

CONSTITUTION of the TONTO APACHE TRIBE

We, The people of the Tonto Apache Tribe, adopt this Constitution in order to organize and establish ourselves under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 934, as amended) to secure the privileges and powers granted by Federal Law, and to exercise our sovereign and inherent powers to provide for an orderly and effective government of our affairs.

ARTICLE I – NAME

The name of the Tribe shall be the "TONTO APACHE TRIBE", hereinafter referred to as the "Tribe."

ARTICLE II – TRIBAL TERRITORY

The authority of the Tribe shall extend to all of the territory within our Indian Preservation, as established by the Act of Congress, October 6, 1972, P. L. 92 – 470, 86 S T A T. 73, and held in trust for the Tribe of the United States Government, and to all lands which may hereafter be acquired by or set aside for use of the Tribe. Tribal land, except land purchased for investment and not held in trust, shall be held by the Tribe and shall not be sold, assigned, conveyed, or mortgaged, or otherwise encumbered except with the approval of the Tribal Council and as provided by Federal and Tribal law. Tribal land shall not be allotted to individual members of the tribe, but maybe leased to travel members of the tribe and other persons in accordance with Tribal and Federal Law.

ARTICLE III – MEMBERSHIP

Section 1. Membership of the Tribe shall include all persons who have enrolled on the official census of the tribe. Those persons in title to enroll on such official census are those (a) who were living within 10 (10) miles of the city limits of Payson, Arizona, on October 6, 1972, or lineal descendants of such persons who were alive on October 6, 1972, and (b) who possess at least one fourth (1/4) degree Apache, Tonto Apache, Western Apache, Yavapai – Tonto Apache, or Yavapai – Apache Indian blood, or combination thereof.

Section 2.

- (a) A lineal descendent of a member which lineal descendent possesses at least one fourth (1/4) degree of Indian blood, shall be entitled to membership in the Tribe.
- (b) Any lineal descendent of a member having less than one – fourth (1/4) degree, but no less than one-eighth (1/8) degree Indian blood under the age of 12 (12) years, who has been legally adopted by a member of the Tribe, may be adopted into the Tribe pursuant to an election as set forth in Section 4 of this Article.
- (c) Persons of at least one fourth (1/4) degree Indian blood not otherwise meeting the requisites of Article III, Sections 1 and two, may be adopted into the Tribe pursuant to election as set forth in section 4 of this Article.

Section 3. No person shall be a member of the Tribe who is enrolled with any other Federally Recognized Indian Tribe, band or group unless such person shall first relinquish membership therein.

Section 4. An election required under this Article may be called by a majority of the Travel Council and shall be called by the Tribal Council upon the presentation of a petition requesting such an election signed by at least one fourth (1/4) of the eligible voters of the Tribe. A person shall be adopted into the Tribe by a majority vote of the eligible voters of the Tribe voting in an election noticed for that purpose, in which at least thirty percent (30%) of those entitled to vote shall vote. Notice for the purposes of this

Section shall be posted no less than ten (10) days and shall be made pursuant to the rules, regulations or ordinances governing special election for the Tribe.

Section 5. The tribal Council may prescribe rules, regulations or ordinances not inconsistent with this Constitution and subject to the approval of the Secretary of the Interior, governing future membership, adoption into the membership, loss of membership, enrollment procedures, and shall maintain a current role of all living tribal members.

ARTICLE IV – GOVERNING BODY

Section 1. The governing body of the Tribe shall be known as the Tonto Apache Tribal Council, hereinafter referred to as the "Tribal Council".

Section 2. The Tribal Council shall consist of five (5) voting members: "(a) a Chairman, (b) a Vice – Chairman, and (c) three (3) Council members.

Section 3. The Tribal Council shall select a Secretary, Treasurer and such other officials as it deems appropriate from within or without its membership; provided, however, that only members of the Tribal Council shall vote on matters before the Tribal Council and contribute to the existence of a quorum.

Section 4. The terms of office for the Tribal Council shall be four (4) years for the Chairman and the Vice Chairman and two (2) years for the Council members, or until their successors are duly elected and seeded. The officials selected by the Tribal Council shall serve at the sufferance of the Tribal Council.

Section 5. Duties of Tribal Council Members and Officials.

- (a) Chairman of the Tribal Council. The chairman of the Tribal Council shall preside over all meetings of the Tribal Council, shall perform all duties of the chairman and exercise any authority given specifically by the Tribal Council or by a general meeting of the Tribe. The Chairman shall have power to vote.
- (b) Vice – Chairman of the Tribal Council. In the absence of the Chairman, the Vice – C shall preside and shall have all powers, privileges and duties of the Chairman. The Vice – Chairman shall have power to vote at any meeting.
- (c) Secretary. The Sec. shall prepare TRIBAL correspondence and shall keep accurate records concerning the meetings and business of the Tribe and Tribal Council.
- (d) Treasurer.
 - (1) The Treasurer shall accept, receipt for, keep and safeguard all funds in the custody of the Tribal Council and shall deposit all such funds as directed by the Tribal Council. The Treasurer shall keep and accurate record of such funds and shall report on all receipts and expenditures in the amount and nature of all funds of the Tribe to the Tribal Council at regular meetings and at such other times as requested by the Tribal Council. The Treasurer shall not pay or otherwise disburse any funds in custody of the Tribe except when properly authorized to do so by the Tribal Council.
 - (2) The books and records of the Tribe shall be audited at least once a year by a competent auditor authorized by the Tribal Council, and at such other times as the Tribal Council may direct.
 - (3) The Treasurer, and other persons who are responsible for Tribal funds or funds in the custody of the Tribe, shall be bonded by a surety bond purchased by the Tribe.

- (4) The Treasurer shall be present at all meetings of the Tribal Council unless otherwise excused by the Chairman.
- (5) All checks shall be signed by the Treasurer and shall be countersigned by the Chairman of the Tribal Council, or in his absence by some other member designated by the Tribal Council.

Section 6. Annual Meeting. The Annual meeting of the Tribal Council shall be open to all members of the Tribe, shall be held on the second Saturday of October at 10:00 AM in the Tribal Office Building. Special meetings of the Tribal Council may be held at such other times and locations as may be designated by the Chairman or Tribal Council.

ARTICLE V – ELECTIONS

Section 1. Qualifications of Candidates for Elective Office.

- (a) Recognizing the desirability of having powers of self – government vested in persons having a significant degree of Indian blood, the right to hold office in Tribal government shall be afforded only to Tribal members possessing at least one fourth degree Apache, Tonto Apache, Western Apache, Yavapai – Tonto Apache or Yavapai – Apache Indian blood, or combination thereof.
- (b) A Tribal member must be thirty (30) years of age or older to qualify for the office of Chairman or Vice – Chairman, and eighteen (18) years of age or older qualify as Council member.
- (c) All person seeking to qualify as a candidate for Tribal Council shall have physically resided on the Preservation or land controlled by the Tribe released one (1) year immediately preceding the election.
- (d) No person who has been convicted of a felony, or who within the last year preceding the election has been convicted of a misdemeanor involving moral integrity shall be eligible to hold office in the Council. The following misdemeanors and no other shall be considered misdemeanors involving moral integrity: adultery, bribery, embezzlement, extortion, fraud, forgery, misbranding, perjury and theft.
- (e) The Tribal Council shall make the final decision on whether a candidate meets the qualifications.

Section 2. Qualifications of Voters.

- (a) Tribal members eighteen (18) years of age or older are eligible voters in all elections.
- (b) Or questions relating to the disposition of Tribal land require approval of the Tribal membership, only Tribal members residing on the Reservation or land owned by the Tribe may vote.

Section 3. Nominations.

- (a) Any Tribal member, who meets the qualifications of Section 1 of this Article, whose name is submitted on a petition signed by at least 5% of the eligible voters of the Tribe, shall be a nominee for the office indicated by the petition.

- (b) Nomination petitions must be received by the Tribal Chairman or Tribal Secretary no earlier than thirty (30) days nor later than fifteen (15) days before the election.
- (c) The names of all qualified candidates shall be posted in at least two public places on Tribal land at least 10 days prior to the election.
- (d) An eligible voter may find only one nomination petition for the office of Chairman and one nomination petition for the office of Vice – Chairman
- (e) An eligible voter may sign one nomination petition for each Council position to be elected for each election.
- (f) Signatures of persons in violation of subsections (d) and (3) of this Section shall be disregarded in determining the regularity of a nomination.

Section 4. Election Procedure.

- (a) All elections shall be by secret written ballot.
- (b) The Tribal Council shall enact an ordinance governing the conduct of elections. Such ordinance shall be consistent with this Constitution and shall include, but not be limited to, the following provisions: Nomination of Candidates, Secret Ballots, Absentee Voting, Settlement of Election Disputes, Handling of Petitions, Conduct of: Referendum, Initiative, and Recall Elections
- (c) the Tribal Council assembled an open meeting, shall, within 24 hours after closing of the polls, receives the ballot boxes, the unused ballots, the rejected ballots, the tally sheet, and the abstract of the votes. The abstract vote shall be read aloud to the public. Upon determining the highest number of votes for each office or Tribal seat, the Tribal Council shall certify the results and shall declare the same to be the winners of the election.

Section 5. Initial Tribal Council. Within 60 days after the effective date of this Constitution, a meeting of the Tribal membership shall be called for the purpose of electing the initial Tribal Council, as set forth in Article IV, Section 2, and transacting such other business as may be necessary. The election shall be called and conducted by existing Tribal government. At this selection, nomination shall be accepted from the floor by verbal nomination. The Tribal Council members elected at that meeting shall be elected by secret ballot and shall serve until the second Saturday in June, 1980, or until their successors are duly elected seeded. Thereafter, the Tribal Council shall be elected pursuant to Article V, Section 6.

Section 6. Regular Elections.

- (a) Regular elections shall be held annually on the second Saturday in June beginning in 1980.
- (b) At the first regular election, a Chairman and a Vice – Chairman shall be elected for terms of four years; one Council member shall be elected on a term for one year; and to Council members shall be elected for a term of two years. Thereafter, Council members shall be elected in the regular election as may be necessary to fill expired in vacant positions.
- (c) Should the Tribal Council failed to call a regular election, or in case a regular election has not been held, the Superintendent, Truxton Canyon Agency, is authorized to conduct such election.

ARTICLE V I – VACANCY AND REMOVAL FROM OFFICE

Section 1. Vacancies. If any member of the Tribal Council dies, resigns or is removed from office by the Tribal Council, or is recalled, the Tribal Council shall declare that position vacant. Within 30 days after

the Tribal Council seat is declared vacant, the Tribal Council shall call on hold a special election to elect a successor to fill the unexpired term. If, however, the next regular election is less than 60 days from the date the Tribal Council seat is declared vacant, that's each of be filled by majority vote of the Tribal Council until the regular election is held.

Section 2. Removal.

- (a) Any member of the Tribal Council may be removed from office by majority vote of all the remaining members of the Tribal Council if, in their opinion, he is guilty of gross misconduct or gross neglect of duty.
- (b) The Tribal Council shall set the date, time and place for a public hearing on the matter and shall provide written notice to the accused. Such notice shall include a statement of the specific charges against him. Such notice shall be provided with at least five days prior to the meeting set for the hearing.
- (c) At the hearing, the accused shall be given reasonable opportunity to defend against such charges.
- (d) The decision of the Tribal Council shall be final.

Section 3. Recall.

- (a) Any elective member of the Tribal Council shall be recalled from office by a majority vote of the eligible voters voting in a special election in which at least 50% of the eligible voters have voted.
- (b) The Tribal Council shall call and hold a recall election upon a written petition the Tribal Council signed by at least 50% of the eligible voters.
- (c) A separate petition for recall shall be drawn for each elective Council member to be considered for recall and shall contain a statement of the specific charges against such Council member.
- (d) The Tribal Council shall set a date, time and place for a public hearing on the matters set forth in the petitions and shall provide written notice to each elected Council member to be considered for recall. That notice shall contain a copy of the written petition which has names such elective Council member. Such notice shall be provided at least five days prior to the meeting separate hearing.

ARTICLE VI I – POWER OF THE GOVERNING BODY

Section 1. The Tribal Council shall exercise all powers of the Tribe, subject to any limitations imposed by this Constitution or laws of the United States applicable to Indian tribes; provided, that actions of the Tribal Council shall be subject to approval by the Secretary of the Interior were such approval is required by Federal Law, or by virtue of the fact that the United States holds property in trust for use of the Tribe.

Section 2. The following Tribal powers shall be exercised by the Tribal Council:

- (a) To adopt regulations, ordinances, bylaws, and rules of procedure to govern the duties, responsibilities, conduct and procedures of the Tribal Council.
- (b) To negotiate, make and perform contracts and agreements of any description not inconsistent with law or this Constitution, with any person, association, partnership,

- corporation, municipality, country, local government, county, state, the United States, or Indian tribe, band or community.
- (c) To seek, make application for and accept grants, aid or donations from any source.
 - (d) To manage and appropriate Tribal funds for Tribal purposes and to extend such funds in accordance with resolutions and an annual budget approved by the Tribal Council; and to manage and administer any other funds or property with the control of Tribe for the benefit of the Tribe and its members.
 - (e) To enact ordinances, including, but not limited to: civil actions, crimes, law enforcement, zoning, businesses, signs, land use, environmental quality and protection, inheritance, probate and administration of personal estate, domestic relations, protection of minors and mental incompetents, including the appointment of guardians and custodial care and adoption, and the sale and use of alcoholic beverages.
 - (f) To remove or exclude from jurisdiction of the Tribe any non— member of the Tribe's presence may be undesirable or injurious to the member of the Tribe.
 - (g) To enact ordinances governing the activities of voluntary associations consisting of members of the Tribe organized for purposes of cooperation or other purposes.
 - (h) To appoint subordinates, committees, commissions, boards, authorities, advisory or otherwise, Tribal officials and employees not otherwise provided for in this Constitution, and to regulate subordinate organization for economic and other purposes.
 - (i) To manage, protect and preserve all land, minerals, water, wildlife and other natural resources of lands held by the Tribe.
 - (j) To initiate, regulate and administer land development projects or lands owned by or within the jurisdiction of the Tribe.
 - (k) To levy and collect taxes, tolls and licenses upon those living on, visiting, purchasing or doing business within the jurisdiction of the tribe.
 - (l) To encumber, mortgage, lease, permit, sell, assign, manage or provide for the management of tribal lands, interest in such land or other Tribal assets; to purchase or otherwise acquire lands her interest in lands within or without the Reservation; and to regulate the use and disposition of Tribal property of all kinds; provided that the powers enumerated in this subsection shall be subject to the restrictions of Article II of this Constitution.
 - (m) To encourage and foster arts, crafts, traditions, language and culture of the Tribe.
 - (n) To advise, consult and negotiate with Federal, state or local governments, and other persons, on all activities which may affect the tribe.
 - (o) To advise the Secretary of the Interior and other agencies and representatives of the Federal Government with regard to all appropriation estimates of Federal projects and programs affecting, or for the benefit of Indians, the tribe or its members, prior to the submission of such estimates to the Office of Management and Budget and the Congress.
 - (p) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of this Sec. of the Interior, as long such approvals are required by Federal Law.
 - (q) To veto the sale, disposition, lease or encumbrance of Tribal lands, interest in lands, or other Tribal assets.
 - (r) To charter private or public Corporation for profit or not for profit, and to enact ordinances governing the operation and conduct of such corporations. To issue bonds of any kind whatsoever, in accordance with Tribal law and the laws of the United States.
 - (s) To issue bonds of any kind whatsoever, in accordance with Tribal law and the law of the United States.
 - (t) To own, purchase or sell any kind of property, real, personal or intangible, not otherwise prohibited by law.

- (u) To conduct, on or off the Reservation, any and all activity or business not otherwise prohibited by law.
- (v) To establish and regulated judicial system.
- (w) To exercise jurisdiction over all persons and activities within Tribal territory, except for such jurisdiction has been specifically restricted or preempted by Federal Law.
- (x) To exercise, as non— members, all other sovereign powers of the Tribe, whether or not enumerated in this Constitution, subject only to limitations on the powers expressly imposed by Federal Law.
- (y) To employ accountants and consultants.

ARTICLE VIII – BIL OF RIGHTS

Section 1. All members of the Tribe shall enjoy equal rights of life, liberty and the pursuit of happiness.

Section 2. The Tribe, in exercising its powers of self – government, shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble and 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.
- (e) Take any private property for public use without due process of law and just compensation.
- (f) Deny to any person in the 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 a witness against them, have compulsory process for obtaining witnesses in his favor, and, at its own expense, to have the assistance of counsel for his defense.
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event imposed for conviction of anyone offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500, or both.
- (h) Deny to any person subject to its jurisdiction the equal protection of the flaws or deprive any persons 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 an offense punishable by imprisonment, the right, upon request, to a trial by a jury of not less than six persons.

ARTICLE IX – POPULAR PARTCIPATION IN GOVERNMENT

Section 1. Initiative.

Upon the Tribal Council's receipt of a petition in writing of at least 30% of the eligible voters of the Tribe, any enacted or proposed ordinance or resolution shall be submitted by the Tribal Counsel to an election of eligible voters. The eligible voters shall, by majority vote, in such election, decide whether

the ordinance or resolution shall thereafter be in effect; provided, that at least 30% of the eligible voters shall vote in such election.

Section 2. Referendum.

Upon the request of the majority of the members of the tribal Council, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted by the Tribal Council to a popular referendum of the eligible voters. The eligible voters shall, by majority vote, and such referendum, decide whether the ordinance or resolution shall thereafter be in effect; provided, that at least 30% of the eligible voters to vote in such referendum.

ARTICLE X – AMENDMENTS

This Constitution may be amended by majority vote of the qualified voters of the Tribe voting in an election authorizing conducted by the Secretary of the Interior, in which at least 30% of those entitled to vote shall vote, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior so long as the secretaries approval is required by Federal Law or by the terms of this Constitution. The Secretary the Interior shall authorize such election upon receipt of a written petition of at least one third of the eligible voters the Tribe or resolution of the Tribal Council adopted by the affirmative vote of a majority of all Tribal Council members.

ARTICLE XI – RESERVED POWERS

Powers enumerated by this Constitution are not exclusive and the remaining sovereign powers of the Tribe are reserved the members of Tribe.

ARTICLE XII – SEVERABILITY

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

ARTICLE XII – ADOPTION

This Constitution, when adopted by majority vote of the qualified voters of the Tribe, voting in a special election authorize the Sec. of the Interior, in which at least 30% of those entitled to vote shall vote, shall be submitted to the Sec. of the Interior for his approval, and shall be in force from the date of such approval.

CERTIFICATE OF THE RESULTS OF ELECTIONS

Pursuant to an election authorized by the Acting Deputy Commissioner of Indian Affairs on November 6, 1979, the foregoing Constitution of the Tonto Apache Tribe, was submitted to the qualified voters of the tribe and was on December 22, 1979, duly adopted by a vote of 30 for, and 1 against, in an election at which at least 30% of the 32 entitled to vote cast their ballots in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 982) as amended by the Act of June 15, 1935 (49 Stat. 378).