

# POKAGON BAND OF POTAWATOMI INDIANS

## MNO-BMADSEN CHARTER

### **Section I: Title.**

This Charter shall be known as the “Mno-Bmadsen Charter.”

### **Section II: Findings and Declarations.**

The Tribal Council of the Pokagon Band of Potawatomi Indians (the “Band”) finds and declares as follows:

A. The Band is a sovereign, federally recognized Indian tribe, as reaffirmed by P.L. 103-323 (25 U.S.C. § 1300j *et seq.*, the “Pokagon Restoration Act”), enacted September 21, 1994, and is organized under a Constitution adopted by the Band on November 1, 2005 (the “Constitution”).

B. In accordance with the Pokagon Restoration Act and pursuant to Article IX of the Constitution, the Tribal Council of the Pokagon Band of Potawatomi Indians (the “Tribal Council”) is the duly recognized governing body of the Band.

C. The Tribal Council is vested with those sovereign powers of the Band that are not inconsistent with any provisions of the Constitution, including without limitation those enumerated powers set forth in Article IX, Section 2, of the Constitution, which authorizes the Tribal Council to “regulate all business activities within the jurisdiction of the Band” and to “charter subordinate organizations and to delegate to such organizations, or to any subordinate boards or officials of the organizations, the power to manage the economic affairs, enterprises, and property” of the Band.

D. The Band needs economic development to fund government programs, provide livelihoods to the Pokagon Potawatomi people, and improve the quality of life for the Citizens. The Band is also aware that government ownership of business entities adds risks to performance, but is nonetheless essential in certain realms of Band economic activity. Thus, the Band seeks to:

- i. develop its resources in a manner that produces maximum long-term value for the Citizens;
- ii. establish an environment within which investors can feel their time, talent, energy, and money will be secure;
- iii. insulate business leadership from day-to-day involvement by elected leadership, particularly around personnel decisions and dividend policy;
- iv. hold business leadership accountable for the economic performance of the assets under their management; and

- v. create an environment within which managers and employees can grow in their capabilities without undue fear of political repercussions for risk-taking.

### **Section III: Purpose.**

Accordingly, the Band hereby Charters Mno-Bmadsen as an unincorporated instrumentality of the Band to:

- A. Invest and grow the Band's liquid assets as allocated by the Tribal Council;
- B. Hold and take advantage of all Tribal governmental privileges, immunities, and rights as provided expressly in this charter to the maximum extent allowed by law;
- C. Maximize returns on investments in such sectors as may be chosen by the Board of Directors;
- D. Reinvest and grow profits;
- E. Consistent with maximizing returns on the Enterprise's investments and sustainable business practices, offer employment opportunities to Citizens, through direct hiring, apprenticeships, internships, on-the-job training, and similar initiatives;
- F. Employ others in accord with the commercial realities of the markets in which the Enterprise competes;
- G. Own, manage and supervise those Band assets that have been transferred to the Enterprise pursuant to the specific authority delegated by the Tribal Council herein;
- H. Provide dividends to the Band in a prudent manner as assets and income of the Enterprise, its subsidiary companies and other investments permit, which shall be based on a sustainable percent of net assets and profits, as such is defined in an Enterprise dividend policy adopted by the Board; and
- I. Establish and vest a Board of Directors of the Enterprise with rights, powers and obligations to manage the Enterprise and to act independently of but ultimately accountable to the Tribal Council on behalf of the Citizens pursuant to the specific authority delegated herein.

### **Section IV: Definitions.**

Capitalized terms not otherwise defined in this Charter shall have the following definitions:

- A. "Board of Directors" or "Board" shall mean the Board of Directors of the Enterprise as established in Section VIII.
- B. "Citizen" shall mean a duly enrolled member of the Pokagon Band of Potawatomi.

C. "Enterprise" shall mean Mno-Bmadsen, the entity created by this Charter, which is vested with the specific powers delegated hereunder by the Tribal Council.

D. "Immediate Family Member" Until an ethics code is enacted into Pokagon Band law pursuant to Article XVII, subsection 3(e) of the Constitution, the term Immediate Family Member shall mean a person's spouse, partner, parent, child, sibling, step-child and foster child, grandparent, grandchild, step-grandchild, any person so related to the spouse of that person and any other person raised in that person's home or residing in that person's home.

E. "Personal Financial Interest" means an interest, distinct from that of other Citizens of the Band, held by a person, or by an Immediate Family Member of that person, that is (1) any ownership, income, investment, security or other beneficial interest in a business, or (2) any employment or prospective employment for which negotiations have already begun.

F. "Pokagon Band Official" shall mean all seats on the Pokagon Band Tribal Council and all judicial officers serving on the Pokagon Band Tribal Court or Court of Appeals.

G. "Reservation" shall mean, pursuant to 25 U.S.C. § 1300j-5 or other applicable federal law, (i) all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Band's reservation. The term Reservation includes any rights-of-way running through the Reservation.

H. "Tribal Council" means the governing body of the Pokagon Band of Potawatomi Indians.

I. "Tribal Land" means all lands now held or hereafter acquired by or for the Band, or held in trust for the Band by the United States. For purposes of this definition, the term "Band" includes any wholly owned instrumentalities of the Band, including the Enterprise.

## **Section V: Establishment of the Enterprise.**

**A. Creation.** The Enterprise is hereby established under this Charter as a wholly owned unincorporated instrumentality of the Band, which shall be governed and managed by the Board of Directors, subject in all instances to the terms, provisions, and limitations set forth in this Charter.

**B. Location.** To the fullest extent practicable, the Enterprise shall be a resident of and maintain its headquarters at a suitable location within the Reservation, if available, or on suitable Band fee lands until a location within the Reservation becomes available, provided that the Enterprise may conduct its business activities any place in the world.

**C. Instrumentality of the Band.** As a wholly owned instrumentality of the Band, the Enterprise and its assets and activities shall have all of the privileges and immunities of the Band, subject to the limitations provided in this Charter and applicable law, including

immunity from taxation, regulation, and unconsented suit. The Enterprise shall conduct all commercial for-profit business for the Band, except Gaming Business as defined in the Pokagon Gaming Authority Ordinance, and as may be provided by other Band law. The Band shall at all times retain the sole proprietary interest in the Enterprise.

**D. Exercise of Authority.** Any exercise by the Enterprise of any powers or authority in accordance with this Charter shall constitute the exercise of a governmental function of the Band.

**E. Allocation of Authority.** All rights, powers, or privileges not expressly delegated herein to the Enterprise shall be reserved to and held by the Tribal Council.

**F. Additional Authority.** In accordance with Article IV, subsections 1.a and 3.b.i of the Constitution of the Pokagon Band of Potawatomi Indians, all real estate owned or leased by the Enterprise shall be designated commercial lands and the enactment of this Charter shall convey authority to the Enterprise to sell, lease, mortgage, or otherwise transfer or encumber any real estate owned by the Enterprise without prior approval of Tribal Council; provided that pursuant to Article IV, Subsection 3(c) of the Constitution, other than for a public utility service, no real estate that is owned by the Enterprise or any wholly-owned instrumentality of the Enterprise shall be encumbered in favor of any non-Citizen of the Band, or for any other purpose, for a period in excess of twenty-five (25) years without prior approval of a two-thirds (2/3) majority in a referendum in which at least one-sixth (1/6) of the Citizens eighteen (18) years of age and older cast their ballots.

## **Section VI: Enterprise Rights, Powers and Immunities.**

**A. Privileges and Immunities.** The Enterprise shall be entitled to all of the privileges and immunities of the Band, including the sovereign immunity of the Band, to the same extent as the Band itself, together with all other rights and privileges arising from tribal sovereignty.

- i. Except as provided in Section IX of this Charter, no waiver of sovereign immunity by the Band or any other person or entity shall be valid if it purports to permit or may be construed to permit any enforcement or recourse against the Enterprise, including its assets, revenues, and businesses, except that a waiver of sovereign immunity meeting each of the requirements set forth in Section IX of this Charter will permit recourse against explicitly identified assets, revenues, business or activity of the Enterprise.
- ii. Any liability or obligation of the Enterprise of any nature whatsoever, whether arising under contract, law, or otherwise, shall be enforceable only against the Enterprise (to the extent permitted by any valid waiver of sovereign immunity) but not any other assets or revenues of the Band, except as may be authorized by a duly adopted resolution of the Tribal Council.
- iii. The liabilities and obligations of the Band, as distinct from the liabilities and obligations of the Enterprise, shall not be enforceable against the Enterprise or its assets, revenues, business or activities.

- iv. No assets, liabilities, rights, obligations, receipts or expenditures of the Enterprise shall be considered those of the Band, and no assets, liabilities, rights, obligations, receipts or expenditures of the Band shall be considered those of the Enterprise.

**B. Rights.** It is the intent of this Charter to authorize the Enterprise, subject to approval of the Tribal Council where required as set forth herein, to do any and all things necessary or desirable in connection with the financing, development, construction, ownership, lease, operation, management, maintenance and promotion of the Enterprise in the interest of furthering the purposes of this Charter.

**C. Powers and Authority.** The Enterprise shall have the power in its own name, to:

- i. receive, collect and own all revenues and pay all expenses and expenditures arising from or relating to its business activity;
- ii. purchase, take, receive, lease, obtain by gift or bequest, or otherwise acquire, own, hold, improve, or use real or personal property, or any interest therein, wherever situated;
- iii. sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of or encumber all or any part of the Enterprise property and assets;
- iv. purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, associations, partnerships or other entities, or individuals, or direct or indirect obligations of the United States or of any other government, tribe, state, territory, governmental district or municipality, or of any instrumentality thereof;
- v. make and enter into contracts and incur liabilities, indebtedness and other obligations, including the issuance of guarantees, and the borrowing of money at such rates of interest as the Enterprise may determine, and to issue its notes, bonds, debt securities and other obligations, and secure any of such obligations by mortgage or pledge of all or any of its property, franchises, revenues and income;
- vi. employ contractors, consultants, agents, managers, advisers and accountants;
- vii. lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- viii. conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Charter;
- ix. develop, design, construct, equip and finance, refinance, improve or expand facilities for the conduct of its business;

- x. hire, supervise and terminate employees, consultants and agents of the Enterprise, and define their duties and fix their compensation, provided that all Enterprise employees shall be governed by the personnel policies of the Band unless and until the Board of Directors approves an Enterprise personnel policy;
- xi. establish and maintain policies and procedures for the day-to-day operation of the Enterprise;
- xii. make and amend By-Laws, not inconsistent with this Charter or the laws of the Band and the United States, for the administration and regulation of the affairs of the Enterprise;
- xiii. form under tribal or state law, and own in whole or in part, subsidiaries and other entities including, but not limited to: corporations, partnerships, limited liability partnerships, and limited liability companies which shall enjoy the same privileges and immunities as the Enterprise, except as provided otherwise by law or under the governing documents of the subsidiary or entity;
- xiv. open and maintain such deposit and securities accounts with banks, securities intermediaries and other financial institutions, whether located within or without of the State of Michigan, and to deposit therein any or all revenues of the Enterprise, which accounts shall be separate from other accounts of the Band, and no assets in the accounts of the Enterprise shall be commingled with the other assets of the Band; and
- xv. to the extent not inconsistent with anything herein, to have and exercise all powers necessary to further any or all of the purposes for which the Enterprise is organized.

**D. Limitation on Powers and Authority.** The Enterprise shall have no authority to exercise any regulatory or legislative power, nor shall it engage in community development or deliver services to Citizens. The preceding notwithstanding, the fulfillment of the Enterprise's purpose identified in Section III, Part E and F, shall not be deemed to violate this Section VI(D).

**Section VII: Enterprise Assets.**

The Enterprise's assets shall consist of the earnings and proceeds of the Enterprise and whatever other assets it develops, generates or acquires by other means as provided in this Charter or by formal transfer, sale, lease, or other conveyance from the Band by the Tribal Council. Notwithstanding the foregoing, upon transfer of funds or property from the accounts of the Enterprise to the Band's general funds or other accounts of the Band in compliance with all contractual restrictions applicable to the Enterprise or its subsidiaries, such funds shall cease to be assets of the Enterprise without the requirement of further act or deed by the Enterprise.

## **Section VIII: Board of Directors**

**A. Establishment.** There is hereby established a Board of Directors, whose purpose is to manage and carry out the business and activities of the Enterprise. The Board of Directors is hereby vested with all powers necessary to carry out the purposes of the Enterprise and shall control and manage the business and activities of the Enterprise.

**B. Number.** The Board of Directors shall consist of seven (7) members (each, a “Director”) appointed by the Tribal Council. Once the initial Board of Directors is appointed, vacancies on the Board shall be filled by nomination of the Board of Directors and appointment by the Tribal Council. The Directors shall select from amongst themselves the Chairperson, Vice-Chair, Secretary, and Treasurer.

**C. Qualifications.** Directors may be non-Citizens of the Pokagon Band, provided, however, that no more than two Directors may be non-Citizens. No person may simultaneously be a Director and a Pokagon Band Official. All Directors must:

- i. Be at least twenty-one (21) years of age; and
- ii. Have a high school diploma, high school equivalency diploma, or general education development certificate; and
- iii. Have either: (1) a minimum of ten (10) years experience in private sector management, business administration, accounting, or law, or(2) (a) a minimum of five (5) years experience in private sector management, business administration, accounting, or law, and (b) a bachelor’s degree; and
- iv. Have the ability to exercise sound judgment in matters related to the objectives of the Enterprise; and
- v. Have knowledge or a willingness to acquire knowledge of Pokagon history and culture; and
- vi. Not have been convicted within the last ten (10) years of a crime subject to imprisonment for a term of one (1) year or longer, excepting those crimes determined by the Tribal Council to relate to the furtherance of the Band’s tribal sovereignty rights; and
- vii. Have demonstrated personal and professional integrity, honesty and adherence to high ethical standards; and
- viii. Have a commitment to understand the Enterprise and all of its business activities and to participate fully in meetings of the Board.

**D. Term.** Each Director shall serve a term of three (3) years, provided that the initial Directors, in order to stagger terms, shall be randomly assigned one, two, and three year terms in approximately equal proportion and such terms shall remain staggered for the remainder of the Board’s existence. Directors may be re-nominated and re-appointed to

successive terms without limitation. The Chairperson shall be a voting member of the Board.

**E. Vacancy.** In the event of a vacancy before the expiration of a term, the Board shall promptly nominate and the Tribal Council shall appoint a new Director for the remainder of the unexpired term.

**F. Successor.** Unless and until he or she resigns from office or is removed from office by action of the Tribal Council in accord with the requirements of Section VIII.O., each Director shall hold office until his or her successor is appointed by the Tribal Council and has been sworn in by the Chairperson or other available member of the Pokagon Band Election Board. A certificate of the Secretary of the Tribal Council as to the appointment of any Director shall be conclusive evidence of his or her due and proper appointment as a Director.

**G. Stipend and Reimbursement.** Directors shall not be compensated for service on the Board other than for such stipend and expenses unless pursuant to a plan of compensation approved by the Tribal Council. Directors shall be entitled to a stipend at a rate established by resolution of the Tribal Council and reimbursement for actual and reasonable expenses incurred in the discharge of their duties, provided that such reimbursement shall be in accordance with the Band's Travel Allowance Policy. If such stipend rate established by resolution of the Tribal Council provides for payment based upon Board meeting attendance, no Director shall receive compensation for a meeting, unless he or she attended, whether physically or via telephone, video conference, or other electronic means, at least one-half (1/2) of the meeting, as determined by the Chairperson of the Board of Directors, based upon the length of the meeting.

**H. Oversight.** The Board shall oversee the performance of individual executive officers and managers of the Enterprise.

**I. Board Members Not Liable.** No member of the Board shall be personally liable to any creditor of the Enterprise by reason of his or her status as a member of the Board or by reason of acts done or not done in the course of his or her official duties.

**J. By-Laws.** The Board shall adopt By-Laws to govern itself, which shall be consistent with this Charter and applicable Band law. Such By-Laws shall include, at a minimum: a fiscal year, standards of Director performance, meeting frequency and location, a process for annual review and reporting by the Board.

**K. Quorum.** A quorum of the Board shall consist of four Directors. A quorum of the Board is required to act for the Enterprise through resolutions, motions, or other mechanisms authorized under the By-Laws ("Official Action").

**L. Meetings.** Regular meetings of the Board of Directors shall be held no less frequently than once every two months. Special meetings of the Board of Directors may be held by decision of the Chairperson or at the request of any two members of the Board, pursuant



to the By-Laws. Meetings of the Board of Directors may be held at any location within or outside of the Reservation as directed by a majority of the Board. Members of the Board may participate in meetings by teleconference, videoconference, or other form of communication that allow participants to speak and hear each other.

**M. No Self-Dealing.** No Director or manager shall participate in any action of the Board that involves the Personal Financial Interest of such person. Each Director or manager shall promptly disclose in writing to the Secretary of the Board of Directors any Personal Financial Interest that such Director knows or has reason to know may involve a matter to come before the Board of Directors or may relate to business or activity of the Enterprise. Such disclosure shall be entered upon the minutes of the Enterprise, and that person shall not participate in any action by the Board relating to such matter or be involved in any manner with such business or activity.

**N. Records.** The Board shall keep complete and accurate records of all meetings and actions taken and the same shall be available for inspection at the Enterprise office during regular office hours, by members of the Tribal Council or its duly authorized designees.

**O. Removal.** The Board of Directors may, by majority vote, request that the Tribal Council initiate a procedure for the removal of a Board member and the Tribal Council may, on its own initiative, initiate a removal procedure for any member of the Board of Directors by an affirmative vote of at least eight (8) members of the Tribal Council for any of the following reasons:

- i. Failure to physically attend, during the course of a fiscal year, three-quarters or more of the meetings of the Board of Directors;
- ii. Nonfeasance, including the unexcused absence from at least three meetings in any six-month period or the persistent failure to perform other duties of office;
- iii. Misfeasance, including any substantial or repeated failure to exercise authority or discharge responsibilities in conformity with this Charter or the By-Laws;
- iv. Malfeasance, including (i) a substantial or repeated violation of applicable ethics standards under the Pokagon Band ethics code, (ii) a willful violation of this Charter, the By-Laws, or other applicable Pokagon Band law that assigns duties or responsibilities specifically to the Board of Directors; or (iii) misconduct in office that threatens the integrity or public image of the Enterprise; or
- v. Physical or mental disability that prevents the performance of duties.

If Tribal Council obtains reliable information sufficient to conclude that there may be grounds for removing a Director, it shall notify the Director at least thirty (30) calendar days in advance of all charges against the Director and the time and place for hearing before the Tribal Council. Upon the affirmative vote of a call for removal under this

subsection, Tribal Council may, at its discretion, suspend a Director until the final disposition of the call for removal. The Director subject to removal may defend himself or herself at the hearing and shall not be entitled to the assistance of counsel. The hearing shall be presided over by the Tribal Council Chairperson and shall be recorded by a certified court reporter. A Director may only be removed after a hearing upon a majority vote in which at least eight (8) Tribal Council members vote that finds the stated grounds for removal exist. Removal decisions shall be in writing and shall set forth finding of facts and conclusions of law.

## **Section IX: Ability to Sue and Be Sued.**

**A. Authority to Waive Sovereign Immunity of Enterprise.** By adopting this Charter, the Tribal Council authorizes the Enterprise, subject to the limitations stated herein, to sue and to be sued in the Enterprise's name, including to submit to arbitration or other alternative dispute resolution any controversy arising under any contract, claim, obligation, or any other matter arising from or related to the Enterprise's activities under this Charter, and hereby authorizes the Enterprise to waive by action of the Board of Directors (1) its immunity from unconsented suit or other legal process and (2) its rights to resolve disputes (i) in Tribal Court or other forum of the Band, or (ii) in any other court of competent jurisdiction, and, in connection therewith, to waive any right of exhaustion of tribal remedies. Every contract, note, bond, or other obligation or instrument approved by the Enterprise that waives its sovereign immunity also shall include an express limitation of recourse under such contract to the assets of the Enterprise and shall expressly exclude recourse to any assets and revenues of the Band (a contract, note, bond, or other obligation that is duly approved and contains such express limitation on recourse in accordance with this Charter is referred to herein as an "Approved Instrument"); and for that purpose, with respect to any such Approved Instrument, the Band hereby irrevocably waives any and all defenses otherwise available to the Enterprise based upon its sovereign immunity from suit with respect to any action against the Enterprise in any forum seeking to enforce the obligations of the Enterprise under such Approved Instrument, and to the extent such Approved Instrument so provides, to waive any right of exhaustion of tribal remedies. With respect to suits, actions or other proceedings within the scope of such limited waiver of immunity under an Approved Instrument, shall accept service of process on the Enterprise by delivery to the Chairperson or Secretary of the Enterprise; provided, however, that the power to sue and be sued shall extend only to actions on Approved Instruments as set forth in this paragraph and shall not constitute a waiver of the sovereign immunity of the Band or the Enterprise for any other purpose or action whatsoever. This Section does not constitute and shall not be construed as a delegation to the Enterprise of any power to waive the immunity of the Band itself. The grant of power herein to sue and to be sued shall not in and of itself constitute a waiver of immunity of the Enterprise. No waiver of immunity by the Enterprise shall be valid and enforceable unless: (i) it is duly approved by the Board of Directors by the affirmative vote of at least five (5) Directors; (ii) in writing; (iii) expressly states that such waiver shall permit recourse and enforcement only against the explicitly designated assets, revenues, and business activity of the Enterprise and such Band's assets and property as may be expressly authorized in accordance with the

requirements of subsection VI.A.2; and (iv) be limited in scope to the express matters to which it is given and to the remedies and other conditions set forth therein.

**B. Authority to Consent to Jurisdiction.** Consistent with the foregoing, the Enterprise, by Official Action, shall have the authority to consent, with respect to any suit against the Enterprise, (i) to the exercise of jurisdiction by the courts of any state, any the federal courts sitting in any state, the courts of the Band or any other Indian tribe, or the courts of any United States territory or foreign jurisdiction, and (ii) to arbitration or alternative dispute resolution.

## **Section X: Reports of the Enterprise.**

**A. Monthly Reports.** The Board shall submit to the Tribal Council each month a report showing, with respect to the prior month:

- i. a summary of the Enterprise's activities;
- ii. the financial condition of the Enterprise;
- iii. any significant problems, accomplishments, and events, especially related to progress on the annual plan;
- iv. plans and financial projections for the next month; and
- v. such other information as the Board of Directors or the Tribal Council deems pertinent.

**B. Annual Report.** The Board of Directors shall submit to the Tribal Council, not less than ninety (90) days after the close of each fiscal year, an audited annual report showing, with respect to the prior year:

- i. a summary of the Enterprise's activities;
- ii. the complete financial condition of the Enterprise, which shall include a balance sheet and an audited financial statement and a detailed report outlining the operations of the Enterprise and all subsidiaries;
- iii. any significant problems, accomplishments, and events,
- iv. progress on the annual plan for the prior year and information concerning the annual plan for the current year;
- v. information concerning the long-term investment plan;
- vi. financial projections for the next year; and
- vii. such other information as the Board of Directors or the Tribal Council deems pertinent.

**C. Financial Reporting.** The Enterprise shall maintain such books and records with respect to its operations and assets as are customary or required by any applicable law. The Enterprise shall cause the preparation of financial statements based its annual audit in accordance with generally accepted accounting principles. The Board of Directors shall prepare such other reports at such times and relating to such matters with respect to the Enterprise as the Tribal Council may from time to time request.

**D. Annual Plan.** The Board of Directors shall prepare an annual plan of operation for the Enterprise and any subsidiaries, which shall include, but not necessarily be limited to projected operating budget(s), projected capital budget(s), production/sales targets, projected staffing requirements, expense/revenue projections, acquisitions, and Enterprise strategies.

**E. Long-Term Investment Plan.** The Board of Directors shall prepare a Long Term Investment Plan of operation for the Enterprise, which shall include, but not necessarily be limited to the long term investment goals of the Enterprise, and the identification of businesses or activities that are in conformity with the goals and purposes of this Charter. The Long Term Investment Plan shall be updated every five years, or sooner, if the Board, in its sole discretion, determines it necessary.

## **Section XI: Finances and Accounting.**

**A. Fiscal Year.** The fiscal year of the Enterprise shall be, as set forth in the By-Laws.

**B. Accounting System.** The Board of Directors shall use an accounting system (i) in conformity with generally accepted accounting principles applicable to the Enterprise, (ii) consistent with any covenants related to the Enterprise, and (iii) necessary and advisable, in the reasonable discretion of the Board of Directors, in order to manage the assets of the Enterprise. Such accounting system shall ensure the availability of information as may be necessary to comply with federal, state and tribal regulatory requirements.

**C. Year-End Audit.** The Board of Directors shall cause an annual Independent audit to be performed on the accounts and records of the Enterprise at the close of each fiscal year and as otherwise required by law.

**D. Inspection of Books and Records.** The books, records and property of the Enterprise shall be available for inspection at the Enterprise offices during business hours by authorized representatives of the Band.

**E. Dividends.** The Board of Directors shall have the power to set and issue regular dividends solely to the Band and no other person or entity, which shall be based on a sustainable percent of net assets and profits of the Enterprise, provided however that no dividends will be issued if, after giving effect thereto, either:

- (i) the Enterprise would not have adequate capital reserves to achieve the goals and objectives of the Enterprise set forth in its Annual Plan and Long Term Investment Plan and to pay its debts as they become due in the usual course of business; or

(ii) the Enterprise's total assets would be less than its total liabilities.

The Board of Directors shall adopt a dividend policy consistent with the above.

**F. Initial Funding.** To the extent funding is available, the Tribal Council shall endeavor to provide planned or otherwise predictable funding to the Enterprise of an adequate amount, in the sole determination of the Tribal Council, so that the Board of Directors can develop and implement multi-year plans that advance the Enterprise's goals and purposes as set forth in this Charter, the Enterprise's Annual Plan, and the Enterprise's Long Term Investment Plan. The preceding notwithstanding, the first year of funding for the Enterprise shall be provided by Tribal Council no later than January 31, 2008.

## **Section XII: Indemnification of Board Members and Employees of the Enterprise.**

The Enterprise shall indemnify any present or past employee of the Enterprise or member of the Board of Directors against reasonable expenses actually and necessarily incurred by that person in connection with the defense of any action, suit or proceeding in which that person is made a party by reason of being or having been such employee or Board member, except in relation to matters as to which that person shall be adjudged in such action, suit or proceeding to be liable for gross negligence or intentional misconduct in the performance of duty; or except in relation to matters in which such employee was acting beyond the scope of their employment. The Enterprise shall also reimburse any employee or Board member the reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Board of Directors (other than the member(s), if any, of the Board of Directors involved in the matter in controversy), that it is in the best interest of the Enterprise and the Band that such settlement be made and that such employee or Board member was not guilty of gross negligence or intentional misconduct, or acting beyond the scope of their employment. Such rights of indemnification and reimbursement shall be in addition to any other rights that such employee or Board member may be entitled to receive under the Enterprise's By-Laws or otherwise.

## **Section XIII: Executive Committee.**

- A. **Composition.** The Mno-Bmadsen Executive Committee ("Executive Committee") shall consist of the Chairperson, Vice-Chairperson, Secretary, and Treasurer of the Board of Directors.
- B. **Authority to Act.** The Executive Committee may act on matters that require the attention of the Board of Directors prior to the next scheduled meeting of the Board of Directors.
- C. **Quorum.** A quorum of the Executive Committee shall be three of its members.
- D. **Authorization to Call.** A meeting of the Executive Committee may be called by the Chairperson, the Vice-Chairperson, or by the Executive Committee itself.

- E. **Meetings.** The Executive Committee shall keep minutes of its proceedings, which shall identify the reasons for which the meeting was warranted. The Executive Committee shall promptly provide the Board of Directors with copies of its approved minutes and the records of all actions taken by the Executive Committee.
- F. **Procedures.** So far as applicable, the provisions of this Charter and Pokagon Band law relating to the calling, noticing, and conduct of meetings of the Board of Directors shall govern the calling, noticing, and conduct of meetings of the Executive Committee.
- G. **Ratification by the Board of Directors.** All actions of the Executive Committee shall be subject to ratification by the Board of Directors.
- H. **Sovereign Immunity.** The Executive Committee may not waive the sovereign immunity of the Enterprise.

#### **Section XIV: Miscellaneous.**

- A. **Repeal.** To the extent this Charter conflicts with any provision of law, ordinance, resolution, motion or any other action of the Band heretofore taken, the provisions of this Charter shall govern, and the conflicting provisions are hereby superseded and repealed.
- B. **Consistency with the Constitution.** This Charter shall be construed in a manner that is consistent with the Constitution of the Band but, in the event of any inconsistency, the provisions of the Constitution shall control.
- C. **Effective Date.** This Charter shall become effective as the law of the Band for all purposes on the date of its enactment.

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#### Legislative History

The “Mno-Bmadsen Charter” was enacted by the Tribal Council on March 10, 2007 by adoption of Resolution No. 07-03-10-09; On December 10, 2012, by adoption of Tribal Council Resolution No. 12-12-10-10, the Mno-Bmadsen Charter was amended; On May 22, 2017, by adoption of Tribal Council Resolution No. 17-05-22-03, the Mno-Bmadsen Charter was amended.