

NISQUALLY INDIAN TRIBE
TRIBAL CODE

ADDING NEW TITLE 9 – GOVERNMENTAL CORPORATIONS
(and Repealing Former Chapter 8.50 of Title 8)



Nisqually Indian Tribe

TITLE 9
GOVERNMENTAL CORPORATIONS

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TITLE 9

GOVERNMENTAL CORPORATIONS

**CHAPTER 1
GENERAL PROVISIONS**

1.1 Short Title.

This Title 9 shall be known and may be cited to as the “Nisqually Indian Tribe Governmental Corporation Ordinance.”

1.2 Findings; Purpose.

- (1) The Tribal Council endeavors to promote Tribal economic development, Tribal self-sufficiency and strong Tribal government. The primary source of Tribal government revenue necessary to facilitate said goals is Tribal business enterprises. Recognition and maintenance of the governmental nature of Tribal business enterprises is essential to achieving said goals, as well as to preserving and asserting the sovereignty of the Tribe.
- (2) Pursuant to the Constitution of the Nisqually Indian Tribe, Article VI, Section 1(h), the Tribal Council is empowered to establish subordinate entities for economic purposes and to review any actions taken by such entities.
- (3) This Ordinance is enacted to provide for the creation, organization and regulation of Governmental Corporations under and as a matter of Nisqually Tribal law.

1.3 Definitions.

- (1) “Articles” or “Articles of Incorporation” includes any of the following:
 - (a) the articles of incorporation or any other instrument filed or issued under this Ordinance to organize a Governmental Corporation, as amended, supplemented or restated; or
 - (b) a special act or charter issued by the Tribal Council and creating a Governmental Corporation, as amended, supplemented or restated.
- (2) “Board” or “Board of Directors” means the board of directors or other governing board of a Governmental Corporation.
- (3) “Corporation” or “Governmental Corporation” means a corporation organized under and subject to the provisions of this Ordinance that is either a Tribal Corporation or a Tribal Subsidiary.
- (4) “Director” means a member of the Board of a Corporation.
- (5) “Electronic Transmission” or “Electronically Transmitted” means any form of communication that meets all of the following:
 - (a) it does not directly involve the physical transmission of paper;

- (b) it creates a record that may be retained and retrieved by the recipient; and
- (c) it may be directly reproduced in paper form by the recipient through an automated process.
- (6) “Ordinance” means this Title 9, the Nisqually Indian Tribe Governmental Corporation Ordinance.
- (7) “Reservation” means all lands within the Nisqually Indian Reservation, as is now or hereafter recognized by the Secretary of the Interior of the United States of America, as well as all lands outside the Nisqually Indian Reservation held in trust or restricted status by the United States for the Tribe or its Tribal members.
- (8) “Resolution” means a written resolution adopted by the Tribal Council at a duly-held meeting.
- (9) “Tribal Corporation” means a Governmental Corporation that is wholly-owned by the Tribe.
- (10) “Tribal Council” means the Tribal Council of the Nisqually Indian Tribe.
- (11) “Tribal Court” means the Tribal Court of the Nisqually Indian Tribe.
- (12) “Tribal Subsidiary” means a Governmental Corporation that is wholly-owned by a Tribal Corporation.
- (13) “Tribal Treasurer” means the Treasurer of the Nisqually Tribal Council.
- (14) “Tribe” or “Tribal” means or refers to the Nisqually Indian Tribe.
- (15) “Ultra Vires Act” means an act or attempted act by a Corporation, its Directors, officers or employees, that is beyond the scope of the powers granted by, or contrary to limitations set forth in, the Corporation’s Articles, this Ordinance or other applicable law.

1.4 Applicability of Ordinance; Title 8 Not Applicable.

- (1) The provisions of this Ordinance shall apply to all Governmental Corporations. All Tribal Corporations and all Tribal Subsidiaries shall be organized under this Ordinance.
- (2) Title 8 of the Nisqually Tribal Code is not applicable to Governmental Corporations.

1.5 Governmental Corporations Organized Under Chapter 8.50; Repeal of Chapter 8.50

- (1) Any corporation organized under Chapter 8.50 of Title 8 of the Nisqually Tribal Code prior to the effective date of this Ordinance, including but not limited to Greenfoot Government Corporation, Nisqually Construction Government Corporation, Medicine Creek Enterprise Corp., Nisqually Advertising Government Corp., Nisqually Communication Services Government Corp., Nisqually Markets Government Corp., Nisqually Markets – Valley Government Corp., Nisqually Markets – Lakewood Government Corp., Nisqually Markets – Yelm Highway Government Corp., Nisqually Markets – Lacey Government Corp., Nisqually Markets – Rez Government Corp. and Nisqually Markets– Frederickson Government Corp., shall be deemed to be in valid existence and organized as a

Governmental Corporation under this Title 9 as of the effective date of this Ordinance. To the extent the articles of incorporation, bylaws or other corporate governance documents of such Governmental Corporation are inconsistent with this Ordinance on the effective date hereof, the Governmental Corporation shall have a ninety (90) day period from the effective date of this Ordinance to amend or otherwise conform same to comply with this Ordinance.

- (2) Chapter 8.50 (Governmental Corporations) of Title 8 of the Nisqually Tribal Code, consisting of Sections 8.50.010 through 8.50.290, is hereby repealed in its entirety.

1.6 Status of Governmental Corporations; Privileges and Immunities Generally; Sovereign Immunity.

- (1) Governmental Corporations are governmental agencies and instrumentalities of the Tribe. As a sub-entity, arm and enterprise of the Tribe, a Governmental Corporation has as its primary purpose the generation of revenues for the Tribal government so that the Tribe may provide and perform essential governmental services and functions for the benefit, advancement and general welfare of the Tribe's members. As such, Governmental Corporations, their Directors, officers and employees, have all of the privileges and immunities enjoyed by the Tribe including, but not limited to, immunity from suit in Federal, State, Nisqually Tribal and non-Nisqually Tribal Courts and other forums.
- (2) The sovereign immunity of the Tribe and of Governmental Corporations is recognized by applicable law. This Ordinance and its various provisions do not constitute a waiver (or consent to a waiver) of a Governmental Corporation's sovereign immunity for any purpose or under any circumstances, except (i) as otherwise provided in Section 1.6(3) of this Ordinance and (ii) to the extent a sovereign immunity waiver by a Governmental Corporation has been granted by the Corporation consistent with the provisions of Section 2.9(1)(ii) of this Ordinance.

This Ordinance does not in any way restrict or limit the authority of the Tribal Council to, from time-to-time, approve, authorize and/or consent to any waiver of sovereign immunity by a Governmental Corporation, regardless of whether or not such waiver is consistent with the provisions of Section 2.9(1)(ii). A waiver of the sovereign immunity of a Governmental Corporation may be granted by the Governmental Corporation itself, and without Tribal Council approval, authorization or consent, only if consistent with the provisions of Section 2.9(1)(ii); a waiver of the sovereign immunity of a Governmental Corporation that is not consistent with Section 2.9(1)(ii) may only be granted either (i) by the Governmental Corporation with the approval, authorization or consent of the Tribal Council or (ii) by the Tribal Council. (Res. 137-2022, 8/17/2022)

- (3) Sovereign immunity shall be deemed waived and not be asserted by (i) a Tribal Corporation, its Directors, officers and employees, in an action brought by the Tribe or (ii) a Tribal Subsidiary, its Directors, officers and employees, in an action brought by the parent Tribal Corporation or by the Tribe. Following is a non-exclusive list of circumstances for which the Tribe or a Tribal Corporation may pursue such an action:
 - (a) commission of an Ultra Vires Act;
 - (b) commission by a Director of an act set forth in Section 5.11(1) or any other unlawful act;

- (c) realization of or potential for material harm to the assets of a Governmental Corporation or the Tribe; and
- (d) realization of or potential for material harm to the reputation of a Governmental Corporation or the Tribe.

1.7 Tribal Taxation.

All activities and assets of Governmental Corporations shall be subject to taxation by the Tribe.

1.8 Tribal Assets Distinct from Corporation Assets.

The assets of a Governmental Corporation shall be separate and distinct from the assets of the Tribe. A Corporation shall have and own only such assets as are specifically and expressly designated or transferred to it pursuant to Tribal Council Resolution or acquired by the Corporation on its own behalf. In no case shall assets of the Tribe that are not so specifically and expressly designated or transferred be considered assets of a Governmental Corporation for any purpose.

1.9 Reserved.

1.10 Reserved.

1.11 Jurisdiction.

- (1) Governmental Corporations shall be subject to all applicable laws of the Tribe and be subject to the Tribe's jurisdiction.
- (2) The Tribal Court shall have jurisdiction over permissible claims arising under this Ordinance.

1.12 Existing Lending Agreements.

This Ordinance shall not be construed, relied on or implemented in a way that would adversely affect the parties to any lending agreement, or amendments thereto, to which the Tribe or a Governmental Corporation is party if such lending agreement was executed prior to the effective date of this Ordinance. Any such lending agreement, including that certain credit agreement dated as of August 31, 2008 (as amended, restated, supplemented or otherwise modified from time to time) by and between Columbia State Bank as lender, Medicine Creek Enterprise Corporation as borrower and the Tribe as guarantor, as well as all documents, agreements and instruments relating thereto, and the rights, obligations and duties of the parties thereunder, shall be and remain subject to the terms of such lending agreement notwithstanding any provisions in this Ordinance contrary thereto.

1.13 Tribal Council Approval, Authorization and Consent.

Whenever a provision of this Ordinance requires that an action, activity, document, instrument or other matter requires Tribal Council approval, authorization and/or consent, such action, activity, document, instrument or other matter shall be invalid, void and/or of no legal force or effect without such Tribal Council approval, authorization and/or consent. Such Tribal Council approval, authorization and/or consent may be given only pursuant to a Tribal Council Resolution.

1.14 Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall 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.

1.15 Conflict in Law.

Any Tribal law heretofore adopted by the Tribal Council that conflicts with a provision of this Ordinance is hereby repealed to the extent of such conflict.

1.16 Amendment or Repeal of Ordinance.

This Ordinance may be supplemented, altered, amended or repealed by the Tribal Council and in accordance with applicable Tribal law.

1.17 Effective Date.

This Ordinance shall be effective upon adoption by Resolution of the Tribal Council.

CHAPTER 2
CORPORATE FORMATION AND POWERS

2.1 Incorporators; Tribal Council Approval of Articles.

- (1) One or more persons who (i) are enrolled member(s) of the Tribe, (ii) have attained at least 18 years of age and (iii) have been designated and authorized by the Tribal Council, may serve as the incorporators of a Corporation by signing and filing with the Tribal Treasurer Articles of Incorporation.
- (2) The Articles of Incorporation shall be authorized and approved by the Tribal Council.

2.2 Articles of Incorporation; Mandatory Provisions.

- (1) The Articles of Incorporation shall set forth the following information:
 - (a) the name of the Corporation;
 - (b) that the Corporation, if a Tribal Corporation, is wholly-owned by the Tribe or, if a Tribal Subsidiary, is wholly-owned by a Tribal Corporation;
 - (c) the purpose for which the Corporation is formed, which may generally be stated to include the transaction of any or all lawful business for which Corporations may be incorporated under this Ordinance;
 - (d) the street address, and the mailing address if different from the street address, of the Corporation's initial registered office and the name of the Corporation's initial resident agent at that address;
 - (e) the name of each incorporator;
 - (f) the duration of the Corporation, which may be perpetual; and
 - (g) the number of directors constituting the initial Board of Directors and the names of the persons who are to serve as initial Directors until their successors are appointed and qualify.
- (2) It shall not be necessary to set forth in the Articles of Incorporation any of the corporate powers enumerated in this Ordinance.
- (3) The Articles of Incorporation shall not contain any provision that is inconsistent with the provisions of this Ordinance or other Tribal law.

2.3 Articles of Incorporation; Permissible Provisions.

The Articles of Incorporation may contain any provision not inconsistent with this Ordinance or other law of the Tribe, including, but not limited to, any of the following:

- (a) provisions for management of the business and conduct of the affairs of the Corporation, or creating, defining, limiting or regulating the powers of the Corporation or its Directors;

- (b) provisions setting forth periodic financial and other reporting requirements by the Corporation to the Tribal Council or a Tribal Council designee;
- (c) provisions requiring Tribal Council authorization, approval or consent to certain corporate actions or activities;
- (d) provisions that under this Ordinance are required or permitted to be set forth in the bylaws;
- (e) provisions setting forth the method by which Corporation revenues will be distributed to the Tribe; and
- (f) provisions establishing the qualifications for Directors.

2.4 Filing of Articles of Incorporation; Beginning of Corporate Existence.

- (1) Duplicate originals of the Articles of Incorporation, together with a copy of the Tribal Council Resolution authorizing same, shall be delivered to the Tribal Treasurer. The Tribal Treasurer shall not accept for filing any Articles of Incorporation that have not been authorized and approved by Resolution of the Tribal Council. If the Tribal Treasurer finds that the Articles of Incorporation conform to Tribal law, the Tribal Treasurer shall:
 - (a) endorse on each such duplicate original the word “filed” and the month, day and year of the filing thereof;
 - (b) maintain one of such duplicate originals in the Tribal Treasurer’s Office; and
 - (c) issue a certificate of incorporation to which the Tribal Treasurer shall affix the other duplicate original and return to the incorporator.
- (2) Upon the issuance of the certificate of incorporation by the Tribal Treasurer, the corporate existence shall begin.

2.5 Bylaws.

- (1) The adoption, amendment or repeal of corporate bylaws by the Board shall be subject to Tribal Council approval. The bylaws may contain any provision for the regulation and management of the affairs of the Corporation not inconsistent with the Articles of Incorporation, this Ordinance or other Tribal law.
- (2) If a provision of the Articles of Incorporation is inconsistent with the corporate bylaws, the Articles shall be controlling.

2.6 Corporate Name.

The name of a Corporation shall contain the word “corporation,” “company,” “incorporated,” or “limited,” or shall contain one of the following abbreviations: corp., co., inc., or ltd., with or without periods.

2.7 Registered Office and Resident Agent.

- (1) Each Corporation authorized to transact business under this Ordinance shall have and continuously maintain a registered office and a registered agent as follows:
 - (a) a registered office within the Reservation which may be the same as its place of business; and
 - (b) a registered agent who maintains an office that is within the Reservation and identical to the registered office.
- (2) A Corporation may change its registered office or change its resident agent, or both, upon filing a statement with the Tribal Treasurer. The statement shall provide all of the following information:
 - (a) the corporate name;
 - (b) the street address of the Corporation's then registered office, and its mailing address if different from its street address;
 - (c) if the address of the Corporation's registered office is changed, the street address and the mailing address, if different from the street address, to which the registered office is changed;
 - (d) the name of the Corporation's then resident agent;
 - (e) if the Corporation's resident agent is changed, the name of its successor resident agent;
 - (f) that the address of the Corporation's registered office and the address of its resident agent, as changed, will be identical; and
 - (g) that the change was authorized by resolution duly adopted by the Corporation's Board.
- (3) A resident agent of a Corporation may resign by filing a written notice of resignation with the Board. The Corporation shall promptly appoint a successor resident agent. The appointment of the resigning agent terminates upon appointment of a successor, or upon expiration of thirty (30) days after receipt of the resignation notice by the Board, whichever first occurs.

2.8 Service of Process.

A process, notice or demand required or permitted by law to be served upon a Corporation may be served either upon (i) the current registered agent of the Corporation as reflected in the files of the Tribal Treasurer, or (ii) an officer of the Corporation.

2.9 Corporate Powers.

A Corporation may be organized under this Ordinance for any lawful purpose or purposes. A Corporation, subject to any limitations provided in this Ordinance, in any other Tribal law or in its Articles of Incorporation, shall have power in furtherance of its corporate purposes to do all of the following:

- (a) have perpetual duration;
- (b) have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed or reproduced in any other manner;
- (c) subject to Section 2.5, adopt, amend or repeal bylaws, including emergency bylaws, for the administration of the affairs of the Corporation;
- (d) elect or appoint officers, employees and other agents of the Corporation, prescribe their duties, fix their compensation and, subject to Section 5.13, indemnify them;
- (e) subject to Section 2.12, purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or an interest in real or personal property, wherever situated;
- (f) subject to Section 2.12 and Section 6.2, sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, or create a security interest in any of its property or an interest in its property, wherever situated;
- (g) subject to Section 2.12 and Section 6.2, make contracts, give guarantees and incur liabilities, borrow money at rates of interest as the Corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest in its property, wherever situated;
- (h) subject to Section 2.11 and Section 2.12, 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;
- (i) subject to Tribal Council approval, participate with others in any corporation, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking, or agreement which the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others;
- (j) subject to Chapter 7, cease its corporate activities and dissolve;
- (k) transact business, carry on its operations and have offices and exercise the powers granted by this Ordinance in any jurisdiction within the United States;
- (l) to (i) sue in courts of competent jurisdiction and (ii) agree to arbitrate disputes and/or agree to suit to compel arbitration and/or agree to suit to enforce an arbitration award only if all of the following shall occur: (I) the Corporation's sovereign immunity is expressly waived in writing by the Corporation in a written contract or other written obligation for the limited purpose(s) of allowing disputes arising thereunder to be submitted to arbitration for resolution; of allowing suit in the Nisqually Tribal Court (and not in any other court or dispute resolution forum whatsoever) to compel arbitration (if, and only if, the Corporation has refused to arbitrate in violation of the terms of the subject contract or other obligation); and/or of allowing an arbitration award issued to be enforced in the Nisqually Tribal Court (and not in any other court or dispute resolution

forum whatsoever), Provided That, notwithstanding the foregoing provisions of this Section 2.9(1)(ii)(I), and notwithstanding anything to the contrary in the Articles of Incorporation of a Governmental Corporation, the Tribal Council may, from time-to-time, approve, authorize and/or consent to suit against a Tribal Corporation in any Federal or State Court for the purposes of so compelling arbitration and/or of so allowing an arbitration award issued to be enforced in any Federal or State Court (Res. 129-2022, 8/4/2022); (II) said written express waiver identifies the party or parties that may arbitrate with or commence said suit against the Corporation; and (III) said written contract or other written obligation has been duly authorized by the Corporation's Board and executed by a duly authorized official of the Corporation. A Corporation retains its sovereign immunity except (i) to the extent expressly waived in writing by the Corporation in accordance with subparts (I-III) of this Section 2.9(1)(ii) or (ii) to the extent expressly waived in writing by the Corporation and approved, authorized or consented to by the Tribal Council in accordance with Section 1.6(2) hereinabove or (iii) to the extent expressly waived in writing by the Tribal Council in accordance with Section 1.6(2) hereinabove (Res. 137-2022, 8/17/2022);

(m) establish benefit or incentive plans for any or all of its current employees; and

(n) to have and exercise all lawful powers necessary or convenient to effect its corporate purposes.

2.10 Severance Compensation Prohibited.

No Corporation organized under this Ordinance shall pay any type of severance or unemployment compensation to any person in relation to cessation, discharge or dismissal of the person's employment or other affiliation with the Corporation unless approved by the Tribal Council.

2.11 Loans to Directors, Officers and Employees Prohibited; Other Loans.

- (1) No loans shall be made by a Governmental Corporation to its Directors, officers or employees in any circumstances.
- (2) No loans whatsoever shall be made by a Governmental Corporation without the approval of the Tribal Council.

2.12 Real Property Transactions.

- (1) Any transaction to which a Corporation is party involving real property or any interest therein, wherever situated, including but not limited to purchase, sale, transfer, lease, sublease, assignment, lien, exchange, mortgage, pledge or other conveyance or encumbrance, shall require the approval, authorization and/or consent of the Tribal Council.
- (2) A Corporation's use or occupancy of real property or any interest therein that is within the Reservation and/or otherwise subject to the jurisdiction of the Tribe shall require the approval and authorization of the Tribal Council.
- (3) Whenever directed by the Tribal Council, any real property or interest therein owned by the Corporation shall be conveyed to the Tribe for the purpose of Tribal application to the United States for placement of such real property in trust for the benefit of the Tribe.

CHAPTER 3
AMENDING OR RESTATING ARTICLES OF INCORPORATION

3.1 Right to Amend or Restate Articles of Incorporation.

A Corporation may amend or restate its Articles of Incorporation in accordance with the provisions of this Chapter 3.

3.2 Amendment or Restatement of Articles of Incorporation.

A Corporation may amend or restate its Articles of Incorporation by either (i) action of the Board of Directors that is consented to by the Tribal Council or (ii) action of the Tribal Council.

3.3 Execution of Articles of Amendment or Restatement.

Articles of amendment or restatement shall be executed by either (i) the Corporation president, or a vice-president, and its secretary and/or (ii) the Tribal Council Chairperson, or Vice-Chairperson, and the Tribal Secretary.

3.4 Filing of Articles of Amendment or Restatement.

Duplicate originals of the articles of amendment or restatement, together with a copy of the Tribal Council Resolution authorizing same, shall be delivered to the Tribal Treasurer. The Tribal Treasurer shall not accept for filing any articles of amendment or articles of restatement that have not been consented to or approved by Resolution of the Tribal Council as provided in Section 3.2. If the Tribal Treasurer finds that the articles of amendment or restatement conform to Tribal law, the Tribal Treasurer shall:

- (a) endorse on each duplicate original the word “filed” and the month, day and year of such filing thereof;
- (b) maintain one of such duplicate originals in the Tribal Treasurer’s office; and
- (c) issue a certificate of amendment or restatement to which the Tribal Treasurer shall affix the other duplicate original and return to the Corporation.

3.5 Effect of Certificate of Amendment or Restatement.

Upon the issuance of a certificate of amendment or a certificate of restatement by the Tribal Treasurer, the amendment or restatement shall become effective and the Articles of Incorporation shall be deemed to be amended or restated accordingly.

CHAPTER 4
OWNERSHIP, TRIBAL COUNCIL CORPORATE MEETINGS

4.1 Ownership.

- (1) A Tribal Corporation shall be and remain wholly-owned by the Tribe. The Tribal Council, on behalf of and for the benefit of the Tribe, shall perform the customary functions of corporate shareholders for a Tribal Corporation.
- (2) A Tribal Subsidiary shall be and remain wholly-owned by its parent Tribal Corporation. The Tribal Council, on behalf of and for the benefit of the Tribe, shall perform the customary functions of corporate shareholders for a Tribal Subsidiary.
- (3) Generally, and as provided in this Ordinance and/or the Articles, the Tribal Council, on behalf of the Tribe, controls matters that are beyond the scope of day-to-day corporate management including, but not limited to, election and removal of Directors, amendment or restatement of the Articles of Incorporation and dissolution of the Corporation.

4.2 No Shares or Shareholders.

- (1) Because a Tribal Corporation is directly owned by the Tribe and a Tribal Subsidiary is indirectly owned by the Tribe, and because both Tribal Corporations and Tribal Subsidiaries are sub-entities of the Tribe, shares shall not be issued to delineate ownership in a Tribal Corporation or a Tribal Subsidiary.
- (2) Tribal Corporations and Tribal Subsidiaries shall not have corporate shareholders.

4.3 Reserved.

4.4 Annual Meeting of Tribal Council.

An annual meeting of the Tribal Council for appointment of Directors and for such other corporate ownership business as may come before the meeting shall be held within the Reservation at a time and location fixed by the Tribal Council. Failure to hold the annual meeting at the designated time, or to appoint a sufficient number of Directors at the meeting or any adjournment thereof, does not affect otherwise valid corporate acts or work a forfeiture or give cause for dissolution of the Corporation. If the annual meeting is not held on the date designated therefor, the Tribal Council shall cause the meeting to be held as soon thereafter as convenient.

4.5 Special Meetings of Tribal Council.

- (1) Special meetings of the Tribal Council to address a corporate matter or for a corporate purpose may be called by the Tribal Council upon the request of the Corporation President or a majority of the Directors or as otherwise determined by the Tribal Council.
- (2) The Board of Directors shall attend any corporate special meeting or annual meeting of the Tribal Council when so directed by the Tribal Council. The Board of Directors shall respond at the meeting to any matters or questions directed to the Board by the Tribal Council in advance of or at the meeting.

4.6 Conduct of Meetings.

All meetings of the Tribal Council to address a matter arising under this Ordinance, whether an annual meeting or a special meeting, shall be conducted according to the established meeting procedures of the Tribal Council. The Tribal Council may consider and/or take action at any regular or special Tribal Council meeting with respect to a matter arising under this Ordinance in the same manner in which it generally considers items and/or takes action. A Tribal Council meeting which has an agenda item that is a matter arising under this Ordinance shall constitute an annual meeting under Section 4.4 or a special meeting under Section 4.5, as applicable.

**CHAPTER 5
DIRECTORS AND OFFICERS**

5.1 Management Functions of Directors.

The ordinary day-to-day business and affairs of a Corporation shall be managed by or under the direction of its Board of Directors. Directors are required to use their best judgment and independent discretion to determine and execute corporate policy with respect to such matters as (i) products, services, prices, wages, employment and labor relations, (ii) financial management, (iii) selection, supervision and removal of officers and other executive personnel, (iv) possible adoption, amendment and repeal of bylaws and (v) supervision and vigilance for the welfare of the Corporation.

5.2 Number, Appointment and Term of Directors; Resignation; Removal; Vacancy; Compensation.

- (1) The Board shall consist of three (3) or more members appointed by the Tribal Council. The number of Directors shall be fixed by, or in the manner provided in, the Articles of Incorporation.
- (2) The first Directors seated on the Board by the Tribal Council shall hold office until the first annual meeting of the Tribal Council under Section 4.4. At the first annual meeting, and at each annual meeting thereafter, the Tribal Council shall appoint Directors to hold office until a succeeding annual meeting. A Director shall hold office for the term for which he or she is appointed and until his or her successor is appointed and qualified, or until his or her resignation or removal.
- (3) A Director may resign by written notice to the Corporation Board. The resignation is effective upon its receipt by the Board or a later time as set forth in the notice of resignation.
- (4) A Director may be removed at any time, with or without cause, by the Tribal Council.
- (5) Any vacancy on the Board, due to expiration of a term, resignation, removal or otherwise, shall be filled by Tribal Council appointment for the remainder of the term of the vacant Board seat.
- (6) Unless otherwise expressly provided in the Articles of Incorporation, Directors shall not receive any compensation or reimbursement for their attendance at Board meetings or otherwise in their capacity as Board members except as may be determined by the Tribal Council.

5.3 Reports to Tribal Council; Audit; Inspection of Records.

- (1) Between September 1st and October 1st of each year, the Corporation Board shall submit an annual report to the Tribal Council concerning the Corporation's financial and business activities. If directed by the Tribal Council, the Board shall appear at a Tribal Council meeting to present the annual report and respond to any questions from Tribal Council pertaining thereto. Such annual reports shall conform with the Corporation's Articles.
- (2) In addition to the annual report referred to in subsection (1) immediately above, the Board of Directors of each Corporation shall file such additional reports with the Tribal Council as may be provided for in the Articles. If directed by the Tribal Council, the Board shall appear

at a Tribal Council meeting to present any such reports and respond to any questions from Tribal Council pertaining thereto.

- (3) All Corporations organized under this Ordinance shall record the complete proceedings of every Board meeting, and every committee of the Board meeting, and the verbatim, unapproved records of those proceedings shall be filed with the Tribal Treasurer within twenty (20) days after the date of the meeting; provided that, this Section shall not require the filing with the Tribal Treasurer of records of personnel matters, business strategy or legal strategy. In addition, all enacted resolutions of the Board or committee of the Board shall be filed with the Tribal Treasurer within twenty (20) days of enactment or action. Any such Board or committee resolutions with a confidential content shall be marked "Confidential" prior to submission to the Tribal Treasurer.
- (4) The Tribal Council, by duly adopted Resolution, may at any time require that any Corporation be audited by an independent auditor retained by the Tribe and shall have the absolute authority to require access to all corporate documents necessary or useful to such audit.
- (5) In addition to the independent audit set forth in subsection (4) immediately above, the Tribal Council has the right to inspect and/or audit a Corporation's books and records of accounts at any time to ensure the Corporation's compliance with its Articles and applicable law. The Tribe's internal accounting department or other Tribal Council designee may conduct any such inspection and audit.
- (6) Any records, documents or instruments generated or maintained by the Corporation, including the Corporation Board or a committee of the Board, in the course of its business and/or business-related activities, to the extent not coming within the scope of the foregoing provisions of this Section 5.3, shall be subject to inspection by the Tribal Council or its designee at any time for the purpose of verifying compliance of the Corporation with its Articles and/or applicable law.

5.4 Director or Officer Discharge of Duties.

- (1) A Director or officer shall discharge his or her duties as a Director or officer, including his or her duties as a member of a committee, in the following manner:
 - (a) in good faith;
 - (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) in a manner he or she reasonably believes to be in the best interests of the Corporation and that is consistent with the provisions of the Articles, this Ordinance and other applicable law.
- (2) In discharging his or her duties, a Director or officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by any of the following:

- (a) one or more Directors, officers, or employees of the Corporation, or of a business organization under joint control or common control, whom the Director or officer reasonably believes to be reliable and competent in the matters presented;
 - (b) legal counsel, public accountants, engineers or other persons as to matters the Director or officer reasonably believes are within the person's professional or expert competence; or
 - (c) a committee of the Board of which he or she is not a member if the Director or officer reasonably believes the committee merits confidence.
- (3) A Director or officer is not entitled to rely on the information set forth in subsection (2) if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

5.5 Open Meetings Law Applicable; Regular or Special Meetings of Board.

- (1) Title 1, Chapter 1 (Open Public Meetings), of the Nisqually Tribal Code is applicable to Governmental Corporations. A Governmental Corporation is a "public agency" within the meaning of Section 1.01.020(a), and the Board of Directors (as well as a committee of the Board that may exercise the authority of the Board pursuant to Section 5.8(3) of this Ordinance) is a "governing body" within the meaning of Section 1.01.020(b), of the Nisqually Tribal Code. The applicability of said Title 1, Chapter 1, to Governmental Corporations does not expand or otherwise affect the corporate powers set forth in Section 2.9 of this Ordinance.
- (2) Regular and special meetings of the Board (as well as a committee of the Board that may exercise the authority of the Board pursuant to Section 5.8(3) of this Ordinance) shall be held within the Reservation and in accordance with the requirements of Title 1, Chapter 1 (Open Public Meetings), of the Nisqually Tribal Code.
- (3) Notwithstanding anything to the contrary in this Section 5.5, each member of the Tribal Council shall receive reasonable advance notice, in writing or by Electronic Transmission, of all regular and special Board meetings and all committee of the Board meetings. A Tribal Council member may attend any Board, or committee of the Board, meeting in his or her discretion.

5.6 Quorum; Action of Board.

A majority of the members of the Board then in office constitutes a quorum for transaction of business. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the Board.

5.7 Reserved.

5.8 Committees of the Board.

- (1) Unless otherwise provided in the Articles of Incorporation or bylaws, the Board may designate one or more committees, each committee to consist of five (5) or more of the Directors of the Corporation. The Board may designate one or more Directors as alternate members of a committee who may replace an absent or disqualified member at a meeting of the committee.

- (2) A committee, and each member thereof, shall serve at the pleasure of the Board.
- (3) A committee designated pursuant to this Section 5.8, to the extent provided in a resolution of the Board or in the bylaws, may exercise the authority of the Board of Directors.

5.9 Appointment of Officers.

- (1) The officers of a Corporation shall consist of a president, secretary, treasurer, and, if desired, a chairman of the Board, one or more vice-presidents, and such other officers as may be prescribed by the bylaws or determined by the Board. Unless otherwise provided in the Articles of Incorporation or bylaws, the officers shall be appointed by the Board.
- (2) Two or more offices may be held by the same person, with the exception that the same person may not hold the office of president and secretary.
- (3) An officer appointed as herein provided shall hold office for the term for which he is appointed and until his successor is appointed and qualified, or until his resignation or removal.
- (4) An officer, as between himself and other officers and the Corporation, has such authority and shall perform such duties in the management of the Corporation as may be provided in the bylaws, or as may be determined by resolution of the Board not inconsistent with the bylaws.
- (5) Officers of a Corporation who concurrently hold a directorship on the Board shall not receive compensation, reimbursement or other monies in their capacity as officers unless otherwise provided by the Tribal Council.

5.10 Removal or Resignation of Officers.

- (1) An officer appointed by the Board may be removed by the Board at any time with or without cause.
- (2) The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.
- (3) An officer may resign by written notice to the Corporation Board. The resignation is effective upon its receipt by the Corporation Board or at a subsequent time specified in the notice of the resignation.

5.11 Liability of Directors for Corporate Actions.

- (1) Directors who vote for, or concur in, any of the following corporate actions are jointly and severally liable to the Corporation and/or the Tribe to the extent of any legally recoverable damage suffered as a result of the action:
 - (a) failure or refusal to make a distribution of revenues to the Tribe in contravention of this Ordinance or the Articles of Incorporation;
 - (b) making severance compensation contrary to Section 2.10 of this Ordinance;

- (c) making a loan to a Director, officer or employee of the Corporation, or making any other loan, contrary to Section 2.11 of this Ordinance;
 - (d) participation in a real property transaction contrary to Section 2.12 of this Ordinance;
 - (e) indemnification of a person contrary to Section 5.13 of this Ordinance;
 - (f) failure of a Director, officer, contractor or employee to be bonded or insured contrary to Section 5.14 of this Ordinance; or
 - (g) action that is not within the scope of the foregoing provisions of this Section 5.11 that is contrary to applicable law or the Articles and results, in whole or in part, from a Director's failure to discharge his or her duties in accordance with Section 5.4.
- (2) A Director is not liable under this Section if he or she has complied with Section 5.4.

5.12 Interest of Director or Officer in Transaction.

- (1) A transaction in which a Director or officer is determined to have an interest shall not, because of the interest, be enjoined, set aside or give rise to an award of damages or other sanctions in a proceeding by a Tribal Corporation or the Tribe if the person interested in the transaction establishes any of the following:
 - (a) the transaction was fair to the Corporation at the time entered into;
 - (b) the material facts of the transaction and the Director's or officer's interest were disclosed or known to the Board, a committee of the Board or the independent Directors, and the Board, committee or independent Directors authorized, approved or ratified the transaction in good faith and otherwise in accordance with Section 5.4; or
 - (c) the material facts of the transaction and the Director's or officer's interest were disclosed or known to the Tribe and the Tribe authorized, approved or ratified the transaction pursuant to Tribal Council Resolution.
- (2) The presence of, or a vote cast by, a Director with an interest in the transaction does not per se affect the validity of the action taken under subsection (1)(b).
- (3) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a Director or officer is determined to have an interest. Those claims shall be evaluated under principles of law applicable to a transaction in which a Director or officer does not have an interest.

5.13 Indemnification.

Subject to the prior consent of the Tribal Council, a Corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, other than an action by or in the right of the Corporation or by the Tribe, by reason of the fact that he or she is or was a Director, officer, employee, or agent of the Corporation, against expenses, including attorney's fees, judgments, penalties, fines and amounts paid in settlement actually and

reasonably incurred by him or her in connection with the action, suit or proceeding, if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation or the Tribe, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of an action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not (i) act in good faith and in a manner which he or she reasonably believed to be in or not opposed to said best interests of the Corporation or the Tribe, or (ii) with respect to a criminal action or proceeding, have reasonable cause to believe that his or her conduct was unlawful.

5.14 Bonding.

- (1) Notwithstanding any other provision of this Ordinance or the Articles of Incorporation, all Directors, officers, contractors and employees of any Governmental Corporation who are (i) authorized, either individually or in conjunction with others, to expend funds on behalf of the Governmental Corporation, or (ii) responsible for accounting for the funds of a Governmental Corporation, shall at all times be bonded or insured by the Corporation to protect the assets of the Corporation in an amount consistent with the financial responsibilities of the Director, officer, contractor or employee. Such bonds or policies of insurance shall be obtained at the expense of the Governmental Corporation or the contractor.
- (2) No Director, officer, contractor, or employee of a Governmental Corporation shall have authority under this Ordinance or the Corporation's Articles of Incorporation to expend or account for corporate funds unless bonded or insured in compliance with this Section 5.14. Any signature of a corporate Director, officer, contractor or employee purporting to authorize expenditure of corporate funds shall be void if at the time the signature is given the Director, officer, contractor or employee is not bonded or insured as required by this Section 5.14.

**CHAPTER 6
SALE OF ASSETS**

6.1 Sale or Mortgage of Assets in Regular Course of Business.

Subject to Section 2.12, and unless otherwise provided in the Articles, a Corporation may, on the terms and conditions and for the consideration determined by the Board of Directors:

- (a) sell, lease, exchange or otherwise dispose of its property in the usual and regular course of business;
- (b) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse) or otherwise encumber its property in the usual and regular course of business;
or
- (c) transfer its property and assets to any Governmental Corporation or to the Tribe in the usual and regular course of business.

6.2 Sale or Mortgage of Assets Other Than in Regular Course of Business.

A Corporation may sell, lease, exchange or otherwise dispose of, or mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse) or otherwise encumber all, or substantially all, of its property (with or without the good will), other than in the usual and regular course of business, on the terms and conditions and for the consideration proposed by the Corporation's Board of Directors and approved by the Tribal Council.

6.3 "Usual and Regular Course of Business" Defined.

As used in Section 6.1 and Section 6.2, the phrase "in the usual and regular course of business" shall mean and be defined as follows: the normal and routine activities of a Corporation that are necessary to the Corporation's day-to-day business operations.

6.4 Excess or Surplus Property.

A Corporation shall notify the Tribal Council of its intent to sell excess or surplus property and provide the Tribe with at least thirty (30) days advance notice and opportunity to purchase the property.

CHAPTER 7 DISSOLUTION

7.1 Voluntary Dissolution by Tribal Council (Prior to Commencement of Business).

- (1) A Corporation which has not commenced business may be voluntarily dissolved by the Tribal Council at any time. Articles of dissolution, as authorized by Tribal Council Resolution, shall be executed in duplicate by a Tribal Council designee and shall set forth:
 - (a) the name of the Corporation;
 - (b) the date of issuance of its certificate of incorporation;
 - (c) that the Corporation has not commenced business;
 - (d) that no debts of the Corporation remain unpaid; and
 - (e) that the Tribal Council has determined that the Corporation be dissolved.
- (2) Duplicate originals of the articles of dissolution, together with the authorizing Tribal Council Resolution, shall be delivered to the Tribal Treasurer. The Tribal Treasurer shall not accept for filing any articles of dissolution that have not been authorized and approved by the Tribal Council. If the Tribal Treasurer finds that the articles of dissolution conform to law, the Tribal Treasurer shall:
 - (a) endorse on each of such duplicate original the word “filed” and the month, day and year of the filing thereof;
 - (b) maintain one of such duplicate originals in the Tribal Treasurer’s Office; and
 - (c) issue a certificate of dissolution to which the Tribal Treasurer shall affix the other duplicate original.
- (3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Tribal Treasurer, shall be returned to the Tribal Council or its designee. Upon the issuance of such certificate of dissolution by the Tribal Treasurer, the existence of the Corporation shall cease. If not sooner effectuated, all assets of the Corporation shall thereupon be distributed, in cash and in kind, to the Tribe unless otherwise provided by Tribal Council Resolution.

7.2 Voluntary Dissolution by Tribal Council (After Commencement of Business).

- (1) A Corporation which has commenced business may be voluntarily dissolved by authorization of the Tribal Council, either with or without the recommendation of the Board of Directors.
- (2) Upon authorization by Tribal Council Resolution, a statement of intent to dissolve shall be executed in duplicate on behalf of the Corporation by the Tribe, by the Tribal Council Chairman or Vice-Chairman and the Tribal Secretary, which statement shall set forth and/or contain:

- (a) the name of the Corporation;
- (b) the names of its officers;
- (c) the names of its Directors; and
- (d) a copy of the Resolution adopted by the Tribal Council authorizing the dissolution of the Corporation.

7.3 Filing of Statement of Intent to Dissolve.

- (1) Duplicate originals of the statement of intent to dissolve, together with a copy of the Tribal Council Resolution authorizing same, shall be delivered to the Tribal Treasurer. The Tribal Treasurer shall not accept for filing any statement of intent to dissolve that has not been authorized and approved by the Tribal Council. If the Tribal Treasurer finds that such statement conforms to law, the Tribal Treasurer shall:
 - (a) endorse on each of such duplicate original the word “filed” and the month, day and year of the filing thereof;
 - (b) maintain one of such duplicate originals in the Tribal Treasurer’s Office; and
 - (c) return the other duplicate original to the Corporation or its representative.
- (2) Upon the filing with the Tribal Treasurer of the statement of intent to dissolve, the Corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof. Its corporate existence shall continue until a certificate of dissolution has been issued by the Tribal Treasurer.

7.4 Procedure after Filing of Statement of Intent to Dissolve.

- (1) After filing the statement of intent to dissolve with the Tribal Treasurer, the Corporation shall:
 - (a) immediately cause notice thereof to be mailed to each known creditor of the Corporation; and
 - (b) proceed to collect its assets and convey and dispose of its properties as are to be distributed in accordance with this Section 7.4.
- (2) The assets of a Corporation in the process of dissolution shall be applied and distributed as follows:
 - (a) all liabilities and obligations of the Corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
 - (b) assets held by the Corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements; and

- (c) remaining assets shall be distributed, in cash and in kind, to the Tribe. The Tribe shall hold the assets or their proceeds in trust for ninety (90) days or until the resolution of any pending legal action involving the assets or proceeds. Under no circumstances shall the Tribe assume any liability not covered or satisfied by the assets so held. Upon the expiration of said trust period, the Tribe may utilize and/or dispose of the assets as deemed appropriate by the Tribal Council.
- (3) A plan providing for the distribution of assets may be adopted by a Corporation in the process of dissolution for the purpose of authorizing any transfer or conveyance of assets. Any such plan of distribution may be proposed by the Board of Directors and must be approved by the Tribal Council.

7.5 Articles of Dissolution.

- (1) When all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the Corporation have been distributed as set forth in Section 7.4, articles of dissolution, as authorized by Tribal Council Resolution, shall be executed in duplicate on behalf of the Corporation by the Tribe, by its Tribal Council Chairman or Vice-Chairman and the Tribal Secretary, which articles shall set forth:
 - (a) the name of the Corporation;
 - (b) that all debts, obligations and liabilities of the Corporation have been paid and discharged or that adequate provision has been made therefor;
 - (c) that all remaining property and assets of the Corporation have been distributed in accordance with Section 7.4; and
 - (d) that there are no suits pending against the Corporation in any court, or that adequate provision has been made for the satisfaction or any judgment, order or decree which may be entered against it in any pending suit.
- (2) Duplicate originals of such articles of dissolution, together with a copy of the Tribal Council Resolution authorizing same, shall be delivered to the Tribal Treasurer. The Tribal Treasurer shall not accept for filing any articles of dissolution that have not been authorized by the Tribal Council. If the Tribal Treasurer finds that such articles of dissolution conform to Tribal law, the Tribal Treasurer shall:
 - (a) endorse on each of such duplicate original the word “filed” and the month, day and year of the filing thereof;
 - (b) maintain one of such duplicate originals in the Tribal Treasurer’s Office; and
 - (c) issue a certificate of dissolution to which the Tribal Treasurer shall affix the other duplicate original.
- (3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Tribal Treasurer, shall be returned to the representative of the dissolved Corporation. Upon the issuance of such certificate of dissolution, the existence

of the Corporation shall cease, except for the purpose of permissible suits, other proceedings and appropriate corporate action.

7.6 Involuntary Dissolution.

- (1) A Corporation may be dissolved involuntarily by a decree of the Tribal Court in an action instituted by the Office of the Tribal Attorney in the name of the Nisqually Indian Tribe when it is made to appear to the Court that:
 - (a) the Corporation procured its Articles of Incorporation through fraud;
 - (b) the Corporation has continued to exceed or abuse the authority conferred upon it by this Ordinance;
 - (c) the Corporation has failed for ninety (90) days to appoint and maintain a registered agent on the Reservation;
 - (d) the Corporation has failed for ninety (90) days after change of its registered office or registered agent to file with the Tribal Treasurer a statement of such change; or
 - (e) the Corporation is found by the Court to be in violation of this Ordinance or any other law of the Tribe.
- (2) At least thirty (30) days before any action for the involuntary dissolution of a Corporation shall be filed by the Office of the Tribal Attorney, the Tribal Treasurer shall notify the Corporation, by certified or registered mail addressed to such Corporation at its registered office, of the intention to file such suit and the reasons therefor. If, before the action is filed, the Corporation shall submit satisfactory evidence to rebut the conditions in subsection (1)(c) or 1(d), the Office of the Tribal Attorney shall not file an action against the Corporation for such cause. If, after an action is filed for failure to comply with subsection (1)(c) or (1)(d), the Corporation satisfies these subsections and pays the costs of such action, the action for such cause shall abate.