

**CONSTITUTION OF THE
TIMBISHA SHOSHONE TRIBE**

PREAMBLE

We, the Timbisha Shoshone Tribe, being a sovereign native people, in order to organize for our common good, to maintain and foster our tribal culture, to protect and conserve our land and natural resources, to promote the social, economic and general welfare of our people, to maintain peace and order, and to secure the rights and powers inherent in our sovereign status guaranteed to us by laws of the United States, do hereby establish and adopt this document in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended, which from this time forward shall govern the Timbisha Shoshone Tribe.

ARTICLE I

Name

The name of this organization shall be Timbisha Shoshone Tribe, hereinafter referred to as “the Tribe”.

ARTICLE II

Territory and Jurisdiction

The jurisdiction of the Tribe shall extend to all lands, water and resources within the exterior boundaries of the Timbisha Shoshone Reservation and to such other lands, water and resources as may be thereafter acquired by the Tribe.

ARTICLE III

Membership

Section 1.

Membership in the Timbisha Shoshone Tribe shall consist of the following:

a. All persons who are listed as possessing some degree of Shoshone blood on the census entitled "Indians Living in Death Valley and Vicinity in March 1936;"

b. All persons who filed as Timbisha Shoshone Indians and were listed on the genealogy roll prepared as of March, 1978;

c. All persons who are lineal descendants of any person designated in subsection (a) or (b) above and who possess at least one-fourth (1/4) degree Indian blood of which one-sixteenth (1/16) degree must be Shoshone blood; and

d. All persons of Indian blood upon whom membership is conferred by adoption.

Section 2.

A person who is officially enrolled with or is a recognized member of some other tribe or band shall not be enrolled.

Section 3.

The official membership roll shall be prepared in accordance with an ordinance adopted by the Tribal Council. Such ordinance shall contain provisions for enrollment procedures, establishment of an Enrollment Committee, application forms, approval or disapproval of application, rejection notices, appeals, corrections, adoptions, disenrollment procedures and provisions for keeping the roll on a current basis.

Section 4.

No person shall be enrolled as an adopted member of the Tribe unless he/she possesses at least one-fourth (1/4) degree Indian blood and has been approved by a majority vote of the General Council.

Section 5.

Any person who wishes to relinquish his/her membership in the Tribe must submit a request for relinquishment in writing to the Enrollment Committee. With the approval of the Tribal Council, the Enrollment Committee may immediately remove the person from the Tribal roll upon receipt of the request, or, if applicable, may approve the relinquishment but make removal from the Tribal roll conditional upon the receipt of evidence of the person's enrollment in another tribe.

Section 6.

Upon a determination that a Tribal member was erroneously, fraudulently, or otherwise incorrectly enrolled, and provided that the member has been afforded due process and equal protection of law, the Tribal Council shall direct the Enrollment Committee to remove the member's name from the Tribal roll.

Section 7.

Any Tribal member who the Tribal Council has decided to disenroll pursuant to Section 6 herein shall be entitled to appeal the decision to the General Council. The Enrollment Ordinance shall set forth procedures for conducting the appeal consistent with the constitution and providing due process and equal protection of law. All General Council members shall be entitled to vote with regard to any such appeal except for their own, regardless of similar status or familial relationship, without exception. The burden of proof for disenrollment shall be on the Tribe. The decision to disenroll the individual shall only be upheld if over Fifty Percent (50%) of the members of the General Council vote to uphold the disenrollment (not 50% of a quorum, but 50% of the actual members).

ARTICLE IV

Governing Body

Section 1.

The powers of the government of the Tribe shall be divided into three distinct branches; the General Council, the Tribal Council and the Tribal Judiciary. No branch, group or person charged with the exercise of powers properly belonging to one of these branches shall exercise any powers belonging to one of the other branches, except as otherwise specified in this document.

Section 2.

The governing body of the Tribe shall be the General Council. The General Council shall consist of all tribal members sixteen (16) years of age or older. All members of the General Council shall be able to vote at all General Council meetings and all tribal elections, referenda, initiatives, and recalls. The age requirement for all elections of the Tribe shall be sixteen (16) years of age or older, provided that the age requirement for any Secretarial election to be conducted by the Department of the Interior

pursuant to 25 C.F.R. Part 81, as the same may be amended from time to time, or for any vote required by federal law, shall be consistent with federal law.

Section 3.

In addition to the General Council, there shall be elected from the General Council a Tribal Council. The Tribal Council shall be composed of five (5) persons elected by the General Council. The Tribal Council shall exercise, concurrently with the General Council, all powers delegated to it by the General Council in Article V of this document and otherwise vested in the Tribal Council by this document.

Any member of the Tribe who is eighteen (18) years old or older shall be eligible to serve as a member of the Tribal Council, provided that not more than two members of an immediate family may serve on the Tribal Council at any time. For purposes of this section, "immediate family" shall mean mother, father, brother, sister, spouse or child.

ARTICLE V

Powers

Section 1. General Council

a. All powers of the Tribe shall be vested in the General Council, subject to any limitation imposed upon such powers by the laws of the United States, including those powers delegated to the Tribal Council and any such other powers as may in the future be granted or delegated to the Tribe by federal law.

b. The General Council shall exercise its powers of self-government through the initiative, referendum, and recall powers as set forth in this document, and through direct action at a meeting of the General Council where a quorum is present concerning any matter within the jurisdiction of the Tribe, provided that the General Council may not take direct action at a meeting to: amend this constitution; abrogate, modify or amend any properly executed contract or agreement approved by the Tribal Council and entered into with third parties; or infringe upon the rights of an individual Tribal member as set forth in Article XIV herein.

c. The following powers shall be exclusively reserved to the General Council; no exercise of these powers by the Tribal Council or by any other agency

or officer of the Tribe shall be effective unless the General Council has given its consent to such action in accordance with Article V of this document:

1. The power to transfer lands held in trust for the benefit of the Tribe by the United States, subject to applicable federal law;
2. The power to condemn for tribal purposes real property or interest in real property within tribal jurisdiction, provided that the owners of assignments or property shall be paid fair market value for the assignment or property and all improvements made thereon by the assignee or owner;
3. The power to grant or relinquish any tribal jurisdiction to any other government, political subdivision of a government agency, organization, association or person;
4. The power to waive the Tribe's immunity from suit; and
5. The power to set compensation for Tribal Council members, officers and committee members, as it believes is advisable.

Section 2. Tribal Council

The General Council hereby delegates to the Tribal Council the following enumerated powers subject only to those limitations imposed by this document and the laws of the United States:

- a. On behalf of the Tribe, to consult, negotiate, contract or conclude agreements with federal, state, local and tribal governments and with private persons and organizations;
- b. To employ legal counsel of its choice on behalf of the Tribe or for the benefit of tribal members and to fix the fees for such counsel in accordance with federal law;
- c. To make recommendations to the Secretary of the Interior or to his authorized representative with regard to all appropriation estimates for all projects which are for the benefit of the members of the Tribe, prior to the submission of such estimates to the Office of Management and Budget and Congress, or to the State of California;

- d. To borrow money from public and private sources and to pledge, mortgage or assign tribal assets held in trust for the benefit of the Tribe by the United States, subject to the specific restrictions set forth in this Article and federal law;
- e. To set aside and to spend tribal funds for tribal purposes;
- f. To impose taxes on all persons, property and business activities located or conducted within tribal jurisdiction, provided no tax shall be imposed on real property held in trust by the United States;
- g. To regulate the use and development of all tribal lands, whether assigned or unassigned, and to manage, lease or otherwise use all unassigned tribal lands;
- h. To charter and regulate corporations, cooperatives, associations, special districts, housing authorities, educational and charitable institutions, political subdivisions and other entities;
- i. To license and regulate the conduct of all business activities within tribal jurisdiction;
- j. To establish business enterprises as branches or agencies of the tribal government and otherwise to engage in business activities and projects which promote the economic well-being of the Tribe and its members;
- k. To purchase and to acquire in other ways land and other property, and to request additional lands to be taken into trust for the benefit of the Tribe by the United States;
- l. To provide written procedures regarding the execution of bank checks and vouchers;
- m. To manage, develop, protect and regulate the use of water, minerals and all other natural resources within tribal jurisdiction;
- n. To enact laws, statutes and codes governing conduct of individuals and proscribing offenses against the Tribe; to maintain order, protect the safety and welfare of all persons within tribal jurisdiction; and to provide for the enforcement of the laws and codes of the tribe;

- o. To establish a tribal court, to provide for the jurisdiction and procedures of the court, and to appoint judges;
- p. To prescribe conditions under which non-members may enter and remain on the reservation and to establish procedures for the exclusion of non-members from any land within the Tribe's jurisdiction;
- q. To assert as a defense to lawsuits against the Tribe, the sovereign immunity of the Tribe, provided that no waiver of sovereign immunity may be made by the Tribal Council without prior approval of the General Council;
- r. To regulate the domestic relations of members of the Tribe; to provide for the guardianship of minors and incompetent persons within tribal jurisdiction; to provide services for the peace, safety, health, education and general welfare of the members of the Tribe;
- s. To regulate the inheritance of all lands within tribal jurisdiction and all property owned by persons within tribal jurisdiction; and to provide for escheat of property to the Tribe, provided that no law, statute, code or ordinance governing the inheritance of property owned by tribal members shall be in violation of federal law;
- t. To enact ordinances consistent with this document establishing procedures for the nomination, election, and recall of members of the Tribal Council;
- u. To appoint, direct and set the compensation of a tribal business administrator or manager; and to establish policies and procedures for the employment of tribal personnel;
- v. Subject to any limitations contained in this document to delegate any powers vested in the Tribal Council to subordinate tribal officers, tribal employees or other appropriate persons;
- w. To take all actions which are necessary and proper for the exercise of the powers enumerated in this document and necessary to effectively govern tribal affairs, which are otherwise consistent with, and in furtherance of, tribal customs, traditions and beliefs, and any other powers which may hereafter be vested in the Tribal Council; and

x. Except as provided in this document, to establish its own rules of procedures.

y. To reassume jurisdiction over juvenile matters pursuant to the Indian Child Welfare Act of 1978, Public Law 95-608, 92 Stat. 3069.

Section 3. Reserve Powers of General Council

All powers heretofore vested in the Tribe, but not specifically referred to in this document, shall not be abridged, but shall be reserved to the General Council.

Section 4. Limited Power to Transfer Tribal Land Out of Tribal Ownership.

The Tribal Council shall not transfer lands held in trust for the benefit of the Tribe by the United States out of tribal ownership by any means unless prior to any such transfer taking effect, such proposed transfer is approved by:

a. The General Council at a meeting at which a quorum is present, or by majority vote of the General Council in a special election conducted by the Election Board, provided that a majority of the General Council participates in the election; and

b. The Secretary of the Interior.

Section 5. Limited Power to Encumber Tribal Land

a. Except as permitted by Subsection (b) of this Section, the Tribal Council shall not pledge, mortgage, lease or grant licenses to use lands held in trust for the benefit of Tribe by the United States (whether revocable or irrevocable) unless it is approved by the Secretary of the Interior, and by the General Council, at a General Council meeting where a quorum is present, or by majority vote of the General Council in a special election conducted by the Election Board, provided a majority of the General Council participates in the election.

b. The Tribal Council may authorize the following encumbrances by a vote of a majority of the Tribal Council, subject to applicable federal law:

1. Grants of permission to members of the Tribe and qualified non-members in accordance with provisions of this document, to use specified portions of tribal land for residential, agricultural, commercial or industrial purposes;

2. Grants of rights-of-way over tribal land or interests therein; for the purposes of providing municipal services, such as water, sewer disposal, electricity, telephone and roads, to and for the benefit of tribal members, or the heirs and descendants of tribal members who had a land use assignment or lease.

Section 6. Limited Power to Develop Natural Resources

The Tribal Council shall not develop on a commercial or industrial basis any natural resources of the Tribe without the consent of the General Council, either at a General Council meeting at which a quorum is present, or by majority vote of the General Council in a special election conducted by the Election Board, provided that a majority of the General Council participates in the election, and provided that such actions are subject to applicable federal law.

Section 7. Principal of Construction

Sections 5, 6 and 7 of this Article shall not be construed to deny to the Tribal Council its governmental power and authority to regulate activities on tribal land for the Tribe's general welfare, including, but not limited to, zoning, the regulation of commercial ventures, fishing, hunting and other sports activities, and for the purpose of promoting the health, safety and welfare of tribal members and the conservation and protection of tribal resources.

ARTICLE VI

Elections

Section 1.

An Election Board, appointed by the Chairperson and approved by the Tribal Council, shall supervise and administer all elections in accordance with the election ordinance enacted by the Tribal Council in accordance with this document. The election ordinance shall provide procedures for Tribal Council elections, and all special elections concerning initiatives, referenda, recalls, amendments to this constitution, and other matters set forth in this constitution. The election ordinance shall provide procedures for the proper submission of petitions to the Election Board. Notwithstanding any other

provision of this constitution or a Tribal ordinance, Secretarial elections and appeals of Secretarial elections shall be conducted in accordance with applicable federal law.

Section 2.

Election Board members shall serve one year terms, and may only be removed by majority vote of the General Council. Immediate family members of members of the Tribal Council may not serve on the Election Board. The Election Board shall not be subject to influence from the Tribal Council, and the Election Board shall conduct its business in a manner which avoids any perception of influence from the Tribal Council.

Section 3.

Members of the Tribal Council shall be chosen by secret ballot, the form of which shall be established by the election ordinance enacted by the Tribal Council. The Tribal Council shall also make provision in the election ordinance for absentee voting, and reasonable qualifications for candidacy.

Section 4.

All present officials shall continue to hold office until the members of the Tribal Council are seated from the first general election date following the adoption and approval of this document. The first election of Tribal Council members and officers of the Tribe under this document shall be held on the first general election date following the effective date of this constitution. All elections shall be conducted in accordance with this document and the election ordinance.

At the first Tribal Council election held pursuant to this document, in November, 2014, the three members receiving the highest number of votes shall be elected to fill the vacancies which would have existed in 2014 under the former tribal constitution (which was not approved by a Secretarial election), and the members shall hold office for four (4) years. Two (2) years later, in November, 2016, the second regular election pursuant to this document shall be held, and the two members receiving the highest number of votes shall be elected to fill the vacancies which would have existed in 2015 under the former tribal constitution, and the members shall hold office for four (4) years. Thereafter, the candidates receiving the highest number of votes shall serve four (4) year terms of office. The two Tribal Council members who were to serve until 2015 under the former tribal constitution shall serve until 2016.

Section 5.

a. Any member of the General Council eighteen (18) years of age or older who desires that his or her name be placed on the ballot as a candidate for the Tribal Council shall file with the Tribal Secretary/Treasurer a statement of intent stating his or her name and address.

b. General elections to vote for Tribal Council members shall be held every other year on the second Tuesday of the month of November. Notice of the general elections shall be posted by the Election Board at least twenty (20) days before each such election at the Tribe's business office, the voting place, and in three more additional public places. In case the date of the general election should conflict with a holiday, the election shall be held on the following work day.

c. All newly elected officials shall assume their offices thirty (30) days after the election in which they were elected, or upon the resolution of any appeal filed pursuant to Section 6 herein. Current Tribal Council members shall continue in office until their successors are seated.

d. A tie vote which effects who will be seated on the Tribal Council shall be decided only by holding a general election within thirty (30) days from the date of the previous general election that resulted in a tie. Only those receiving the same number of votes shall be candidates in the subsequent election.

Section 6.

a. Any member of the General Council who voted in the election may file an appeal with the Election Board, provided that such appeal must be received in writing by the Election Board within ten (10) days of the announcement of the results of the election. The appeal shall set forth the basis for the appeal and any evidence supporting the appeal.

b. The Election Board may decide the appeal on the basis of the record or may schedule a hearing to consider the evidence. In any case the appeal shall be resolved no later than ten (10) days after the date the appeal is received by the Election Board.

c. If the appealing member disputes the decision of the Election Board, he/she may file an appeal pursuant to the arbitration provisions of Article XIII of this constitution, provided that the decision of the Election Board shall stand until the resolution of the arbitration.

Section 7.

a. After each Tribal Council election, the Tribal Council members shall elect from among the five (5) members of the Tribal Council the following officer positions:

1. Chairperson;
2. Vice-Chairperson; and
3. Secretary/Treasurer.

ARTICLE VII

Duties of Officers

Section 1.

a. The Chairperson shall have the following duties:

1. To preside at all meetings of the Tribal and General Councils;
2. To vote at Tribal and General Council meetings only when it is necessary to break a tie vote;
3. Subject to the approval of the Tribal Council, to appoint all non-elected officials and employees of the Tribal government and direct them in their work, subject only to applicable restrictions embodied in this document or in enactments of the Tribal Council establishing personnel policies or government personnel management;
4. Subject to the approval of the Tribal Council, to establish such boards, committees, or sub-committees as the business of the Tribal Council may require and to serve as an ex-officio member of all such committees and boards;

5. Subject to the approval of all contracts by the Tribal Council, to serve as a contracting officer or agent for the Tribe including the authority to retain legal counsel;

6. Subject to such regulations and procedures as may be prescribed by statute enacted by the Tribal Council and subject to approval by the Tribal Council, to grant pardons or restore Tribal members to eligibility for elective office in the Tribal government;

7. Subject to the approval of the Tribal Council, to appoint tribal law enforcement officials as are from time to time required to assure the administration and enforcement of tribal laws;

8. The Chairperson shall hold no other Tribal office or engage in private remunerative employment which may pose a conflict of interest with the Tribe's enterprises or business activities during his or her term of office;

9. To prepare and cause to be published at least five (5) days before the meetings an agenda for each General Council meeting. The agenda shall include, but not be limited to:

a) A report by the Tribal Secretary/Treasurer on the finances of the Tribal government during the quarter immediately preceding the meeting; and,

b) A list of all the laws enacted by the Tribal Council during the quarter immediately preceding the meeting, with a short summary explaining each law. During the meeting the Tribal Council Chairperson will ensure that this agenda, including the financial report, will be available for inspection by any member of the General Council upon request. All items on the agenda will be considered by the General Council before considering new matters from the floor.

Section 2.

The Vice-Chairperson shall, in the absence of the Chairperson, perform all duties and assume all the responsibilities vested in the Chairperson. The Vice-Chairperson

shall, upon the request of the Chairperson, assist in carrying out the duties of the Chairperson. The Vice-Chairperson shall perform such other duties as the Chairperson may direct.

Section 3.

a. The Secretary/Treasurer shall call the roll, handle all official correspondence of the Tribal Council, keep the minutes of all regular and special meetings of the Tribal and General Councils, and certify to the Superintendent of the Bureau of Indian Affairs, Central California Agency, the duly elected officers of the Tribal Council within fifteen (15) days from the date of any election;

b. Accept, keep and safeguard all funds under the exclusive control of the Tribe by depositing them in a bank insured by an agency of the federal government or in a Tribal trust account with the Bureau of Indian Affairs, as directed by the Tribal Council, and shall keep or cause to be kept an accurate record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his or her custody to the Tribal and General Councils at regular meetings and at such other times as requested by either Council. The Secretary/Treasurer shall not pay or otherwise disburse any funds in the custody of the Tribal Council except when properly authorized to do so by the Tribal Council;

c. At such times as the Tribal Council or General Council may direct, have the books and records of the Tribe audited by a competent independent auditor employed by the Tribal Council.

d. Be present at all meetings of the Tribal and General Councils unless prevented by illness or circumstances beyond his or her control;

e. Required to give a surety bond satisfactory to the Tribal Council if the Tribal Council so desires;

f. Insure compliance with Tribal procedures for the execution and approval of checks and vouchers drawn on Tribal funds; and

g. In the absence of the Chairperson and Vice-Chairperson, with the approval of the Tribal Council, the Secretary/Treasurer shall carry out the duties of the Chairperson.

Section 4.

The Tribal Council may require all responsible tribal officials and employees to be bonded, the person responsible for the cost of such bonding to be determined by the Tribal Council.

ARTICLE VIII

Meetings

Section 1.

All meetings of the General or Tribal Councils shall be open to all tribal members, except in those cases where the matter under discussion would invade the privacy of an individual tribal member or employee.

Section 2.

All meetings of the Tribal Council shall be held in accordance with the following provisions:

a. The Tribal Council shall meet at least once per month. The Tribal Council may schedule additional regular meetings as necessary, provided that it shall publish the schedule of all such meetings.

b. A majority of the members of the Tribal Council shall constitute a quorum at all Tribal Council meetings. No business shall be conducted in the absence of a quorum.

c. Special meetings of the Tribal Council may be called by the Chairperson or by any three (3) members of the Tribal Council. The notice in regard to any special meeting shall be given at least three (3) days prior to the meeting and shall specify the purpose of the meeting.

d. Each member of the Tribal Council shall have one vote on all matters, and all matters to be acted on at a Tribal Council meeting shall be approved or disapproved by a majority vote of those present and voting, provided that the Chairperson shall only vote to break a tie.

Section 3.

All meetings of the General Council shall be held in accordance with the following provisions:

a. The annual General Council meeting shall be held on the last Saturday of October. The Tribal Council may set more frequent meetings of the General Council as necessary, provided it shall publish a schedule of all such meetings.

b. Special meetings of the General Council may be called by the Tribal Chairperson or by any member of the General Council who submits a petition with ten (10) signatures of General Council members to the Election Board requesting a special meeting and setting forth the purpose of the meeting. Upon receipt of a properly executed and submitted petition, the Election Board shall notify the Tribal Council and notice the meeting. The notice in regard to any special meeting shall be given at least three (3) days prior to the meeting and shall specify the purpose of the meeting.

c. No business shall be transacted in the absence of a quorum. A majority of the voting members of the General Council shall constitute a quorum at all General Council meetings. The quorum may include members attending the meeting by electronic means, provided each member is able to engage in two-way communication with the members at the physical location of the meeting, and provided the member is able to convey electronic votes through a secure and verifiable means.

ARTICLE IX

Enactments

Section 1.

All final decisions on matters of general and permanent interest to members of the Tribe shall be embodied in ordinances, such as an enrollment or an election ordinance. Such enactments shall be available for inspection by members of the General Council during normal office hours.

Section 2.

All final decisions on matters of short term or one time interest where a formal expression is needed shall be embodied in resolution. Other decisions of a temporary nature or relating to particular individuals, officials or committees shall be put in the form

of motions and noted in the minutes and shall be available for inspection by members of the General Council during normal business hours.

Section 3.

All ordinances and resolutions shall be dated and numbered and shall include a certification showing the presence of a quorum and the number of members voting for and against the proposed enactment.

ARTICLE X

Vacancies

Section 1.

The Tribal Council shall declare a Tribal Council position vacant for any of the following reasons:

- a. When a Tribal Council member dies;
- b. When a Tribal Council member resigns;
- c. When a Tribal Council member is convicted of a crime while in office that is classified as a felony by either state or federal law; and
- d. When a Tribal Council member is recalled from office.

If less than twelve (12) months of vacant term remains, the Tribal Council shall fill the vacancy by appointment of a General Council member who qualifies for candidacy for the vacant position. If more than twelve (12) months remain in the vacant term a special election shall be held to fill the vacant position. Such a special election shall be held within thirty (30) days after the Tribal Council declares the position vacant.

ARTICLE XI

Suspension and Recall

Section 1. Suspension

- a. Any member of the Tribal Council may be suspended from office by the Tribal Council for any of the following reasons:

1. Absence from regular Tribal or General Council meetings three (3) successive, unexcused times, or three (3) unexcused times in any twelve (12) month period;

2. Conviction of a crime while in office involving the moral character of the Tribal Council member;

3. Neglect of duty; and

4. Misconduct in office.

b. Any member of the General Council can request suspension of any Tribal Council member by submitting a written statement of charges to the Chairperson of the Tribal Council, or in the case of a request for suspension of the Chairperson, to the Vice-Chairperson of the Tribal Council. Such written statement must be received by the accused Council member no later than ten (10) days before the next regular Tribal Council meeting at which he or she is to appear.

c. At the next regular Tribal Council meeting following the submission of such written statement, the allegations and proof against the accused member of the Tribal Council shall be presented, and the accused member shall be given an opportunity to reply to all charges.

d. The Tribal Council shall decide on the suspension within ten (10) days of the hearing. The Tribal Council member who is the subject of the suspension request shall not vote on the suspension nor serve in his or her capacity as a Tribal Council member in the suspension proceedings.

e. The maximum length of time for a suspension of a Tribal Council member shall be ninety (90) days. During the suspension, the suspended Tribal Council member shall not be eligible for any stipends or other benefits of service on the Tribal Council. If, at the end of that time, the suspended Tribal Council member has not been recalled by the General Council, the Tribal Council member shall reassume his/her position on the Tribal Council.

f. If any officer (Chairperson, Vice-Chairperson, Secretary/Treasurer) engages in conduct which constitutes cause for suspension pursuant to Article XI, Section 1(a) herein, whether or not such suspension is

carried out by the Tribal Council, the Tribal Council may determine that the officer is unfit to continue to serve the Tribal Council as an officer. In such case the Tribal Council may decide to reelect its officers in between elections.

Section 2. Recall

Every person elected to a position on the Tribal Council or who is an elected officer of the Tribe shall be subject to recall from such office by the General Council as follows:

a. Any member of the Tribe may circulate one or more petitions among the members of the General Council requesting a special recall election, which petition(s) shall contain the name(s) of the person(s) whose recall is sought and shall state the charges being proffered against such person(s) in 25 words or less. A recall action will only proceed if the petition is properly executed by one-third (1/3) of the members of the General Council and submitted to the Election Board.

b. Upon verification of the proper execution and submission of the petition for recall, the Election Board shall call a special election concerning the recall action within sixty (60) days from receipt of the petition(s).

c. The election ordinance shall set forth procedures for conducting a special election concerning recall, including provisions which provide adequate information to the members of the General Council concerning the reason for the recall, and due process for the Tribal Council member or elected officer of the Tribe who is the subject of the recall.

d. The Election Board shall immediately declare the Tribal Council member or elected officer of the Tribe recalled and the seat vacant if a majority of the General Council members vote in favor of the recall, provided that a majority of the members of the General Council participate in the special election.

ARTICLE XII

Initiative and Referendum

Section 1. Initiative

The members of the General Council reserve the right to independently propose tribal ordinances and resolutions. Any proposed initiative measure shall be submitted to the Election Board accompanied by a petition signed by not less than one-third (1/3) of the members of the General Council. Upon receipt of a properly executed and submitted petition for an initiative, the Election Board shall call a special election concerning the initiative. The election shall be held within sixty (60) days from the date the valid petition was received by the Election Board. The initiative may be adopted by a majority vote of the General Council at a meeting of the General Council where a quorum is present, or by majority vote of the General Council in a special election conducted by the Election Board, provided that a majority of the General Council participates in the election.

Section 2. Referendum

The members of the General Council reserve the right to independently approve or disapprove enactments of the Tribal Council. Any proposed action to approve or disapprove an enactment of the Tribal Council shall be submitted to the Election Board accompanied by a petition signed by three (3) Tribal Council members or at least one-third (1/3) of the members of the General Council. In the alternative, three (3) members of the Tribal Council may submit a petition to the Election Board for the General Council to vote to approve or disapprove a proposed enactment of the Tribal Council. Upon receipt of a properly executed and submitted petition for a referendum, the Election Board shall call a special election concerning the referendum. The election shall be held within sixty (60) days from the date the valid petition was received by the Election Board. The approval or disapproval of the Tribal Council action may be adopted by a majority vote of the General Council at a meeting where a quorum is present, or by a majority vote of the General Council in a special election conducted by the Election Board, provided that a majority of the General Council participates in the election. A disapproval of the Tribal Council action adopted by the General Council through a referendum shall repeal the Tribal Council action.

Section 3.

No initiative or referendum adopted pursuant to the provisions of this Article shall serve to abrogate, modify or amend any properly executed contract or agreement approved by the Tribal Council and entered into with third parties.

ARTICLE XIII

Judiciary

Section 1.

When the Tribal Council determines that the Tribe has sufficient resources and cause, the Tribal Council may establish a Tribal Judiciary. The Tribal Judiciary shall consist of a Supreme Court and such other inferior courts as the Tribal Council may from time to time establish. Once established, the Tribal Judiciary shall exercise jurisdiction over all cases and controversies within the Tribe's jurisdiction, in law and equity, whether civil or criminal in nature, that arise under this document, the laws of the Tribe, or which is vested in the Tribal courts by federal law.

Section 2.

The Supreme Court shall consist of a chief judge, appointed by the Tribal Council.

Section 3.

The duties and procedures of the court shall be determined by the Tribal Council and set forth by ordinance. To the extent that the Tribal Council authorizes the Tribal Judiciary to exercise criminal jurisdiction, the ordinance shall set forth provisions insuring that such exercise is consistent with the Indian Civil Rights Act, 25 USC § 1301 *et seq.*, as amended.

Section 4.

The tenure and salary of Tribal judges shall be established by statute of the Tribal Council. No person shall be appointed to the office of Tribal judge unless he or she is not less than twenty-one (21) years of age and has never been convicted of a felony or, within one year preceding his or her appointment, of a misdemeanor. The minimum qualifications for Tribal judges shall include prior service as a federal or state court judge.

Section 5.

In all criminal prosecutions, the accused shall enjoy the right to a speedy jury trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him or her, the right of cross-examination, to have compulsory process for obtaining witnesses in his or her favor, and to have assistance of an advocate for his or her defense admitted to practice before the Tribal courts.

Section 6.

The General Council shall sit as a Court of Appeals whenever necessary and may hear appeals from the Supreme Court at regular or special meetings. Whenever the General Council sits as an appellate court, their decision shall be final and binding upon all parties to the suit and not subject to review. The procedures of the General Council sitting as an appellate court shall be determined by the General Council at any regular or special meeting.

Section 7.

a. Notwithstanding the establishment of a Tribal Judiciary, in order to insure that certain disputes are resolved in an impartial manner and without undue delay, and to insure due process to all members of the General Council, the arbitration provisions of this Article shall provide an exclusive forum for the resolution of the following disputes:

1. Appeals from decisions of the Election Board pursuant to Article VI, Section 6 herein; any member of the General Council who voted in the election may initiate the arbitration;

2. Disputes arising out of any special election conducted by the Election Board pursuant to this constitution, including decisions concerning the validity of a petition submitted to the Election Board pursuant to this constitution; any member of the General Council who signed a petition, or who participated in the special election may initiate the arbitration; and

3. Disputes arising out of more than one group claiming to be the properly elected tribal council of the Tribe; any member of one of the tribal councils may initiate the arbitration process.

b. Procedures for Arbitration.

1. Arbitration shall be commenced by written notice to JAMS, setting forth the basis of the request for arbitration and any evidence supporting the request. In the case of an appeal from the decision of the Election Board, the request for arbitration must be received by JAMS no later than ten (10) days after the date of the decision of the Election Board.

2. JAMS shall apply the JAMS Comprehensive Rules and Procedures.

3. A single neutral Arbitrator with experience in Federal Indian law shall be assigned to the matter by JAMS.

4. The Arbitrator shall set the schedule for the arbitration to ensure a final determination no later than ninety (90) days after the date JAMS receives notice of the appeal in order for the appeal not to interfere with the proper functioning of the Tribal government. If the matter is extended past ninety (90) days, it shall not affect the jurisdiction of JAMS or any other provision of this constitution.

5. The Arbitrator shall resolve the dispute applying the laws of the Tribe to the facts presented. In the absence of applicable Tribal law, the Arbitrator shall apply law in the following order: federal statutory law, federal common law, California statutory law, California common law, common law.

6. In the case of a member of the General Council appealing the results of an election, the cost of arbitration shall be borne by the Tribe, not including legal costs of the appellant. In the case of a member of the General Council challenging the conduct of a special election or a decision concerning a petition, the cost of arbitration shall be borne by the Tribe, not including legal costs of the appellant. In the case of a dispute between more than one purported tribal council of the Tribe, the cost of arbitration shall be divided equally by the parties.

7. Should JAMS cease to function in this capacity, the Tribe shall utilize its successor organization. Should a successor organization

not be named, or should JAMS refuse to accept the arbitration for any reason, disputes subject to the exclusive jurisdiction of arbitration pursuant to this Article may be resolved by any nationally recognized independent provider of arbitration services, consistent with the provisions of this document.

8. No body of the Tribe or individual shall have the power to assert sovereign immunity in order to avoid the jurisdiction of arbitration pursuant to this Article. This provision shall not have any effect on the general sovereign immunity of the Tribe and its officers.

c. The decision of the Arbitrator shall be final, and shall not be subject to appeal or challenge before any court or federal agency. No court or federal agency shall have jurisdiction over disputes subject to this exclusive arbitration provision except by unanimous consent of all members of the General Council involved in the dispute.

ARTICLE XIV

Bill of Rights

Section 1.

In exercising its powers of self-government, the Tribe shall not:

a. Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and 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 seizure, 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 offenses to be twice put in jeopardy;

d. Compel any person in any criminal case to be a witness against himself;

- e. Take any private property for a public use without just compensation;
- f. Deny to any person in a criminal proceeding the right to a speedy 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, at his or her own expense, to have the assistance of counsel for his or her defense;
- g. Require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
- h. Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- i. Pass any bill of attainder or ex post facto law;
- j. Deny any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

Section 5.

Nothing in this Article affects the obligation of the United States, or any state government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

Section 6.

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of the Tribe.

Section 7.

Tribal members shall have the right to review all Tribal records, including financial records, at any reasonable time in accordance with procedures established by the Tribal Council. This right does not include records maintained by the Tribe which are confidential to individual members or employees of the Tribe. For purposes of this section, "confidential" shall mean enrollment eligibility documentation, personal contact information, medical information, ICWA records, application documentation (applicable to both applications for membership in the Tribe, and applications for employment),

performance evaluations, background and credit checks, and records pertaining to complaints, allegations of misconduct, and grievances.

ARTICLE XV

Adoption of Constitution

This constitution, when adopted by a majority of those members of the Timbisha Shoshone Tribe entitled to vote (pursuant to applicable federal law) at a Secretarial election authorized by the Secretary of the Interior, or his authorized representative, provided that at least thirty percent (30%) of the members entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior, and, if approved, shall be effective from the date of approval.

ARTICLE XVI

Amendments

This constitution may be amended by a majority vote of the members of the Timbisha Shoshone Tribe entitled to vote (pursuant to applicable federal law) at an election called by the Secretary of the Interior, provided that at least fifty percent (50%) of the members entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior.

It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment at the request of the Tribal Council, or upon a presentation of a petition signed by at least one-third (1/3) of the members of the Tribe eligible to vote in a Secretarial election, provided such petition meets the requirements of 25 C.F.R. Part 82.

ARTICLE XVII

Savings Clause

All enactments of the Tribe adopted before the effective date of this constitution shall continue in full force and effect to the extent they are consistent with this constitution.

ARTICLE XVIII

Severability

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

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial election authorized on _____, by the Pacific Regional Director, Bureau of Indian Affairs, delegated to the Regional Directors by Memorandum dated October 11, 2006, the attached CONSTITUTION OF THE TIMBISHA SHOSHONE TRIBE, INYO COUNTY, CALIFORNIA, was submitted to the qualified voters of the Tribe, and was on _____, duly adopted/rejected by a vote of _____ for, _____ against, and _____ cast ballots found to be spoiled or mutilated, in an election in which at thirty percent (30%) of the _____ entitled to vote, cast their ballot in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 948), as amended.

Chairperson, Election Board

Election Board Member

Election Board Member

Election Board Member

March 29, 2014

**NOTICE - RESULTS OF
SECRETARIAL ELECTION
TIMBISHA SHOSHONE TRIBE**

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial election authorized on 1-6-2014, by the Pacific Regional Director, Bureau of Indian Affairs, delegated to the Regional Directors by Memorandum dated October 11, 2006, the attached CONSTITUTION OF THE TIMBISHA SHOSHONE TRIBE, INYO COUNTY, CALIFORNIA, was submitted to the qualified voters of the Tribe and was on March 29, 2014, duly adopted/rejected by a vote of 63 for and 22 against, and 1 cast ballots found to be spoiled or mutilated, in an election in which at least thirty percent (30%) of the ¹⁰³~~87~~ entitled to vote, cast their ballot in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 948), as amended.



Chairperson, Election Board



Election Board Member



Election Board Member



Election Board Member

Date: 3-29-2014