



MUSCHIGON CONSTRUCTION COMPANY ORDINANCE
05-800-04

Article I. Purpose; Findings

1.01. *Purpose.* It is the purpose of this ordinance to authorize the creation of a limited liability company to engage in residential and commercial construction projects which shall be managed by a Board of Directors in accordance with this ordinance.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

- a. The legislative powers of the Tribe are vested in the Tribal Council, Article IV, Section 7; and
- b. The Tribal Council's powers are exercised through action by ordinance, resolution or motion, Article IV, Section 6(g)(l); and
- c. The Tribal Council is delegated responsibility and authority regarding land and assets, Article IV, section 7 (c and d); and
- d. The Tribal Council is responsible for making, holding, and revoking assignments of Tribal property, Article IV, Section 7(a)(4); and
- e. The Tribal Council has the duty to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members, Article IV, Section 7(a)2; and
- f. The Tribal Council has the power to manage any funds within the exclusive control of the Little River Band and to appropriate these funds for the benefit of the Tribe and its members, Article IV, Section 7(i)2; and
- g. The Ogema is delegated the responsibility to manage the economic affairs, enterprises, property (both real and personal) and other interests of the Tribe, consistent with ordinances and resolutions enacted by the Tribal Council, Article V, Section 5(a)(8).
- h. Article IV, Section 7(f) of the Constitution of the Tribe states that the Tribal Council has the power to create subordinate organizations and to delegate to such organizations the power to manage the enterprises of the Tribe; and
- i. The establishment of a Board of Directors for Muschigon Construction Company to provide appropriate monitoring, oversight, and direction regarding the management of the company serves the best interests of the Tribe by maximizing Muschigon's income, reducing expenses where appropriate, and minimizing the potential for political interference of business decision-making, all in accordance with the goals and budgets established by the Tribal Council by law or resolution.

Article II. Adoption; Amendment; Severability

2.01. *Adoption.* This Ordinance is adopted by Resolution # 05-1116-598.

- a. Resolution # 06-0802-547 - emergency amendments.
- b. Resolution # 06-1004-684 - permanent adoption.
- c. Resolution #09-0902-254 - emergency amendments to lower number of members of the Board and quorum requirements and clarify duties and responsibilities of the Board of Directors.
- d. Resolution #09-1014-300, permanent adoption of emergency amendments.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.04. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

3.01. *General.* For purposes of this Ordinance, certain terms are defined in this Article. The word *shall* is always mandatory and not merely advisory.

Article IV. Creation of Muschigon Construction Company

4.01. *Formation of a Limited Liability Company; General Authority.* There is hereby authorized the creation of a construction company to be structured and formed in accordance with the Limited Liability Company Ordinance, to engage in residential and commercial construction projects. It shall be named *Muschigon Construction, LLC* and shall be managed by a Board of Directors. The Board of Directors shall act as agent of the company for the purpose of providing guidance for or otherwise administering the operation of Muschigon Construction, LLC. in accordance with this Ordinance.

4.02. *Scope of Activities.* Muschigon Construction, LLC is authorized to conduct the following business activities:

- a. To engage in residential and/or commercial construction projects.
- b. To enter into competitive bids for construction projects.
- c. To enter into joint venture agreements to further the purpose of its creation.
- d. To develop activities reasonably related to the above.
- e. To engage in any other lawful act or activity for which a limited liability company may be organized under the Limited Liability Company Ordinance and that does not conflict with the purposes of the creation of the Muschigon Construction, LLC.

4.03. *Assets.*

- a. The Muschigon Construction Company budget shall be managed by Muschigon Construction, LLC.
- b. Assets shall be transferred by adoption of resolution of the Tribal Council.
- c. The Tribe may, from time to time, transfer additional financial or physical assets to the company.
- d. The Tribe may restrict assets of the Muschigon Construction, LLC where such assets involve the transfer of land, facilities, or Tribal relevant assets. Such restriction shall be identified in any resolution transferring assets.

4.04. *Ownership.* The Little River Band of Ottawa Indians shall be the sole owner of all shares of the Muschigon Construction, LLC.

Article V. Management Structure

5.01. *Management Organization.* Muschigon Construction, LLC shall be managed by a General Manager, hired by and reporting to a Board of Directors.

5.02. *General Manager.* The General Manager shall have sole authority and responsibility for managing Muschigon Construction, LLC in accordance with the processes and Articles of Organization and by-laws approved by the Board of Directors, the Limited Liability Company Ordinance and the laws and regulations of the Tribe.

Article VI. Board of Directors.

6.01. Creation of the Board of Directors.

a. The Tribal Council created and established the Board of Directors for Muschigon Construction Company.

b. The Board of Directors shall be subject to the Constitution, laws and resolutions of the Tribe, including the executive authority of the Ogema to carry out the laws and resolutions enacted by the Tribal Council.

c. The Board of Directors shall take an oath of office given by the Ogema, and shall file a signed confidentiality statement.

6.02 Composition of the Board of Directors.. The Board of Directors is made up of three members.

6.03 Qualifications of Members of the Board of Directors.

a. All members of the Board of Directors shall be members of the Little River Band of Ottawa Indians.

b. There shall be a member of the Board of Directors that has one of the following qualifications, and all qualifications shall be represented:

1. Three years of residential/commercial construction experience in any capacity.

2. Two years of construction project management experience.

3. Two years of business development experience or

4. One year of managerial experience.

c. A vacancy in one of the required qualifications must be filled by a candidate meeting the qualifications.

d. No elected official of the Tribe shall sit as a member of the Board of Directors.

6.04 *Appointment; Recommendation; Ratification.* Board members shall be appointed by the Ogema with the approval of the Tribal Council.

a. *Appointments.* When a vacancy occurs or a reappointment is required, the Ogema has 45 days to submit the name of the individual nominated to fill the vacancy or to be reappointed.

b. *Recommendation; Ratification.* Upon the expiration of the 45 days term above, Tribal Council may request through a public notice the submission of applications to fill the vacant position(s). Tribal Council then will forward a directive to the Ogema to submit for appointment a name of an individual from the list of applicants collected by Tribal Council. Board members are official upon approval by Tribal Council and

are authorized to attend meetings upon their appointment.

6.05 *Term of Office; Vacancies.* Board members shall serve 4 year terms subject to removal under Section 6.09 below. A term begins the date of the member's appointment approval ending on the fourth anniversary. A vacancy prior to the end of the term shall, if less than 18 months remaining on the last date in office, be filled for the remainder of the term and a full four year term; and, if more than 18 months remaining on the last date in office, shall be filled only for the remainder of the vacant term.

6.06 *Posting Notice of Vacancy for Applicants.* The Ogema shall post, for 30 days, in the Tribal newspaper, that a vacancy on the Board of Directors exists, the qualifications for the vacant position, the term of office for the vacant position, and the open and closing date of the application period.

6.07 *Compensation.* Board members shall receive compensation for attendance at and participation in meetings as set forth by resolution of the Tribal Council paid in monthly increments. Such compensation shall be included in the budget of Muschigon Construction, LLC. Every two years, the Tribal Council shall review the compensation set for the Board of Directors and approve changes if appropriate. Compensation shall not be reduced during the two year term after approval, provided that, compensation may be reduced based upon revenues of Muschigon Construction, LLC and must be approved by resolution of the Tribal Council. Board members shall be reimbursed reasonable expenses related to activities of the Board of Directors for attending meetings or travel.

6.08 *Quorum.* A quorum of the Board of Directors shall consist of two members.

6.09 *Meetings.* The Board of Directors is authorized to meet as often as necessary to carry out the responsibilities set forth in this Ordinance.

6.10 *Removal.* A member of the Board of Directors may be removed for the following reasons by a vote of two members of the Board of Directors. When the Board of Directors obtains information that a member has engaged in any of the following conduct, it shall be required to bring forward a motion for removal for vote by the remaining Board members.

- a. Failure to attend four meetings of the Board of Directors, including special or emergency meetings, within a 12 month period.
- b. Revocation of a professional license, permit or certification that reflects on the qualifications of the member to sit on the Board or reflects on the professional responsibilities and integrity of the member.
- c. Conviction of a felony.
- d. Conviction of a misdemeanor act that infringes on the professional responsibilities and integrity of the member.
- e. Tribal Council may remove a member of the Board if the member is disenrolled from the Tribe.
- f. Tribal Council may also remove a member of the Board when the Board of Directors fails to carry out any removal under the reasons set forth under subsections a through d above.

Article VII. Responsibilities of the Board of Directors.

7.01. *Board of Directors.* Muschigon Construction, LLC shall be managed by a Board of Directors responsible for guiding and supporting the business operations of the enterprise, having as a main purpose generating revenues and profits for the company and to encourage job development opportunities for Tribal members within the company.

7.02. *Authority.* The Board of Directors shall prepare, approve, and submit to Ogema and Tribal Council for approval, the company's Annual Operating Plan, which includes the operating budget, and the financial and business forecasts. In addition, the Board of Directors has the authority to review and approve the Standard Operating Procedures and Internal Controls of the company. The Board of Directors shall also have the authority to request audits, financial, personnel, and compliance reports.

7.03. *Capital Expenditures.* The Board of Directors shall be required to approve all capital expenditures in excess of \$1,500.00, unless they require financing through the utilization of loan documents, letters of credit, and other banking and non-banking activities which require borrowing funds. In such case, the Board of Directors is required to approve the transaction and to seek ratification and approval by Tribal Council where such loans, letters of credit, and banking or non-banking activities involve the restricted assets of the company.

7.04. *Joint Ventures.* The Board of Directors is authorized to negotiate and execute joint venture agreements with other entities, Tribal or not, and to obligate the company to management contracts or any other agreement derived from a joint venture agreement.

7.05. *Personnel.* The Board of Directors is delegated the limited responsibility to hire the General Manager, to complete the General Manager's job performance appraisal, and to issue recommendations for improvement or to impose disciplinary measures. In exercising this authority, the Board of Directors is bound by the Tribe's employment laws. If needed, the Board of Directors may approve the company's personnel manual. The Board of Directors has the authority to approve all job descriptions for managerial positions within the company.

7.06. *Notices.* The Board of Directors must provide notice to the Ogema and Tribal Council of all other Board actions and documents reflecting the management of the company.

7.07. *Budget.* The Board of Directors shall create an annual budget, which shall be included within the budget of the company, sufficient to maintain appropriate office space, compensation, and other activities of the Board.

7.08. *Staffing.* The Board of Directors shall have the authority to engage staff for the purposes of maintaining the books and records of the Board.

7.09. *Reporting in April and October.* At the first Tribal Council meeting in April and October, the Board of Directors shall be present to answer questions and respond to concerns presented by the Ogema, Tribal Council, or membership.

7.10. The Board of Directors shall submit a report to the Ogema and Tribal Council on a monthly basis. The monthly reports shall include the monthly financial statements, marketing activity, human resources activity, and meeting minutes. The Board of Directors shall request comments or recommendations from the Ogema prior to submission of the

reports identified in this section.

7.11. *Annual Funding Needs.* On July 15th of each year, the Board of Directors shall forward to the Ogema and Tribal Council the estimated revenues for the next fiscal year and the estimated budget needs of the operations in accordance with the Budget and Appropriation Ordinance. This report shall be sufficiently detailed so as to allow the Ogema to incorporate it within the governmental budget development processes and to allow review by the Tribal Council in the review and approval processes.

7.12. The Board of Directors shall be authorized to establish its own procedures to meet as well as by-laws to regulate its operation.

Article VIII. Duties of the Board of Directors.

8.01. The Muschigon Construction Board has been delegated the following specific powers:

- a. To regulate all day-to-day construction activity to ensure the integrity thereof, through the adoption, review and approval of internal controls, procedures, processes, policies and other documents which relate to the operation of the construction company and businesses conducted under the construction company.
- b. To promote the full and proper enforcement of all Tribal laws.
- c. to enact and enforce such regulations consistent with this ordinance and the Board's by-laws regarding its activities as the Muschigon Construction Board may deem necessary and proper to effectuate the powers granted by this ordinance and duties imposed by applicable law.
- d. To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents and financial statements of any construction operating, or suspected to be operating, within the jurisdiction of the Tribe.
- e. When necessary or appropriate, to request the assistance and utilize the services of the courts, law enforcement and government officials or agencies, and private parties, in exercising its powers and carrying out its responsibilities.
- f. Where it is in the best interests of the Tribe, to develop a cooperative working relationship with federal, state and other Indian tribes, agencies and officials.
- g. To make application and accept grants and other awards from private and governmental sources in carrying out or furthering the purpose of the Muschigon Construction Board.
- h. To exercise all authority delegated to it or conferred upon it by law and to take all action which shall be reasonably necessary and proper for carrying into execution the foregoing powers and all the powers vested in this ordinance as permitted by the purposes and powers herein stated, which are deemed to be in the best interests of the Tribe and in compliance with applicable law.

8.02 The Muschigon Construction Board shall:

- a. enforce all health and safety standards applicable to the Tribe;

- b. publish and distribute copies of this Ordinance, Muschigon Construction Board regulations and by-laws, and Tribal Council, Muschigon Construction Board or Tribal Court decisions regarding construction matters;
- c. maintain and keep current a record of new developments in the area of construction;
- d. arrange for training of employees and others in areas relating to the regulation of construction; and
- e. consult with and make recommendations to the Tribal Council regarding changes in construction laws.

CERTIFICATION

I, Janine Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Muschigon Construction Company Ordinance adopted by the Tribal Council on 10/14/09.



A handwritten signature in black ink, appearing to read "Janine Sam", is written over a horizontal line. The signature is stylized and cursive.

[Seal]