

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
ODAWA FISHERY INC. CORPORATE CHARTER**

This Corporation is hereby organized, incorporated and granted its corporate powers, privileges and immunities under the laws of the Little Traverse Bay Bands of Odawa Indians as a Tribally chartered corporation for the purposes set forth in Article III. The Little Traverse Bay Bands of Odawa Tribal Council grants this corporate charter pursuant to its inherent sovereign authority and pursuant to Part Two of Comprehensive Business Codes of the Little Traverse Bay Bands of Odawa Indians, WOTC 12.114, *et seq.* This Charter creates a Tribal Corporation as defined at WOTC 12.116(B) as a corporation wholly owned by the Little Traverse Bay Bands of Odawa Indians for the benefit of the Tribe and its members, and its ownership is inalienable.

ARTICLE I: NAME

The name of this Tribal Corporation is **Odawa Fishery Inc.** The Corporation shall have its principal place of business at the 229 S. Huron Ave. Mackinaw City, Michigan 49701 or at such other location within the Tribe's territories that the Board of Directors of the Corporation shall determine.

ARTICLE II: OWNERSHIP

The Corporation shall be 100% owned and controlled by the Little Traverse Bay Bands of Odawa Indians, (Tribe).

ARTICLE III: PURPOSES

The purpose of the corporation is to pursue business opportunities and economic development with an emphasis on Great Lakes commercial fishing. The corporation may form partnerships with other tribes or entities acting on behalf of other tribes and/or any other relevant

corporations or entities.

ARTICLE IV: DEFINITIONS

For purposes of this Charter the following terms shall have the meanings respectively specified:

- a. “*Board of Directors*” shall mean the Board of Directors of the Corporation created by this Charter.
- b. “*Corporation*” shall mean the Odawa Fishery, Inc., created by this Charter.
- d. “*Felony*” shall mean only those offenses set forth under Tribal Statute or the United States Indian Major Crimes Act (18 U.S.C. § 1153).
- e. “*Obligations*” shall mean any notes, bonds, interim certificates, debentures or other evidences of indebtedness issued by the Corporation under this Charter.
- f. “*Obligee*” shall mean any holder of an Obligation, and any agent or trustee for any holder of any Obligation.
- h. “*Non-gaming Economic Affairs*” means economic development enterprises and activities not related to the gaming commercial enterprises.
- i. “*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*” means “*areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.*” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).
- j. “*Tribe*” or “*LTBB*” means the Little Traverse Bay Bands of Odawa Indians.

k. “*Tribal Constitution*” means the Little Traverse Bay Bands of Odawa Indians Constitution as adopted by its membership on February 2, 2005.

l. “*Tribe Council*” means the elected body of nine Tribal members of Little Traverse Bay Bands of Odawa Indians with duties found in the Tribal Constitution Article VII. “Tribal Council”.

ARTICLE V: RELATION TO TRIBE

The Corporation shall constitute a governmental instrumentality of the Tribe, having autonomous existence separate and distinct from the Tribe.

a. For purposes of civil jurisdiction, regulatory jurisdiction and taxation, the Corporation shall be deemed a subordinate arm of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe.

b. The Corporation shall have no power to exercise any regulatory or legislative power; the Tribe reserves from the Corporation all regulatory, legislative and other governmental power.

ARTICLE VI: ASSETS

The Corporation shall have only those assets of the Tribe formally assigned or leased to it by the Tribal Council, together with whatever assets it acquires by other means as provided in this Charter. No activity of the Corporation, or any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Tribe or another Tribal Entity not assigned or leased in writing to the Corporation.

Odawa Fishery Inc. is hereby assigned control of the land, real property, building(s), equipment and assets at 229 S. Huron Ave. Mackinaw City, Michigan 49701, formerly known as Bell’s Fishery.

ARTICLE VII: BOARD OF DIRECTORS

The management of the affairs of the corporation shall be vested in a Board of Directors, except as otherwise provided in this Charter or in the bylaws of the corporation. As follows:

1. William Marsh McNamara, 928 Franklin St., Petoskey, MI 2 year term
2. Daugherty Johnson III, 307 Chamberlain, Flushing, MI 3 year term
3. John W. Keshick III, 5583 U. S. 131-South, Petoskey, MI 1 year term

a. Compensation

1. The board members may be compensated a reasonable amount as approved by Tribal Council, provided availability of funds.
2. Board members shall adhere to the approved travel policies for reimbursement of travel expenses.

ARTICLE VIII: CORPORATE POWERS

The Corporation shall have the power to:

- a.** To purchase, receive, solicit, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in personal property of every description, or any interest therein, wherever situated.
- b.** To lease real property and improvements from the Little Traverse Bay Bands of Odawa Indians.

- c. To make contracts or agreements, incur liabilities and borrow money from any source, upon such terms and rates and interests as the Board of Directors may determine; to issue notes, bonds and other obligations and secure any of its obligations by specifically mortgaging, pledging or assigning its corporate property or income as collateral for its corporate debts or liabilities, as approved by Tribal Council.
- d. To lend or invest money for its corporate purposes.
- e. To conduct its affairs, carry on its operations, and exercise the powers granted under this Corporate Charter in any state, territory, district, or possession of the United States or in any foreign country.
- f. To elect or appoint officers and agents of the corporation and define their duties and fix their compensation
- g. To sue and be sued but only in accordance with Article V of this Charter.
- h. To have and exercise all powers incidental, necessary or convenient to the conduct of corporate business, not inconsistent with applicable law, and to engage in any and all activities which will directly or indirectly carry out the purposes as set forth in Article III.

ARTICLE IX: SOVEREIGN IMMUNITY

- a. The Corporation is a distinct legal entity from the Little Traverse Bay Bands of Odawa Indians with its own assets. While the Tribe is the sole owner, the Corporation's corporate activities, transactions, obligations, liabilities and property are not those of the Tribe. Nothing in this charter waives or permits the corporation to waive the Tribe's sovereign immunity from suit.

b. The Corporation may effectuate limited waivers of its sovereign immunity for conducting day-to-day business if the waivers are made in accordance with either of the following methods:

1. Tribal Council may expressly authorize a limited waiver of sovereign immunity on a case-by-case basis through a specific resolution.

2. The Corporation may waive its sovereign immunity pursuant to transactions or agreements that the Tribal corporation may execute in the course of its ordinary business affairs.

3. Any waivers of sovereign immunity made pursuant to (1) or (2) above shall only expose the assets owned or held by the Corporation and shall not subject other Tribal assets to liability. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Tribal corporation. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Tribal corporation subject thereto. Neither the power to sue and be sued provided in this Charter, nor any express waiver of sovereign immunity by resolution of the Corporation's Board of Directors or the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon any property of the Tribal corporation other than property specifically pledged or assigned, or any property of the Tribe, or a consent to suit with respect to any land within the exterior boundaries of the Reservation or consent to the alienation, attachment or encumbrance of any such land.

c. Sovereign Immunity of the Tribe. All inherent sovereign rights of the Tribe as a federally recognized Indian tribe with respect to the existence of the Tribal corporation are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Charter shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe or to be a consent of the Tribe to the jurisdiction of the United States or of any state with regard to the business affairs of the

Tribal corporation or the Tribe or any cause of action, case or controversy.

ARTICLE X: MANAGEMENT OF CORPORATION

The Board of Directors is empowered and directed to adopt bylaws consistent with this Charter and all applicable law to set out management of the Corporation and regulation of its affairs.

ARTICLE XI: INSULATION FROM SHIFTS IN TRIBAL POLITICS

a. Board members can only be involuntarily removed during their term for one or more of the following reasons:

1. The Board member(s) intentionally or negligently took action to harm the interests of the Corporation or Tribe;
2. The Board member(s) is convicted on any crime that could harm the credibility or function of the Corporation;
3. The Board member(s) is convicted of a felony;
4. The Board member(s) failed to act in good faith, or with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, or in a manner he or she reasonably believes to be in the best interests of the Corporation.
5. The Board member(s) fail to meet the financial performance measures or show any substantial action toward achieving such measures.

b. Removal of a Board member(s) for one or more of the reasons set out in subsection (a) above can only be accomplished by an affirmative vote of three-fourths

($\frac{3}{4}$) or more of the Board.

c. Any changes to this charter by Tribal Council shall only be adopted upon the affirmative vote of three-fourths ($\frac{3}{4}$) or more of those Tribal Council members eligible to vote.

d. Member(s) of the Board of Directors appointed under Article III serve 3 year terms and there shall be no limitation on the amount of terms that may be served. Any changes to this charter by Tribal Council shall only be adopted upon the affirmative vote of three fourths ($\frac{3}{4}$) or more of those council members eligible to vote.

ARTICLE XII: ATTORNEYS

The Corporation may utilize the services of Tribal attorney(s) with prior approval by Tribal Council. The Corporation with Board approval may hire the services of outside attorneys as necessary, with Tribal Council approval.

ARTICLE XIII: DURATION and DISSOLUTION

The Corporation shall continue in perpetuity unless and until dissolved upon adoption of a resolution requiring dissolution by an affirmative vote of three-fourths ($\frac{3}{4}$) or more of the Tribal Council members eligible to vote. No such resolution shall take effect before the expiration of 90 days from the date of adoption. Upon dissolution of this Tribal corporation, its assets shall be distributed at the direction of the Tribal Council, or its designee, as follows:

a. Any property held upon an express condition requiring its return, transfer or other disposition shall be distributed accordingly;

b. Any property or assets required to be distributed or transferred in any manner according to federal law shall be distributed or transferred accordingly;

c. Claims of creditors of the Tribal corporation approved by the Tribal Council shall

be paid accordingly from the assets or funds of the corporation; and

d. Remaining assets shall be transferred to another Tribal corporation, to the Tribe, or distributed or transferred as the Tribal Council directs.

ARTICLE XIV: REGISTERED AGENT

The Registered Agent of the Corporation is:

Name: Executive Director
Address: Odawa Fishery
229 S. Huron Ave. Mackinaw City, 49701

Provided, the Board of Directors may change the Registered Agent by taking official action and notifying Tribal Council and the Department of Commerce of the change.

ARTICLE XV: DISTRIBUTIONS TO TRIBAL GOVERNMENT

The Board of Directors shall distribute annually fair and reasonable profits to the Tribal government beyond the amount required to maintain adequate funds in the Corporation for debt service, and maintenance and growth of business operations. The Corporation shall have no power to issue any shares of stocks to declare and pay any dividends.

ARTICLE XVI: REPORTING AND AUDIT REQUIREMENTS

The Corporation shall provide quarterly reports to Tribal Council setting out the Corporation's assets, liabilities, equity, revenue and expenses in reasonable detail, and general Corporate activities.

The Corporation shall obtain an annual financial audit by an independent public

accountant, the results of which will be provided to Tribal council within 120 days of the end of its fiscal year.

The Corporation shall keep correct and complete books and records of account and shall keep minutes of its meetings. All books and records of the corporation, except for sensitive proprietary information, may be inspected by any LTBB citizen at the location where the records are normally kept at any reasonable time.

Certificate of Adoption

As Tribal Secretary and Legislative Leader, we certify that this Charter was formally adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians by adoption of Statute # 2011-012 on MAY 19, 2011.

Date: 5-23-11

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