

CHARTER OF INCORPORATION

issued by

**THE
THE FOND DU LAC BAND OF LAKE SUPERIOR
CHIPPEWA**

for the

FOND DU LAC TRIBAL UTILITY CORPORATION

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Pursuant to the authority granted by Article VI, Section 1(d) of the Constitution of the Minnesota Chippewa Tribe, the Fond du Lac Reservation Business Committee does hereby charter a public corporation to engage in the business of providing utility services.

Article 1: General Provisions

1.1 Establishment of FDLTUC

- (A) The name of this corporation shall be the Fond du Lac Tribal Utility Corporation, hereafter called the "FDLTUC".
- (B) FDLTUC is hereby established and so named with the purposes, powers and responsibilities set forth in this Charter of Incorporation (hereinafter "Charter"). FDLTUC shall operate as an agency and instrumentality of the Fond du Lac Tribal Government. The methods of appointment, terms of office, and operating procedures of FDLTUC shall be set forth in this Charter and in rules, regulations, procedures or guidelines adopted by FDLTUC.
- (C) Amount of stated capital and assets with which this corporation will begin shall be at least one thousand dollars (\$1,000).
- (D) No share of stock shall be issued.

1.2 Duration and fiscal year of FDLTUC

- (A) The FDLTUC shall have perpetual existence, which shall commence on **June 1, 2021**. The fiscal year of FDLTUC shall be the same as the fiscal year for the Tribe.

1.3 Location and Place of Business

- (A) The principal place of business and the office of FDLTUC shall be on the Tribe's Reservation in Minnesota.
- (B) FDLTUC may also have offices at such other places as the Board may from time to time direct.

1.4 Sovereign Immunity

- (A) All inherent sovereign rights of the Tribe are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court.

1.5 Disposition of Assets

- (A) In the event of the dissolution of the corporation or the winding up of its affairs, the corporation assets shall only be transferred to an organization approved by the Fond du Lac Reservation Business Committee.

Section 2: Fond du Lac Tribal Utility Corporation

2.1 Purposes

- (A) The purposes for which the FDLTUC is organized are as follows:
1. To plan for, provide and furnish utility services to the Fond du Lac Reservation (the "Reservation"), where such services are determined to be feasible. Such utility services shall include electric power and any other utility which is approved by the Fond du Lac Tribal Council.
 2. To promote and encourage the conservation of electricity and use of utility services where available in order to improve the health and welfare of the residents of the Reservation.
 3. To acquire, construct, operate, maintain, promote and expand utility services on and contiguous to the Reservation and study and investigate the feasibility of acquiring, operating, and maintaining other utility services on and contiguous to the Reservation.
 4. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purpose herein above set forth, and to do all things incidental thereto or connected therewith, which are not forbidden by law, this Charter and the Constitution.

2.2 Powers and Limitations

- (A) The FDLTUC shall have the power to do the following in order to accomplish the purpose of the FDLTUC:
1. Adopt and use an official seal;
 2. Enter into agreements, contracts, joint ventures, partnerships, cooperative projects and/or other appropriate relationships with any federal, tribal, state, municipal or foreign government, or with any agency or authority of any such government, or with any person, partnership, corporation, or any other legal entity; provided, however, that the Reservation Business Committee must approve of any contract:
 - a. with a term of more than one (1) year, or;
 - b. exceeding one hundred thousand dollars (\$100,000);
 3. Levy and collect reasonable fees for utility services;
 4. Acquire real and personal property of any kind, including funds, securities and other intangible property or property rights, and to own and hold same in its own name; separate and apart from the property and assets of the Tribe;
 5. Sell, lease, exchange, transfer and/or assign real and personal property of any kind owned by the FDLTUC;
 6. Subject to approval from the Reservation Business Committee, lease property and obtain easements and rights-of-way for such periods as are authorized by law, and to hold and manage or to sublease the same;
 7. Borrow or lend money, issue temporary or long-term evidence of indebtedness and repay the same, provided that the notes and other

obligations of the FDLTUC shall not be debts of the Tribe and shall not create a lien or any other encumbrance on any property or assets of the Tribe, and any such obligations shall so state on its face;

8. Pledge the assets and receipts of the FDLTUC as security for debts;
9. Subject to approval from the Reservation Business Committee, employ personnel and establish the compensation, benefits and conditions of their employment, and delegate to such personnel such powers or duties as the FDLTUC may deem proper;
10. Subject to approval from the Reservation Business Committee, employ consultants, advisors, planners, legal counsel and other experts by written contract in accordance with the Tribe's and/or federal law;
11. Authorize investment of the FDLTUC funds that are not required for immediate disbursements or obligations;
12. Open and maintain, in the name of the FDLTUC, accounts in any financial institution whose deposits are insured by an agency of the United States government;
13. Purchase insurance from any stock or mutual company for any property or against any risk or hazards, and any additional insurance needed for FDLTUC;
14. Terminate any utility user agreement when the user has violated the terms of such agreement or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for recovery of amounts;
15. Adopt appropriate procedures, rules and regulations to implement the requirements of this Charter;
16. Contract with vendors and contractors to assure utility services are available;
17. Subject to approval from the Reservation Business Committee, exercise the power of eminent domain.

(B) The FDLTUC, by and through the Board of Directors, may employ manager(s) responsible for the day-to-day operational management of FDLTUC; provided however, that the activities of any such manager(s) shall be subject to the control and oversight of the Board of Directors at all times in accordance with established policies and procedures adopted by the Board of Directors. Without specific authority from the Board, which must be set forth in a duly-adopted written resolution of the Board or by employment contract properly executed by the Board, such manager(s) shall not:

1. Borrow money or pledge assets of the FDLTUC.
2. Sell, lease, assign or convey real or personal property of the FDLTUC.
3. Enter into any contract with a term exceeding one year or that requires the expenditure of more than twenty-five thousand dollars (\$25,000) of FDLTUC's funds.
4. Compromise any claim of or against the FDLTUC over twenty-five thousand dollars (\$25,000); or
5. Enter into contracts with any other Indian Tribe or with any unit of federal, state or local governments.

(C) Neither FDLTUC nor any person employed by it or acting on its behalf shall have the power or authority to waive sovereign immunity of the Tribe or to sell, convey, assign, or encumber any real or personal property or other assets of the Tribe, provided that this limitation shall not apply to personal property or other assets held in the name of the FDLTUC.

2.3 Power to Sue; Sovereign Immunity

(A) The FDLTUC shall have the power to sue and be sued in its corporate name. The sovereign immunity of the Tribes and the FDLTUC, as an agency of the Tribes, is hereby expressly retained for all purposes, including but not limited to counter-claims and cross-claims raised in any suit initiated by the FDLTUC.

(B) Notwithstanding the provisions of subsection A of this section, the Board of Directors shall have the authority to make a limited waiver of the FDLTUC's sovereign immunity from suit for the limited purpose of allowing a party to a contract between FDLTUC and said party to enforce that party's rights under the contract in question or to recover damages for any breach thereof by the FDLTUC, provided (1) the waiver must be explicit and in the form of a provision in a specific written contract between the party and the FDLTUC (2) the specific contract shall be authorized by duly adopted, written resolution of the Board identifying the contract, which contract must be signed by the Chairman of the Board; (3) the waiver is limited to the maximum cost of the contract.

(C) Any waivers not falling under (A) and (B) would require a Resolution from the Fond du Lac Reservation Business Committee.

2.4 Insurance

(A) Insurance, including property damage, liability, automobile and other insurance adequate and sufficient to protect the interest of FDLTUC and the Tribes shall be carried by FDLTUC. It is in the best interests of the Tribes and FDLTUC that such insurance be obtained, notwithstanding the sovereign immunity of the Tribes and FDLTUC.

Section 3: Management Board

3.1 Appointment, Qualification, Terms

- (A) The FDLTUC Board of Directors (the “Board”) shall be composed of five members who are appointed by the Fond du Lac Reservation Business Committee. A Director may be a member or non-member of the Band.
- (B) Candidates for appointment must have a reputation of good character and honesty and shall have a demonstrated experience, education, skill or training in the utility or energy field and may possess a combination of education and/or professional experience in a business, utility or energy related field to meet the minimum qualifications.
- (C) All appointments shall be for a period of two years and shall be staggered. When the Board is first established, two member’s term shall be designed to expire in one year, and three member’s term to expire in two years. Thereafter, all appointments shall be for two years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and sworn into office.
- (D) No Director or any person executing the obligations of the FDLTUC shall be liable personally on the obligations by reason or issuance or acts done in the course of his or her official duties.

3.2 Compensation

- (A) Directors of the Board shall receive compensation for attending a regular or special meeting of the Board. The amount of compensation shall be established in a separate Board compensation policy approved by the Reservation Business Committee. Such Board compensation policy must set the compensation at a commercially reasonable amount. Directors of the Board shall be reimbursed for expenses associated with attending Board meetings in accordance with the Board compensation policy. Directors of the Board will be reimbursed for expenses incurred in attending meetings outside the Reservation if approved in advance by the Board and when such reimbursement does not violate any Board policies.

3.3 Resignations, Vacancies and Removal of Directors

- (A) If a Director resigns or is found guilty of a felony or major crime in any federal, state or tribal court, the Fond du Lac Reservation Business Committee shall declare the Board position vacant. If a Director misses more than two consecutive meetings without a valid excuse, the Fond du Lac Reservation Business

Committee may declare the position vacant. All vacancies shall be filled within a reasonable timeframe in accordance with this Section.

- (B) The Directors of the Board shall not be subject to removal from office at the will and pleasure of the Fond du Lac Reservation Business Committee, but may be removed for cause set forth below in a written petition and proved by a preponderance of the evidence in a duly called hearing under Paragraph D of this section:
1. dishonesty, gross misconduct or incompetence in office;
 2. willful neglect of duty as evidenced by excessive absences from duly convened meetings of the Board;
 3. conviction of a felony or Class A offense under federal, state or tribal law;
 4. committing any act or engaging in any activity which would constitute a criminal offense involving dishonesty or moral turpitude under federal, tribal or state law;
 5. directly or indirectly engaging in any activities or transactions constituting a conflict of interest under the laws of the Band or any other applicable laws, rules, or regulations;
- (C) A Petition may be filed by the Fond du Lac Reservation Business Committee upon a Resolution by the Fond du Lac Reservation Business Committee.
- (D) Any board member accused of any of the foregoing causes shall be given a copy of the petition charging him or her and afforded the right to respond to the charges and present witnesses and other evidence in his or her defense at a hearing convened by the Fond du Lac Reservation Business Committee.

3.4 Board Officers

- (A) The officers of the Board shall consist of a Chairman, Vice Chairman, Secretary, and Treasurer. If official business requires the action of the Secretary and the Secretary is absent, the Chairman can appoint a Board member to serve as Acting Secretary during the Secretary's absence.
- (B) The officers of the Board shall have the following duties and such other duties as may be determined by resolution of the Board, not inconsistent with this Charter.
1. The Chairman shall, if present, preside at all meetings of the Board and shall perform all the duties incident to the office of the Chairman of the board and such other duties as may be delegated to the Chairman by the Board.
 2. The Vice Chairman shall act in the capacity of the Chairman in the absence of the latter, and shall discharge any other duties designated by the Chairman.
 3. The Secretary shall perform all duties incident to the office of Secretary, and such other duties as may, from time to time, be assigned by the Board or the Chairman.

4. The Treasurer shall perform all duties incident to the office of the Treasurer and such other duties as may, from time to time, be assigned by the Board or the Chairman. The Treasurer shall render, or cause to be rendered, to the Chairman and the Board whenever required, an account of all transactions as Treasurer and the financial condition of FDLTUC.
- (C) The officers of the Board shall be chosen by the Board at each annual meeting.
 - (D) Any officer or agent elected or appointed by the Board may be removed by the Board whenever, in its judgment, the best interest of FDLTUC will be served thereby.
 - (E) Any officer may resign at any time by giving written notice to the Board, or to the Chairman, or Secretary, such resignation to take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause may be filled for the unexpired part of the term at the next regular meeting of the Board.
 - (F) A majority of the full Board of Directors shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such Board. Any action of the FDLTUC taken must be approved by a majority vote of those Directors present at a FDLTUC Board meeting. Each Director of the FDLTUC, except the Chair, shall be entitled to vote on each matter coming properly before the FDLTUC. The Chair shall vote only in the event of a tie.
 - (G) In the event that the number of unfilled Directors vacancies prevents gathering of a quorum for purposes of conducting business, the remaining Directors shall act as the interim FDLTUC until such time as the filling of a director vacancy allows for a quorum.

3.5 Meetings

- (A) The FDLTUC Board of Directors shall conduct a regular quarterly meeting at a designated place within the jurisdiction of the Band.
- (B) The Chair shall call special and emergency meetings of the Board.
- (C) Any three Board members may request the Chair, in writing, to schedule a special meeting of the FDLTUC. If the Chair fails to schedule a meeting within five days after receipt of a written request, any other three Board members may call such a meeting.

- (D) Emergency meetings may be held upon twenty-four (24) hours of notice and business to be transacted. Emergency meetings may only be called in the most extraordinary circumstances.
- (E) Notice of meetings of the Board of Directors, either regular or special, shall contain an agenda which describes each item of business to be conducted. The agenda may include a line item for new business which shall allow the Board to discuss any new business which has arisen since the time of the posting of the agenda.
- (F) Minutes of all meetings of the Board, other than meetings or portions thereof held in executive session, shall be kept by a recording secretary.
- (G) Any action taken by the Board during a meeting convened or held in violation of this subsection shall be null and void.

3.6 Powers and Limitations of Powers.

- (A) The general authority, powers and responsibilities of the FDLTUC Board of Directors are:
 - 1. The Board of Directors are charged with the administration and management of the FDLTUC's operations, facilities and maintenance;
 - 2. The primary authority and responsibility of the Board of Directors is to establish the policies, procedures, standards and goals for the efficient and profitable management and operation of FDLTUC, in compliance with industry standards and other federal laws, and to establish rules and regulations for such operations; and
 - 3. The Board of Directors shall have the authority to oversee and supervise the activities of the personnel to assure said personnel implement adopted policies, procedures, standards and goals established for the FDLTUC.
- (B) The specific authority, powers and responsibilities of the Board of Directors are:
 - 1. Employ a manager(s), accountants, professional and administrative staff, and other employees who shall be responsible for carrying out the day-to-day operations of FDLTUC;
 - 2. Adopt and implement administrative policies and procedures for the Board's staff as well as for the managers and their administrative and other staff operating FDLTUC;
 - 3. Adopt and implement personnel policies and procedures to be followed in the hiring, supervision, management, promotion, disciplining and /or termination of

all Board and FDLTUC employees, including provisions for employment appeals and grievances filed by each manager, staff, and employees;

4. Adopt and implement procurement policies and procedures to be used in contracting for and/or purchasing goods, services and supplies, including without limitation rules prohibiting transactions and/or actions which would violate Band's laws regarding conflicts of interests.
5. Adopt and implement such other policies which the Board deems appropriate for the effective management and operation of Band's public utilities or which may be otherwise required by law.
6. Any rules, policies, procedures and standards adopted pursuant to this section shall be submitted to the Fond du Lac Reservation Business Committee, no later than three hundred and sixty five (365) days after the enactment of this Charter and shall not become effective until the same are approved by duly adopted Fond du Lac Reservation Business Committee Resolution. The rules, policies, procedures and/or standards may be revised by the Board from time to time but all such revision shall be submitted to the Fond du Lac Reservation Business Committee, and shall not become effective until approved by duly adopted Fond du Lac Reservation Business Committee Resolution. Any rules, policies and procedures and standards of the Board currently in effect which are not otherwise inconsistent with the provisions of this Charter shall remain in effect until such new rules, policies, procedures and standards are duly approved by Fond du Lac Reservation Business Committee Resolution.
7. The Board shall have the power to contract with any person, corporation, partnership or other business entity for goods, supplies and services necessary and/or appropriate for the efficient operation of the Tribes' public utilities facilities, and this power shall include the power to enter into routine equipment leases. Provided, however, any contract with a term of more than one (1) year shall not be valid unless approved by duly adopted Fond du Lac Reservation Business Committee resolution. Provided further that the Board may delegate its power to contract for goods, supplies and services to the facility managers provided that any contract exceeding one hundred thousand dollars (\$100,000) shall not be valid unless first approved by the Reservation Business Committee.
8. The Board shall be responsible for the protection, maintenance and proper disposition of all funds, accounts and other property that come under its authority or control or that are used and/or maintained in connection with and pursuant to its authority, powers and responsibilities hereunder. In this connection, the Board shall:
 - a. Provide narratives and financial reports to the Fond du Lac Reservation Business Committee;

- b. Establish an internal auditing system of operations in accordance with industry standards;
 - c. Record and maintain a copy of the minutes of all meetings of the Board, including meetings or portions of meetings conducted in executive session;
 - d. Promptly report any theft or misuse of funds or other property under the Board's control to the Fond du Lac Reservation Business Committee;
 - e. Cooperate in any criminal or civil investigation being conducted by the Fond du Lac Band including the furnishing of documents, papers or other evidence relevant to such investigation in accordance with applicable law.
9. Hold regular meetings of the Board for the conduct of business and to discharge its powers and duties;
10. Delegate such authority to the manager(s) of the FDLTUC as the Board deems appropriate, subject to any limitations imposed by this Charter;
11. On behalf of the FDLTUC and subject to the limitations of this Charter, approve any contracts proposed by the manager(s) for the engagement of consultants, advisors, planners and/or other experts which the Board deems necessary or appropriate to carry out the purposes of FDLTUC,
12. Subject to any requirements and/or limitations imposed on the Board or FDLTUC under the provisions of this Charter, take or perform all other actions, including without limitation approving contracts and agreements in the name of the FDLTUC, which the Board may deem necessary or appropriate in order for the FDLTUC to carry out its purposes and authority set forth in this Charter, provided that any limitations imposed hereunder on the FDLTUC shall be limitations on the Board; and

(C) Limitations on the Boards Authority, Powers and Responsibilities

1. Without first obtaining approval by Resolution by the Fond du Lac Reservation Business Committee, the Board of Directors shall have no power to:
- a. Enter into contracts or agreements with a term exceeding one (1) year or which cannot be performed within one (1) year;
 - b. Enter into contracts exceeding one hundred thousand dollars (\$100,000);
 - c. Enter into leases, or agreements for the use, of real property or space within any of the Band's facilities;

- d. Borrow money or make, accept, endorse or issue bonds debentures, promissory notes, mortgages, or security agreements or any other instrument of indebtedness or guaranty;
- e. Make private or public donations of money or property;
- f. Waive the sovereign immunity of the Band for any purpose whatsoever, or enter into any contract or agreement which contains any provision purporting to waive the sovereign immunity of which subjects the Band to the jurisdiction of any tribal, state or federal court; and
- g. Sue or be sued in any tribal, federal or state court.

3.7 Tribal Utility Operational and Management Plan

- (A) The FDLTUC shall be responsible for providing an operational and management plan to the Fond du Lac Tribal Council for each fiscal year.

3.8 Fiscal Responsibility

- (A) The Board of Directors is responsible for the oversight and control of the financial and business affairs of the FDLTUC through the establishment and implementation in accordance with generally accepted accounting principles of an administrative system that shall include, but not be limited to controlling, accounting and reporting disbursements, payroll, cost management and investments and establishing and maintaining bank accounts in the name of the Tribes FDLTUC in an financial institution whose deposits are insured by an agency of the United States government; provided that expenditures may be made only upon approval by the Board of Directors.

3.9 Annual Audit

- (A) The Board of Directors shall maintain complete, accurate books and records of the financial affairs of the FDLTUC, and for each fiscal year shall furnish to the Fond du Lac Tribal Council an annual budget, annual balance sheet, annual income statement and complete annual report of the business and financial affairs of the FDLTUC and each of its businesses or ventures. The books and records of the FDLTUC shall be audited each year by an independent Certified Public Accountant in accordance with generally accepted auditing procedures.

3.10 Financial Reports and Annual Report

- (A) The Board of Directors shall make written semi-annual financial reports to the Fond du Lac Reservation Business Committee.

(B) The Board of Directors shall submit an annual report by October 31st of each year on behalf of the FDLTUC. The report shall contain the following:

1. A summary of the year's activities;
2. The financial condition of the FDLTUC;
3. Any significant accomplishments and problems;
4. Future goals, objectives and activities; and
5. Any other information the Board deems important.

Section 4: Amendments

This Charter may be amended by resolution of the Fond du Lac Reservation Business Committee.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #01/21 was duly approved by Resolution #1206/21 by a vote of _ for, _ against, with a quorum of _ Being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on may 5, 2021, on the Fond du Lac Reservation.



Kevin R. DuPuis, Sr.
Chairman



Ferdinand Martineau, Jr.
Secretary/Treasurer