

# **Constitution of the Fort McDowell Yavapai Nation 1999**

## **PREAMBLE**

We, the people of the Fort McDowell Yavapai Nation ("Nation"), formerly known as the Fort McDowell Mohave-Apache Community, pursuant to our inherent sovereignty and in order to improve, promote, and maintain our culture, customs and independence of our people; to provide for the continued self-government of our people; to encourage the economic well-being of our people; to promote the rights of our people and their common welfare; and to preserve, secure and exercise all the inherent rights and powers of a sovereign Indian Nation, do ordain and establish this Constitution for the Fort McDowell Yavapai Nation which shall repeal the Constitution and Bylaws of the Fort McDowell Mohave Apache Community approved by the Secretary of the Interior on November 24, 1936.

## **ARTICLE I - TERRITORY**

The territory of the Fort McDowell Yavapai Nation shall include all lands within the exterior boundaries of the Fort McDowell Reservation established pursuant to the Executive Order of September 15, 1903 and the Act of August 23, 1904 (28 Stat. 491), any and all lands held by the Nation, and to any additional lands acquired by the Nation, or by the United States for the benefit of the Nation, except where expressly prohibited by Federal law.

## **ARTICLE II - JURISDICTION**

The jurisdiction of the Fort McDowell Yavapai Nation shall extend over all persons, property, lands, water, air space, resources and all activities occurring within the boundaries of the reservation or on other lands within the jurisdiction of the Nation notwithstanding the issuance of any right-of-way, except as the Nation's jurisdiction is limited by Federal law. This Article shall not be construed or interpreted in any way to limit the jurisdiction of the Nation.

## **ARTICLE III - MEMBERSHIP**

Section 1. All persons whose names appear on the Fort McDowell Indian Reservation census roll of 1934 shall be members of the Nation.

Section 2. All descendants of members of the 1934 census roll shall be entitled to membership in the Nation if they are at least one-quarter (1/4) degree Fort McDowell Yavapai blood and their name does not appear on another Indian tribal roll.

Section 3. Every person, duly enrolled pursuant to the 1936 Fort McDowell Mohave-Apache Community Constitution and By-laws as of the date of adoption of this Constitution is entitled to membership and is hereby an enrolled member of the Fort McDowell Yavapai Nation.

Section 4. Enrollment Ordinance. The Tribal Council shall enact an Enrollment Ordinance within six months of the adoption of this Constitution. The Tribal Council shall maintain a current roll of the members of the Fort McDowell Yavapai Nation.

Section 5. Membership Determination. The Fort McDowell Tribal Council shall have final authority and exclusive jurisdiction over membership claims upon the exhaustion of all administrative remedies. Administrative remedies will be determined by the Enrollment Ordinance.

## **ARTICLE IV - TRIBAL GOVERNMENT**

Section 1. The Fort McDowell Yavapai Nation government shall consist of: the Legislative and Judicial branches. No branch shall exercise powers reserved to another branch. This Constitution shall be the supreme law of the Fort McDowell Yavapai Nation.

Section 2. The Legislative power and Executive authority of the Fort McDowell Yavapai Nation shall be vested in the Legislative branch.

## **ARTICLE V - LEGISLATIVE BRANCH**

Section 1. Governing Body. The governing body of the Fort McDowell Yavapai Nation shall be the Fort McDowell Tribal Council and shall consist of the President, Vice President, Treasurer; Secretary and two Council Members, all to be chosen by popular vote of the voters of the Fort McDowell Yavapai Nation.

Section 2. President. The President shall be elected to the Office of the President by the voters of the Nation. The President shall preside over the Tribal Council. The President, or any other member of the Fort McDowell Tribal Council presiding over the Tribal Council in the absence of the President, shall vote in Tribal Council meetings only in the case: of a tie, except as otherwise provided in Article VI I, Section 11 and Article IX, Section 1 of this Constitution.

Section 3. Vice-president. The Vice-president shall be elected to the Office of the vice-president by the voters of the Nation. The Vice-president shall preside over the Tribal Council in the absence of the President and shall perform all duties of the President during such periods as the office is vacant. The Vice-president shall perform such duties of the President, subject to supervision of the President, as the President may from time to time delegate. The Vice-president shall be a full voting participant on the Tribal Council except when presiding over the Tribal Council.

Section 4. Treasurer. The Treasurer shall be elected to the Office of Treasurer by the voters of the Nation and shall be a voting member of the Tribal Council. The Treasurer shall prepare annual financial reports and maintain and have custody of all financial records of the Nation. The Treasurer shall provide access to enrolled members of the Fort McDowell Yavapai Nation to inspect the annual budget of the Nation during normal business hours. 2

Section 5. Secretary. The Secretary shall be elected to the Office of Secretary by the voters of the Nation, but shall not be a voting member of the Tribal Council. The Secretary shall prepare and maintain the minutes of all Tribal Council meetings and all records of the Nation, and perform such other duties as the Tribal Council may prescribe.

Section 6. Qualifications For The President, Vice-president and Council Members. A person shall be eligible for the Office of President, Vice-president, Treasurer, Secretary or Council Member if such person meets all the following requirements: (1) is an enrolled member of the Fort McDowell Yavapai Nation; and (2) has continuously physically resided within the Fort McDowell Yavapai Nation for at least one year immediately preceding the election date; and (3) is at least 25 years of age; and (4) has a high school diploma or GED; and (5) has no felony convictions or any misdemeanor convictions involving moral turpitude. The foregoing qualifications shall not be cause to remove any Council Member serving at the time of the enactment of this Constitution.

Section 7. Term of Office. The President, Vice-president, Treasurer, Secretary and members of the Tribal Council shall be elected for terms of four years. If for any reason any such officer fails to complete the full term, the person filling the vacancy for the office shall complete such term of office pursuant to Article X.

Section 8. Tribal Council Members Not to Hold Other Employment or Offices.

A. No member shall hold other employment while serving on the Tribal Council. No member of the Tribal Council shall be an employee of or hold another constitutional office in the Fort McDowell Yavapai Nation government. No member of the Tribal Council shall be employed in any branch of the United States Government nor shall any member of the Tribal Council hold any elective office in any other governmental body. This section shall not prohibit a Council Member from serving as the Council's representative on boards, associations or committees.

B. Upon written notice by the Tribal Council to a member of the Tribal Council or the Secretary who has violated this Section 8, the affected person shall have 14 days to relinquish such employment or elective office prohibited by this section. If the affected person fails to relinquish such employment, such elective office shall become vacant and an election shall be held pursuant to Article X. This section 8 shall remain in effect so I( as the Tribal Council is receiving a full salary.

Section 9. Compensation. Salary increases for the President, Vice-president, Treasurer, Secretary and all Council Members shall be approved by a majority of the eligible voters of the Nation. This section shall not apply to standard cost of living increases which are afforded to all other employees of the Nation for that particular year.

Section 10. Other Officers. The Tribal Council may create other offices, and prescribe the qualifications and duties thereof and the manner in which they shall be filled. 3

Section 11. Meetings of Tribal Council.

A. The Tribal Council shall hold its regular meeting on the first Tuesday of each month, unless special circumstances arise. Special meetings shall be held at the request of the President or at the request of three members of the Tribal Council, notice to be given to all members of the council at least three days before such meeting. In case of an emergency, the three day notice shall be suspended, provided that all members of the Tribal Council are afforded reasonable notice, and further that at least three of the Council Members agree to the meeting.

B. A majority of the members of the Tribal Council shall constitute a quorum for the transaction of business. In the absence of the President and Vice President from any regular or special meeting, the Tribal Council members shall choose a presiding officer for such meeting from among the members of the Tribal Council present.

C. There shall be no proxy voting by the Tribal Council.

D. No member may vote on an issue wherein such Council Member has a financial or personal interest, unless approved by a majority of the remaining members. Any Tribal Council vote, where a member of the Tribal Council had a financial or personal conflict of interest, that was not approved by a majority of the remaining Tribal Council, shall be voidable.

E. Tribal Council meetings shall be open to members of the Nation, except when the Tribal Council calls for an Executive Session by a majority vote of the quorum present. Executive Session meetings shall be closed. The Tribal Council shall adopt an open meetings ordinance.

Section 12. Attendance Required. If a member of the Council fails to attend three successive regular or special meetings of the Tribal Council, the Council office held by that member shall be vacant at the adjournment of the next succeeding regular council meeting unless that member is excused by a majority of the Council or is absent because of illness. At any time prior to the time the office becomes vacant, the Tribal Council may determine that the member's absence was due to reasons satisfactory to the Tribal Council, then the Council office will not become vacant.

Section 13. Powers of the Legislature. The Tribal Council, the designated Legislative body, shall have authority to exercise any and all powers inherent as a sovereign Indian Nation and those powers delegated to or hereafter vested in the Fort McDowell Yavapai Nation, except where expressly prohibited by Federal law and this Constitution. The Tribal Council's powers shall include but are not limited to the following: 4

A. Powers:

1. To regulate its own procedures; to appoint committees, advisors and clerks; to provide further safekeeping of its records; to establish and disestablish departments and offices of the tribal government; to prescribe the functions, powers, procedures, qualifications and duties of its personnel;

2. To govern the civil and criminal conduct of persons within the jurisdiction of the Nation;

3. To enact and enforce ordinances regulating the following: civil actions, crimes, law enforcement, gaming, zoning, business, signs, land use, environmental quality, housing development and improvement, uniform building codes and enforcement, the sale and use of tobacco and alcoholic beverages, protection of minors and mental incompetents, including the appointment of guardians, custodial care and adoptions;
4. To establish law enforcement agencies;
5. To protect and regulate the public health, safety, and morals of the Nation;
6. To provide for the public welfare and particularly the welfare and protection of children, the poor, disabled and aged;
7. To regulate the domestic relations of persons within the jurisdiction of the Nation;
8. To prescribe rules of inheritance and enact laws to provide for the administration of probate estates
9. To regulate hunting and fishing;
10. To regulate livestock and animal health;
11. To prescribe and regulate safe standards for housing, buildings and structures;
12. To administer, protect and preserve historic and prehistoric arts, crafts, sites and other items;
13. To authorize, charter and regulate voluntary associations, economic enterprises and corporations for business or charitable purposes;
14. To remove and exclude from the territory of the Fort McDowell Yavapai Nation, nonmembers who violate tribal laws or ordinances, or whose presence is found detrimental to the peace, health or morals of the Fort McDowell Yavapai Nation;
15. To consult, negotiate, contract, conclude and perform agreements with Federal, state, local governments and Indian tribes, as well as any person, association, partnership, corporation, government or other private entity on behalf of the Fort McDowell Yavapai Nation;
16. To employ legal counsel consistent with the requirements of Federal law;
17. To prevent the sale, lease, disposition, or encumbrance of lands and interests in lands, without the consent of the Tribal Council;
18. To lease and otherwise grant to private persons, entities and public bodies the right to use tribal lands consistent with the requirements of tribal and Federal laws;

19. To enter into agreements concerning the use, exploration, development and extraction of the natural and mineral resources;

20. To acquire and/or convey lands or other property by gift, escheat, will, exchange, purchase or sale; and to acquire lands or other property needed for public purposes by negotiation or condemnation;

21. To manage the lands, natural resources and other public property of the Nation;

22. To regulate use and disposition of private property within its territory;

23. To enact an annual budget for the various and particular functions of the tribal government;

24. To enact and levy taxes, duties, fees and assessments on persons, entities, transactions and property; and

25. To borrow money or loan money for public purposes and to secure the repayment thereof.

B. To Take Necessary Action To Exercise Its Powers.

1. To enact laws, ordinances; resolutions and take such actions as shall be necessary or incidental to the exercise of its legislative powers; and

2. Take any and all other actions necessary and proper for the exercise of the foregoing powers and duties, including those powers and duties not enumerated above, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribal Council through the Nation's inherent sovereignty or through Federal law.

## **ARTICLE VI - ELECTIONS AND VOTING**

Section 1. Election Ordinances. The Tribal Council shall enact ordinances to prescribe elections, and to provide for the appointment of independent Election Board officials as are necessary to impartially and fairly supervise elections conducted under this Constitution prior to the first regular scheduled election pursuant to this Constitution. The election ordinance shall include, among other things, tie-votes, voter qualifications, write-in ballots, absentee voting, secret ballots and the Election Board. Appointments to the Election Board shall be for a specified term as established by ordinance. Once appointed, the Tribal Council may only remove an Election Board official for good cause, as defined in the Election Ordinance.

Section 2. Elections.

A. Regular Elections are the regularly scheduled elections for elected offices pursuant to this Constitution.

B. Special Elections are any elections other than a Regular Election, including but not limited to: Article VI, Section 2(D); Article IX, Section 2; Article X; and Article XI.

C. Elections for President, Vice President, Treasurer, Secretary and Council Members shall be held on the second Tuesday in January in even numbered years. The candidate with the most votes for that specific office, certified as elected by the Election Board, shall be installed into office the second Tuesday in February. All elected officers shall hold office until their successors have been elected and installed.

D. The regular term of office shall be four-year terms for all elected officers. The first election under this Constitution shall be held in January 2000. The President, Treasurer, and one Council Member shall be elected for regular four-year terms and the terms of those offices will thereafter be four-years. The Vice-president, Secretary, and one Council Member shall be elected for two-year terms, expiring in January 2002. The Council Member receiving the most votes in this election will serve the four-year term. The regular election for the Vice-president, one Council Member, and the Secretary will begin in January 2002 and the terms of office will thereafter be four years.

Section 3. Candidates for President, Vice-president, Treasurer, Secretary, and Council Members. A candidate for President, Vice-president, Treasurer, Secretary and Council Members shall be required to obtain signatures from qualified voters, the number of signatures required and the procedures to be established by ordinance for a candidate to be placed on the election ballot. The signatures shall be submitted to the Election Board for verification.

Section 4. Voter Qualification. Any enrolled member of the Fort McDowell Yavapai Nation, 7 who is at least 21 years of age on the date of the election and meets any other voting ordinance requirements may vote in any tribal election.

Section 5. Absentee Voting. The Tribal Council shall enact ordinances to provide uniform and standard forms for voting by absentee ballot so as to allow persons to vote who are otherwise qualified and who cannot be physically present at the Fort McDowell Yavapai Nation on the date of any election.

Section 6. Secret Ballot. All elections within the Fort McDowell Yavapai Nation shall be conducted by secret written ballot.

## **ARTICLE VII - JUDICIARY**

Section 1. The Judicial Department. The judicial power of the Fort McDowell Yavapai Nation shall be vested in the Fort McDowell Yavapai Judiciary which shall consist of a Trial Court and Supreme Court and such other lower courts or lower alternative dispute resolution forums as are deemed necessary by the Tribal Council.

Section 2. Jurisdiction of the Court.

A. The Judiciary shall exercise jurisdiction over all cases and controversies within the jurisdiction of the Nation, in law and equity, whether civil or criminal in nature, that arise under the Constitution, laws, customs, or traditions of the Nation, by virtue of the Nation's inherent sovereignty, or which is vested in the Judiciary by Tribal or Federal law.

B. The maternity or paternity of an applicant for enrollment shall be decided exclusively by the Judiciary and the decision of the Judiciary shall be final for membership purposes.

Section 3. Power of the Courts. The Judiciary shall have the power to:

A. interpret, construe and apply this Constitution and the laws and customs of, or applicable to, the Fort McDowell Yavapai Nation;

B. declare the laws of the fort McDowell Yavapai Nation void if such laws are inconsistent with this Constitution;

C. issue injunctions, attachments, writs of mandamus, quo warrant, review, certiorari and prohibition, and writs of habeas corpus upon petition by, or on behalf of, any person held in actual custody; and

D. establish court rules and procedures for the Judiciary, except that the Tribal Council may by ordinance modify such procedures consistent with this Constitution. 8

Section 4. Composition of the Trial Court. The Fort McDowell Trial Court shall be composed of one Chief Judge and other Associate Judges as may be determined by the Tribal Council.

Section 5. Appointment of Judges. The Chief Judge and Associate Judge(s) shall be appointed by a majority of the Tribal Council. Should a vacancy occur through death, resignation, or otherwise, for the position of Chief Judge or Associate Judge(s), the Tribal Council shall appoint a person or persons to fill such vacancy or vacancies.

Section 6. Term of Office. The Chief Judge and other Associate Judge(s) shall hold office for a period of two years, unless sooner removed under section 11, or by reason of abandonment of the office; however, the Chief Judge or Associate Judge(s) shall be eligible for re-appointment

Section 7. Supreme Court. The Fort McDowell Yavapai Nation Supreme Court shall consist of three Judges appointed by the Tribal Council. Supreme Court Judges shall serve four-year terms. Initially, two Judges shall be appointed to four-year terms and one Judge shall be appointed for a two-year term. At the end of the two-year term, a Judge shall be appointed for a four-year term. The Supreme Court Judges shall be eligible for reappointment. No Judge shall sit on a Supreme Court proceeding if he presided over -the original proceedings or if disqualified under Article VII, Section 10.

Section 8. Qualification of Judges. The qualifications for Judges shall be established by ordinance enacted by the Tribal Council, but no additional requirements may be added during the tenure of a Judge already in office, unless the additions or changes exempt the present Judge(s) during their term.

Section 9. Compensation. The Judge(s) shall receive for their services reasonable compensation established by the Tribal Council. The Tribal Council shall not diminish the compensation of a Judge during his term in office.

Section 10. Disqualification to Act. No Judge shall preside in any case wherein he has any direct interest or wherein any party is a relative by past or present marriage or blood. The Tribal Council may establish by ordinance the scope and limitations of this section.

Section 11. Removal of Judges:

A. The Tribal Council may suspend, dismiss or remove any Judge of the Trial or Supreme Court by a unanimous vote of all five members of the Tribal Council. 1 The presiding officer of the Tribal Council shall cast a vote relative to the suspension, dismissal or removal. A Judge shall be removed for any of the following reasons:

1. conviction of a felony in any Federal, state or tribal court;
2. conviction in any court of bribery, embezzlement, extortion, fraud, forgery, perjury, theft, any alcohol related or drug related driving offense, contributing to the delinquency or dependency of a minor, or any other crime of moral turpitude;
3. substantial and documented nonfeasance, misfeasance, or malfeasance with regard to official duties.

B. A Judge shall be given notice of the charges and fair opportunity to reply to any and all charges for which he may be suspended, dismissed or removed from judicial office.

C. A Judge suspended, dismissed or removed under Article VII, Section 11 (A) may appeal directly to the Supreme Court which shall have jurisdiction over such matters. The Supreme Court decision shall be final.

Section 12. Right to Appeal. Any party may appeal a verdict or judgment of the Trial Court to the Supreme Court in accordance with, and subject to ordinance establishing the Rules of Appellate Procedure. The Supreme Court's decision shall be final.

## **ARTICLE VIII - BILL OF RIGHTS**

Section 1. The Fort McDowell Yavapai Nation in exercising its powers of self-governance shall not:

A. Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition for 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.

E. Take any private property for public use without just compensation.

F. Deny to the accused 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, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense.

G. Require excessive bail, impose excessive fines, inflict cruel and unusual 10 punishment, and in no event impose for conviction of one offense, any penalty or punishment that is expressly prohibited by Federal 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 bill of attainder or ex post facto law.

J. Deny to any person accused of any offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

## **ARTICLE IX - REMOVAL AND RECALL FROM OFFICE**

### Section 1. Removal.

A. Causes for removal: The office of any elected official of the Fort McDowell Yavapai Nation shall be forfeited and declared vacant if such official, during such officer's term of office, is:

1. Convicted of any felony or a misdemeanor involving moral turpitude and no appeal is pending; or
2. Fails to physically reside within the Nation during his term of office; or
3. Is found guilty by the Tribal Council of neglect of duty, malfeasance in office, or misconduct affecting the dignity and integrity of the tribal government.

### B. Hearing.

1. An elected official shall be removed from office by a unanimous vote of the remaining members of the Tribal Council after a hearing before the Tribal Council. Five days before such hearing a written statement of the charges shall be served by the Tribal Council on such person and at that hearing an opportunity to answer such charges shall be allowed.
2. All remaining members of the Tribal Council must be present during the vote to remove any Council Member. For the purpose of this section, the presiding officer of the Tribal Council shall cast a vote. The person subject to removal shall not cast a vote.

3. No more than two elected officials may be recalled at a time.
4. No member of the Tribal Council may vote on the removal wherein such member has been charged with the same offense.

#### Section 2. Recall.

A. The Election-Board shall hold a Special Election to recall an elected official upon the filing with the Election Board of an official recall petition form, demanding the recall of any elected officer, signed by at least 40 percent of the total qualified voters of the Nation, provided that the office held by such person shall not be subject to election at a regular general election within 90 days of the date the recall petition is filed.

1. Such election shall be called and held between 20 and 30 days from the date of the filing of the petition.
2. No Council Member or other elected official shall be recalled unless a majority of the qualified voters voting in the recall election vote in favor of the recall, and at least 40 percent of the voters of the Nation vote in the recall election.

3. No more than two elected officials may be recalled at a time.

B. Every official recall petition must contain a clear and concise statement of the grounds for the recall.

C. Any recalled official shall not be eligible for elected office for a period of eight years after their recall from office.

### **ARTICLE X - VACANCIES**

Section 1. Tribal Council. If for any reason, any office of the Tribal Council or the Secretary becomes vacant, the Election Board shall within 30 days call and hold a Special Election for a person to serve the unexpired term of the vacant position. If said vacancy occurs within 90 days of the next general election, the vacant office shall be filled at the next general election. Incumbent member(s) of the Tribal Council may run for the vacant seat, provided such member resigns their current office.

Section 2. Vacancy of Both Offices. If the offices of both the President and Vice President are vacant under the conditions get out in Sections 1 of this article, the Tribal Council shall within 24 hours appoint one of its members to serve as acting President until the offices of the President and Vice President shall have been filled by election as provided above for the balance of the term(s).

### **ARTICLE XI - INITIATIVE AND REFERENDUM**

Section 1. Initiative.

A. Petition and Election: Upon receipt by the Election Board of a written petition signed by not less than 30 percent of the total number of qualified voters of the Fort McDowell Yavapai Nation and calling for a vote to consider the enactment of any ordinance or resolution, or other official action, Election Board shall hold a Special Election to consider the enactment of such ordinance or resolution, or other official action. The election shall take place between 30 days and 60 days after receipt of the petition by the Election Board.

B. Required Votes for Passage: If a majority of the voters voting in the Special Election are in favor of the enactment or repeal of such an ordinance or resolution, provided that at least 30 percent of the qualified voters vote in such an election, the ordinance or resolution shall be enacted or repealed. No action undertaken by this procedure shall be overturned by the Tribal Council. .

C. Contractual Obligations: No petition shall be effective if its enactment would impair the obligations of any contract previously authorized by an ordinance or resolution of the Tribal Council, unless such petition is submitted to the Election Board within 30 days of said obligation.

Section 2. Referendum. The Tribal Council may refer to the voters of the Nation proposals for the enactment of ordinances or resolutions which shall be enacted only after the approval by a majority of the voters who vote in such an election, provided that at least 30 percent of the qualified voters vote in such election.

## **ARTICLE XII - AMENDMENTS**

This Constitution may be amended by a majority vote of the voters of the Fort McDowell Yavapai Nation voting in an election called for that purpose by the Secretary of the Interior, provided that at least 30 percent of those who in accordance with Secretarial regulations shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior or by operation of law. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of the Tribal Council or upon receipt of a petition signed by not less than 30 percent of the voters.

## **ARTICLE XIII - ADOPTION OF CONSTITUTION**

This Constitution, when adopted by a majority vote of the voters of the Fort McDowell Yavapai Nation voting at a special election authorized by the Secretary of the Interior in which at least 30 percent of those registered in accordance with Secretarial regulations to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and, if approved by the Secretary of the Interior or by operation of law, shall be effective from the date of such approval. 13

## **ARTICLE XIV - REPEAL OF PREVIOUS CONSTITUTION AND SAVINGS CLAUSE**

Section 1. The Constitution and Bylaws of the Fort McDowell Mohave-Apache Community approved by the Secretary of the Interior on November 24, 1936, shall be considered superseded upon ratification and approval of this Constitution.

Section 2. All prior laws, ordinances and resolutions enacted pursuant to the 1936 Fort McDowell Mohave-Apache Community Constitution shall remain in full force and effect to the extent that they are not inconsistent with this Constitution until such time as they might be duly rescinded or repealed pursuant to the provisions of this Constitution.

## **ARTICLE XV - SOVEREIGN IMMUNITY**

Section 1. The Fort McDowell Yavapai Indian Nation possesses sovereign immunity. The Nation's sovereign immunity extends to the Nation, the Nation's officers, enterprises, departments, and employees except as prohibited by this Constitution. Except as expressly provided herein, nothing in this Constitution shall be construed to effect a waiver of the Nation's sovereign immunity.

Section 2. The Nation's immunity is waived for these purposes:

A. Any duly enrolled member of the Fort McDowell Yavapai Nation may bring an action exclusively in the Fort McDowell Yavapai Judiciary against the Tribe or Tribal Council to enforce the terms of this Constitution for equitable and injunctive relief, but this section (2)(A) shall not be deemed a waiver of sovereign immunity for purposes of any monetary damages against the Nation.

B. The Tribal Council may authorize a waiver of sovereign immunity, but only in writing and in clear and unequivocal language.

## **CERTIFICATE OF RESULTS**

Pursuant to a Secretarial election authorized by the Deputy Commissioner of Indian Affairs on June 18, 1999, the Constitution of the Fort McDowell Yavapai Nation was submitted to the qualified voters of the Fort McDowell Mohave - Apache Indian Community and on October 19, 1999, was duly adopted/rejected by a vote of 69 for, and 29 against, and 1, cast ballots found spoiled or mutilated, in an election in which at least 30 percent of the 130 entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

## **CERTIFICATE OF APPROVAL**

I, Hilda Manuel, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984) as amended, and delegated to me, do hereby approve the Constitution of the Fort McDowell Yavapai Nation. This Constitution is effective as of this date, PROVIDED, That nothing contained in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Deputy Commissioner of Indian Affairs  
Washington, DC

Date: 11-12-99