTAWATOMI INDIANS

PREAMBLE

We, the members of the Pokagon Band of Potawatomi Indians, historic dwellers of the greater St. Joseph River Valley, a band of the Potawatomi Indian Nation, have maintained an ongoing community and government prior to and throughout European contact, and to the present day. The Band, acting as of 1952 through the Potawatomi Indian Nation, Inc., pursued restoration of Federal Tribal status for the Band, and on September 21, 1994, Public Law 103-323, 108 Stat. 2152, 25 U.S.C. 1300j - 1300j-8, was signed into law reaffirming the legal and political status of the Pokagon Band of Potawatomi Indians as a federally-recognized Indian tribe.

We do, therefore, ordain this Constitution for the Pokagon Band of Potawatomi Indians in order to organize for our common good, to govern ourselves under our own laws, to maintain and foster our tribal culture, to protect our homeland, to conserve and develop our natural resources, and to establish the framework for governing the Pokagon Band of Potawatomi Indians.

The Pokagon Band of Potawatomi Indians is also referred to in this Constitution as the “Pokagon Band” and the “Band.”

ARTICLE I
SOVEREIGN RIGHTS AND POWERS

SECTION 1. Sovereign Rights and Powers. The Pokagon Band has certain rights as a sovereign nation. These rights include the inherent rights of an aboriginal people and nation, the treaty rights between the Band and the United States, and all other government-to-government rights with the United States, its states and municipalities, and all other sovereign nations. The intent of this Constitution is to guarantee that these rights and the associated powers be fully preserved, protected, and exercised for the continued government and welfare of the Band.

SECTION 2. Treaty Rights Reserved. Pokagon Band members have the right to hunt, fish, trap, and gather wild animals and wild plants for use as food, medicine, clothing, and any other uses consistent with the usual rights of occupancy on land or bodies of water within the jurisdiction of the Band. These rights are subject to reasonable

restrictions established by Tribal Council for the protection of tribal resources and the public safety. Members shall not develop tribal resources without being authorized for that purpose in accordance with tribal law.

SECTION 3. Treaty Rights Not Restricted. Nothing in this Article shall be construed as restricting the aboriginal rights or the treaty rights of the Band or its members.

SECTION 4. Rights and Powers Not Diminished. Any rights and powers heretofore vested in the Band, but not expressly referred to in this Constitution, shall not be diminished, abridged, or divested by this Constitution.

ARTICLE II TRIBAL LAW

SECTION 1. Tribal Law. This Constitution, all legislative enactments, codes, statutes, ordinances, regulations, and judicial decisions of the Band shall govern all persons, entities, resources and matters subject to the Pokagon Band's jurisdiction.

SECTION 2. Rule of Law. The members of the Pokagon Band collectively mandate the utmost adherence to a rule of law. Rule of law principles shall be respected by all in their actions/inactions.

ARTICLE III JURISDICTION AND TERRITORY

SECTION 1. Sovereign Powers. The Band's sovereign powers shall be exercised to the fullest extent consistent with tribal self-determination, and to the extent applicable, with federal law, and shall extend to all members of the Band and to all non-members, entities, resources and matters within the jurisdiction of the Band, for now and in the future.

SECTION 2. Territory. The territory of the Pokagon Band of Potawatomi Indians shall encompass all lands now held or hereafter acquired by or for the Band, or held in trust for the Band by the United States, including lands in which rights have been reserved or never ceded by the Potawatomi in previous treaties, or as may otherwise be provided under federal law.

SECTION 3. Indian Child Welfare Act Service Area. For purposes of the Indian Child Welfare Act, the territory referred to in 25 U.S.C. 1300j-7, including Allegan, Berrien, Van Buren and Cass counties in Michigan and LaPorte, St. Joseph, Elkhart,

Starke, Marshall and Kosciusko counties in Indiana, shall be considered reservation lands of the Band.

ARTICLE IV TRIBAL LAND

The Pokagon Band is dedicated to re-establishing a tribal land base. To that end, the Band shall designate all tribal lands in use classifications, establish and maintain a Land Use and Conservation Code to govern operations on tribal land, and set forth a Long Term Land Acquisition and Development Plan to guide future growth on tribal lands.

SECTION 1. Classification of Tribal Lands. The Tribal Council shall classify all tribal land, whether or not held in trust, as follows:

- (a) Commercial Lands. Land the Band designates for commercial use, such as business, agriculture, farming, public recreation, surface and/or sub-surface mining or oil installations, and any other commercial activity available to the Band.
- (b) Non-Commercial Lands. Land the Band designates for purposes of housing, tribal centers, health service programs, education, judicial centers, natural resource centers, tribal recreation areas, and any other tribal service center or facilities.
- (c) Land Preserves. Lands, waterways, lakes, timber areas, and other surface/subsurface land the Band designates for ceremonial, medicinal, burial, historic, or other aboriginal uses. These areas are to be returned to a natural state and protected from any development as described in (a) and (b) above and held in perpetuity by the Band.

SECTION 2. Reclassification or Transfer of Tribal Lands. It is the overall intent of the Pokagon Band to acquire rather than divest itself of land; therefore, reclassification of tribal land or transfer of land out of tribal ownership is subject to the following restrictions:

- (a) Lands or other resources within a designated Land Preserve
 - (i) may not be reclassified and

- (ii) except for sustainable uses of resources consistent with the traditional uses provided for under Article I, Section 2, may not be transferred out of tribal ownership.
- (b) Lands or resources within any area designated for Commercial or Non-Commercial use may be reclassified, but only in accordance with fair, open and uniform procedures to be set forth in the Land Use and Conservation Code.
- (c) Lands or resources held in trust for the Band and located within any area designated for Commercial or Non-Commercial use may be transferred by assignment, sale, lease, or any other means consistent with federal law, in accordance with fair, open and uniform procedures to be set forth in the Land Use and Conservation Code.
- (d) Tribal lands or resources located within any area designated for Commercial or Non-Commercial use and not held in trust for the Band may be transferred by assignment, sale, lease, or any other means, but only in accordance with fair, open and uniform procedures to be set forth in the Land Use and Conservation Code.

SECTION 3. Tribal Land Use and Conservation Code. The Tribal Council shall establish and maintain a Land Use and Conservation Code to govern operations on tribal land. The Land Use and Conservation Code shall include:

- (a) Procedures for classifying tribal lands in accordance with Section 1 above.
- (b) Procedures for reclassifying or transferring tribal lands in accordance with Section 2 above; *provided that*
 - (i) title to Commercial Lands not held in trust for the Band may be transferred upon a majority vote of Tribal Council;
 - (ii) title to Non-Commercial Lands not held in trust for the Band may only be transferred with the prior approval of the voters of the Band in a referendum vote held under Article XIV, Section 3; and
 - (iii) title to trust lands may only be transferred by the United States at the request of the Band approved by a two-thirds (2/3) majority in a referendum in which at least one-third (1/3) of the Band's members eighteen (18) years of age and older cast their ballots.

- (c) Standards and procedures for authorizing a lease, mortgage, security interest, lien, right of way, or other encumbrances to any tribal land; *provided* that, other than for a public utility service, no tribal land shall be encumbered in favor of any non-member of the Band, or for any other purpose, for a period in excess of twenty-five (25) years without prior approval of a two-thirds (2/3) majority in a referendum in which at least one-sixth (1/6) of the Band's members eighteen (18) years of age and older cast their ballots. Public utility services include the distribution, transmission, relay or receipt of electricity, gas, water, sewer, telephone, radio, television (including cable) and data communications, and similar services which are available or may become available in the future.

The Land Use and Conservation Code may include any other form of land use requirement, restriction, or management practice deemed necessary for the protection, sound use and development of the common property, rights and resources of the Band.

SECTION 4. Long Term Land Acquisition and Development Plan. The Tribal Council shall approve a comprehensive long term land acquisition and development plan to establish goals and priorities for tribal land and natural resources. The Tribal Council shall provide for on-going assessment of the plan. The plan shall be reported upon annually by Tribal Council in an open membership meeting, and Council shall review, revise and update the plan as needed, at least every five (5) years.

SECTION 5. Article Construction. This Article shall not be construed to deny the Tribal Council its power and authority to regulate activities on tribal land, or to authorize Tribal Council to change any protection achieved by having tribal land held in trust.

ARTICLE V MEMBERSHIP

SECTION 1. Membership Rights and Powers. The Pokagon Band exists as a community for the benefit of the common good. To this end the membership of the Pokagon Band, as a collective body, shall have the right to elect and recall from office its governmental representatives, to propose and repeal legislation by initiative and referendum, to call for meetings of the Tribal Council and of the tribal membership to address its concerns and desires, and to adopt and amend the terms of its fundamental governing document, this Constitution.

Individual members of the Band, in addition to the rights specified in Article XVI, shall have the right to vote, to run for and to serve in office, to attend meetings and review the records of the Band, and to enjoy aboriginal and treaty rights, all in accordance with this Constitution and tribal law.

Membership is not quantifiable; any person enrolled for membership shall enjoy all rights guaranteed under this Constitution and privileges provided by the laws of the Band, without regard for ancestry or lineage. Every member shall have a continuing right to membership under the terms of this Article in effect at the time he or she was enrolled.

SECTION 2. Band Membership.

- (a) Subject to the conditions set forth in Subsection 2(b), every person who meets one of the following criteria shall be eligible for membership.
 - (i) His or her name appears on the Cadman Roll of 1895 or the Shelby Roll of 1896; or
 - (ii) The name of any of his or her lineal ancestors appears on the Cadman Roll of 1895 or the Shelby Roll of 1896; or
 - (iii) He or she, or any lineal ancestor, is identified as a Pokagon Band member on any other payment roll, census, or record determined to be reliable, made prior to 1900 for the Pokagon Band by officials or agents of the Department of the Interior, the Bureau of Indian Affairs or their predecessor agencies, or by the governing body of the Pokagon Band; or
 - (iv) He or she, or any lineal ancestor, is identified as a Pokagon Band member on the May 2, 1996 Base Roll of the Pokagon Band.
- (b) Any person that fails to complete all requirements of the enrollment process under Pokagon Band law prior to his or her twenty-first (21st) birthday shall be ineligible for membership with the Pokagon Band, *provided* that this Subsection shall not apply to any person that completes all such enrollment requirements prior to October 31, 2010 or persons that were legally adopted by a non-Pokagon family.
- (c) To become a member of the Band, an eligible person must complete the enrollment process outlined in Section 3.
- (d) Any child of Pokagon Band descent who is or was legally adopted by a non-Pokagon family shall be eligible for membership in the Band, notwithstanding such adoption.
- (e) All persons established as Pokagon Band members prior to 1900 shall be conclusively presumed to be full-blooded Pokagon Potawatomi Indians.

SECTION 3. Enrollment Code and Procedures. Procedures for enrollment, disenrollment and relinquishment of Band membership shall be set forth in an Enrollment Code adopted by the Tribal Council.

- (a) To aid in developing and maintaining fair enrollment procedures, the Tribal Council shall appoint an Enrollment Committee, and may establish an Enrollment Office. The Enrollment Committee shall make recommendations to the Tribal Council on all enrollment policies, laws, and membership actions. The Enrollment Office would exist to aid Tribal Council and the Enrollment Committee in carrying out their duties under this Article.
- (b) The enrollment procedures under the Code shall include oversight, review, and recommendations by the Enrollment Committee on all applications for membership, and Tribal Council shall make all membership decisions in a timely manner, based solely on the merits of the Committee's recommendations.
- (c) An up-to-date record of living Band members, to be called the Current Roll, shall be maintained by the Enrollment Committee.
- (d) The Enrollment Code may provide for disenrollment in the event that membership was approved on the basis of information later determined to be false, or in other circumstances as may be necessary to conform the membership rolls to the provisions of Section 2 of this Article. Any disenrollment must be approved by Tribal Council after an orderly process, as shall be specified by the Code.
- (e) Membership and disenrollment decisions of the Tribal Council may be reconsidered only on the basis of new or additional evidence.

SECTION 4. Relinquishment of Membership Rights.

- (a) Dual Membership Prohibition. No person shall be eligible to be a member of the Pokagon Band if that person is enrolled in another Indian tribe, band or group recognized by the United States or Canadian government. Any member of the Pokagon Band who applies to be and is accepted as a member of another Indian tribe, band, or group recognized by the United States or Canadian government shall thereby automatically forfeit all membership rights and benefits in the Pokagon Band.

- (b) Voluntary Relinquishment. Any adult member of the Band may relinquish his or her membership by delivering a signed written statement to that effect to the Enrollment Committee or the Band's Enrollment Office.
- (c) Reinstatement Prohibition. No person whose membership was forfeited or relinquished may be reinstated to membership in the Pokagon Band.

SECTION 5. Rights of Appeal. Any person whose application for membership has been denied or not acted upon, who has been disenrolled, or whose membership has been forfeited shall have the right of appeal for declaratory relief to the Tribal Judiciary. If the Judiciary concludes that the necessary facts for the Tribal Council's action, or failure to act, were not supported by reasonable evidence, or that the Council applied the Band's enrollment laws incorrectly, it shall so declare and return the matter to the Enrollment Committee for further consideration and a new recommendation to Tribal Council.

Any appeals of membership issues shall be governed by procedures established for that purpose by the Tribal Judiciary, which shall include provisions for payment of costs to the Band by any person whose appeal is determined by the Tribal Judiciary to be frivolous.

ARTICLE VI GOVERNANCE OF THE BAND

The Pokagon Band will make decisions for the community as a whole and govern its affairs through the collective actions of the tribal membership and through Tribal Council.

- (a) Membership may take official action and make binding decisions for the Band as a whole. Such actions and decisions shall be made through an orderly process for the election or recall of government officials, voting upon legislation proposed by membership initiative or by Tribal Council referendum, or voting upon amendments to this Constitution.
- (b) Tribal Council shall serve as the focal point for establishing tribal policy and direction. Tribal Council has the authority to pass legislation for tribal governance, and has the responsibility to provide for the management of tribal activities and property and to oversee the finances of the Band.
- (c) Enrollment and membership in the Pokagon Band will be governed by this Constitution and by an Enrollment Code established by Tribal Council, and Tribal Council shall appoint an Enrollment Committee to oversee and to provide recommendations on enrollment and membership issues.

- (d) Tribal elections shall be overseen and conducted by the Election Board, which shall be established by Tribal Council.
- (e) A tribal court system shall also be established to resolve legal controversies properly put before it, to apply tribal law and exercise tribal jurisdiction, and to enforce the rights and remedies provided in this Constitution.
- (f) An Elders Council shall serve in an advisory capacity to the Band and to Tribal Council.

The authority of all governing bodies described in this Article is to be exercised as provided in this Constitution.

ARTICLE VII RECORDS AND MEETINGS OF THE BAND

Activities and actions of the Band's government are representative actions of the Band, and as such, are to serve the interests of the Band as a whole. The products and decisions of its governmental bodies belong to the Band, and the records generated from these decisions and activities are the property of the Band and not of any instrumentality, body, subgroup or individual.

To provide for a system of open communication and participation with Band membership, the governmental bodies and officials of the Pokagon Band shall keep records of all their official actions, and governmental bodies shall conduct all their meetings open to members of the Band unless otherwise provided in this Article.

SECTION 1. Records of the Band.

- (a) Any record of an official action taken by governmental bodies or officials as agents or representatives of the Pokagon Band is an official record of the Band, made to serve the Band as a whole. All such records shall be maintained as the exclusive property of the Pokagon Band and kept at the official offices of the Band.
- (b) Any member of the Band shall have a right to review any record of the Band, except when tribal or applicable federal law provides for confidentiality or limits access to records or the information contained therein.

- (c) The Tribal Council shall provide by legislation for the maintenance of such records under its custody or control, including the records and votes of the Boards, Committees, and other instrumentalities of the Band, and for the reasonable access to such records for review by Band members.
- (d) The Court of Appeals shall provide procedures for review of the records in the custody or control of the Tribal Judiciary in accordance with this Article.
- (e) Tribal law, including procedures adopted by the Court of Appeals for the Tribal Judiciary, may limit access to records or information:
 - (i) To prevent an unwarranted invasion of personal privacy, such as with personnel, membership and medical records;
 - (ii) To prevent damage to the investigative, competitive or bargaining position of the Band, including with respect to pending or anticipated arbitration or litigation;
 - (iii) To protect minors involved in juvenile or child welfare proceedings; or
 - (iv) In other circumstances in which non-disclosure protects a significant public interest of the Band.

SECTION 2. Open Meetings.

- (a) All meetings of the Tribal Council, the Boards, Committees and other instrumentalities of the Band shall be open to all tribal members, except when meeting in closed session is authorized or required by tribal law consistent with the principles in Subsection 1(e) of this Article or by applicable federal law.
- (b) All votes of Tribal Council, excepting motions regarding routine procedural matters during a closed session, shall be open to all tribal members.
- (c) At any open meeting, any member of the Band shall have a reasonable opportunity to be heard under such procedures as may be prescribed by tribal law or written policy. The Tribal Council shall adopt procedures for conducting its meetings, including closed sessions, and may adopt such procedures for meetings of the Boards, Committees, and other instrumentalities of the Band.

- (d) When meeting in a duly authorized closed session, Tribal Council, the Tribal Judiciary, or other governmental body may, in its discretion, determine not to keep a record of all or any part of its discussion in closed session; *provided* that the general reason for such determination shall be recorded and a record shall be kept of any action taken in closed session. Such record may be withheld from inspection by tribal members pending final disposition of the matter concerned.
- (e) The Tribal Judiciary shall maintain open proceedings, except when procedures for meeting in closed session are adopted by Court of Appeals rule consistent with the principles in Subsection 1(e) of this Article and applicable federal law.

ARTICLE VIII MEMBERSHIP MEETINGS

Membership Meetings provide an opportunity for both tribal members and Tribal Council to inform membership of the affairs of the Band and to serve as a forum for membership discussion of issues facing the Band. Tribal membership and Tribal Council each have the authority to call for meetings of the tribal membership, and attending Membership Meetings is among the duties of Tribal Council members. However, because Membership Meetings are meant to allow discussion among Band members, these meetings are not Tribal Council meetings and are not controlled by Tribal Council meeting requirements, and lack of a Tribal Council quorum shall not affect the proceedings of a Membership Meeting. Procedures for calling Membership Meetings are outlined below.

SECTION 1. Membership Meetings Called by Tribal Council.

- (a) The Tribal Council shall hold a Saturday meeting of the Band's members in March of each year for the purpose of informing the membership of the status of the affairs of the Band. The tribal budget shall be a specific agenda item of this annual Membership Meeting.
- (b) The Tribal Council may hold additional Tribal Membership Meetings when it deems appropriate. Notice of the meeting must be mailed to all Band members eighteen (18) years of age or older, to their last mailing address provided to the Band's Enrollment Committee, at least fourteen (14) calendar days before the meeting.
- (c) Membership Meetings called by Tribal Council under (a) or (b) above shall be presided over by the Tribal Chairperson. Membership Meetings, and the

records of Membership Meetings, shall be open to all members of the Band on the same terms as governmental meetings and records set forth in Article VII of this Constitution.

SECTION 2. Membership Meeting Called by Petition. The Election Board shall call and conduct a Tribal Membership Meeting upon receipt of a petition calling for such a meeting and verified in accordance with the following procedure:

- (a) To qualify for circulation, a proposed Membership Meeting petition must:
 - (i) identify one or more specific issues of tribal government to be discussed;
 - (ii) be signed initially by at least ten (10) members of the Band eighteen (18) years of age or older; and
 - (iii) be submitted to the Election Board for review.
- (b) Within five (5) calendar days of its receipt of the proposed petition, the Election Board may suggest revisions to the submitted language which identify or make clear the specific issue or issues to be presented. The petitioners may or may not accept the suggested revisions. If the petition is otherwise proper, the Election Board shall approve the proposed petition for gathering signatures when the five (5) calendar days expires or sooner if the language is mutually agreed.
- (c) Upon approval of the proposed petition, the Election Board shall immediately forward a copy of it by personal service to an officer of Tribal Council. Within five (5) calendar days of the Election Board's approval of the petition, Tribal Council may decide to call a Membership Meeting in accordance with Section 1 above to discuss the issues presented in the proposed petition. Any Membership Meeting called by Tribal Council under this provision must be conducted within thirty-five (35) calendar days of the Election Board's approval of the proposed petition, and Tribal Council must mail notice of the Meeting and the issues of the petition to all adult members not less than seven (7) calendar days before the Meeting.
- (d) Within twelve (12) calendar days of receiving the proposed petition, if Tribal Council has not called a Membership Meeting to discuss the issues presented, the Election Board shall make the proper forms for gathering signatures of Band members available to the petitioners. A petition requires the signatures of at least five percent (5%) of the Band's members eighteen (18) years of age and older to move forward.

- (e) To be considered, the approved petition forms must be returned to the Election Board within thirty (30) calendar days after being made available to the petitioners; and
- (f) The Election Board shall verify the signatures on the returned petitions and determine whether the petition has the required percentage of support within five (5) calendar days of receiving their return.
- (g) The Election Board shall call and conduct the Membership Meeting within thirty (30) calendar days of verifying a petition. The Board must mail notice of the Meeting and the issues of the petition to all adult members not less than seven (7) calendar days before the Meeting. The Election Board Chairperson shall preside over the meeting, but no quorum of the Election Board is needed to conduct the Membership Meeting. A Membership Meeting shall be limited to the specific issues listed in the petition.
- (h) Once called in response to a petition, a Membership Meeting may not be canceled.

In accordance with Article XIII, Section 7 Tribal Council shall provide the Election Board with adequate funding to carry out its responsibility of calling and conducting meetings under this Section.

SECTION 3. Scope of Meetings. While Membership Meetings are intended to aid the Band in managing its affairs, official action and decisions binding upon the Band made by tribal membership must be made through formal initiative, referendum or recall elections as provided in this Constitution, and official action and binding decisions made by Tribal Council must take place at properly convened Tribal Council meetings, in accordance with Tribal Council Procedures and this Constitution.

ARTICLE IX DUTIES AND POWERS OF THE TRIBAL COUNCIL

Except as governing powers are conferred upon others by this Constitution, the Tribal Council shall be the governing body of the Pokagon Band.

SECTION 1. Duties of Tribal Council.

- (a) To promote and protect the peace, health, safety, education, and general welfare of the Band;
- (b) To set policy and direction for the Band;

- (c) To establish and amend tribal laws as Tribal Council may find necessary or prudent to serve the community objectives of the Band;
- (d) To guide and oversee management of the affairs, activities and property of the Band;
- (e) To oversee the Band's financial resources;
- (f) To meet in formal session to conduct the business and affairs of the Band in accordance with the provisions of this Constitution;
- (g) To enact policies and procedures for conducting the activities of the Tribal Council, to be called the Tribal Council Procedures;
- (h) To appoint members of committees, boards, and commissions, in accordance with the Procedures of the Tribal Council;
- (i) To provide information concerning the tribal community and the Band's affairs to tribal members; and
- (j) To attend the Membership Meetings described in Article VIII of this Constitution.

SECTION 2. Powers of the Tribal Council. The Tribal Council of the Pokagon Band shall be vested with the sovereign powers of the Band not inconsistent with any provision(s) of this Constitution. Such powers shall include, but not be limited to, the following:

- (a) To make laws, not inconsistent with this Constitution, which shall be necessary and proper to carry out the sovereign powers of the Band, and to implement and enforce the same;
- (b) To purchase, lease, take by gift, devise or bequest, or otherwise acquire land, interests in land, personal property, or other assets which the Tribal Council may deem beneficial to the Pokagon Band;
- (c) To approve or veto any sale, disposition, lease, or encumbrance of Pokagon Band land, interests in land, personal property, or other assets of the Pokagon Band in accordance with Article IV, Section 3 and other provisions of this Constitution, *provided* that any distribution of net profits from tribal commercial enterprises to the Band's membership may only be

authorized by legislation approved by Tribal Council and a referendum vote conducted in accordance with Article XIV, Section 3;

- (d) To provide for the privilege of admission of non-members to tribal lands, when necessary or appropriate, and for the exclusion or removal of non-members from tribal lands;
- (e) To levy and collect taxes, license fees, or assessments upon persons, entities, property, or activities subject to the jurisdiction of the Band;
- (f) To administer any funds within the control of the Band and to make expenditures from the tribal funds for tribal purposes;
- (g) To employ legal counsel for the protection and advancement of the Pokagon Band and with respect to all activities that may affect the Band;
- (h) To provide for, by legislation, jurisdiction over Indian child welfare matters;
- (i) To establish subordinate governmental committees, departments and offices, to retain officers and employees, and to delegate to such committees, departments, officials and employees the power to manage the governmental programs, activities, and property of the Pokagon Band;
- (j) To regulate all business activities within the jurisdiction of the Band;
- (k) To charter subordinate organizations and to delegate to such organizations, or to any subordinate boards or officials of the organizations, the power to perform limited governmental functions, excluding the enactment of legislation or the fulfillment of duties and responsibilities assigned under this constitution to an elected official, or to manage the economic affairs, enterprises, and property of the Pokagon Band; and
- (l) To negotiate, advise, consult, and enter into contracts with federal, state, and local governments and their agencies, and individuals, corporations, and other entities on behalf of the Band.

SECTION 3. Action by Tribal Council.

- (a) The Tribal Council shall act only at a properly called Tribal Council meeting at which a quorum has been established in accordance with Section 5 below, and must act in accordance with its own procedures.

- (b) The Tribal Council shall act only by legislation, resolution, or motion.
- (c) Tribal Council action shall be determined by a majority vote of the Tribal Council members present at the Tribal Council meeting, unless a greater vote is specified in this Constitution, the Tribal Council Procedures or other laws of the Band.
- (d) Tribal Council members, including the Chairperson or other presiding officer, shall abstain from voting only in conflict-of-interest cases as defined by the Code of Ethics mandated in Article XVII, Section 3 or due to absence from previous relevant meetings.
- (e) The Executive Committee shall be comprised of the Chairperson, Vice-Chairperson, Secretary and Treasurer of the Tribal Council. The Executive Committee may act on matters requiring full Council attention at times other than scheduled Tribal Council meetings and shall report all action taken to the full Tribal Council for ratification. A quorum of the Executive Committee shall be three (3) of its members.

SECTION 4. Meetings of the Tribal Council. The Tribal Council shall hold Regular Meetings on a periodic basis, and may conduct Special Meetings or Emergency Meetings as it may find necessary to take official action between regularly scheduled meetings. In addition, the Tribal Council shall conduct special meetings devoted to tribal laws, to be called Legislative Sessions. Except as provided in Subsection 5(d) of this Article, no official action may be taken at any of the foregoing Tribal Council meetings unless a quorum is present.

Unless additional or other requirements are called for under this Constitution, notice of a Tribal Council meeting shall be conspicuously posted or otherwise made available within the tribal community at least five (5) calendar days before the meeting and shall include the meeting time, place, purpose and agenda of the meeting.

- (a) Regular Meetings. The Tribal Council shall meet in open session at least once monthly to address the matters of the Band. Such sessions are to be called Regular Meetings. Any and all matters facing the Band may be included on the agenda posted in advance of the Meeting; furthermore, any additional matter concerning the Band may be added to the agenda on the day of the Meeting upon the affirmative vote of a majority of the Council Members in attendance. If a matter is raised at a Regular Meeting, but not added to the agenda at that time, Tribal Council shall place it on the agenda for either the next Regular Meeting or for a Special Meeting called on the matter, whichever occurs first.

Time and location for Regular Meetings shall be established on a recurring schedule by resolution, provided that there shall be no necessity of a meeting in the month of July of an election year.

- (b) Special Meetings. Special Meetings of the Tribal Council may be held when it is considered necessary or prudent to address a specific matter or matters between the dates of Regular Meetings.

(i) Special Meetings called by Tribal Council:

- (A) May be called by the Chairperson of the Council at his/her discretion; or
- (B) Shall be called and conducted within seven (7) calendar days by the Chairperson upon the written request of the Vice-Chairperson, Treasurer or Secretary of the Council; or
- (C) Shall be called and conducted by the Council officer requesting the meeting should the Chairperson refuse pursuant to (b)(i)(B) above.

(ii) Special Meetings called by Petition:

- (A) Shall be called and conducted by the Chairperson within seven (7) calendar days of notification by the Election Board that it has validated a membership petition calling for a Special Meeting of Tribal Council, signed by five percent (5%) of the Band's members eighteen (18) years of age and older; or
- (B) Shall be called and conducted by any Council member should the Chairperson refuse pursuant to (b)(ii)(A) above.

Written notice of the time, place and agenda of any Special Meeting shall be given to each Tribal Council member in accordance with the notice provisions established in the Tribal Council Procedures at least three (3) calendar days before the meeting.

Official action may be taken in a Special meeting only on a matter shown in the prior notice of the Meeting or added to the agenda on the day of the Meeting upon the affirmative vote of two-thirds (2/3) of the Council Members in attendance.

- (c) Emergency Meetings. An Emergency Meeting of the Tribal Council may be called by the Chairperson upon less than three (3) calendar days written notice, if in the judgment of the Chairperson such a meeting is necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Band. Efforts shall be made to give maximum practical notice to each Tribal Council member, and to post notice of such a meeting conspicuously within the tribal community. No business other than that stated in the notice or added to the agenda on the day of the Meeting upon the affirmative vote of two-thirds (2/3) of the Council Members in attendance shall be transacted at such a meeting.
- (d) Legislative Sessions. Tribal Council shall meet in open legislative session at least two (2) times a year, where the matters presented shall be limited to the laws of the Band. Such sessions must be held at least twenty (20) calendar days apart in order to satisfy this two-meeting requirement. Nothing in this Subsection limits the legislative authority of Tribal Council acting at any duly called Council Meeting.
- (e) Conduct of Meetings. Any question regarding the conduct of any Tribal Council meeting shall be resolved by ruling of the Chairperson, subject to being overruled by vote of the Tribal Council.

SECTION 5. Quorum for Tribal Council Meetings.

- (a) A quorum of the Tribal Council shall equal one-half (1/2) the filled seats plus one (1), all numbers to be rounded to the next whole number.
- (b) If all but one (1) or if all Council seats are vacated, the Ethics Board and any remaining Council Member shall act as the interim governing body of the Band, having all the powers and duties of the Tribal Council until new Council members can be seated following a Special Election to fill the Council seats. The Election Board shall hold such a Special Election within sixty (60) days after the last seat was vacated.
- (c) The Chairperson or other presiding officer shall be counted in determining a quorum.
- (d) Once a quorum is established, it shall continue throughout the meeting even though one or more Council Members leaves, provided that the number of Council Members remaining is at least equal to quorum minus one.

SECTION 6. Meetings of the Tribal Membership. The Tribal Council shall call Tribal Membership Meetings pursuant to Article VIII.

**ARTICLE X
TRIBAL COUNCIL**

SECTION 1. Composition.

- (a) There shall be eleven (11) seats on the Pokagon Band Tribal Council. These seats shall include a Chairperson, Vice-Chairperson, Secretary, Treasurer, and seven (7) Councilpersons. One of the seven Councilperson seats may be held by an Elders Council Representative pursuant to Section 3 of this Article. Only Pokagon Band members shall be seated on Tribal Council.
- (b) All Tribal Council members shall be elected in accordance with Article XIII and all vacancies shall be filled in accordance with Article XV.
- (c) No Band member shall hold more than one Tribal Council seat at one time.

SECTION 2. Qualifications for Tribal Council Members and Candidates.

To serve on Tribal Council, a Band Member:

- (a) must be at least twenty-five (25) years of age;
- (b) must not be incarcerated for any criminal conviction;
- (c) must not have been convicted within the last ten (10) years of a crime subject to imprisonment for a term of one (1) year or longer, excepting those crimes determined by the Election Board to relate to the furtherance of the Band's tribal sovereignty rights; and
- (d) must not be a current Judge in the Tribal Judiciary, or a member of the Election Board, the Salary Commission, the Ethics Board or any Personnel Committee the Tribal Council may establish, or an employee of the Band.

Also, no person may be a candidate for Tribal Council while seated as a Judge on the Tribal Judiciary, or as a member of the Election Board, the Salary Commission, the Ethics Board, or any Personnel Committee the Tribal Council may establish.

SECTION 3. Elders Council Representative. An Elders Council Representative, not a member of the Elders Council, shall be elected by the Band's membership when the

Elders Council presents nominations for the position in accordance with the following procedures:

- (a) An Elders Council Representative may be elected in the initial election of Tribal Council members under this Constitution, or in a General Election
 - (i) when there is no Elders Council Representative position currently on the Tribal Council, or
 - (ii) when the term of an Elders Council Representative is due to expire.
- (b) The Elders Council must timely state its intent to reserve a Councilperson seat by nominating one (1) or more eligible candidates for a Councilperson position scheduled for election at that time.
- (c) In order to allow the Election Board to properly conduct the election, the Elders Council must present its candidates in accordance with the procedures and time lines established by the Election Board for such presentation.
- (d) Any candidate for Elders Council Representative must meet all qualifications for Tribal Council members outlined in Section 2, and must also meet the age qualification for Elders Council Membership.
- (e) Any Elders Council Representative seated as a Councilperson under this Article shall have the duties and powers of all other Councilpersons and shall be subject to the recall, removal, resignation and vacancy provisions applicable to Tribal Council members in this Constitution, *provided* that any vacancy in this position shall be filled by a nominee of the Elders Council.

SECTION 4. Terms of Office.

- (a) After the first election of Tribal Council described in Article XIII, Section 6, each position on the Tribal Council shall have a three (3) year term of office. The terms of Tribal Council members shall be staggered, with the Chairperson, the Secretary and two (2) Councilpersons elected one (1) year apart from the Treasurer and three (3) Councilpersons, and two (2) years apart from the Vice-Chair and remaining two (2) Councilpersons. This pattern shall be initiated in the first election described in Article XIII, Section 6. All provisions for filling vacancies on Tribal Council and for seating an Elders Council Representative to Tribal Council shall maintain these staggered terms.

- (b) Tribal Council members shall continue in office until their successors are duly elected and installed in office, until their resignation, removal, recall or death, or until they fail to meet any of the qualifications set out in Section 2 above, but not beyond the expiration of their term of office.

SECTION 5. Duties of Tribal Council Members.

- (a) All Tribal Council Members shall be responsible for being informed in tribal law and procedures and in issues before the Council. Each Council Member shall make a good-faith effort to attend all Council meetings. Each Council Member, including the Chairperson or other presiding officer, shall vote for each matter up for vote while in attendance at a Council meeting, except when a conflict of interest arises. Each Council member serving as a member of a committee or as a representative of the Council or the Band is responsible for keeping the Tribal Council appropriately informed.
- (b) All Tribal Council members shall abide by the conflict-of-interest provisions and the Code of Ethics mandated by Article XVII.
- (c) Chairperson. The Tribal Council Chairperson shall:
 - (i) Represent the Band's membership.
 - (ii) Preside at all meetings of the Tribal Council and general membership except as otherwise provided for in this Constitution.
 - (iii) Represent the Tribal Council in its relations with others.
 - (iv) Personally, or through a Council member designated by the Chairperson, be an ex-officio, non-voting member of all committees of the Tribal Council, with the right and privilege of attending all committee meetings and access to all information available to other committee members, or alternatively to be appointed as a Tribal Council member of any committee, with full voting rights.
 - (v) Call special meetings of the Tribal Council and any committee of the Council, in accordance with this Constitution and the rules and procedures of the Tribal Council.
 - (vi) Receive reports of all committees and deliver such reports or cause such reports to be delivered to the Tribal Council.
 - (vii) Sign contracts authorized by the Tribal Council, unless additional or other signatures are specified by the Tribal Council.
 - (viii) Perform such other duties as may be specified by this Constitution, by tribal code, or as required by the Tribal Council.

Except as authorized by the Tribal Council, the Chairperson alone shall not take any action which under this Constitution must be taken by the Tribal Council.

- (d) Vice-Chairperson. The Tribal Council Vice-Chairperson shall:
- (i) Represent the Band's membership.
 - (ii) Perform the duties of the Chairperson in the Chairperson's absence.
 - (iii) Perform those functions delegated to him/her by the Chairperson.
 - (iv) Perform such other duties as may be specified by this Constitution, by tribal code, or as required by the Tribal Council.
- (e) Treasurer. The Tribal Council Treasurer shall:
- (i) Represent the Band's membership.
 - (ii) Monitor the fiscal matters of the Band, and serve as Chairperson of any body or group established to advise Tribal Council on the financial affairs of the Band.
 - (iii) Ensure that accurate records of account be maintained, and made available to any Board, Committee or similar tribal entity described in (ii) above and to Tribal Council as requested, showing at all times the receipts, disbursements and financial condition of the Band.
 - (iv) Have direct access to all records and documents of the Band relating to tribal financial transactions, and have the assistance of the tribal staff administering the Band's financial affairs.
 - (v) Ensure that financial reports are submitted to the Tribal Council at such times as may be requested by the Tribal Council and report any findings related to tribal finances to Tribal Council.
 - (vi) At the Band's expense, acquire a surety bond, in an amount and with a surety company satisfactory to the Tribal Council, covering administration of the Band's fiscal affairs.
 - (vii) Perform such other duties as may be specified by this Constitution, by tribal code, or as required by the Tribal Council.
- (f) Secretary. The Tribal Council Secretary shall:
- (i) Represent the Band's membership.
 - (ii) Ensure that a report of the minutes of all Tribal Council and Tribal Council Membership Meetings is recorded, maintained and submitted to the Tribal Council.
 - (iii) Ensure that a record of all votes of the Tribal Council, excepting motions regarding routine procedural matters of a closed session, is submitted for inclusion in a Tribal monthly publication.

- (iv) Be responsible for the maintenance and protection of Tribal Council records and minutes and for the records of all other instrumentalities under Tribal Council's oversight, and for the maintenance and protection of the Tribal Seal.
 - (v) Perform such other duties as may be specified by this Constitution, by tribal code, or as required by the Tribal Council.
- (g) Councilpersons. Each Tribal Councilperson shall:
- (i) Represent the Band's membership.
 - (ii) Perform such other duties as may be specified by this Constitution, by tribal code, or as required by the Tribal Council.
- (h) Elders Council Representative. Any Elders Council Representative seated on the Tribal Council shall have all the rights and responsibilities of a Councilperson.

SECTION 6. Recall and Removal of Tribal Council Members. Recall and removal of all Tribal Council members is governed by procedures in Article XV.

SECTION 7. Compensation. Tribal Council members may be reasonably compensated for their services. The Tribal Council shall, by legislation, provide for an independent Salary Commission composed of five (5) Band members, elected by the Band's Membership in accordance with Article XIII and having staggered terms of three (3) years each, to recommend compensation levels and guidelines to Tribal Council. Salary Commissioners shall not be serving the Pokagon Band as Tribal Council members, Tribal Judges, Election Board members, or employees of the Band. Salary Commissioners shall be subject to recall under Article XV, and to the same provisions of Article XV governing the removal of members and the filling of vacancies as apply to the Election Board.

No Salary Commissioner shall vote on the compensation for any office or position then occupied by his/her immediate family member, nor shall a Salary Commissioner vote on the compensation for any office or position for which he/she is a candidate or for which his/her immediate family member is a candidate. "Immediate family member" is to be defined in the Code of Ethics mandated in Article XVII, Section 3 of this Constitution.

The Tribal Council shall take no action affecting compensation for the services of its members except upon the recommendation of the Salary Commission. A Tribal Council resolution may accept or not accept a Salary Commission recommendation but no other resolution may be voted upon except as recommended by the Salary Commission. The Salary Commission shall provide opportunity for membership input on its proposed recommendation before it makes its final recommendation to Tribal Council.

Each Salary Commission recommendation, and each Council action on such recommendations shall be recorded and published in a tribal monthly publication. No increase or decrease in compensation shall take effect until after the next regularly scheduled Tribal Council election.

ARTICLE XI ELDERS COUNCIL

SECTION 1. Elders Council Role. In honor and recognition of the role the Elders of the Pokagon Band play in protecting and promoting the culture of the Band, this Constitution creates an Elders Council composed of Band members to provide guidance and advice to the community. The Elders Council shall have the opportunity to reserve a Councilperson seat for an Elders Council Representative, who, when duly elected by the Band's voters, shall have full Councilperson duties and powers.

SECTION 2. Elders Council Code. The Tribal Council shall maintain a tribal code governing the procedures of the Elders Council.

- (a) The Elders Council Code must include:
 - (i) A specific age requirement for Elders Council membership;
 - (ii) Provisions for open and equitable participation of all Band elders;
 - (iii) Regulations for conduct of Elders Council meetings;
 - (iv) Procedures for reserving a Councilperson seat for an Elders Council Representative and for making nominations for that position, all in accordance with the provisions of this Constitution and the Election Code; and
 - (v) Specific duties and responsibilities for the Elders Council. Such duties and responsibilities may include, but are not limited to, an Elders Council advisory role and/or a dispute resolution role in the tribal judiciary.
- (b) The Elders Council shall not, however, be granted any power properly belonging to the Tribal Council, Election Board, or Tribal Judiciary as specified in this Constitution.
- (c) The Elders Council Code may not be amended or repealed without the concurrence of the Elders Council.

- (d) If an amendment to the Code proposed by the Elders Council is not adopted by the Tribal Council within ninety (90) calendar days of its submittal to Tribal Council, the Elders Council may submit the proposed amendment to the Election Board for a referendum vote in accordance with Article XIV, Section 3.

ARTICLE XII TRIBAL JUDICIARY

SECTION 1. Judicial Powers and Jurisdiction. The judicial power of the Pokagon Band shall be vested in a tribal court system. The judicial power shall extend to all cases arising under this Constitution, all legislative enactments, codes, statutes, ordinances, regulations, and judicial decisions of the Pokagon Band, may be exercised to the fullest extent consistent with self-determination and the sovereign powers of the Band, and, as exercised, shall govern all persons and entities subject to the Pokagon Band's jurisdiction.

SECTION 2. Judicial Independence. The Tribal Judiciary shall be independent from the legislative and executive functions of the tribal government. No person exercising powers of the executive or legislative branches of the government shall exercise powers properly belonging to the judicial branch.

SECTION 3. Court Funding and Administration. The Tribal Council shall provide continuous funding to the Tribal Judiciary for the tribal courts' functioning and administration. The Tribal Judiciary shall employ an administrator of the courts and other assistants as may be necessary to perform the administrative duties assigned by the judiciary.

SECTION 4. Judicial Responsibility. Tribal Judges shall:

- (a) Preserve and protect the Constitution of the Band;
- (b) Protect the rights of individual members;
- (c) Rule on the merits of cases arising under tribal law;
- (d) Conduct court with proper decorum;
- (e) Give due deference to previous tribal court decisions;

- (f) Excuse himself/herself in any matter which presents an actual or apparent conflict-of-interest, and abide by such rules of judicial conduct as may be established by tribal law; and
- (g) In all other respects provide a forum for the fair administration of justice.

SECTION 5. Composition of the Tribal Court System. The tribal court system shall be composed of:

- (a) A court of general jurisdiction (hereinafter the "Tribal Court"), providing an initial, single judge forum for the cases and controversies arising under tribal jurisdiction.
 - (i) The Tribal Court shall consist of one (1) or more judges appointed by the affirmative vote of at least eight (8) Tribal Council members, and each judge shall be an attorney who is, or has been, licensed to practice law before the courts of a state in the United States.
 - (ii) The Tribal Council, by legislation, may also create an Elders Council advisory role and/or dispute resolution role in the Tribal Court system.
- (b) An appellate court (hereinafter the "Court of Appeals"), which shall have jurisdiction to hear all appeals arising from Tribal Court decisions or proceedings. Decisions of the Court of Appeals on all matters within its jurisdiction shall be final.

The Court of Appeals shall consist of three (3) judges, appointed by an affirmative vote of at least eight (8) members of the Tribal Council. At least two (2) of those judges shall be attorneys who are, or have been, licensed to practice law before the courts of a state in the United States. The other judge need not be an attorney but if this judge is not an attorney, he/she must be a Band member. No Court of Appeals Judge may sit simultaneously as a Tribal Court Judge.

SECTION 6. Initial and Succeeding Terms of Office.

- (a) Court of Appeals Judges shall have staggered terms such that not more than two terms expire in any two-year period. Following the adoption of this Constitution, Court of Appeals Judges shall be appointed to initial terms of less than four (4) years to the extent necessary to establish these staggered terms. All provisions for filling vacancies in the Court of Appeals shall maintain these staggered terms.

- (b) Terms of office for all Judges of the Tribal Judiciary shall be for four (4) years, after expiration of any initial terms necessary to establish the staggered terms described in Subsection (a) above.
- (c) Judges shall continue in office until their successors are duly appointed and installed in office, or until their resignation, removal, or death, or until they fail to meet any of the qualifications set out in this Article.

SECTION 7. Qualifications. In addition to the qualifications in Section 5 above, a person shall be eligible to serve as a judge if he/she:

- (a) Is at least thirty (30) years of age;
- (b) Is not presently a candidate for, or a member of Tribal Council, the Salary Commission, the Election Board, the Ethics Board, or a member of any other board or commission of the Band or any Band enterprise or other entity controlled by or affiliated with the Band;
- (c) Is not presently an employee of the Band, or any Band enterprise or other entity controlled by or affiliated with the Band;
- (d) Has not been convicted within the last ten (10) years of a crime subject to imprisonment for a term of one (1) year or longer, excepting those crimes determined by the Election Board to relate to the furtherance of the Band's tribal sovereignty rights; and
- (e) If required to be an attorney, must not have been disbarred from practicing law in any tribal, federal, or state court, provided however, that if a person has been disbarred but later reinstated, such a person shall be eligible.

SECTION 8. Selection. Tribal Council shall provide for a Selection Committee to review prospective candidates, standards for the merits of such candidates, and an open meeting process for this review.

SECTION 9. Practice and Procedure. The Court of Appeals shall establish and amend general rules for practice, procedure and evidence in the Tribal Court and the Court of Appeals. Such rules shall be maintained as records of the Band.

SECTION 10. Removal of Tribal Judges. Removal of Tribal Judges is governed by procedures in Article XV.

SECTION 11. Compensation. Tribal Judges shall be reasonably compensated for their services. Tribal Council shall set compensation for judges based upon recommendations made by the Salary Commission as provided in Article X, Section 7 of this Constitution.

The Tribal Council shall take no action affecting compensation for the services of tribal judges except upon the recommendation of the Salary Commission. A Tribal Council resolution may accept or not accept a Salary Commission recommendation but no other resolution may be voted upon except as recommended by the Salary Commission. The Salary Commission shall provide opportunity for membership input on its proposed compensation recommendation before it makes its final recommendation to Tribal Council. Each Salary Commission recommendation, and each Council action on such recommendations shall be recorded and published in a tribal monthly publication. No decrease in compensation due each individual judge shall take effect during his/her service on the Tribal Court or the Court of Appeals.

ARTICLE XIII ELECTIONS

SECTION 1. Election Code. It shall be the principles of the Pokagon Band to provide fair, legal, and impartial elections, and to encourage participation by the membership in the electoral process. To this end, Tribal Council shall enact, within sixty (60) calendar days following the vote adopting this Constitution, an Election Code consistent with this Constitution.

- (a) The Election Code shall set forth the procedures for conducting the Band's elections, and shall include provisions for at least the following:
 - (i) Secret balloting;
 - (ii) Absentee voting;
 - (iii) Voter qualifications;
 - (iv) Maintenance of a current voter list;
 - (v) Certification of candidates and nominees;
 - (vi) Run-off elections in the event of a tie vote;
 - (vii) Settling of election disputes;
 - (viii) Procedures for submitting and verifying petitions;
 - (ix) Maintaining polling place(s) which shall be open a minimum of eight (8) hours on election day;
 - (x) The swearing-in of newly elected or appointed officials not more than forty-five (45) calendar days following their election or appointment; and

- (xi) Qualification and supervision of poll workers and other election officials, as may be necessary to aid the Election Board in carrying out its duties under this Constitution.
- (b) The Tribal Council, the Election Board, and/or the Tribal Judiciary shall not have the power to change or establish different qualifications for Tribal Council membership, the Tribal Judiciary, or Election Board membership other than those established in this Constitution.

SECTION 2. Election Board.

- (a) The Band shall maintain an Election Board composed of five (5) members of the Band appointed by Tribal Council.
- (b) Members of the Election Board, on the date of their appointment and throughout their terms, must:
 - (i) Be eligible voters of the Band in accordance with the Election Code and Election Board procedures;
 - (ii) Be at least twenty-five (25) years of age;
 - (iii) Not be incarcerated for any criminal conviction.
 - (iv) Not be presently members of or candidates for Tribal Council, the Tribal Judiciary, the Ethics Board or the Salary Commission; and
 - (v) Not have been convicted within the last ten (10) years of a crime subject to imprisonment for a term of one (1) year or longer, excepting those crimes determined by the Election Board to relate to the furtherance of the Band's tribal sovereignty rights.
- (c) Except as provided in (d) below, Election Board seats shall have four (4) year terms of office, following a staggered pattern established in (d) below.
- (d) The Election Board in existence at the time of the vote adopting this Constitution shall conduct the initial election of Tribal Council under this Constitution. Any vacancies in the existing Election Board shall be promptly filled by Tribal Council appointment as necessary to bring the Election Board to five (5) members. Three (3) Election Board seats with approximate two (2) year terms of office, and two (2) additional Election Board seats with approximate four (4) year terms of office shall be filled by Tribal Council appointment following the initial Tribal Council election.
- (e) Terms of office in (d) above are described as approximate to allow for future terms to begin on February 1 of the appropriate years. The precise

length of these initial terms shall be determined by Tribal Council when the Board members are appointed.

- (f) Election Board members shall be removed from office only pursuant to the procedures of Article XV.
- (g) The Election Board shall select a chairperson from its membership.
- (h) Election Board members shall continue in office until their successors are duly appointed and installed in office, or until their resignation, removal, or death, or until they fail to meet any of the qualifications set out in this Section.

SECTION 3. Duties of the Election Board.

- (a) The Election Board shall conduct and certify the results of all elections of the Band, and carry out the requirements of the Election Code.
- (b) The Election Board shall verify petitions from the membership calling for initiative elections, Tribal Council meetings, and Tribal Membership Meetings. The Election Board shall call and preside over any mandated meetings when a petition is verified pursuant to Article VIII, Section 2.
- (c) Decisions of the Election Board shall be final and conclusive on the Pokagon Band, except as provided in Subsection (d) below and in Article XIV, Subsection 1(a).
- (d) Decisions of the Election Board under this Article may be appealed to the Tribal Judiciary only on the grounds that the Board's decision has been affected by a clear error in the application of tribal election law or federal law, if applicable, or by a conflict of interest or conduct violating the tribal Code of Ethics.

SECTION 4. Voting and Election Procedure.

- (a) Any enrolled member of the Pokagon Band may vote in an election, provided he/she is at least eighteen (18) years of age on the date of that election, and has qualified to vote in accordance with the Election Code.
- (b) The election process shall follow a timetable that allows for a General Election to be conducted on the second Saturday in July each year to maintain the staggered terms mandated by this Constitution.

- (c) A person can be a candidate for only one (1) elective tribal office in any one election.
- (d) Any person who holds an elective tribal office and becomes a certified candidate for another elective tribal office shall be deemed to have resigned from his or her current elective office, which resignation shall be effective as provided in Article XV, Subsection 3(c).
- (e) The candidates for each position receiving the highest number of votes in an election shall win the position.
- (f) All candidates for Councilperson positions shall be listed together in a pool on the election ballot. Voters may cast votes for as many Councilperson positions as are open for election, *provided* that no voter shall cast more than one (1) vote for the same candidate. If the Elders Council makes more than one (1) nomination for a Councilperson seat, the Election Board shall designate one (1) of the open Councilperson seats as the “Elders Council Representative” and shall list the Elders Council nominees for that position separately on the election ballot from the pool of Councilperson candidates described above.
- (g) In all elections and for all elected positions, if only one (1) candidate is certified for a position, then the Election Board shall deem that candidate elected and no election shall be held for that position. Any candidate deemed elected under this Subsection shall be seated at the same Council meeting in which any other winning candidate from that same election is or would be seated.
- (h) All elections specified in other Articles of this Constitution shall be subject to all provisions of this Article, unless otherwise stated.

SECTION 5. Installation of Elected Officials.

- (a) Unless a different term is stated in this Constitution, the term of office for each elective tribal office having a fixed term of years begins at 10:00 a.m., eastern time on the date of the first Regular Meeting of the Tribal Council in August next following the General Election, and ends [at 10:00 a.m., eastern time on the date of the first Regular Meeting of the Tribal Council in August after the prescribed number of years. No elected official, however, may conduct official tribal business or exercise the authority of any tribal office until he or she is duly installed in office.

- (b) No alteration in the time for commencement of the term of an elective tribal office provided in Subsection 5(a) of this Article shall occur, notwithstanding the circumstance that such office may unavoidably be vacant at the commencement of the term. In the event of a vacancy for any reason in an elective tribal office at the time prescribed for the commencement of the term of office, the Tribal Council shall provide by law for another elected tribal official to serve in an acting capacity to carry out the powers and duties of the vacant office until such time as a duly elected and qualified person is willing and able to be installed into such office.
- (c) Every person before assuming the powers and duties of an elective tribal office shall be sworn in and installed into office by a tribal official designated to perform such duties under tribal law and shall take an oath of office prescribed by tribal law.

SECTION 6. Initial Election of Tribal Council Under This Constitution. An election shall be held on all Tribal Council seats within one hundred eighty (180) calendar days following the vote adopting this Constitution. This initial election of Tribal Council members under this Constitution shall be subject to all provisions of this Article, with the exceptions listed below:

- (a) The Election Board shall set the date for the initial election under this Constitution within fifteen (15) calendar days following the vote adopting this Constitution. Thereafter, General Elections shall be conducted the second Saturday of July to maintain the staggered terms mandated by this Constitution.
- (b) The initial election shall implement a staggered pattern of terms for Tribal Council. The Council Chairperson, Secretary, and the two (2) candidates who receive the most votes for Councilperson in the initial election shall serve approximate three (3) year terms of office, *provided* that if an Elders Council Representative is properly nominated and elected in the initial election, the Elders Council Representative and the one (1) Councilperson candidate receiving the most votes shall serve approximate three (3) year terms following the initial election. The Treasurer and three (3) candidates who receive the next highest vote totals for Councilperson in the initial election shall serve approximate two (2) year terms of office. The Vice-Chairperson and the two (2) candidates who receive the next highest vote totals for Councilperson in the initial election shall serve approximate one (1) year terms of office.

- (c) Terms of office are described as approximate to allow the following elections to fall in the month of July pursuant to Subsection 4(b) of this Article. The precise length of these initial terms are to be determined by the Election Board prior to the initial election of Tribal Council under this Constitution.

SECTION 7. Funding. The Tribal Council shall provide such continuous funding to the Election Board to allow it to carry out its duties and responsibilities under this Constitution and the Election Code.

ARTICLE XIV MEMBERSHIP PETITION, INITIATIVE AND REFERENDUM

SECTION 1. Membership Petitions. The actions specified in Article V, Section 1 of this Constitution that may be initiated by petition of the Band's membership shall follow the procedures set forth in this Section, unless a different procedure is provided for a specific action elsewhere in this Constitution.

- (a) A proposed petition must be submitted to the Election Board for review. Within five (5) days of its receipt of the proposed petition, the Election Board may suggest revisions to the submitted language which identify or make clear the specific issue or issues to be presented. The petitioners may or may not accept the suggested revisions. The Election Board shall declare that the proposed petition is approved for gathering signatures of Band members if it determines that the proposal, if approved, would not be inconsistent with this Constitution or with applicable federal law. A decision by the Election Board on the consistency of a proposal with this Constitution or applicable federal law may be appealed to the Tribal Judiciary only on the grounds that the Board's decision has been affected by an error of law. Review by the Tribal Judiciary shall be limited to whether the proposal, on its face, is in conflict with the Constitution or applicable federal law.
- (b) The Election Board must issue its declaration within fifteen (15) calendar days of receiving the proposed petition.
- (c) If the petition is approved for gathering signatures, the Election Board shall, within eight (8) calendar days after the approval, notify the petitioners of its declaration and make available petitions with the petition language on the proper forms to be used for gathering signatures of Band members. A petition requires the signatures of at least five percent (5%) of

the Band's members eighteen (18) years of age and older to move forward, unless a different percentage of signatures is required under this Constitution.

- (d) The petition must be submitted to the Election Board within sixty (60) calendar days after notice that the petition forms are available to the petitioners. The Election Board shall verify the signatures timely submitted on the petition and determine, within fifteen (15) calendar days after submission of the petition, whether the petition has the required percentage of support.

If the Election Board determines the petition does not have the required percentage of support and any time remains within the sixty (60) day period to submit the petition to the Election Board, the petitioners may submit additional signatures, within the original sixty (60) day period, for verification. The Election Board shall verify the signatures timely submitted and determine, within fifteen (15) calendar days after the deadline for submissions, whether the petition has the required percentage of support.

SECTION 2. Initiative. The voters of the Band shall have the power to propose, by initiative, any tribal code, or to repeal or amend any tribal code, exclusive of codes making appropriations, establishing the Tribal budget, or impairing contracts as set forth in Article XX. Voters shall also have the power to propose, by initiative, the recall of any elected tribal official.

- (a) A proposed initiative must be submitted to the Election Board for review under the petition process described in Section 1 of this Article.
- (b) A proposed initiative requires the signatures of at least five percent (5%) of the Band's members eighteen (18) years of age and older.
- (c) If the required number of signatures on the petition is verified, the Election Board shall conduct an election on the initiative no sooner than thirty (30) calendar days and no later than sixty (60) calendar days after verifying the petition. The Election Board may reasonably shorten or lengthen the time line described in this Subsection to permit holding the initiative election at the same time as the Tribal Council election. If, in the judgment of the Election Board, sufficient time does not exist for the Band's membership to become informed about the initiative or for the Election Board to prepare for the election, the initiative election shall be held separately from the Tribal Council election.

- (d) An initiative requires a sixty percent (60%) majority support in an election with at least fifteen percent (15%) of the Band's members eighteen (18) years of age and older casting ballots. Such support shall be binding and conclusive upon the Band. If less than fifteen percent (15%) of the Band's members eighteen (18) years of age and older cast ballots, the initiative is defeated.
- (e) If an initiative is defeated in an election, the same matter cannot again be the subject of an initiative election for at least two (2) years, excepting recall of officials under Article XV, Section 1.
- (f) A law enacted by initiative election may only be amended or repealed by an initiative or referendum, unless Tribal Council action is provided for in the enactment.

SECTION 3. Referendum. The Tribal Council may submit any proposed or previously enacted tribal code for a referendum election.

- (a) A referendum proposal requires the support of at least seven (7) Council members.
- (b) The Tribal Council must submit the proposed referendum to the Election Board for review, in accordance with the same review procedures outlined in Subsection 1(a) of this Article.
- (c) If the referendum is approved by the Election Board to be put to a tribal vote, the Election Board shall conduct an election on the referendum no sooner than thirty (30) calendar days and no later than sixty (60) calendar days after receiving the proposed referendum from the Tribal Council. The Election Board may reasonably shorten or lengthen the time line described in this Subsection to permit holding the referendum election at the same time as the Tribal Council election. If, in the judgment of the Election Board, sufficient time does not exist for the Band's membership to become informed about the referendum or for the Election Board to prepare for the election, the referendum election shall be held separately from the Tribal Council election.
- (d) A referendum requires a majority support in an election with at least fifteen percent (15%) of the Band's members eighteen (18) years of age and older casting ballots. Such support shall be binding and conclusive upon the Band. If less than fifteen percent (15%) of the Band's members eighteen (18) years of age and older cast ballots, the referendum is defeated.

- (e) If a referendum is defeated in an election, the same matter cannot again be the subject of a referendum election for at least two (2) years.
- (f) A law enacted by referendum election may only be amended or repealed by an initiative or referendum, unless Tribal Council action is provided for in the enactment.

SECTION 4. Effective Date. Any initiative or referendum approved in accordance with this Article shall take effect ten (10) calendar days after certification of the results of the election, excepting recall of tribal officials, which shall be effective upon certification of the results of the election.

ARTICLE XV RECALL, REMOVAL, AND VACANCIES

SECTION 1. Recall: Dismissal from Office by Voters of the Band.

- (a) Any elected official of the Pokagon Band, after holding office for one (1) year, may be recalled by the membership through the initiative process in Article XIV.
- (b) An official shall be subject to only one (1) recall election per calendar year.

SECTION 2. Removal: Dismissal from Office Initiated by Tribal Council.

- (a) The Tribal Council may call for the removal of any member of Tribal Council, the Election Board, or the Tribal Judiciary by an affirmative vote of at least eight (8) members of Tribal Council.
- (b) The Tribal Council may call for the removal of a member of the Tribal Council, Election Board, or Tribal Judiciary for any of the following reasons:
 - (i) Persistent failure to perform the duties of office;
 - (ii) Misconduct in office consisting of any knowing violation of tribal law;
 - (iii) Physical or mental disability which prevents the performance of duties;
 - (iv) Ineligibility under the specified qualifications for office;
 - (v) Failure to attend three (3) consecutive meetings without a valid excuse;
 - (vi) For Tribal Judiciary: unethical conduct as defined by such rules of judicial conduct as may be established by tribal law.

- (c) Each call for removal and any subsequent hearing may address only one (1) official.
- (d) Upon the affirmative vote of a call for removal under Subsection (a), Tribal Council may, at its discretion, suspend an official, without loss of pay, until final disposition of the call for removal as provided in this Section.
- (e) Call for removal of Tribal Council, Election Board members, or Tribal Judges shall be subject to a hearing before Tribal Council.
- (f) Grounds for removal must be set forth with specificity by Tribal Council. The Tribal Council shall give priority to any call for removal. The Tribal Council shall schedule a timely hearing on the charges, notifying the official subject to removal of the specific charges, in person or by registered or certified mail sent at least thirty (30) calendar days prior to the hearing.
- (g) The official subject to removal may defend himself/herself at this hearing, with or without the assistance of private legal counsel. Any hearing shall be recorded verbatim in a manner allowing judicial review.
- (h) If Tribal Council, after the hearing and by vote of at least eight (8) members of Tribal Council, finds that the stated grounds for removal of a Tribal Council, Election Board or Tribal Judiciary member exist, it shall order the Tribal Council, Election Board or Tribal Judiciary member removed from office.
- (i) If Tribal Council by vote fails to find that grounds for removal as stated exist, or takes no vote on the proposed removal within thirty (30) calendar days of the completion of the hearing, the removal proceeding shall be concluded, and the official shall remain in office.
- (j) All Tribal Council removal orders shall be in writing, setting forth the facts and conclusions that serve as the basis for the order, and shall be subject to review by the Court of Appeals by petition of the aggrieved official filed in the Court of Appeals within ten (10) calendar days of issuance of the Council's order, *provided* that if the removal order addresses a Judge of the Court of Appeals, the senior Tribal Court Judge shall sit in his or her place for any review of the Tribal Council's removal order. The Court of Appeals may remand the matter to the Tribal Council to remedy any procedural errors found by the Court, but otherwise shall reverse a removal decision only if it is not supported by substantial evidence in the hearing record.

SECTION 3. Vacancies in Tribal Council, the Election Board, the Tribal Judiciary or the Salary Commission.

- (a) The office of any Tribal Council, Election Board, Tribal Judiciary, or Salary Commission member who is recalled, is removed, no longer meets the qualifications for office, or dies shall automatically be deemed to be vacant. Elective tribal offices having a fixed term of office are vacant upon the expiration of that term. The holders of elective tribal offices shall not serve beyond the conclusion of the term of office. Persons appointed to serve in an acting capacity in an elective tribal office shall serve only for the duration of that appointment. In the absence of Tribal Council action to the contrary, the holders of appointed tribal offices may continue to serve after the expiration of their term of office, until a successor is appointed.
- (b) An elected tribal official may resign from elective tribal office at any time. Notice of a resignation from elective tribal office shall be written and shall be deemed to be effective as of the date tendered unless otherwise stated in the notice or in this Constitution. Notices of resignation shall be delivered to the Chairperson and the Secretary of the Tribal Council. Delivery of a notice of resignation to either the Chairperson or the Secretary shall be sufficient in the event of the resignation of the Chairperson or the Secretary.
- (c) The office of any Tribal Council, Election Board, Tribal Judiciary, or Salary Commission member who becomes certified by the Election Board as a candidate for an elective tribal office not presently held by such member shall be deemed to be vacant as of the first Regular Meeting of the Tribal Council next following the General or Special Election involved or forty-five (45) days following the General or Special Election involved, whichever comes first. The certification by the Election Board of an elected tribal official's candidacy for another elective tribal office shall be deemed a notice of resignation by the candidate from the candidate's current elective tribal office, which resignation shall be effective at the time the current elective tribal office becomes vacant.
- (d) A vacancy in the office of Tribal Council Chairperson shall be filled by the eligible voters of the Band in a Special Election for the balance of the unexpired term; *provided* that if the balance of the unexpired term is less than twelve (12) months, then the Tribal Council Vice-Chairperson shall serve as Acting Tribal Council Chairperson for the balance of the unexpired term.

- (i) If the Tribal Council Vice-Chairperson is unable to serve as Acting Tribal Council Chairperson, then the Tribal Council Treasurer shall act in that capacity. In the event the Tribal Council Vice-Chairperson and the Tribal Council Treasurer are both unable to serve as Acting Tribal Council Chairperson, then the Tribal Council Secretary shall act in that capacity.
 - (ii) If the Tribal Council Vice-Chairperson, the Tribal Council Treasurer, and Tribal Council Secretary are all unable to serve as Acting Tribal Council Chairperson, then the Tribal Councilpersons shall elect from their membership an Acting Tribal Council Chairperson.
- (e) Any vacancy in the office of Tribal Council Vice-Chairperson, Tribal Council Treasurer, or Tribal Council Secretary shall be filled by Tribal Council appointment of a seated Tribal Councilperson originally elected by the membership. An official appointed to the office of Vice-Chairperson, Treasurer or Secretary shall serve in an acting capacity only.
- (f) Any other vacancies in the Tribal Council shall be filled in the following manner:
- (i) Vacancies created when the holder of any Tribal Council position becomes a candidate for another elective tribal office under Article XIII, Subsection 4(d) may be filled in the same General or Special Election filling the other office.
 - (ii) Except as provided in Subsection (f)(i) of this Section, the first five (5) vacancies on the Tribal Council occurring between regularly scheduled elections for Tribal Council members shall be filled by Tribal Council appointment.
 - (iii) Further vacancies occurring between regularly scheduled elections of the Tribal Council members shall be filled by the eligible voters of the Band, in an election conducted in accordance with the provisions of this Constitution and the Election Code.
- (g) For all Council vacancies required to be filled by Tribal Council appointment, Tribal Council shall make a good faith effort to fill the vacancies within forty-five (45) calendar days of the vacancy, or as soon thereafter as possible, in a manner prescribed by Tribal Council procedures. The Council may choose to waive its authority to make an appointment to a vacant Council seat and refer the vacancy to be filled in a Special Election,

if the Council has been unable to fill the vacancy by appointment or if a Special Election has been scheduled to fill one or more vacancies pursuant to Subsection 3(f)(iii) above.

- (h) The official who is appointed to fill a Council vacancy pursuant to Subsections 3 (e) or (f)(i) above shall serve in that position only until the next General Election for Tribal Council. The balance of any unexpired term in the vacated position shall then be filled at the next General Election of Council Members in accordance with this Constitution, and the patterns of staggered terms maintained. A Council Member appointed in an acting capacity to the position of Chairperson, Vice-Chairperson, Treasurer, or Secretary shall resume his/her original position if the term for that position extends beyond the next General Election of Council Members.
- (i) Any Special Election to fill a vacancy in the Tribal Council shall fill the balance of the unexpired term in the vacant position.
- (j) Vacancies in the Election Board or Judgeships of the Tribal Judiciary shall be filled by Tribal Council appointment for the balance of the unexpired term. Tribal Council shall make a good faith effort to fill the vacancies within forty-five (45) calendar days of the vacancy, or as soon thereafter as possible, in a manner prescribed by Tribal Council Procedures.
- (k) Any Tribal Council, Election Board, or Tribal Judiciary member taking office under the provisions of this Section shall be subject to all provisions of this Constitution and of tribal law applicable to tribal officials and to their particular office.

ARTICLE XVI CONSTITUTIONAL RIGHTS

The Pokagon Band, in exercising the 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 of the right of the people to assemble peaceably and to petition for a redress of grievances;
- (b) 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 person or thing to be seized;

- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself/herself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him/her, to have compulsory process for obtaining witnesses in his/her favor, and at his/her own expense to have the assistance of counsel for his/her defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense a penalty or punishment greater than allowed by law;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (i) Pass any legislation, directed against a designated person, pronouncing him/her guilty of an alleged crime, without trial or conviction;
- (j) Pass any *ex post facto* law, which retroactively changes the legality or consequences of a fact or action after the occurrence of that fact or commission of the act;
- (k) Discriminate against any person on the basis of sex, age (because he/she is elderly), physical disability, or sexual orientation;
- (l) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons; or
- (m) Make or enforce any law unreasonably infringing the right of a person to keep and bear arms.

The enumeration of rights in this Constitution shall not be construed to deny or abridge other rights retained by Band members.

ARTICLE XVII

CONFLICT OF INTEREST AND CODE OF ETHICS

SECTION 1. Personal Financial Interest. In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve a personal financial interest. The voting of Tribal Council members, however, on recommendations made by the Salary Commission for Tribal Council compensation levels under Article X, Section 7 of this Constitution shall not be considered a violation of this provision.

SECTION 2. Employment Prohibitions. No Tribal Council member may be an employee of the Band. The receipt by a Tribal Council member of compensation under Article X, Section 7 of this Constitution shall not classify that Council member as an employee of the Band.

SECTION 3. Code of Ethics. The Tribal Council shall establish, by legislation, a Code of Ethics to cover the conduct and activities of Tribal Council members, Tribal Judges, employees, Commissioners, Board members, and Committee members. This code shall include, but not be limited to, the following:

- (a) The establishment of an Ethics Board;
- (b) Financial disclosure and financial conflict-of-interest;
- (c) The acceptance of gifts;
- (d) A definition for and policy on nepotism; and
- (e) A definition of “immediate family member” as used in this Constitution.

ARTICLE XVIII SOVEREIGN IMMUNITY

SECTION 1. Tribal Immunity. The Pokagon Band, as a sovereign Indian Nation, is immune from suit in all forums except to the extent that immunity is expressly waived as provided in this Article.

SECTION 2. Waivers of Immunity. The Tribal Council may waive the Band’s immunity from suit in furtherance of a governmental or a tribal business purpose. Such a waiver must be in writing and must be approved by the affirmative vote of at least eight (8) Tribal Council members. The Tribal Council may delegate its authority under this Section to the governing bodies of subordinate tribal entities, *provided* that recourse is limited to assets of the entity.

SECTION 3. Personal Suits Against the Pokagon Band in Tribal Court.

- (a) The Pokagon Band and Tribal Council members, in their official capacities, shall not be immune from suit brought by a Band member in the Tribal Judiciary to declare the legal rights and duties established by this Constitution and by the laws of the Band.
- (b) The Tribal Council shall, by legislation, waive the immunity of the Pokagon Band from suit in the Tribal Judiciary by a member of the Band for compensatory damages when such a waiver would promote the best interests of the Band or the interests of justice.
- (c) If the individual bringing the suit prevails on the merits in the Tribal Judiciary, or if settlement occurs which accomplishes the same, the cost of bringing the suit may be charged to the Band, if so ordered by the court.
- (d) Nothing in this Section waives the Band's immunity from suit in any forum other than the Tribal Judiciary.

ARTICLE XIX SEVERABILITY

If any provision(s) of this Constitution shall be declared invalid by a court of competent jurisdiction, the invalid provision(s) shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XX IMPAIRMENT OF CONTRACTS

The Pokagon Band shall not adopt any law, code, or resolution, either through any act of Tribal Council or through the membership, impairing the obligation of any written and properly executed contract of the Band or of any agent, corporation, or member of the Band. Any law, code, or resolution which, by its terms or in effect, would impair the availability of any judicial remedy in such contract shall be considered an impairment of contract.

ARTICLE XXI CONSTITUTIONAL REVIEW

At least every ten (10) years from the effective date of this Constitution, Tribal Council shall review the provisions of this Constitution to ensure that they continue to meet the needs of the Pokagon Band.

ARTICLE XXII
AMENDMENTS

An amendment to this Constitution shall be effective upon the two-thirds (2/3) majority vote of the voters of the Pokagon Band of Potawatomi Indians voting in an election called for that purpose; *provided* that:

- (a) if voter registration is required, at least one-third (1/3) of the Band's registered voters cast ballots, or
- (b) if voter registration is not required, at least one-sixth (1/6) of the Band's members eighteen (18) years of age and older cast ballots.

Proposed amendments shall be submitted to a membership vote, either by resolution of the Tribal Council or by valid petition.

ARTICLE XXIII
SAVINGS CLAUSE

SECTION 1. Prior Enactments. All enactments of the Band adopted before the effective date of this Constitution shall continue in effect to the extent that they are consistent with this Constitution.

SECTION 2. Governing Body Upon Adoption. As according to Public Law 103-323, 108 Stat. 2152, 25 U.S.C. 1300j-4(b)(2), the Tribal Council in place at the time this Constitution is adopted shall continue to act as the governing body of the Band until the first Tribal Council election under this Constitution is held and the new Tribal Council duly installed.

ARTICLE XXIV
ADOPTION OF THE CONSTITUTION

This Constitution shall be effective upon the affirmative vote of a majority of the registered voters of the Pokagon Band of Potawatomi Indians voting in an election called for that purpose, *provided* that at least one-third (1/3) of those registered to vote cast ballots in that election.

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**CONSTITUTION OF THE POKAGON BAND OF POTAWATOMI INDIANS
HISTORY OF ADOPTION, APPROVAL, AND AMENDMENTS**

ADOPTION

The Constitution of the Pokagon Band of Potawatomi Indians was adopted on November 1, 2005 by a vote of 425 for and 21 against in an election in which at least thirty percent (30%) of the 659 citizens who were registered and entitled to vote cast ballots. Effective December 16, 2005, the Director, Bureau of Indian Affairs, U.S. Department of Interior approved the Constitution of the Pokagon Band of Potawatomi Indians pursuant to Section 5 of the Act to Restore Federal Services to the Pokagon Band of Potawatomi Indians (108 Stat. 2153, dated September 21, 1994; 25 U.S.C. § 1300j *et seq.*) and Section 16 of the Indian Reorganization Act (48 Stat. 984, June 18, 1934, 25 U.S.C. 476).

FIRST AMENDMENT

In accordance with Article XXII of the Constitution of the Pokagon Band of Potawatomi Indians, the First Amendment to the Constitution was adopted on September 18, 2010 by a vote of 441 for and 51 against in an election in which at least one third of the 1,305 citizens who were registered and entitled to vote cast ballots. The First Amendment amended the membership provisions in Article V, Section 2 of the Constitution to limit future enrollment with the Band by requiring that all requirements of the enrollment process under Pokagon Band law be completed prior to an applicant's twenty-first (21st) birthday except for persons that complete all such enrollment requirements prior to October 31, 2010 or persons who were legally adopted by a non-Pokagon Band family.