

CONSTITUTION  
OF THE PASSAMAQUODDY TRIBE  
NOVEMBER 10, 1993

PREAMBLE

WE, the MEMBERS of the PASSAMAQUODDY TRIBE, People of the Dawn, adopt this Constitution to further enhance our democratic form of tribal government; to protect our sovereignty and freedom of self-determination; to preserve our heritage and culture for our children and for our future generations; to insure equal rights for all members of the tribe; and to create fair opportunities for the economic and domestic well-being of all members of the Passamaquoddy Tribe.

ARTICLE I. NAME.

The name of the Tribe shall be the Passamaquoddy Tribe, hereinafter referred to as the "Tribe."

ARTICLE II. TRIBAL JURISDICTION.

Section 1. Scope.

The authority of the government established by this Constitution shall extend over all members of the Passamaquoddy Tribe and all persons, subjects, territory and property now or hereafter included within the jurisdiction of the Passamaquoddy Tribe.

Section 2. Sovereign Immunity.

As a sovereign Indian Tribe in existence from time immemorial, the Tribe possesses the sovereign immunity from suit recognized by the applicable law of the United States, including immunity from suit in the Passamaquoddy Tribal Court.

However, in order to protect the individual rights established by this Constitution, the Tribe shall be subject to suit in the Passamaquoddy Tribal Court in any suit arising under Article IV, Section 1 of this Constitution or the Indian Civil Rights Act, provided that the Tribe's immunity is waived only to the extent that damages may be awarded in an amount of not more than fifty thousand dollars for any and all claims of any one party arising out of the same course of conduct, transaction or occurrence, or any larger amount that the Joint Tribal Council may hereafter establish by ordinance.

The Tribe shall otherwise be subject to suit only in the manner and to the extent expressly authorized by action of the Joint Tribal Council.

Any suit for injunctive and prospective relief against a tribal official to enforce the terms of this Constitution or tribal law shall not be deemed a suit against the Tribe, and is not barred by this Section.

### ARTICLE III. TRIBAL MEMBERSHIP.

#### Section 1. Requirements for Membership.

The membership of the Tribe shall consist of all persons who:

(a) possess at least one-quarter degree Passamaquoddy Indian ancestry; and

(b) are not members of any other Indian tribe; and

(c) have not relinquished their membership in the Passamaquoddy Tribe by signing a document to that effect and delivering it to the Tribe, or by maintaining membership in another tribe, provided that a former member may reapply for membership upon his or her revoking the signed resignation or forsaking membership in another tribe.

Blood quantum shall be determined in accordance with the 1900 Tribal Census and all persons listed as Passamaquoddy on the 1900 Tribal Census shall be considered to be of 100% Passamaquoddy Indian ancestry.

#### Section 2. Tribal Membership Ordinance.

Membership shall be determined under the Tribe's current Membership Ordinance, as it may be amended from time to time.

The Tribal Membership Ordinance shall provide procedures for determining all questions of membership, including but not limited to:

(a) procedures for application for membership, for addition or removal of names from the Tribal Census, for listing the degree of Passamaquoddy Indian blood possessed by members, for establishment of an annual Tribal Census, for verification of application or other information, including the issuance of subpoenas by the Joint Census Committee and their enforcement by the Tribal Court, and for such other matters as are necessary to determine questions of membership;

(b) procedures for determination of membership questions by a Joint Census Committee, which shall consist of three tribal members from each reservation, elected to staggered terms of four years, and one member of the Council from each reservation appointed by his or her Council, which appointees shall serve as co-chairs of the Joint Census Committee during their respective Council terms, and are entitled to vote only when presiding and to break a tie vote, provided that the appointed Census Committee members of the respective reservations shall constitute the Joint Census Committee until replaced by elections conducted pursuant to the Tribal Membership Ordinance;

(c) requirements for reporting of information by members of the Tribe in order to maintain and update the Tribal Census;

(d) criteria for meeting the requirements for membership set forth in Section One of this Article, which criteria shall be the same at both reservations, and for abandonment of membership and for restoration to membership, and for correction of any Tribal Census;

(e) provision for registering each member as a member of either the Pleasant Point Passamaquoddy Reservation or the Indian Township Passamaquoddy Reservation for purposes of determining voting rights and any other matters dependent on membership in either reservation;

(f) provision for appeal, within a fixed time, of decisions of the Joint Census Committee on questions of membership by any person whose application for membership is denied, or by any tribal member with respect to any membership application granted, to the Tribal Court for judicial review, in which the decision shall be reversed only if it is found to be arbitrary.

ARTICLE IV. INDIVIDUAL RIGHTS.

Section 1. Civil Rights.

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 the press, or the right of the people peaceably to assemble 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 or herself;

(e) take any private property for a public use without due process of law and just compensation;

(f) deny to 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 or her, to have compulsory process for obtaining witnesses in his or her favor, to have the assistance of counsel for his or her defense, and to have counsel appointed for any indigent member in any action in which he or she faces possible incarceration;

(g) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000 or both, or such other penalties as may be provided by the Indian Civil Rights Act;

(h) deny to a person subject to its jurisdiction the equal protection of its laws or deprive any persons of liberty or property without due process of law;

(i) pass any bill of attainder or ex post facto law, or any law impairing the obligation of contracts; and

(j) deny to any person accused of an offense punishable by imprisonment, the right, upon request, to trial by jury of not less than six (6) Passamaquoddy tribal members, or, if enough tribal members cannot be found to fill an impartial jury, members of Maine Indian tribes.

## Section 2. Banishment.

No officer or entity of tribal government shall have the power of banishment over tribal members, except as authorized by ordinance approved by referendum vote.

## Section 3. Access to Governmental Records and Proceedings.

Records of official governmental actions shall be open to inspection by tribal members except particular records that:

(a) are expressly made confidential by a tribal ordinance duly enacted to give protection to personal privacy or reasonable protection to business or trade secrets of the tribe, or

(b) are expressly made confidential by applicable federal or state law, or

(c) would be confidential if such records were records of the federal government.

Meetings of official bodies of the tribal government shall be open to tribal members, provided however that discussions may be held in closed session as authorized by this Constitution, by a tribal ordinance duly enacted or by applicable federal or state law, as long as any decision is made in open session. Any tribal member shall be entitled to attend any meeting of the Joint Tribal Council, of either Governor and Council, and of any other official committee or body of the tribal government, except as otherwise provided herein. Any minutes of such meetings shall be prepared promptly and shall be open to inspection by any tribal member.

## ARTICLE V. JOINT TRIBAL COUNCIL.

### Section 1. Powers of the Joint Tribal Council.

The Joint Tribal Council of the Passamaquoddy Tribe shall have and exercise all sovereign and governmental powers and rights of the Passamaquoddy Tribe, including, without

limitation, the authority to negotiate with the Federal, State and local governments, except as follows:

(a) those powers conferred by this Constitution upon the Tribal Court, the Joint Census Committee, the Clerks of the Joint Tribal Council, or upon the Sakomak (Governors), Leptanetok (Lieutenants) or the Governor and Council of the separate reservations, or upon any other body or officer of the tribe, whether acting jointly or as part of the tribal government of either reservation, shall be exercised exclusively by those bodies or officers;

(b) no regulation or ordinance of the Tribe or the Joint Tribal Council shall be valid unless a public hearing on the proposed regulation or ordinance has been held on each reservation prior to the adoption thereof, and unless seven days advance notice of the hearing was conspicuously posted on each reservation, stating the time, place and purpose of the hearing;

(c) no ordinance which affects solely one reservation of the Tribe shall be adopted without the consent of the Council of that reservation;

(d) no tax shall be imposed by the Joint Tribal Council on tribal members (other than motor vehicle and snowmobile excise and sales taxes) unless approved pursuant to Article VIII;

(e) no interest in real property within Passamaquoddy Indian Territory may be conveyed unless approved pursuant to Article VIII, other than the renewal of camp leases to those persons who held them at the time the land was acquired by the Passamaquoddy Tribe, consent to which is hereby given, provided that the assignment to individual tribal members of house lots within either reservation or of camp lots is not a conveyance for purposes of this provision;

(f) no resolution or other decision authorizing the purchase or sale of real property outside of Passamaquoddy Indian Territory or the borrowing of money shall be valid except after a public hearing has been conducted on each reservation, of which at least seven days advance notice was conspicuously posted on each reservation;

(g) no expenditure of tribal general funds shall be made except as authorized by an annual budget showing both projected sources of funds and expenditures. The annual budget shall be adopted by the Joint Tribal Council following the conduct of a public hearing on the proposed budget which shall be held on each reservation on the third Tuesday in July

or as soon thereafter as practical, and of which seven days advance notice was conspicuously posted on each reservation, stating the time, place and purpose of the hearing; provided, that the said budget may be amended by the Joint Tribal Council at any regular meeting at which public comment on the proposed amendment is allowed, provided the meeting is held upon not less than three working days' public notice conspicuously posted on each reservation; and provided further, that the financial affairs of the Tribe subject to control by the Joint Tribal Council shall be subject to an annual audit. For purposes of this paragraph, the term "tribal general funds" shall include all funds controlled by the tribe except enterprise or federal trust funds of the Tribe;

(h) members of the Joint Tribal Council shall receive such compensation as may be fixed by the Council, but no increase in the compensation of any member shall take effect during his or her term of office.

Section 2. Composition and Procedures of the Joint Tribal Council.

(a) The Joint Tribal Council shall consist of the six members of the councils of the Pleasant Point Passamaquoddy Reservation and the Indian Township Passamaquoddy Reservation, and the Sakomak (Governors) and Leptanetok (Lieutenants) of each reservation. No action may be taken by the Joint Tribal Council except at a meeting duly called and convened.

(b) The Sakom (Governor) of each reservation shall chair all meetings of the Joint Tribal Council which are held on his or her reservation but shall not vote except to break a tie. In the event of the inability of a Sakom to preside as the result of absence, incapacity or a conflict of interest, the Sakom of the other reservation shall chair the meeting. In the event of the inability of both Sakomak (Governors) to chair a meeting, the Leptanet (Lieutenant) of the reservation on which the meeting is held shall chair the meeting, or in the absence of that Leptanet, the Leptanet of the other reservation shall chair the meeting; provided, however, that a special meeting may be chaired only by a Sakom. A non-chairing Sakom shall not vote. Both Leptanetok shall have a right to vote unless a Leptanet is chairing the meeting, in which case the chairing Leptanet shall not vote except to break a tie, and the non-chairing Leptanet shall not vote. The Joint Tribal Council shall determine which Sakom or Leptanet shall chair an off-reservation meeting. All votes of the Joint Tribal Council shall be recorded, identifying the position of each member.

(c) The Joint Tribal Council shall adopt a schedule of regular meetings and may convene in special session at the request of the Sakom (Governor) of either reservation or of any five Council members; the agenda of each meeting shall be prepared by a Clerk of the Joint Tribal Council and shall include any matter requested by the Sakom of either reservation, or any member of the Council, or by written petition of any seven adult tribal members, and shall be made available to all Council members at least three days prior to any meeting.

(d) Notice of any meeting of the Joint Tribal Council shall be conspicuously posted on each reservation at least three working days before the meeting, identifying the matters on the meeting agenda.

(e) The presence of a quorum is necessary to commence a meeting of the Joint Tribal Council, and for the taking of any action by the Council. A quorum shall consist of eight voting members, at least four of whom must be from each reservation, and either the Sakom (Governor) or the Leptanet (Lieutenant) from each reservation. The officer chairing the meeting shall not be counted in determining the presence of a quorum.

(f) All meetings of the Joint Tribal Council shall be open to all members of the Tribe; provided, however, that the Joint Tribal Council may, by ordinance, authorize discussion to be conducted in closed executive session, but no final action may be taken on any matter in such closed session; and provided further, that any person who is the subject of an executive session may require that matters concerning him or her be discussed in an open meeting.

(g) All minutes, ordinances, resolutions and votes of the Joint Tribal Council, and all audits performed pursuant to Section 1(d) of Article V shall be recorded in writing and shall be available to members of the Tribe. All regulations and ordinances governing the conduct of non-members of the Tribe shall be available for public inspection.

(h) No member of the Joint Tribal Council shall vote on or otherwise participate in any matter in which he or she or a member of his or her household or immediate family has a direct personal interest, including but not limited to employment contracts, project funding, and appointment to Tribal offices, committees, or boards. The term "immediate family" shall include a person's spouse, siblings, parents and children. No action increasing the rate of compensation for any member of the Joint Tribal Council, including either Sakom



(Governor) or Leptanet (Lieutenant), shall take effect during that member's term of office.

Section 3. Annual Membership Financial Meeting.

The Joint Tribal Council shall convene an annual meeting open to all tribal members to present in oral and written form an accounting of the financial status of the Tribe, including the tribal general funds, any enterprise and special revenue funds, and any other funds or accounts. This meeting shall be held on both reservations at least once each year, at a time to be fixed by ordinance, following at least seven days public notice conspicuously posted on each reservation, stating the time, place and purpose of the meeting.

ARTICLE VI. AUTHORITY OF EACH RESERVATION.

Section 1. Powers of the Governor and Council.

The Pleasant Point Passamaquoddy Reservation and the Indian Township Passamaquoddy Reservation are each constituted a public body corporate and a political subdivision of the Passamaquoddy Tribe, acting under the direction and control of their respective Governor and Council, having the following limited powers and authority to be exercised for the following purposes; provided, however, that all such powers and authority shall be exercised in conformity to the provisions of this Constitution and of the laws and ordinances adopted by the Joint Tribal Council pursuant to this Constitution, and provided further that no tax on real property may be imposed by the Governor and Council without approval by referendum under section 4 of Article VIII:

(a) to administer Tribal government within the respective reservations;

(b) to adopt local ordinances, exercise police powers, take private property when necessary to a public use, and otherwise regulate local matters which solely affect the respective reservations;

(c) to negotiate with the Federal, State and local governments, and to contract for and receive funds or other services or assistance from public or private sources, or from the Joint Tribal Council or from tribal enterprises, in order to provide public services on the reservations, and to expend any available funds for such purposes in accordance with an annual budget adopted in the same manner and subject to the same limitations and audit requirements as provided for the

annual budget of the Joint Tribal Council in Article V of this Constitution, and to advise the Department of the Interior or other federal agencies or representatives as to the needs of the respective reservations.

(d) to provide for the economic development of the respective reservations and for that purpose to invest or lend reservation funds on such terms and conditions as the Governor and Council may determine and, in accordance with the provisions of this Article, to own in whole or in part and in any form, to operate, finance or otherwise promote, tribal or private enterprises of any type or form of organization;

(e) to acquire, by purchase, lease, gift, will or otherwise, to own, hold, use, improve and otherwise deal in, and to sell, convey, encumber, mortgage, pledge, lease, exchange or otherwise dispose of property of all kinds, real and personal, tangible and intangible, in whole or in part, wherever situated, in the reservation's corporate name and capacity; provided, however, that all land located within Passamaquoddy Indian Territory including the reservations shall remain the sole property of the Passamaquoddy Tribe; provided further, that the Governor and Council of each reservation shall have the power to lease tribal land within the respective reservations in accordance with applicable provisions of federal law;

(f) to sue and be sued in the reservation's corporate name and capacity to the same extent and subject to the same limitations and immunities as the Passamaquoddy Tribe may sue and be sued;

(g) to enter into contracts other than for borrowed money in the reservation's corporate name and capacity; provided, however, that any obligations incurred in such contracts shall be the sole obligation of the respective reservation and shall not obligate the Passamaquoddy Tribe nor be secured by or satisfied from the common property or income of the Passamaquoddy Tribe except as may be expressly authorized in the sole discretion of the Joint Tribal Council;

(h) to borrow money in the reservation's corporate capacity to the extent that recourse for repayment or other satisfaction of such debt is expressly and solely limited to particular property then belonging to the respective reservation or to the assets and income of particular tribal enterprises of the respective reservation and otherwise solely to the extent authorized by the Joint Tribal Council; and to secure any of the reservation's obligations by mortgage, pledge, or other encumbrance of all or any part of the

property and income of the reservation; provided, however: (1) that debts incurred by either reservation shall be the sole obligation of that reservation and shall not obligate the Passamaquoddy Tribe nor be secured by or satisfied from the common property or income of the Passamaquoddy Tribe except as may be expressly authorized in the sole discretion of the Joint Tribal Council; (2) that no instrument evidencing the indebtedness of either reservation shall be valid unless it shall set forth expressly that the debts evidenced thereby shall not constitute debts of the Passamaquoddy Tribe nor be secured by or satisfied from the common property or income of the Passamaquoddy Tribe, but shall be payable solely from the property or income belonging exclusively to the respective reservation, except as expressly authorized by the Joint Tribal Council; and (3) that no resolution or other decision authorizing the borrowing of money shall be valid except after a fair opportunity for public comment to the Governor and Council has been provided, which may be provided at any regular or special meeting of the Governor and Council at which the matter was listed on the agenda, and of which at least three working days advance notice was conspicuously posted on the reservation;

(i) to exercise all other powers which may be exercised by a body corporate and politic which are either necessary or convenient in furtherance of the powers and purposes set forth in this section; and

(j) to exercise such other powers and responsibilities as may be delegated to the Governor and Council of the respective reservations by the Joint Tribal Council.

Section 2. Powers of the Sakom (Governor).

The Sakom of each reservation shall have the right and responsibility to chair all meetings of the Council of that reservation, and to carry out the policy decisions of the Governor and Council for that reservation. The Sakom of each reservation shall have principal executive and administrative responsibility for the operations of tribal government on that reservation, to be exercised in accordance with this Constitution and with applicable laws, ordinances and resolutions of the Joint Tribal Council and of the Governor and Council of the respective reservation. Whenever a Sakom is unable to serve due to incapacity or a conflict of interest, the Leptanet (Lieutenant) of the same reservation shall act in his or her place and exercise all powers and responsibilities vested by this Constitution in the Sakom. The Leptanet may exercise the powers of Sakom when the Sakom

is absent from the reservation only to the extent authorized by the Sakom.

No person exercising the authority of the office of Sakom shall have or receive any compensation or other thing of value from the Passamaquoddy Tribe except as provided by the Governor and Council or as may be available under the terms of any tribal program open to other tribal members.

Section 3. Powers of the Leptanet (Lieutenant).

The office of Leptanet shall have no authority except to act for the Sakom (Governor) as set forth in section 2 of this Article, and such other authority as may be granted by the Joint Tribal Council or the Governor and Council, or delegated by the Sakom.

Section 4. Composition and Procedures of the Governor and Council.

(a) The Governor and Council of each reservation shall consist of the Sakom (Governor), Leptanet (Lieutenant) and six Council members elected by that reservation. No action may be taken by the Governor and Council except at a meeting duly called and convened. The Sakom may vote only to break a tie. In the Sakom's absence, the Leptanet shall preside at any meeting of the Governor and Council. The Leptanet may vote except when presiding, in which case the Leptanet may vote only to break a tie. In the absence of both the Sakom and the Leptanet at any meeting of the Governor and Council of either reservation, the members present may select a member of the Council to chair the meeting, provided, however, that such member may vote only to break a tie. All votes of the Governor and Council shall be recorded, identifying the position of each member.

(b) The Governor and Council of the Pleasant Point Reservation shall meet in regular session on the first Tuesday of each month, and the Governor and Council of the Indian Township Reservation shall meet in regular session on the first Wednesday of each month, at times designated by the respective Governor and Council. Either Governor and Council may convene in special session at the request of the Sakom (Governor) or of three or more members of the Council. The agenda of each meeting shall be prepared by the Sakom or the Clerk of the Reservation. The agenda shall include any matter requested by the Sakom or any member of the Council, or by written petition of any seven adult tribal members eligible to vote, and shall be made available to all Council members at least three days prior to any meeting.

(c) A quorum shall consist of four members of the Governor and Council eligible to vote, but shall not include the presiding officer.

(d) Notice of any meeting of the Governor and Council shall identify the matters on the meeting agenda, and shall be conspicuously posted on the reservation at least three working days before the meeting. The notice shall be posted at the school, the health clinic and the tribal offices, in a place commonly used for such notices, and may be posted in additional locations. In the event that one or more of the specified locations no longer exists, the required notice shall be posted at a suitable substitute location designated by the Sakom (Governor) of the reservation.

(e) If, during his or her term of office, any member of the Governor and Council of either reservation:

- (1) misses three consecutive regular meetings of the Joint Tribal Council, or
- (2) misses three consecutive regular meetings of the Governor and Council of the member's reservation, or
- (3) misses any four regular meetings of the Joint Tribal Council in any calendar year, or
- (4) misses any four regular meetings of the Governor and Council of the member's reservation in any calendar year, or
- (5) is convicted of a felony (any crime punishable by imprisonment for a term of one year or more) during his or her term of office,

that member's office shall automatically become vacant. In determining whether any attendance standard under this subsection is met, each regularly scheduled meeting of either body shall be considered, whether or not a quorum was achieved, but if a member's absence from a meeting has been authorized in advance by the member's Sakom or Leptanet and by two members of the Council at his or her reservation, that meeting shall not be included.

In the event of a vacancy occurring under this subsection, the Governor and Council to which the member was elected shall schedule and hold a public hearing on the

reservation to address the absences, and fill the vacancy by Special Election as provided in Article VII, Section 4.

(f) All meetings of the Governor and Council shall be open to all members of the Tribe; provided, however, that the Governor and Council by ordinance may authorize discussion to be conducted in closed executive session, but no final action may be taken on any matter in such closed session, and provided further, that any person who is the subject of an executive session may require that matters concerning him or her be discussed in an open meeting.

(g) All minutes, ordinances, resolutions, votes of the Governor and Council, and audits performed pursuant to Section 1(c) of Article VI shall be recorded in writing and shall be available to members of the Tribe. All regulations and ordinances governing the conduct of non-members of the Tribe shall be available for public inspection.

(h) No member of the Governor and Council shall vote on or otherwise participate in any matter in which he or she or a member of his or her household or immediate family has a direct personal interest, included but not limited to employment contracts, project funding, and appointment to tribal offices or committees. The term "immediate family" shall include a person's spouse, siblings, parents and children. No member of the Governor and Council shall have or receive any compensation or other thing of value from the Passamaquoddy Tribe except as provided by the Governor and Council or as may be available under the terms of any tribal program open to other tribal members. No action increasing the rate of compensation for any member of the Governor and Council, including the Sakom and Leptanet, shall take effect during that member's term of office.

## ARTICLE VII. ELECTIONS.

### Section 1. Qualification of Voters and Candidates.

Any duly enrolled member of the Passamaquoddy Tribe who is at least eighteen years of age and a resident of the reservation where the member appears on the membership roll, or of its service area, shall be eligible to be a candidate for office and to vote in all elections at that reservation, provided:

(a) that such member has complied with any voter registration requirement established by tribal or reservation election ordinance; and

(b) that only eligible voters who satisfy any applicable residency requirement, and who are unable to vote in person solely by reason of their status as full-time students or spouses of full-time students, or military personnel or spouses of military personnel, or by their physical incapacity, shall have the right to vote by absentee ballot, provided that an absentee ballot received by the Clerk conducting an election after the polls have closed shall not be valid; and

(c) that no person convicted of a felony (a crime punishable by imprisonment for a term of one year or more) shall be eligible to be a candidate for or hold elective tribal office, unless a pardon has been granted.

Notwithstanding any other provision of this Section or any tribal ordinance, no duly enrolled member of the Passamaquoddy Tribe aged eighteen or older shall be denied the right to vote on the adoption, amendment or repeal of this Constitution or any part thereof, or on any referendum conducted under Article VIII, Section 1 or 2.

No member shall be eligible to vote or be a candidate for office at more than one of the reservations during the same election, except that all candidates for Tribal Representative shall be candidates at both reservations. No member shall be eligible to be a candidate for or to hold more than one elected office of the Tribe, including school committee member, at the same time, but an elected official may be a candidate for another office without resigning from office.

## Section 2. General Elections.

The Sakom (Governor), Leptanet (Lieutenant), and members of the Council of each reservation shall be elected to 4 year terms, with those of the Council members staggered so that three shall be elected at each General Election. A Tribal Representative to the Maine Legislature shall be elected to a term of four years at a General Election, provided, that such Representative shall be elected alternately from each reservation. The Sakom and Leptanet of each reservation shall reside on their respective reservations for the duration of their terms in office, or be subject to removal by order of the Tribal Court upon a determination that the requirement has not been met. The Governor and Council of the respective

reservations shall schedule special elections for the purpose of filling vacancies or for voting on initiative, referendum or recall proposals. All elections shall be conducted simultaneously or as close thereto as practical on both reservations whenever such elections are to be held on both reservations. All elected officials shall serve until the certification of the results of the election of their successors, unless removed from office under Article VI, Section 4(e) or by recall, resignation or death. General Elections shall be held on the first Tuesday following Labor Day in September of each even-numbered year.

### Section 3. Tribal Election Laws.

Tribal elections shall be conducted in accordance with this Constitution and with any applicable election ordinances consistent with the Constitution.

All tribal elections, including primary, referendum, initiative and recall elections shall be conducted at each reservation under the supervision of the Tribal Clerk of the other reservation. That Tribal Clerk shall give notice of each election, and shall be responsible for the conduct of all elections, including preparation of the ballots, maintenance of voter lists, issuance of absentee ballots, counting the ballots, and the conduct of any recount. The Clerks shall certify the results of tribal elections, and shall perform such other election duties as may be provided by ordinance.

Candidates for tribal office shall be nominated at a caucus held for that purpose. Primary Elections shall be held as necessary so that no more than two candidates for each available office or position appear on the General or Special Election ballot. Votes for write-in candidates shall be counted in any Primary Election, but not in any runoff or final election.

Any dispute arising from the conduct of any tribal election may be heard in the Passamaquoddy Tribal Court. If the Court finds that any written provision of tribal law governing tribal elections was violated in conducting the election for the office from which the dispute arose, whether or not the Court believes that the outcome of the election was affected thereby, the Court shall give notice of the violation to the Governor and Council of the affected reservation and the Tribal Clerk of the other reservation, and a new election for that office shall be conducted. If the Court finds that no such violation occurred, the results of the election certified by the Tribal Clerk are final and binding.



Each elected tribal official shall swear an oath of office to uphold the Constitution and laws of the Passamaquoddy Tribe, and to honor the decisions of the Tribal Court.

#### Section 4. Vacancies in Office.

If a Sakom (Governor) dies, resigns, or is recalled from office, the Leptanet (Lieutenant) of the same reservation shall serve as Sakom until a successor is chosen. The Tribal Council of the affected reservation shall call a Special Election to fill the unexpired term of the Sakom, and notify the Tribal Clerk of the other reservation thereof.

If a Leptanet or a member of the Tribal Council dies, resigns or is recalled from office, the Tribal Council of the affected reservation shall call a Special Election to fill the unexpired term, and notify the Tribal Clerk of the other reservation thereof. In the event that the offices of Sakom and Leptanet are vacant at the same time, the member of the Council of the affected reservation who was elected by the largest number of votes shall serve as interim Sakom, temporarily vacating his or her position on the Council, until the offices are filled by Special Election.

If the Tribal Representative dies, resigns or is recalled from office, the Joint Tribal Council shall call a Special Election to fill the unexpired term, and notify the Tribal Clerks at the two reservations thereof. Any vacancy in the office of Tribal Representative shall be filled by a candidate from the same reservation as the previous Tribal Representative.

Any special election called under this section shall be held within forty-five days after the death, resignation or recall from office requiring the special election, or in the case of an automatic vacancy under Article VI, Section 4(e), within forty-five days after the vacancy occurs. In the event that recall would make it impossible to achieve a quorum because of vacancies on the Tribal Council, those officials who received the least number of recall votes shall remain in office until such time as successors are elected to fill their positions.

#### Section 5. Secret Ballot.

All tribal elections, whether conducted under this Article or Article VIII, shall be conducted by secret ballot.

Section 6. Right to Office.

For purposes of any official act, each person who has been or is hereafter determined by the Clerk of either reservation to have been elected or, if applicable, appointed Sakom (Governor), Leptanet (Lieutenant) or Member of either reservation's Governor and Council shall have the responsibilities and shall be entitled to exercise the authority of such office without regard to the existence of any challenge to such election or appointment, until a determination by the Clerk of either reservation: (a) of the election of the person's successor in office; or (b) of the person's removal from office for absenteeism under the provisions of Article VI, Section 4(e), by resignation, recall, death or a final decision by any competent legal authority under applicable law.

ARTICLE VIII. INITIATIVE, REFERENDUM AND RECALL.

Section 1. Initiative.

Upon receipt and verification by the Clerks of the Joint Tribal Council of a petition bearing the signatures, from among the eligible voters listed on the census at each reservation, of at least twenty-five percent of the number of votes cast at the last Gubernatorial election of the Tribe on that reservation, an ordinance or resolution proposed by the people concerning a matter other than an appropriation of funds shall be submitted to a vote of the members of the Tribe at a general or special election to be called by the Clerks of the Joint Tribal Council and held within sixty days following verification of the petition. The date each signature was made shall be written next to the signature on the petition, and no signature older than one year from the date the petition is submitted shall be valid. A vote of at least two-thirds of those actually voting at each of the Pleasant Point and the Indian Township Reservations is necessary in a referendum under this section to be conclusive and binding upon the Joint Tribal Council.

Section 2. Referendum.

Upon receipt and verification by the Clerks of the Joint Tribal Council of a petition bearing the signatures, from among the eligible voters listed on the census at each reservation, of at least twenty-five percent of the number of votes cast at the last General Election of the Tribe on that reservation, or upon the request of the Joint Tribal Council by a majority of its total membership eligible to vote (i.e.,

all members except the two Sakomak (Governors)), any proposed or previously enacted ordinance or resolution of the Joint Tribal Council shall be submitted to a vote of the Tribe at a General or Special Election to be called by the Clerks of the Joint Tribal Council and held within thirty days following the Council request or the verification of the petition by the Clerks of the Joint Tribal Council; provided, however, that no such referendum shall be conducted upon an enacted ordinance or resolution unless the petition or Joint Tribal Council request is received within thirty days of such enactment. A vote of at least two-thirds of those actually voting at each of the Pleasant Point and the Indian Township Reservations is necessary to be conclusive and binding upon the Joint Tribal Council in a referendum begun by petition under this section, but when a question is submitted to referendum by the Joint Tribal Council without such a petition, approval by a majority vote of those actually voting at each of the Pleasant Point and the Indian Township Reservations is binding upon the Joint Tribal Council.

#### Section 3. Local Initiative.

Upon receipt and verification by the Tribal Clerk of a petition bearing the signatures of eligible voters listed on the census at one reservation equal to at least twenty-five percent of the number voting at the last Gubernatorial Election of the Tribe on that reservation, a proposed ordinance or resolution made by the people concerning a matter, other than an appropriation of funds, which could be acted upon by the Governor and Council of that reservation alone shall be submitted to the voters of that reservation at a General or Special Election to be called by the Tribal Clerk and held within sixty days following verification of the petition. The date each signature was made shall be written next to the signature on the petition, and no signature older than one year from the date the petition is submitted shall be valid. A vote of at least two-thirds of those actually voting at that reservation shall be conclusive and binding upon the Governor and Council of that reservation.

#### Section 4. Local Referendum.

Upon receipt and verification by the Tribal Clerk of a petition bearing the signatures of eligible voters listed on the census at one reservation equal to at least twenty-five percent of the number of votes cast at the last Gubernatorial Election of the Tribe on that reservation, or upon the request of either Governor and Council approved by a majority of its total membership eligible to vote (i.e., all members except the Sakom (Governor)), any proposed or previously

enacted ordinance or resolution of the Governor and Council of that reservation shall be submitted to the voters of that reservation at a General or Special Election to be called by the Tribal Clerk and held within thirty days following the request or the verification of the petition by the Tribal Clerk; provided, however, that no such referendum shall be conducted upon an enacted ordinance or resolution unless the petition or the request of the Governor and Council is received within thirty days of such enactment. A vote of at least two-thirds of those actually voting is necessary to be conclusive and binding upon the Governor and Council of that reservation in a referendum begun by petition under this section, but when a question is submitted to referendum by the Governor and Council without such a petition, approval by a majority vote of those actually voting is binding upon the Governor and Council.

Section 5. Recall.

Any member of the Governor and Council of either reservation, or the Tribal Representative shall be recalled from office upon a determination that the official's conduct in office has violated this Constitution or tribal law, or that the official has failed to perform the duties of his or her tribal office, or has been convicted of any crime during his or her term of office, provided that any recall determination shall be made only in accordance with the provisions of this section.

(a) Any member of the Governor and Council of either reservation shall be recalled from office if the number of votes in favor of recall in a referendum election held at the member's reservation is more than two-thirds of the number of voters who participated in the most recent election to elect the Sakom (Governor) at the member's reservation, unless a greater number of votes are cast against recall.

(b) The Tribal Representative shall be recalled from office if the number of votes in favor of recall in a referendum election held at both reservations is more than two thirds of the combined number of voters who participated in the most recent election held at each reservation to elect a Sakom (Governor), unless a greater number of votes are cast against recall.

(c) The Tribal Clerk shall call and hold a special election to recall any member of the Governor and Council of either reservation upon a written petition from the eligible voters of that reservation to the Tribal Clerk signed by at

least fifty per cent of the number of persons voting at the last Gubernatorial Election of the respective reservation. The date each signature was made shall be written next to the signature on the petition, and no signature older than forty-five days from the date the petition is submitted shall be valid.

(d) The Tribal Clerks shall call and hold a special election to recall the Tribal Representative upon a written petition from eligible voters to the Tribal Clerks signed by at least fifty per cent of the total number of persons voting at the last Gubernatorial Election at each reservation. The date each signature was made shall be written next to the signature on the petition, and no signature older than forty-five days from the date the petition is submitted shall be valid.

(e) A separate petition for recall shall be drawn for each official to be considered for recall and shall contain a statement of the specific charges against that official.

(f) The Tribal Clerk verifying the petition shall set a date, time and place for a public hearing on the reservation on the matters set forth in a petition or petitions and shall provide written notice to each official to be considered for recall. The notice shall contain a copy of the written petition which has named that official, and shall be provided at least seven days prior to the time set for the public hearing.

(g) Notwithstanding any other provision of this Constitution, any tribal official recalled from office shall be ineligible to be a candidate for any elected tribal office for a period of two years from the date of the election at which he or she was recalled from office.

## ARTICLE IX. TRIBAL COURT.

### Section 1. Powers of the Tribal Court.

The Passamaquoddy Tribal Court shall exercise the powers of the judicial branch of Tribal government and shall have jurisdiction of all cases and controversies which are within the jurisdiction of the Passamaquoddy Tribe, including without limitation the following:

(a) exclusive jurisdiction over all civil disputes which pertain to internal tribal matters, including review of governmental actions, all other matters affecting tribal

government, rights of membership, and ownership, descent, or possession of land within Passamaquoddy Indian Territory, and which are not by provisions of this Constitution reserved to the exclusive jurisdiction of the tribal councils or to another body of tribal government;

(b) exclusive jurisdiction over all other civil or criminal cases which are committed by law to the exclusive jurisdiction of the Passamaquoddy Tribe;

(c) jurisdiction over all other civil cases arising within the Territory of the Tribe and not committed by law to the exclusive jurisdiction of the courts of the United States or the State of Maine.

Civil disputes which are within the jurisdiction of the Passamaquoddy Tribal Court shall, to the extent consistent with applicable tribal laws, ordinances, customs, and usages, as well as applicable provisions of federal Indian law, be resolved by the Tribal Court in accordance with any corresponding provisions of the applicable civil laws and remedies of the State of Maine, and such laws and remedies shall to that extent be deemed adopted as the law of the Passamaquoddy Tribe.

The Chief Judge of the Passamaquoddy Tribal Court shall have the authority to give, and shall give, an advisory opinion as to the meaning, construction or application of any provision of this Constitution, upon request of the Governor and Council of either reservation or the Joint Tribal Council, provided that the issue arises from actual circumstances involving the official functions of the Council making the request.

## Section 2. Composition of the Tribal Court.

The Passamaquoddy Tribal Court shall consist of a Chief Judge and such Associate Judges and clerks as may be appointed by the Joint Tribal Council. The Chief Judge and any Associate Judges shall be appointed for terms of four years. No Judge shall be removed during such term except for just cause following a public hearing by the Joint Tribal Council held on each reservation upon at least seven days' public notice conspicuously posted on each reservation, including at least at the school, the health clinic and the tribal offices, and notice to the Judge whose removal is to be considered, which notices shall include the time and place of hearing, and specific charges to be considered at such hearing. A Judge may be removed for just cause following such public hearing by a unanimous vote of the Joint Tribal Council and any such

decision by the Joint Tribal Council shall not be subject to judicial review. The term "just cause" shall include involvement in tribal politics in any manner other than by acting as a judge in any case properly presented to the Tribal Court. The salary or hourly fee paid to a judge may not be reduced during his or her term of office.

Associate Judges shall be nominated by the Chief Judge. No person shall be eligible to serve as a judge of the Passamaquoddy Tribal Court who is not a member in good standing of a bar of the highest court of one of the states of the United States, and no person shall remain as a judge of the Passamaquoddy Tribal Court who does not become and remain a member in good standing of the bar of the Supreme Judicial Court of the State of Maine within one year after becoming such a judge.

### Section 3. Rules of the Tribal Court.

The Chief Judge of the Passamaquoddy Tribal Court shall adopt Rules for the Passamaquoddy Tribal Court to govern procedures before the Court which shall be designed to ensure fair, convenient, simplified and prompt resolution of disputes. The Chief Judge shall also supervise the judicial business of the Tribal Court, including assignment of cases, hiring and supervision of court personnel, and other administrative affairs of the court.

### Section 4. Appellate Branch of the Tribal Court.

The Joint Tribal Council shall establish an Appellate Branch of the Passamaquoddy Tribal Court to hear appeals from the decisions of the Tribal Court under such Rules of Procedure as are established by the Tribal Court. The said Appellate Branch shall be composed of no less than one and no more than three judges, all of whom shall meet the qualifications for judges appointed pursuant to Section 2 of this Article. The Joint Tribal Council shall appoint the Judge or Judges of the Appellate Branch (following nomination by the Chief Judge of the Tribal Court) for a fixed term as provided in section 1 of this Article, and may remove such Judge or Judges only as provided in that section. The salary or fee of an appellate judge of the Tribal Court may not be reduced during his or her term of office.

ARTICLE X. ADOPTION OF CONSTITUTION AND INITIAL ELECTION.

Section 1. Adoption.

This Constitution shall become supreme law of the Tribe when adopted by a majority of the adult members of the Tribe actually voting at a referendum called for that purpose at the request of the Joint Tribal Council, provided that the Constitution is approved by a majority of those tribal members actually voting at each of the Pleasant Point and the Indian Township Reservations. Upon adoption, this Constitution shall supersede any prior Constitution adopted for the Tribe or at either reservation thereof.

Section 2. Interim Officers and Initial Election.

Notwithstanding any other provision of this Constitution, upon adoption of this Constitution the existing Sakomak (Governors), Leptanetok (Lieutenants), and Council Members of the respective reservations and the Tribal Representative shall assume all of the powers and duties of such officers as set forth in this Constitution, including those powers and duties exercised in their capacity as the Joint Tribal Council and Tribal Representative, and shall exercise those powers and duties until their resignation or removal from office, or the installation of their successors in office, under the terms of this Constitution and the laws of the Passamaquoddy Tribe.

Notwithstanding any other provision of this Constitution, upon adoption of this Constitution the existing Clerks of each reservation and of the Joint Tribal Council shall assume all of the powers and duties of such officers as set forth in this Constitution, and shall exercise those powers and duties until their resignation or removal from office, or the installation of their successors in office, under the terms of this Constitution and the laws of the Passamaquoddy Tribe.

The said Joint Tribal Council shall provide for the conduct of the initial elections in accordance with Article VII of this Constitution. The officers elected at such first election shall continue until the certification of the results of the succeeding elections which shall be held as provided in Article VII of this Constitution, provided that the Tribal Representative elected at the initial Gubernatorial Election shall be elected from those eligible to vote at the Pleasant Point Reservation. The term of office of any tribal official serving at the time of the adoption of this Constitution shall not be extended or otherwise affected by this provision.



Section 3. Interim Ordinances.

Notwithstanding any other provision of this Constitution, the By-laws and any ordinance previously adopted by the Joint Tribal Council or by the Governor and Council of either reservation and in effect at the time of the adoption of this Constitution, shall remain in full force and effect according to its terms until it is amended or repealed in accordance herewith, except to the extent that it may be inconsistent with the rights and privileges secured by this Constitution.

Section 4. Interim Tribal Court Judge.

Notwithstanding any other provision of this Constitution, any Judge of the Passamaquoddy Tribal Court who holds that office at the time this Constitution is adopted shall immediately assume all powers and duties of that office as set forth in this Constitution, and shall continue in that office until one year after the first general election held under this Constitution, unless sooner removed from office as provided in Article IX.

ARTICLE XI. AMENDMENT.

Section 1. Periodic Review.

In June of each of the first five years after the adoption of this Constitution, and in June of every even-numbered year thereafter, the terms and operation of this Constitution shall be reviewed by the Joint Tribal Council, following a public meeting held for that purpose on each reservation by the Joint Tribal Council during the preceding April or May. Proposals to amend this Constitution may be submitted to the Joint Tribal Council by the Sakom (Governor) or Governor and Council of either reservation, by the Chief Judge of the Tribal Court, or by any tribal member eligible to vote in tribal elections.

Section 2. Amendments Pertaining to the Tribe as a Whole.

The Joint Tribal Council shall cause any amendment pertaining to the tribe as a whole, and endorsed by a majority of the Joint Tribal Council or by written petition of any 50 tribal members eligible to vote, to be drafted in legal form and presented for adoption at a Constitutional referendum vote held at both reservations at the next General Election, or in a Special Election called for that purpose in September of 1995 or 1997, whichever shall come first. A proposed amendment shall become a part of this Constitution if:

(a) during the first five years following the adoption of this Constitution, the amendment is approved at each reservation by at least sixty percent of the votes cast in the Constitutional referendum at that reservation; or

(b) in a Constitutional referendum held more than five years after adoption of this Constitution, the amendment is approved at each reservation by two-thirds of the votes cast in the Constitutional referendum at that reservation.

### Section 3. Amendments Pertaining Solely to One Reservation.

The Governor and Council shall cause any amendment pertaining solely to one reservation, and endorsed by a majority of the Governor and Council of that reservation or by written petition of any 50 tribal members eligible to vote at that reservation to be drafted in legal form and presented for adoption at a Constitutional referendum vote held at that reservation at the same time as the next General Election, or in a Special Election called for that purpose in September of 1995 or 1997, whichever shall come first. A proposed amendment shall become a part of this Constitution if:

(a) during the first three years following the adoption of this Constitution, the amendment is approved at the affected reservation by a majority of the votes cast in the Constitutional referendum;

(b) during the next two years, the amendment is approved at the affected reservation by sixty percent of the votes cast in the Constitutional referendum; or

(c) in a Constitutional referendum held six or more years after adoption of this Constitution, the amendment is approved at the affected reservation by two-thirds of the votes cast in the Constitutional referendum.

### ARTICLE XII. RESERVED POWERS.

The powers enumerated in this Constitution are not exclusive and the remaining sovereign powers of the Tribe are reserved to the members of the Tribe. Adoption of this Constitution does not constitute an agreement on the part of the Tribe to limit the exercise by the Tribe of any right or power it may otherwise be entitled to exercise.

ARTICLE XIII. SEVERABILITY.

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

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