

**CONSTITUTION  
OF THE  
SAULT STE. MARIE TRIBE OF CHIPPEWA**

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# **Draft Three Branch Separation of Powers Constitution**

## **CONSTITUTION**

### **PREAMBLE**

We, the Baaweting Anishinaabek of the Sault Ste. Marie Tribe of Chippewa, in order to provide for the perpetuation of our Anishinaabe Bimaadziwin, provide for the welfare and prosperity of our People, protect our property and resources, and preserve our inherent sovereignty in accordance with the teachings of our Seven Grandfathers, do ordain and establish this Constitution and Bylaws.

### **ARTICLE I - SOVEREIGNTY**

Section 1. Source of Sovereignty. The citizens of the tribe shall be the source of all governing authority and power vested in the Tribe by this Constitution.

Section 2. Supremacy. This Constitution shall be the supreme law over the government and its citizenship. All treaties, laws, compacts, and actions of the government and the tribal entities shall be consistent with this Constitution. All laws of the tribe existing at the time of adoption of this Constitution shall remain in effect so long as such laws are consistent with this Constitution.

Section 3. Delegation of Sovereignty. The government shall exercise only the authority and powers granted by the citizenship in this Constitution.

Section 4. Reserved Powers. Powers not granted to the government shall be reserved to the citizenship.

### **ARTICLE II - TERRITORY AND JURISDICTION**

Section 1. Territory. The territory of the tribe shall encompass all lands which are now or hereafter owned by the tribe or held in trust for the tribe by the United States.

Section. 2. Jurisdiction. The jurisdiction of the tribe shall extend to all of the lands of the tribe to the extent not inconsistent with Federal law and, further, for the purpose of exercising and regulating the rights to fish, hunt, trap and other usual rights of occupancy, such jurisdiction shall extend to all lands and waters described in the Treaty of March 28, 1836 (7 Stat. 491), and to all lands and waters described in any other treaties which provide for such rights to the extent such jurisdiction is not inconsistent with Federal law.

### **ARTICLE III – CITIZENSHIP**

Section 1. Requirements. The following persons shall be entitled to citizenship in the Sault Ste. Marie Tribe of Chippewa Indians, provided that such persons possess Indian blood and are not currently enrolled with any other tribe or band of North American Indians, and provided further that such persons are citizens of the United States of America:

- (a) All persons descended from the seven historical bands (Grand Island, Point Iroquois, Sault Ste. Marie, Garden River, Sugar Island, Mackinac, and Drummond

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Island Bands) of the Sault Ste. Marie Chippewa Indians whose names appear on any historical roll, census or record made by officials of the Department of the Interior or Bureau of Indian Affairs;

- (b) All persons enrolled on the citizenship roll of the organization, known as the Original Bands of the Sault Ste. Marie Chippewa Indians who are alive on the date of approval of this constitution and who are descendants of the original bands;
- (c) All persons who may hereafter be adopted into the tribe in accordance with any ordinance enacted for that purpose by the board of directors;
- (d) All lineal descendants of such persons as are described in (a), (b) or (c) above.

Section 2. Legislative Power. The Tribal Council shall have the power to enact ordinances consistent with this article to govern future citizenship, loss of citizenship and adoption.

### **ARTICLE IV - BILL OF RIGHTS**

Section 1. Bill of Rights. Nothing herein diminishes the rights of the tribal citizenship as granted under the Constitution of the United States of America. The tribe shall not make or enforce any law which:

- (a) infringes upon religious or cultural beliefs of any tribal citizen or prohibits the free exercise thereof nor any law which establishes religion;
- (b) prohibits the freedom of speech, expression, or of the press, or the right of the tribal citizenship peaceably to associate or assemble, and to petition the government for redress of grievances;
- (c) infringes upon the right of any tribal citizen otherwise eligible at any time to seek and hold elective tribal office consistent with this constitution
- (d) violates the right of the tribal citizenship to be secure in the privacy of their persons, houses, papers, electronic and telecommunications information, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a Judge and particularly describing the place, person, house, or things to be searched, the object and scope of such search, and the person or thing to be seized, nor execute an arrest without probable cause, nor exercise a detainment without reasonable suspicion;
- (e) subjects any person to search without probable cause or to interrogation while in custody without informing the person of their right to remain silent, to have access to an attorney, and to be advised that anything they say can be held against them in a court of law;
- (f) subjects any person to criminal prosecution or punishment, in the same jurisdiction, more than once for the same offense arising out of the same incident, nor compels any person in any criminal case to be a witness against himself or herself;
- (g) denies to any person in a criminal or civil 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, and in a criminal proceeding to have the assistance of counsel for his or her defense subject to income guidelines;
- (h) requires excessive bail, imposes excessive fines, or inflicts cruel and unusual methods of interrogation or punishment;

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- (i) denies to any person within its jurisdiction the equal protection, application, or opportunity under the law or deprive any person of liberty or property without due process of law, provided, that the government shall have the power to enact and implement laws that provide employment preferences;
- (j) directs a criminal proceeding against a specific individual or group, or punishes conduct after the fact through the enactment of laws or resolutions which criminalize such conduct;
- (k) denies to any person accused of an offense punishable by imprisonment the right upon request, to a trial by an impartial jury of not less than six persons for misdemeanors and twelve persons for felonies, and all persons shall be presumed innocent until proven guilty in a court of law;
- (l) denies to any tribal citizen the right to own, bear, and use arms.
- (m) discharges any person from employment without proper due process under the laws of the tribe, or takes any other retaliation against an employee who makes public any information of misconduct by officials or employees of the Tribe;
- (n) or takes any private property or possessory interest in private property for public use, without due process and just compensation.

### **ARTICLE V - SEPARATION OF POWERS**

Section 1. Branches of Government. There shall be one legislative branch, one executive branch, and one judicial branch. There shall be a system of separation of powers and checks and balances between the branches of government. No branch of government or official of any branch of government shall exercise any power granted in this Constitution or properly delegated by law to any other branch of government except as expressly directed or permitted by this Constitution and each branch shall act as a check and balance upon the actions of the other branches as permitted by this Constitution.

### **ARTICLE VI - JUDICIAL BRANCH**

Section 1. Composition of the Judicial Branch. There shall be one judicial branch. The judicial branch shall be made up of one Trial Court which shall be called the Court of Gweyakwaadziwin, and one Supreme Court which shall be called the Court of Nbwaakawin, and shall include other courts of special jurisdiction as established, from time to time, by the legislative branch.

- (a) Composition of the Trial Court. The Trial Court shall be made up of one Chief Judge, one Associate Judge, and any other Associate Judges or Substitute Judges as authorized by law. The Chief Judge shall have administrative authority over the Trial Court.
- (b) Composition of the Supreme Court. There shall be three Justices on the Supreme Court. There shall be one Chief Justice and two Associate Justices and any other Associate Justices or Substitute Justices as authorized by law. The Chief Justice shall have administrative authority over the Supreme Court.

Section 2. Election and Selection of Justices and Judges.

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- (a) Election of Justices and Judges. The Chief Judge, the Associate Judge of the Trial Court and Chief Justice of the Supreme Court, shall be elected by the citizenship, except where no qualified tribal citizen seeks a judicial office, then the Tribal Ogemaa shall appoint, and the Tribal Council shall approve, by majority vote, a judge or justice for that vacancy.
  - i. Associate Justices of the Supreme Court shall be appointed by the Tribal Ogemaa and the Tribal Council shall approve by majority vote.
- (b) Selection of Substitute Judges. Upon recusal of the Chief Judge and any Associate Judges, the Chief Judge shall select a Substitute Judge, subject to any restrictions imposed by rules of the Courts or by law.
- (c) Where no candidate, at the conclusion of any deadlines set by the Election Commission, declares for a position on the Trial Court or Supreme Court, the Tribal Ogemaa shall appoint, and the Tribal Council shall approve, by majority vote, a judge for that vacancy.

### **Section 3. Terms.**

- (a) Justices and judges shall serve staggered six-year terms.
- (b) Judges and Justices shall remain seated, unless removed, until the oath of office is administered to a successor.

### **Section 4. Qualifications.**

- (a) The Chief Judge, the Associate Judge of the Trial Court and Chief Justice of the Supreme Court shall be of voting age citizens of the tribe, and licensed attorneys in good standing with a State Bar Association, except where no qualified tribal citizen seeks such office, an attorney, in good standing, may be appointed.
- (b) Associate Justices of the Supreme Court shall be of voting age. At least one of the Associate Judges shall be a citizen of the tribe. All Associate Justices shall be Native American and at least one Associate Justice shall be an attorney. Where no qualified tribal citizens seek such office, an attorney, in good standing, may be appointed to be an Associate Justice to fill any vacancies.
- (c) The Chief Judge of the Trial Court, upon election, must reside within a fifty-mile (50) radius of Baaweting within ninety (90) days of taking the oath of office, and must reside there for the duration of their terms.
- (d) No person shall be eligible to serve as a Judge or Justice who has ever been convicted of a felony in any jurisdiction.
- (e) A judge or justice shall not:
  - (i) serve in any capacity in the executive branch or in the legislative branch.
  - (ii) serve in any elected or appointed capacity for any tribe, state or the United States of America excluding appointments to committee's formed for the public good.
  - (iii) accept any position or appointment that creates a conflict of interest.

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### **Section 5. Jurisdiction of the Courts.**

- (a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, treaties, laws, and customs of the Tribe, including cases in which the tribe or its officials and employees shall be a party. Any such case or controversy arising within the jurisdiction of the tribe shall be filed and exhausted in the judicial branch before it is filed in any other court or in any other jurisdiction. This grant of jurisdiction shall not be construed to be a waiver of the sovereign immunity of the tribe.
- (b) The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court. Only the Supreme Court shall have original and exclusive jurisdiction over any final determination of an election dispute by the Election Commission and such jurisdiction shall include the power to make findings of fact and conclusions of law, and to issue all remedies in law and equity.

### **Section 6. Powers and Duties of the Courts.**

- (a) The Jurisdiction and judicial powers of the courts shall extend to all cases and matters in law and equity arising under the Tribal Constitution or under laws and ordinances applicable to the tribe. Such powers shall include, but are not limited to:
  - i. Trial Court.
    - a. To adjudicate all civil and criminal matters arising under the Jurisdiction of the tribe in accordance with all applicable Tribal and Federal Law;
    - b. To review ordinances, resolutions, and executive actions arising under its Jurisdiction, to ensure that they are consistent with this Constitution and the power to declare ordinances, resolutions, and executive actions of the tribe void if are deemed inconsistent with this Constitution;
    - c. The Chief Judge, of the Trial Court, shall have the authority to create and present an annual budget request to the legislative branch.
  - ii. Supreme Court.
    - a. The Supreme Court shall have the power to interpret the Constitution, laws, and executive actions of the tribe arising under its Jurisdiction, and the power to declare such laws and executive actions of the tribe void if such laws are not consistent with this Constitution;
    - b. The Chief Justice, of the Supreme Court, shall have the authority to create and present an annual budget request to the legislative branch;
    - c. The Supreme Court shall have the power to adopt Court Procedures governing the judicial branch subject to enactment by the Tribal Council and the laws of the tribe. The Supreme Court shall have the power to adopt Rules of the Court consistent and subject to the laws of the tribe.

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- (c) Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict of a Trial Court shall have the right to file an appeal to the Supreme Court. The Supreme Court shall have the right to accept or deny any appeal from a Trial Court.

Section 7. Compensation. The legislative branch shall have the power to establish the level of compensation for each judge or justice; provided that the compensation due to each individual judge or justice shall not be diminished during the term of their appointment.

### **ARTICLE VII - LEGISLATIVE BRANCH**

Section 1. Composition. The Tribal Council shall be comprised of twelve (12) Council Members representing the five voting Units in existence at the time of this constitutional amendment and as enumerated under the tribe's election laws.

Section 2. Terms. The term of office for each Council Member shall be four years. The terms of office for all Council Members shall be staggered.

Section 3. Selection. All Council Members shall be elected by the eligible voters in their voting Units, pursuant to the requirements in this constitution and the terms of the tribe's election laws.

Section 4. Qualifications.

- (a) Every Council member shall be a Citizen of the Tribe and eighteen (18) years of age or older.
- (b) Be a qualified voter of the Tribe.
- (c) Physically reside in the voting Unit for which they wish to be elected for at least one year immediately prior to the election.
- (d) Council members shall not:
  - i. serve in any capacity in the executive branch or in the judicial branch.
  - ii. serve in any elected or appointed capacity for any tribe, state or the United States of America excluding appointments to committee's formed for the public good.
  - iii. accept any position or appointment that creates a conflict of interest.

Section 5. Compensation. Tribal Council shall have the power to establish the level of compensation through the approval of the annual budget for council members; provided that the compensation shall not be diminished during the term of their appointment. The compensation of the Tribal Council shall remain consistent with the levels of compensation in place at the time of enactment of this Constitution.

Section 6. Powers. The legislative powers of the tribe shall be vested in the Tribal Council, consistent with this Constitution. Any authority dedicated to the Tribal Board of Directors through operation of law, contract, charter, or judicial order, prior to this amended constitution, shall now be vested in the legislative branch. Such powers shall include:

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- (a) The Inherent power to establish laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution;
- (b) To submit such established laws within five days of approval to the Tribal Ogemaa to allow the opportunity to veto.
- (c) To approve of lawsuits in the name of the Tribe as proposed by the Tribal Ogemaa, provided that, the Tribal Council may approve the filing of a lawsuit in the name of the Tribe without Ogemaa concurrence by an affirmative vote of 2/3 of the Tribal Council. To authorize and approve agreements and contracts negotiated by the Tribal Ogemaa on behalf of the tribe with federal, state, and local governments and with other Indian nations and their departments and political subdivisions, or with private persons on all matters within the authority of Tribal Council;
- (d) To purchase, lease, take by gift, or otherwise acquire land, interests in land, personal property or other assets which may be deemed beneficial to the tribe;
- (e) To approve or disapprove of any sale, disposition, lease, or encumbrance of the tribe, its land, interests in land, property, or assets;
- (f) To establish the executive Departments of the Tribal government and their governing policies;
- (g) To adopt resolutions, ordinances and a code providing for the licensing, regulation and control of non-tribal persons coming upon or being within the territory or jurisdiction of the tribe as defined in this constitution, for the purpose of recreational boating, hunting, fishing, trapping, gathering wild rice or other fruits of the earth or other usual rights of occupancy;
- (h) To create by ordinance regulatory commissions or subordinate entities and to establish rules and procedures to regulate all meetings of the Tribal Council, standing committees, special committees and such other regulatory commissions or subordinate entities created by ordinance;
- (i) To create by ordinance legally separate authorities to manage the business, gaming, or enterprise needs of the tribe or other necessary authority owned by the tribe as may be needed.
- (j) To enact rules of procedure for the courts, submitted by the Supreme Court, to ensure that that all litigants receive due process of law, impartial justice, together with prompt and speedy relief.
- (k) To conduct internal and administrative business without formal adoption of tribal law, ordinance, or resolution. Internal and administrative actions shall not be subject to veto.
- (l) To employ legal counsel and necessary staff;
- (m) To approve appointments made by the Tribal Ogemaa to the Tribal Court, duly enacted authorities pursuant to (i), and to key executive positions within the government;
- (n) To enact a public Legislative Process for the adoption of resolutions, ordinances, laws and budgets consistent with this constitution.
- (o) To approve the tribal annual budgets and to make appropriate modifications to the annual budgets not inconsistent with this Constitution.
- (p) Failure to approve the annual budgets by the start of the fiscal year shall cause the tribe to continue to function at the level of the last approved budgets. To manage any funds within the exclusive control of the tribe and to appropriate these funds

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- for the benefit of the tribe and its citizens. All expenditures of funds shall be pursuant to appropriations or budgets authorized by resolution or ordinance;
- (q) To levy duties, fees, taxes and assessments on any person, natural or corporate, residing or doing business within the territorial jurisdiction of the tribe;
  - (r) To promulgate rules of order for the Tribal Council meetings and establish Tribal Council officers and their duties;
  - (s) To elect from within its citizenship Tribal Council Officers.
  - (t) The Council shall have the authority to establish by law a process for the extending. Full Faith and Credit to the judicial orders and judgments of other jurisdictions.
  - (u) To take action, not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe including the power to waive the tribe's sovereign immunity.
  - (v) To investigate and issue subpoenas for valid legislative purposes consistent with this constitution and Tribal Council enumerated powers.

Section 7. Speaker. The Council shall select a Speaker from among its membership whose duties shall be:

- (a) Preside over all meetings of the Tribal Council;
- (b) Call special meetings of the Tribal Council, when appropriate;
- (c) Receive reports from commissions and subordinate organizations, and deliver such reports to the Tribal Council;
- (d) Perform the duties of the Tribal Ogemaa in the absence of or due to the inability of the Ogemaa to perform those duties.

### **ARTICLE VIII - EXECUTIVE BRANCH**

Section 1. Composition.

- (a) The Executive powers of the tribe shall be vested in the Tribal Ogemaa. The Tribal Ogemaa shall exercise control over the Executive Branch of the tribal government subject to the laws of the tribe.

Section 2. Terms. The term of office for the Ogemaa shall be four years.

Section 3. Selection. The Ogemaa shall be elected by the eligible voters of the tribe, pursuant to the requirements in this constitution and the terms of the tribal codes governing tribal elections.

Section 4. Qualifications.

- (a) The Ogemaa shall be a Citizen of the Tribe and at least eighteen (18) years of age.
- (b) Be a qualified voter of the tribe.
- (b) Physically reside in the tribe's jurisdictional territory for at least one year immediately prior to the election, and upon election must reside within a fifty-mile (50) radius of Baaweting within ninety (90) of taking the oath of office, and must reside there for the duration of their terms.
- (c) Ogemaa shall not:
  - (i) serve in any capacity in the judicial branch or in the legislative branch.

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(ii) serve in any elected or appointed capacity for any tribe, state or the United States of America excluding appointments to committee's formed for the public good.

(iii) accept any position or appointment that creates a conflict of interest.

Section 5. Powers. Executive power shall be vested in the executive branch. Consistent with this Constitution, the Tribal Ogemaa shall be invested with the executive powers as follows:

- a) To enforce and execute the resolutions, ordinances and laws as enacted by the Tribal Council;
- b) To oversee the administration and management of the tribal government in accordance with the laws, resolutions, and ordinances as enacted by the Tribal Council;
- c) To consult, negotiate, and execute agreements and contracts on behalf of the tribal government subject to the approval of the Tribal Council;
- d) To appoint members of the Tribal Court as enumerated in Constitution Article VI Section 2 and 4, subject to the approval of Tribal Council;
- e) To hire direct support staff in the office of Ogemaa. Support staff shall be vacated to coincide with the expiration of the Ogemaa's term;
- f) To appoint members to the authorities as enacted by Tribal Council subject to Tribal Council approval, and to appoint key executive positions of the tribal government subject to Tribal Council approval.
- g) Serve as the official representative of the Tribe;
- h) To veto resolutions, ordinances, laws, and budgets enacted by the Tribal Council. A veto shall include a written explanation of any objections to the action.
  - i. Every action taken by the Tribal Council, whether by resolution, ordinance, appropriation, or law shall be presented to the Tribal Ogemaa for approval and signature before it is effective.
  - ii. The Ogemaa shall approve or disapprove the action taken by Tribal Council within ten (10) days after the item is submitted to the Tribal Ogemaa. If the action is vetoed the Tribal Council may override the veto by an affirmative vote of three-fourths of the Tribal Council members.
- i) Internal and administrative actions of the Tribal Council shall not be subject to veto. To timely prepare and present the annual tribal government budget to the Tribal Council for approval or other action and to keep the Tribal Council fully advised as to the financial condition and needs of the Tribe, preparing monthly reports for the Tribal Council and making quarterly reports available to the citizenship;
- j) To collect any taxes as enacted by Tribal Council;
- k) To exclude from the lands of the Tribe persons, or other entities, not legally entitled to be present thereon pursuant to tribal law;
- l) To present an annual state of the tribe address.

Section 6. Compensation. Tribal Council shall have the power to establish the level of compensation, through the approval of the annual budget, for the Ogemaa; provided that the compensation shall not be diminished during the term of their appointment. The compensation of the Ogemaa shall remain consistent with the levels of compensation in place for the Tribal Chair at the time of enactment of this Constitution.

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### **ARTICLE IX – RESIGNATION, RECALL, REMOVAL, AND VACANCIES**

Section 1. Resignation. Any appointed or elected official of the tribe may resign from their elected or appointed position by submitting written notice of resignation to the Tribal Council. Such resignation is effective upon receipt by the Tribal Council.

Section 2. Recall. The registered voters of the tribe shall have the right to recall any elected official of the tribe by filing a recall petition with the Election Commission. The petition must meet the threshold number of signatures of registered voters as follows:

- (a) Recall petition of a Tribal Council member must have verified signatures of at least ten percent (10%) of the total votes cast in the previous general election for that Unit. Signatures must be from voters registered within the voting Unit that the Council member represents;
- (b) Recall petition of the Tribal Ogemaa must have verified signatures of at least ten percent (10%) of the total votes cast in the previous Tribal Ogemaa general election. Signatures must be from registered voters eligible to vote in an Ogemaa election;
- (c) Recall petition of a Tribal Judge or Appellate Justice must have verified signatures of at least ten percent (10%) of the total votes cast in the previous general election of a Judge or Justice. Signatures must be from registered voters eligible to vote in the election of Judges and Justices.

The Election Commission shall review the petition and all signatures and upon approval of the petition shall conduct a recall election by a special election held after thirty (30) days but no more than ninety (90) days of receipt of a valid recall petition. An elected official who is successfully recalled from office shall not be eligible to run for any elected office until the original term of that recalled official would have expired.

Section 3. Removal for Cause. Any appointed or elected official of the tribe may be subject to removal for any of the following reasons:

- (a) Gross misconduct or malfeasance in office;
- (b) Conviction, while in office, of a felony under Federal, Tribal, or State law, or conviction of any other similar crime involving financial fraud, or violent crimes against persons.

These reasons shall constitute good cause and subject the elected official to removal proceedings in the Tribal Court under duly enacted tribal law.

Section 4. Vacancies. A vacancy in the office of an elected official resulting from death, resignation, removal, or recall shall be filled by a special election held after thirty (30) days but no more than ninety (90) days of the vacancy. If six months or less remain in the official's term, then the seat shall remain vacant and shall be filled in the next election.

- (a) Assumption of Duties

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- (i) In the case of a vacancy in the Office of Ogemaa, the Speaker of the Tribal Council shall temporarily assume such duties until the results of the special election are certified and a successor sworn in.
- (ii) In the case of a vacancy in the Office of Chief Judge or Justice, the Senior Associate Judge or Justice shall temporarily assume such duties until the results of the special election are certified and a successor sworn in.
- (iii) A vacancy occurring in the position of Speaker of the Tribal Council shall be filled by majority vote of the Tribal Council.

### **ARTICLE X - NOMINATIONS AND ELECTIONS**

Section 1. Voting Units. The five (5) voting as units of the tribe in existence at the time of the adoption of this amended constitution shall continue, under the current boundaries located with due regard to the historical location of each of the historical bands of the Sault Ste. Marie Chippewa Indians. At four-year intervals beginning four years from the year of adoption of this constitution, the Tribal Council shall cause to be made a census and voter registration of the citizenship within each unit and shall publish no less than three (3) months in advance of the next general election the results thereof.

Section 2. First Election. The First Election under this Constitution of the twelve (12) members of the Tribal Council, the Tribal Ogemaa and the Tribal Judges shall be conducted consistent with this Constitution and all duly enacted election laws of the tribe.

- (a) The current Tribal Ogemaa and Tribal Council members shall continue in office until the expiration of their current term. Thereafter, elections for all vacant Tribal Council member seats will be conducted consistent with this Constitution.
- (b) The current Tribal Judges shall remain in office until the first election of judges which shall take place during the next general election of the tribe.
  - a. In the First Election for purposes of establishing staggered terms of the judicial offices, the Chief Judge of the Trial Court shall serve for six years, and the Associate Judge of the Trial Court shall serve for four years;
  - b. In the First Election, the Chief Justice shall serve a term of six years.
    - i. The appointed Associate Justices, for purposes of establishing staggered terms of office, shall serve terms as follows:
      - 1. one Justice of the Supreme Court shall serve a term of six years, and
      - 2. one Justice of the Supreme Court shall serve a term of four years.

Section 3. Eligible Voters. Any person eighteen (18) years of age or over who is a citizen of the tribe shall be eligible to vote in tribal elections.

Section 4. Voting Unit. In any general election called pursuant to this constitution, each eligible voter shall vote within his unit of residence. Voters residing outside of any unit shall register not less than three months prior to any election and vote in the unit of their choice.

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Section 5. Election Ordinance. The Tribal Council shall enact appropriate ordinances to implement nominations and the holding of elections.

### **ARTICLE XI - SOVEREIGN IMMUNITY**

Section 1. Sovereign Immunity. The tribe shall possess Sovereign Immunity. Nothing in this Constitution shall be deemed to constitute a waiver of Sovereign Immunity from suit unless specifically stated herein, except that the Tribal Council may authorize a waiver of Sovereign Immunity by law. Any authorization by Tribal Council to waive Sovereign Immunity shall be specific and for a limited scope and duration.

Section 2. Suit Against Elected Officials and Employees. The tribe, its elected officials, its executive officials and its employees acting in their official capacity or within the scope of their authority shall be immune from suit except to the extent waived in accordance with law provided that, any citizen of the tribe may bring a suit exclusively in the judicial branch to enforce the terms of this Constitution.

Section 3. Suits Against Judges. Judges and Justices shall be immune from suit in law and equity for actions taken in their official capacity.

### **ARTICLE XII – RIGHT OF REFERENDUM**

Any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted to a popular referendum upon an affirmative vote of a majority of the Council or when so requested by a petition presented to the board bearing the signatures of at five percent (5%) of the total votes cast in the previous Tribal Ogemaa general election. Such referendum must be held within sixty (60) days after receipt by the Tribal Council of a valid petition. A vote of a majority of the eligible voters voting in such referendum shall be conclusive and binding upon the Tribal Council provided, however, the return rate must be equal to the return rate of the last Tribal Ogemaa general Election for a referendum election to be considered valid.

### **ARTICLE XIII - AMENDMENTS**

Section 1. Request for an Election.

- (a) The Tribal Council may by a three-fourths vote of the whole number of seats in the Council call for a Special Election to amend the Constitution.
- (b) The voters of the Tribe may call for a Special Election to amend the Constitution by submitting a petition signed by at least five percent (5%) of the number of eligible voters of the tribe to the Election Commission. Once a petition is submitted, the Election Commission shall verify the signatures on the petition within fifteen days, and if valid, the Election Commission shall conduct a Special Election within ninety days thereafter.

Section 2. Requirements For Approval. The Constitution may be amended by a majority vote of the voters who vote in the Special Election, provided, that there is a ballot return rate of at least

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twenty percent (20%) of eligible voters based on the last Tribal Ogemaa general election and the amendment is approved by the majority of the tribe's voting Units. Any amendment approved by the voters shall become effective immediately unless otherwise stated in the amendment.

### **ARTICLE XIV - ADOPTION**

This amended constitution and bylaws when ratified by a majority vote of the eligible tribal citizens, voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty (30) percent of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior and, if approved, shall become effective upon the date of ratification of the eligible voters of the tribe. The Tribal Council shall amend existing laws or enact necessary laws in conformance with this amended Constitution within eighteen (18) months of its ratification, provided that the provisions for Article IX shall be enacted within six (6) months of its ratification.

# **Draft Three Branch Separation of Powers Constitution**

## **BYLAWS**

### **ARTICLE I – MEETINGS OF THE TRIBAL COUNCIL**

Section 1. Time for Meeting. The Tribal Council shall meet once each month at such place, time and date as is designated by the council at the meeting immediately preceding. The place, time and date of the meeting shall be at the discretion of the tribal council, provided that at least one meeting per year shall be held in each of the five voting units.

Section 2. Special Meetings. Special meetings may be called from time to time by the Speaker or by a majority vote of the Tribal Council. Written notice of such special meetings shall be given to all members of the council at least ten (10) days in advance of such meeting. At special meetings, the council shall have the same power to transact business as at regular meetings.

Section 3. Emergency Meetings. When immediate official action of the Tribal Council is necessary to preserve or promote essential interests of the tribe, the Speaker or the Tribal Council by a 2/3 majority agreement may call an emergency meeting. Advanced written or verbal notice of such meeting shall be given to each Council member to the greatest extent feasible as long as at least 24 hours' notice is provided. Emergency meetings shall be restricted to the urgent subject matter necessitating the meeting and shall be consistent with tribal law.

Section 4. Open Meetings. Both regular, special and emergency meetings of the tribal council shall be open to the citizenship of the tribe.

Section 5. Notice of Meeting. All regular meetings shall be publicized at least ten (10) days in advance by some appropriate and effective means such as newspaper advertisements or radio announcements. Special meetings require such publicity as is reasonable under the circumstances, provided that all members of the Tribal Council receive notice as provided in Section 2 of this Article. Emergency meetings must be noticed consistent with Section 3 of this Article.

Section 5. Quorum. No business at any regular, special or emergency meeting shall be transacted unless a quorum is present, a quorum being a majority of the Tribal Council.

Section 6. Conflict of Interest. No member of the Tribal Council shall cast a vote on any matter in which the council determines by a majority vote that said member may have a personal interest in the matter.

Section 7. Duties of Committees. The duties of all appointed boards, committees, subordinate organizations of the Tribal Council, or employees shall be clearly defined by resolutions of the Tribal Council at the time of their creation or appointment. Such boards, committees or subordinate organizations of the Tribal Council shall report from time to time, as required, to the Tribal Council, and their activities and decisions shall be subject to review by Tribal Council.

Section 8. Monthly Unit Reports. It shall be the duty of each member of the Tribal Council to make public monthly reports to the unit from which they are elected concerning the proceedings of the Council.

## **Draft Three Branch Separation of Powers Constitution**

Section 9. Records. All ordinances, resolutions and minutes of meetings of the Tribal Council shall be kept on file in the tribal office and shall, upon reasonable request, be open for inspection by tribal citizens at such office during regular office hours pursuant to Article III of these bylaws.

### **ARTICLE II – DUTIES OF TRIBAL COUNCIL OFFICERS**

Section 1. Speaker. The Speaker shall preside over all meetings of the Tribal Council and exercise any other lawful authority delegated to the Speaker by the Tribal Council.

Section 2. Absence of Speaker. The other officers, pursuant to established parliamentary procedures, of the Tribal Council shall assist the Speaker when called upon to do so, and in the absence of the Speaker shall preside at all meetings of the Tribal Council. When so presiding, the other officer shall have all of the rights, privileges, duties and responsibilities of the Speaker.

Section 3. Treasurer. The treasurer or their designee shall, under the direction of the Tribal Council, monitor all of the fiscal affairs of the tribe and perform such duties as designated by the Tribal Council or as defined by tribal law.

Section 4. Secretary. The secretary or their designee shall, under the direction of the Tribal Council, keep an accurate record of all matters transacted at meetings of the Tribal Council and shall see that all ordinances and resolutions adopted by the Tribal Council are reduced to writing in the proper format and any other such duties as designated by Tribal Council or as defined by tribal law.. Within five (5) days to submit to Executive Branch.

### **ARTICLE III – TRIBAL RECORDS**

Section 1. Records of the Tribe. All books, records and financial accounts of the tribal government, including the tribal roll, shall be open to inspection by tribal citizens upon reasonable request to the Tribal Council. The Tribal Council shall pass, through resolution, laws consistent with this article to govern the reasonable disclosure of information and appropriate sunset laws with regard to the disclosure of proprietary business information within six (6) months of the ratification of this amended constitution.

Section 2. Records of Officers. All books, records and financial accounts kept by officers or employees of the tribal government in connection with their tribal duties or employment are the property of the tribe and shall be maintained in the tribal office. Upon leaving office or employment, it shall be the duty of each tribal officer or employee to turn over such books, records and financial accounts to the appropriate successor.

Section 3. Protection of Records. All records as enumerated in Section 1 and 3 of this Article are property of the tribe. All current and former tribal officers, or employees of the tribe shall properly safeguard this property consistent with this constitution.