

TITLE 16
LUMMI NATION CODE OF LAWS
SEWER AND WATER DISTRICT CODE

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**TITLE 16
LUMMI NATION CODE OF LAWS
SEWER AND WATER DISTRICT CODE**

**Chapter 16.01 Sewer and Water District and
Sewer and Water Board**

16.01.001 Jurisdiction

The provisions of this Title and all rules and regulations under it shall apply within the exterior boundaries of the Lummi Reservation and within the exterior boundaries all lands held in trust for the Lummi Nation by the United States or owned in Fee regardless of location

16.01.010 Establishment of District

There is hereby established the Lummi Tribal Sewer and Lummi Tribal Water District encompassing all of the land and waters within the exterior boundaries of the Lummi Reservation and trust lands and/or fee lands.

16.01.020 Sewer Board and Water Board

There are hereby established the separate Lummi Tribal Sewer and the Lummi Tribal Water Board to serve as the administrative Boards for the Lummi Tribal Sewer and the Lummi Tribal Water District. When the term Board is used in this Ordinance it shall meant the Sewer Board or the Water Board as the context shall indicate.

16.01.030 Purpose

The Lummi Tribal Sewer and Water Board (hereinafter referred to as “Board”) shall be responsible for assuring the District complies with the Sewer and Water Code and the District Comprehensive Plan.

16.01.040 Board Members

The Sewer Board shall consist of five (5) members. Two (2) members will be elected from the community within the boundaries of the District. Two (2) members will be elected from the Lummi Tribal membership. The fifth member will be a member of the Lummi Indian Business Council (LIBC) and shall be appointed by the LIBC to the Sewer and Water Board position. The Water Board shall consist of the two elected tribal member representatives on the Sewer Board and the one appointed LIBC representative. Current District employees are not eligible to be Board Members.

16.01.050 Term of Office

Except for the initial Board, all members shall serve a three-year (3) term, except for the representative of the LIBC, who shall serve a one-year (1) term.

16.01.060 Elections

Elections shall be held on the first Tuesday after the first Monday in November of each year. Each election one (1) Tribal position, one (1) open position, and the LIBC position shall be filled.

16.01.070 Voting

Voting shall be by secret ballot. At least thirty (30) days prior to the scheduled date of the elections, an election committee made up of the LIBC representative, and the two (2) Board members that are not running for election.

**16.01.071? Election Committee and Poll
Workers**

The District Board will approve rules and election procedures for the conduct of the election, including, but not limited to, the type of secret ballot, the number and type of poll workers at the polls, and compensation to be paid these people.

16.01.080 Candidates, Nominations and Qualifications

Candidates and electors for the open positions shall consist of all persons residing within the District for at least ninety (90) days preceding the election and registered to vote in the election of the State of Washington. The District office shall be responsible for certifying that those registering meet these qualifications. Within twenty-five (25) days preceding the date set for elections, any person qualifying as a candidate under the preceding sections may be nominated by submitting his or her name in writing to the District office. Nominations shall be received by the District office for ten (10) days and may not be received by the District office later than fifteen (15) days prior to the date set for elections. The District will post the names of all nominees at prominent places within the Lummi Reservation or trust lands, published in a newspaper of general circulation, post on the Lummi Communication Network and the District’s website together with the notice of the election.

16.01.100 Initial Board

The entire initial Board shall be appointed by the LIBC in accordance with the membership pattern set out above. Two (2) Indians and two (2) non-Indians and the LIBC representative shall be appointed to serve until the Annual General Council meeting in January, 1977, or until their successors are elected or appointed. Two (2) Indians and two (2) non-Indians shall be appointed to serve until the Annual General Council meeting in January, 1978, or until their successors are elected or appointed. At the expiration of the terms of the first members of the Board, terms shall be for a three (3) year period, except for the LIBC representative.

16.01.110 Officers

Within thirty (30) days after the election, or after the appointment of the initial Board, there shall be an organizational meeting of the Board to elect a Chairman, Vice-Chairman and a Secretary Treasurer.

16.01.120 Records of Meetings

The Secretary shall keep or cause to be kept a complete and accurate record of all meetings, copies of which will be furnished to the Board.

16.01.130 Quorum and Voting

A minimum of three (3) members of the Board shall constitute a quorum. Any action taken by the Board must be taken by a minimum of a majority of those present at a Board meeting. Any resolution of the Board shall be signed by not less than three (3) members of the Board before becoming effective.

16.01.140 Vacancies

If any member of the Board shall die, resign or no longer be qualified to be a Board member under the terms of this Ordinance, or if the Board shall expel any member for neglect or gross misconduct, after a hearing on the matter, a vacancy in his office shall automatically be created and the remaining members of the Board shall appoint a qualified person to serve the unexpired portion of the term. Such appointment shall be made consistent with the membership pattern for the Board established by this Ordinance. Any Board member who shall, without sufficient excuse, miss three (3) consecutive regularly scheduled meetings shall forfeit his or her office, subject to reappointment by the LIBC.

16.01.150 Meetings

The Board shall meet when business demands and requires attention, but in no case less than once a month. Meetings may be called by the Chairman, or upon request in writing of two (2) members of the Board or by request in writing

of the District Manager. If the Chairman fails to call a meeting within five (5) days after receipt of a written request, any other two (2) members of the Board may call such a meeting. No meeting shall be held except on not less than forty-eight (48) hours written notice to the Board members. Any action taken at a meeting not called in accordance with this Section shall be void and of no effect.

16.01.160 Signatures

The Chairman or Vice-Chairman of the Board may sign such papers as the Board may authorize for and on behalf of the Board. All such authorizations shall be reflected in the records of the meetings.

16.01.170 Board Voting

Each member of the Board including the Chairman shall be entitled to vote on each matter coming properly before the Board.

16.01.180 Powers and Duties

Generally, the LIBC shall have full plenary authority over the Board. The Board shall be responsible for providing management and over all responsibilities of the District and its projects. It shall have the power, with prior approval of the Council in each case, to borrow funds for the operation of the District, take and give evidence of indebtedness, collateral and other security for loans and advances. It shall have the power to enter into business contracts and to do all things necessary to carry out the responsibilities hereunder, and specifically the responsibilities delegated to it under this Ordinance. However, the Board shall not enter into any litigation without specific authorization of Council nor may the Board waive immunity from suit without such specific authorization. No contract entered into by the Board without Council approval shall be an obligation of the Council.

16.01.181 Power to Acquire Property and Rights-Construction, Operation, etc., of System

The Board may acquire by purchase all lands, property rights, water, and water rights, within the District necessary for its purpose provided (a) title to all such property so acquired shall be taken in the name of the United States for the use and benefit of the Lummi Nation in the case of real property and in the name of the Lummi Nation in the case of other property; and no real property shall be acquired without permission of the Council.

It may lease real or personal property necessary for its purposes for a term of years for which such leased property may not be needed permanently or substantial savings to the District can be effected thereby. The Board may construct, purchase, add to, maintain, and operate systems of water and sewers for the purpose of furnishing the District and inhabitants thereof with an adequate system of water distribution and sewers for all uses and purposes, public and private, including but not limited to water storage and distribution, on-site sewage disposal facilities, facilities for the drainage of storm or surface water, public highways, streets, and roads with full authority to regulate the use and operation thereof and the service rates to be charged. For such purposes the District may conduct water and sewage throughout the District and throughout other political subdivisions within the District and purchase or acquire land and rights of way necessary for such sewer and water pipe. The District may erect reservoirs and sewage treatment plants, within or without the District, and may acquire by purchase properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution, from its sewers or its sewage treatment plants. The District may charge property owners seeking to connect to the District system of water or sewer lines, as a condition to granting the right to so connect in addition to the cost of such connection, such reasonable connection charges as the Board

shall determine to be proper. The District may require all property owners within the District located within the area served by the District system to connect their private drain and sewer and water systems with the District system under such penalty as the sewer and water commissioners shall prescribe by resolution. The District may for such purpose enter upon private property and connect the private drains or sewers with the District system and the cost thereof shall be charged against the property owner and shall be a lien upon property served.

16.01.182 Contracts for Acquisition, Use and Operation, etc., Authorized Service to Areas in Other Districts

The Sewer and Water District may enter into contracts with any county, city, town, sewer and water districts, or any other municipal corporation, or with any private person, firm, or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the Sewer and Water District and necessary or desirable to carry out the purpose of the Sewer and Water District, and the Sewer and Water District may provide sewer and water service to property owners in the areas within or without the limits of the District.

16.01.183 Contracts for Labor and Materials-Call for Bids-Small Works Roster-Award of Contract-Emergency, Requirements Waived

(a) All materials purchased, and work ordered, the estimated cost of which is in excess of five thousand dollars (\$5,000), shall be let by contract. All contract projects, the estimated cost of which is less than twenty-five thousand dollars (\$25,000), may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The Board may set up uniform procedures to prequalify contractors for inclusion on the small works roster. The Board

shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster.

Immediately after an award is made the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised every six (6) months. All contract projects equal to or in excess of twenty-five thousand dollars (\$25,000) shall be let by competitive bidding. Before awarding any competitive contract the Board shall cause a notice to be published in a newspaper in general circulation in Whatcom County at least once, ten (10) days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication be on file in the office of the Board subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the Board on or before the day and hour named therein.

Each bid shall be accompanied by a bid proposal deposit in the form of a certified check, cashier's check, postal money order, or surety bond payable to the order of the Lummi Tribal Sewer and Water District in a sum of not less than five percent (5%) of the amount of the bid and no bid shall be considered unless accompanied by such bid proposal deposit.

At the time and place named such bid shall be publicly opened and read and the Board shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications; Provided that no contract shall be let in excess of the cost of said materials or work or if, in the opinion of the Board, all bids are unsatisfactory, they may reject all of them and re-advertise and in such case all checks, cash, or bid bonds shall be returned to the bidders. If such contract be let,

then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the Board in the full amount of the contract price between the bidder and the commission in accordance with bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten (10) days from the date he is notified that he is the successful bidder, the said check, cash or bonds and the amount thereof shall be forfeited to the Sewer and Water District. In the event of an emergency when the public interest or property of the Sewer and Water District would suffer material injury or damage by delay, upon resolution of the Board, or proclamation of an official designated by the Board to act for the Board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the Board, or the official acting for the Board, may waive the requirements of this Chapter with reference to any purchase or contract.

16.01.184 Comprehensive Plan

The facilities plan adopted by the Council shall serve as the initial Comprehensive Plan of the District for the provision of sewer services. Any additions to the system of sewage treatment which shall be proposed by the Board, including extension of any lines, expansion of any treatment plants, or similar additions, shall be accompanied by an amendment to the facilities plan. This amendment shall include, but not be limited to, provision

- (a) for the treatment of sewages, industrial, and other liquid wastes which may be generated or expected to be produced within the area to be served by the addition;
- (b) for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, siphons, pumping stations,

treatment plants or expansions, or other sewage collection or treatment facilities; and for the methods of distributing the costs and expenses of the additions against the District and the property with the District, whether by general levy or through a local improvement district. A similar plan shall be developed by the Board covering the water system. In developing the plan and any amendments, the District shall conduct public hearings on the proposed plan or amendments. The Board may employ such legal and engineering services as they deem necessary in carrying out the purposes of this Section. The amendment to the facilities plan shall be submitted and approved by the Council before becoming effective.

16.01.185 Insurance

The Board may purchase such liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. The term “officials” shall include the members of the Board. The officials and employees of the District shall enjoy the same immunity from suit as enjoyed by officials and employees of the Council.

16.01.186 Budget

On or before October 1, of each year, the Board shall adopt a budget for the forthcoming twenty-four (24) months. The Budget shall include anticipated revenues from all sources and all anticipated expenditures, amortization and depreciation, capital and miscellaneous expenditures. The budget shall be adopted by resolution and submitted to the Council. Upon proper consideration, the budget may be amended by resolution and the amendment submitted to the Council. Unless the Council shall disapprove the budget within ten (10) calendar days, it shall be approved. The Council may disapprove any portion or all of the

budget, but those portions not disapproved shall be deemed approved. The Board may expend funds within an approved budget through procedures adopted by the Board in its administrative code.

16.01.187 Administrative Code

The Board may adopt by resolution an administrative code setting forth the procedures, requirements, and methods by which the powers and duties of the Board are to be exercised and carried out.

16.01.188 Indemnification

Each Sewer and Water Board member or employee who was or is threatened to be made a named defendant or respondent in a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, shall be indemnified for all expenses incurred in good faith in such action, suit, or proceeding, so long as the member's or employee's actions leading to his or her being named in the action, suit, or proceeding arose out of his or her actions under this ordinance. The Board shall have the power to reimburse or advance the costs and expenses, of any employee or member, incurred in appearing as a witness in any suit, action, or proceeding, even when the member or employee has not, is not, or is never made a defendant, or respondent in such action, suit, or proceeding; provided, that such reimbursement shall be made only by resolution of the Board. A member or employee shall not be indemnified for costs in any action, suit, or proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall be adjudged liable on the basis that personal benefit was improperly received by him or her. A member or employee shall be indemnified only if he or she conducted him or herself in good faith; and in the case of conduct in his or her own official capacity, he or she reasonably believed his or

her conduct to be in the District's best interests; or

(b) in all other cases, he or she reasonably believed his or her conduct to be at least not opposed to the District's best interests; or

(c) in the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

Indemnification shall include payment of any damages assessed against a member or employee by a court or administrative agency. Any indemnification under this Section shall be reported in writing to the LIBC at its meeting immediately following the action of the Board.

16.01.189 Indemnification-Consultants

The Board may extend the indemnification provisions of LCL §16.01.188 to independent contractors who sign a written contract with the Board; provided that, said contract shall provide for special rates and charges to the District in exchange for the extension of the indemnification of LCL §16.01.188. No such contract shall be entered into with a consultant or contractor whose duties include actual construction of facilities for the District.

16.01.190 Conflict of Interest

No member of the Board shall participate in any decision in which the interest of that member, either pecuniary or otherwise, shall be different from any other person served by the Board, provided that this Section shall not prohibit a member from participating in the formation of a Utility Local Improvement District, or an amendment to the Facilities Plan which shall involve land upon which the residence of the member is located.

Chapter 16.02 Manager and Finances

16.02.010 Manager and Employment

The Board shall have the authority to hire a Manager who shall have the following duties:

(a) The Manager shall be responsible for daily operations of the District and its projects.

(b) The Manager shall be responsible for employing, directing, training and discharging all employees under his charge. All salaries and wages shall be an expense of the District and will be in accordance with pay scales approved by the LIBC and the Board.

(c) The Manager shall have the power to direct purchasing and sales within limits set by the Board.

(d) The Manager shall be responsible for planning, development and operations as directed by the Board and under the provisions of this Ordinance.

(e) The Manager shall be responsible for income and expenditures, budgeting and accounting for the District.

(f) The Manager shall be required to make periodic reports to the Board.

The Manager shall be responsible for those other matters assigned him by the Board.

(h) Where this Ordinance requires the Manager to perform a duty, he may delegate that duty to a member of the District staff.

(i) The Manager will represent the District to secure funding.

16.02.020 Depository

The depository of the District shall be a separate commercial account or accounts in any bank selected by the Board. Said account shall be in the name "Lummi Tribal Sewer & Water District". Said accounts shall be insured by an agency of the United States.

16.02.030 Receipts and Disbursements

Disbursements will be made by the bonded official or employee designated by the Board. Disbursements will be made by check upon presentation of invoices or vouchers. The checks shall be countersigned by either the Chairman, or the Treasurer of the Board, or the official designated as a signator by the Board by resolution or in the Administrative Code. The Chairman, Treasurer, Manager, and other signator, if any, shall be bonded. Cash receipts will be deposited, intact as to amount, in the

depository promptly. Receipts will be issued for all cash received and copies filed and retained for accounting purposes.

16.02.040 Records and Accounts

Separate accounting records for the District shall be maintained in accordance with generally accepted accounting principles and in a manner satisfactory to the Council. The records and accounts shall be made available to the Council upon request.

16.02.050 Audits and Reports

The accounts of the District will be audited annually at the close of the fiscal year at the expense of the District. Annual and periodic reports will be submitted by the District to the Council.

16.02.060 Insurance

Fire and other insurance on property owned by the District or on property in which the District has an insurable interest, shall be in amounts and type of coverage specified by the Board.

16.02.070 Fiscal Year

The fiscal year of the District shall be the same as the fiscal year of the Council.

16.02.080 Leasing or Management of Lands

Authorized members of the Board may negotiate leases with individual owners of allotted trust lands for leasing privileges under mutually agreeable terms. Final action on and authority to execute leases on behalf of the District must be approved by the Board and the Council before becoming effective. No lands may be purchased by the District within the boundaries of the Lummi Reservation or trust lands without the prior approval of the Council.

16.02.090 Petty Cash Fund

A Petty Cash Fund is authorized to be established in the amount of five hundred dollars (\$500.00). This amount may be

increased subject to the approval of the Board. This fund may be used to pay small expenses, when necessary, and to pay small obligations when it is not feasible to pay by check on the official depository. The fund may be reimbursed periodically from the official depository of the District in the amount of and upon the submittal of receipts, vouchers, and statements signed by the payees, of their proof of expenditure. Petty Cash reimbursement vouchers shall be certified by the Manager.

16.02.100 Physical Inventory

A physical inventory of all equipment and property of the District shall be made on the last day of business of the fiscal year of the District and at such other times as may be directed by the Board. Small tools, consumable, and items whose cost is less than fifty dollars (\$50.00) shall not be classified as equipment for inventory purposes, so long as their useful life is less than one year.

16.02.110 Ownership

All the assets acquired by the District shall belong to the Council on behalf of the Lummi Tribe and shall be operated by and managed for the benefit of the District.

Chapter 16.03 Definition of Terms

16.03.010 General

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as set forth in this Chapter.

16.03.020 Acceptance

“ACCEPTANCE” when used in connection with the construction of improvements for the District either through direct contract or through a developer extension agreement, shall mean the action of the Board formally recognizing the transfer of the improvement from the contractor or developer to the District. An acceptance may be with or without conditions or contingencies.

16.03.030 Board

“BOARD” shall mean the five-member Lummi Tribal Sewer or Water District Board serving as the Administrative Board of the Lummi Tribal Sewer or Water District. This Board shall be subordinate as defined in Article VI, Section 1(p) of the Constitution and By-Laws of the Lummi Tribe.

16.03.040 B.O.D.

“B.O.D.” (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at twenty (20) degrees Celsius, expressed in parts per million by weight.

16.03.050 Building Drain

“BUILDING DRAIN” shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer.

16.03.060 Building Sewer

“BUILDING SEWER” (or side sewer) shall mean the extension from the building drain to the public sewer or other place of disposal, beginning two and one-half (2 1/2) feet outside the foundation wall.

16.03.070 Council

“COUNCIL” shall mean the Lummi Indian Business Council (LIBC).

16.03.080 Developer or Owner Extension

“DEVELOPER EXTENSION” shall mean a facility contracted by any person or entity under an agreement with the District, that the facility when constructed according to the District’s standards, shall be connected to the District’s system and ownership transferred to the District. An “OWNER EXTENSION” shall mean an existing improvement which has been in service for some time and which is now proposed to be transferred to the District. An owner extension need not meet the District standards for new construction, but the District shall be under no obligation to accept such a facility, and may condition acceptance on whatever terms it deems appropriate. Developer or Owner Extensions shall be the subject of contracts between the District and the applicable owner or developer on

such terms as may be agreeable to the District. Such contracts may provide for “latecomer charges” as a means of reimbursing the owner or developer for a portion of the costs of the system which are of benefit to persons other than the original builder.

16.03.090 District

“DISTRICT” shall mean Lummi Tribal Sewer or Water District.

16.03.100 District Clerk

“DISTRICT CLERK” shall mean such person as the Board shall designate as the Clerk of Lummi Tribal Sewer or Water District. The Clerk may not be the same person as the Manager.

16.03.110 Duplex

“DUPLEX” shall mean a two-family dwelling, namely a building containing not more than two kitchens, designed and/or used to house not more than two (2) families living independently of each other and including all necessary household employees of each such family.

16.03.120 Engineer

“ENGINEER” shall mean the person registered as an engineer, licensed in Washington State and designated by the Board to perform engineering services for the District, or his authorized assistants, representatives or employees.

16.03.130 Facility

“FACILITY” shall mean any object, item or system used in connection with the collection, transmission, treatment or disposal of sewage, or the appropriation, withdrawal, treatment, transmission or distribution of water.

16.03.140 Garbage

“GARBAGE” shall mean solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage, and sale of produce.

16.03.150 Industrial Wastes

“INDUSTRIAL WASTES” shall mean the liquid and solid wastes from industrial processes.

NEW Item

16.03.155 Lummi Code of Laws and properly adopted policies under these laws

16.03.160 Latecomer’s Agreement

“LATECOMER’S AGREEMENT” shall mean an agreement between the District and the owner or builder of a facility transferred to the District whereby the District agrees to collect from persons connecting to the facility in the future a portion of the cost of the facility, and to reimburse to the original builder or owner the collected costs, less the District’s fees and expenses.

16.03.170 Licensed Sewage Disposal Cleaner

“LICENSED SEWAGE DISPOSAL CLEANER” shall mean any contractor who is duly licensed under this Ordinance to pump out private sewage disposal systems within the District and to dispose of the waste material.

16.03.180 Licensed Sewage Disposal System Designer

“LICENSED SEWAGE DISPOSAL SYSTEM DESIGNER” shall mean any contractor who is duly licensed under this Ordinance to conduct soil percolation tests and design subsurface disposal systems within the District.

16.03.190 Licensed Side Sewer Contractor

“LICENSED SIDE SEWER CONTRACTOR” shall mean any contractor who is duly licensed under this Ordinance to construct, install, repair, reconstruct, excavate or connect any building sewer to the public sewers of the District.

16.03.200 Manager

“MANAGER” shall mean the manager of the Lummi Tribal Sewer or Water District, as designated by the Board, or their authorized deputy, agent, or representative.

16.03.210 Multiple Dwelling

“MULTIPLE DWELLING” shall mean a multiple family dwelling, namely, a building designed and/or used to house two or more families living independently of each other and

including all necessary household employees of each such family; and shall also include trailer parks and trailer courts, and each trailer or stall shall be deemed a separate unit.

16.03.220 Natural Outlet

“NATURAL OUTLET” shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

16.03.230 Owner

“OWNER” shall mean the legal owner of deeded property or the tenant on Tribal or allotted lands, or the beneficial owner of land held in trust by the United States.

16.03.240 Person

“PERSON” shall mean any individual or firm, company, association, society, corporation or group.

16.03.250 pH

“pH” shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

16.03.260 Private Sewage Disposal System

“PRIVATE SEWAGE DISPOSAL SYSTEM” shall mean any privately owned and maintained system which holds, treats, and disposes of sewage within the boundary of a lot or parcel. Such systems include but are not limited to septic systems.

16.03.270 Properly Shredded Garbage

“PROPERLY SHREDED GARBAGE” shall mean the garbage which has been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-twelfth (1/12) inch in any dimension.

16.03.280 Public Sewer

“PUBLIC SEWER” shall mean a sewer which is owned or controlled by the District.

16.03.290 Sanitary Sewer

“SANITARY SEWER” shall mean a sewer which carries sewage and into which storm, surface and groundwaters are not intentionally admitted.

16.03.300 Sewage

“SEWAGE” shall mean a combination of water-carried wastes from dwellings, business buildings, institutions, industrial establishments and other sewer users.

16.03.310 Sewage Treatment Plant

“SEWAGE TREATMENT PLANT” shall mean all facilities for collection, pumping, treating and disposing of sewage.

16.03.320 Sewage Works

“SEWAGE WORKS” shall mean all facilities for collecting, pumping, treating and disposing of sewage.

16.03.330 Sewer

“SEWER” shall mean a pipe or conduit for carrying sewage.

16.03.340 Sewer Stub

“SEWER STUB” shall mean a public sewer constructed by the District, or with its permission, to the property line of the lot or parcel being served by the public sewer, and to which the building sewer may be connected.

16.03.350 Single Family Dwelling

“SINGLE FAMILY DWELLING” shall mean any structure including a condominium, trailer, or mobile home, designed for occupancy by a single family.

16.03.360 Standard Participation Contract

“STANDARD PARTICIPATION CONTRACT” shall mean the form of contract required by this Ordinance to be entered into before a property may connect to or use a public sewer of the District.

16.03.370 Structure

“STRUCTURE” shall mean anything constructed or erected, the use of which required location or attachment to something having location on the ground, including but not limited to trailers and house trailers, but not including fences and walls.

NEW Item

16.03.375 Storm Water

Stormwater is rain and snow melt that runs off rooftops, paved streets, highways, and parking lots. As it runs off, it picks up pollution like oil, fertilizers, pesticides, soil, trash, and animal manure. Most stormwater is not treated, even when it goes into a street drain. It flows downstream directly into streams, lakes, and marine waters.

16.03.380 Suspended Solids

“SUSPENDED SOLIDS” shall mean solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

16.03.385 Trust Lands

“TRUST LAND” shall mean all lands held in trust for the Lummi Nation by the United States regardless of location.

16.03.390 Watercourse

“WATERCOURSE” shall mean a channel in which a flow occurs, either continuously or intermittently.

16.03.400 Shall – May

“SHALL” is mandatory; “MAY” is permissive.

16.03.410 Gender and Plurals

The use of one gender herein shall include the other and the use of the singular or plural shall include the other.

16.03.420 Definitions not Exclusive

The definitions found in this Article shall not be exclusive. Terms used in this Ordinance may be defined in other Articles. Where a term is not defined it shall be given its usual.

Chapter 16.04 Use of Public Sewer Required

16.04.010 Unlawful Deposit of Waste

It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon any property within the boundaries of the District, or in any area under the

jurisdiction of the District, any human or animal excrement, garbage, or other objectionable waste.

16.04.020 Treatment of Sewage Required

It shall be unlawful to discharge into any natural watercourse within the District, or in any area under the jurisdiction of that District, any sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this Ordinance.

16.04.030 Unlawful Sewage Disposal Facilities

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, septic tank, cesspool or other facility intended or used for the disposal of sewage in the District, except as provided in Chapter 16.05.

16.04.040 Toilet Facilities and Sewer Connection Required – Time, Manner, & Repair

The owner of each lot or parcel of real property within an area served by the sewage works of the District, upon which lot or parcel of real property there shall be situated any house, building, or structure for human occupancy, employment, recreation or other purpose or use abutting on any street, alley, easement or right-of-way in which there is now located, or may in the future be located, a public sewer of the District, and where a public sewer is within two hundred (200) feet of any single or multiple-family dwelling on that lot or parcel and to which service by such public sewer is available, is hereby required, at his expense, to install suitable toilet facilities therein and to connect such facilities directly with a proper public sewer, in accordance with the provisions of this Ordinance. Such installation and connection must be made within thirty (30) days after the date of mailing or personal service of notice by the Board addressed to the owner of the property to be served notifying such owner to make such connection unless such time shall be extended by the Board. All connections to the public sewers of the District shall be made in a permanent and sanitary manner and shall be sufficient to carry all the sewage and waste foods of every kind from the house, building and/or structure into the public sewer, and each toilet, sink, stationary washstand, washing machine,

dishwasher and other piece or type of equipment having waste fluid, shall be connected with the public sewer.

No drain of any kind, including curtain, basement or roof drains and downspouts, which is designed to and does carry storm run-off shall be connected to the public sewer.

Any building or structure hereafter constructed or made available for human occupation and use for any purpose shall, when required by this Section, be connected to a public sewer of the District before the completion of the construction of such building or structure or before any occupancy or use thereof, or (in the event that a public sewer capable of serving that building or structure has not been completed by the District prior to the construction or occupancy of such building or structure) within thirty (30) days after written notification from the Board as aforesaid, whichever event first occurs.

Any needed repair to a building sewer or connection to a public sewer shall be made within thirty (30) days after the date of mailing or personal service of a notice by the Manager to the owner of the property served notifying such owner to make such repair. In the event of an emergency, the Manager may establish a shorter period of time for the repair to be made or, if the owner cannot be located or does not promptly make such repairs, the District may make the repairs under the procedure of LCL §16.04.050.

16.04.050 Failure to Connect or Repair Building Sewer

If any connection to a public sewer, or if any needed repair to a building sewer or connection to a public sewer, shall not be made within the time and in the manner provided in LCL §16.04.040 the Board may forthwith apply to the Tribal Court for an order causing such connection or repair to be made by the Board. Such order may be issued only after proper notice to the owner stating that there will be a hearing before the Court on the matter. If the owner cannot be located, this notice may be affixed to the building in question.

Upon making the necessary connection or repair, the Board shall certify the amount of the cost of making such connection or repair and may also

file a declaration of lien with the Treasurer and Auditor of Whatcom County, or with the Western Washington Indian Agency, Bureau of Indian Affairs, or its successor administrative body. Upon such filing, the cost together with a penalty of fifteen percent (15%) of the cost plus interest at one percent (1%) per month, upon the fifteen percent (15%) amount, compounded annually shall become a lien against the property, provided that, liens against trust land shall affect only the beneficial interest in the use and occupation of the land, and shall not affect or touch and concern the fee of the land, and provided further, that liens filed under this Section shall be subject only to the lien for general tribal taxes.

16.04.060 Property Capable of Being Served by Sewer: Availability of Public Sewer

All property shall be deemed capable of being served by a public sewer of the District, and service shall be deemed available if the property contains within its boundaries an inhabitable dwelling and the dwelling is within two hundred (200) feet of a public sewer as required by LCL §16.04.040, even if the drains from the structure are of an elevation such that they may not drain by gravity to the public sewer in accord with LCL §16.06.010. In such case, it shall be the responsibility of the owner to provide a pumping system approved by the Manager. Such pumping system may include installation of a solids pump or an effluent pump at the discretion of the Manager.

16.04.070 New Construction

No new construction shall be permitted which does not use the public sewer unless the owner shall execute an agreement with the Board in which the owner shall

(a) promise to connect to the public sewer as soon as the same becomes available for connection as defined in LCL §16.04.060 hereof; and

(b) agrees to participate in, support, and become a part of, any local improvement District or utility local improvement District which shall be formed to serve the property or any part thereof; and

€ agrees to pay any and all charges associated with the extension of the sewer system to the

property or any part thereof.

16.04.080 Connection Priority

After the initial connections to the system, or in any case after January 1, 1984, all connections to the system shall be made on a first come first serve basis, without regard to the race, color, creed, religion, or tribal membership of the owner, provided that no connection shall be made until the Lummi Planning Department shall certify that the structure to be connected is in present compliance with applicable tribal zoning, subdivision, building, plumbing, electrical, construction, or other health and safety codes and ordinances as adopted by the Lummi Nation.

Chapter 16.05 Private Sewage Disposal

16.05.010 Private Sewage Disposal

Allowed

Where a public sanitary sewer is not available for use as provided in LCL §16.04.040 and LCL §16.04.060 and that is so certified by the Board, the building sewer may be connected to a private sewage disposal system or replacement thereof, any of which must comply with the terms and conditions of this Ordinance.

16.05.020 Private Sewage Disposal: Permit Required

It shall be unlawful to construct or install or make repair on a sewage disposal system without having first obtained a permit from Lummi Planning and approval from the District Manager.

16.05.030 Private Sewage Disposal Permits: Procedure for Obtaining

Private sewage disposal permits shall be obtained in the following manner:

(a) Private sewage disposal permits shall be issued only upon proper application at the office of the District.

(b) A permit which includes work on private property only may be issued to the owner of the property or to a licensed side sewer contractor.

€ The application for a private sewage disposal permit shall supply the Manager with the following information:

- (1) Owner's name.
- (2) Address to be served.
- (3) Owner's mailing address.
- (4) Licensed side sewer contractor's name.
- (5) Legal description of property to be served.
- (6) The area, in square feet, of living space, number of bedrooms, and in the case of commercial buildings, the type and number of sanitary facilities.
- (7) A complete dimensional plot sketch drawn to scale showing any present or proposed structures, the location of any source of potable water within two hundred (200) feet from any point of sewage disposal, location of domestic water lines, and the direction of surface drainage.
- (8) Any other information requested by the Manager (such as, but not limited to, soil test holders, and percolation tests) which is reasonable and relevant to a determination as to the adequacy of the proposed installation or alteration.

(d) After review and approval by the Whatcom County Public Health authorities or the Indian Health Service, if the application is otherwise in order and the proposed sewage disposal system appears to be in compliance with this Ordinance, then the Manager shall issue the permit. Any such permit shall be subject to the terms and conditions of LCL §16.04.020 of this Ordinance, regardless of whether it involves new construction or the renovation or repair of an existing septic system. The District may require the applicant to execute and record an agreement in the form of a covenant binding the property and running to the benefit of the District. If the permit is denied, an appeal may be made as provided in Chapter 16.14.

€ A permit shall expire within one (1) year from the date of issuance.

16.05.040 General Standards

Any existing, or proposed, private sewage disposal system is inadequate and a violation of this Ordinance if the contents and/or discharge to or from the system

(a) violate any regulations of the appropriate federal agencies governing water pollution or the disposal of sewage or liquid-borne waste;

(b) contaminate any drinking water supply;

€ pollute or contaminate, directly or indirectly, any surface or groundwater within the jurisdiction of the Lummi Tribe or affect the health, safety or security of any resident, visitor or other person upon the land of the Lummi Reservation or trust lands, or deleteriously affect the fisheries of the Lummi Tribe;

(d) create a health hazard by the contents or effluent being accessible to people, animals, insects, or other possible carriers of disease;

€ give rise to a nuisance due to odor or unsightly appearance;

(f) serve a structure which is located within two hundred (200) feet of a public sewer collector system.

16.05.050 Requirements for Construction or Alteration

A new or altered private sewage disposal system shall be presumed to be inadequate and a violation if

(a) the contents are discharged directly or indirectly to the surface or groundwater;

(b) if it does not operate in accordance of the standards established by Lummi Planning and /or Whatcom County Health Department.

16.05.060 Design, Construction, and Installation Standards

The general requirements for the design, construction, installation, or alteration of private sewage disposal systems shall be as set forth in the Uniform Plumbing Code as adopted by the LIBC, or such other building code as adopted by the LIBC, or such other standards as are adopted by the District, provided, that in the case of conflict between the standards adopted by the District and other standards, the standard most protective of the public health shall be enforced.

16.05.070 Installation and Alteration: Who May Perform

Private sewage disposal systems can be installed or altered only by the property owner or by a licensed On-site Septic System (OSS) contractor as described in Chapter 16.11 of this Ordinance.

16.05.080 Private Sewage Disposal Systems Cleaner’s License

All septic tanks will be pumped and cleaned by a properly licensed and bonded septic tank pumper. Such parties must show that they are capable of doing the work in a satisfactory manner and that they have a suitable site for disposing of the material by underground burial or other means acceptable to the Board.

(a) Application for a cleaner’s license shall be made on forms provided by the District. License and/or application fees shall be payable to the District. Must have a current Lummi issued business license.

(b) The District may request suspension or revocation of any cleaner’s license if there has been finding of incompetency, negligence, willful misrepresentation or failure to comply with this Ordinance or other applicable laws, rules and regulations.

16.05.090 Designer’s License

It shall be unlawful to engage in the business of designing sewage disposal systems, or parts thereof, without a designer’s license, or registration as a civil engineer. Must have current Lummi issued business license.

(a) The District may request suspension or revocation of any designer’s license if there has been a finding of incompetency, negligence, willful misrepresentation, or failure to comply with this Ordinance or other applicable laws, rules and regulations.

16.05.100 Fees

Fees shall be set by the Board and any changes shall be approved by the board. Fess shall be posted in a fee schedule.

Chapter 16.06 Building Sewer and Water Line Connections

16.06.010 Non-Authorized Connections, Disturbances, Etc. of Public Sewer Forbidden

No person other than representatives of the District shall uncover, make any connections with or opening into, use, alter or disturb any

public sewer or water line or appurtenance thereof without first obtaining a written permit from the Manager.

16.06.020 Building Sewer and Water Line Permits

There shall be three (3) classes of building sewer or water line permits:

- (a) for residential services;
- (b) for commercial services;
- (c) for service to establishments producing industrial wastes.

In each case, the owner or his agent shall make application on a special form furnished by the District. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Manager, including in case of a new building a plan or diagram of plumbing and drainage facilities.

16.06.030 Building Sewer Permits: Procedure for Obtaining

Building sewer permits shall be obtained in the following manner:

- (a) Building sewer permits shall be issued only upon proper application at the office of the District.
- (b) A permit which includes building sewer or water line work in a public area may be issued only to a licensed side sewer or water line contractor.
- (c) A permit which includes building sewer or water line work on private property only may be issued to the owner of the property or to a licensed side sewer or water line contractor.
- (d) No licensed side sewer or water line contractor shall lay any pipe pursuant to any other person's permit nor shall any unauthorized person lay any pipe pursuant to a licensed side sewer or water line contractor's permit.
- (e) The applicant for a building sewer or water line permit shall supply the Manager with the following information:
 - (1) owner's name;
 - (2) address to be served;
 - (3) owner's mailing address;

- (4) name and address to which bills shall be mailed;
 - (5) licensed side sewer or water line contractor's name;
 - (6) legal description of property to be served;
 - (7) all outside dimensions of buildings to be served;
 - (8) location of buildings on property to be served;
 - (9) purpose of building; and,
 - (10) full course of the proposed side sewer or water line.
- (f) No permit will be issued for side sewer or water line connections before the public sewer or water line is accepted by the District.
 - (g) The permit card must be posted on the job and must be readily accessible to the inspector for the District.
 - (h) A licensed side sewer or water line contractor shall meet with the inspector on the job whenever so directed.
 - (i) No sewer or water line permit shall be transferable to another side sewer or water line contractor.

16.06.040 Side Sewer or Water Line Contract

A side sewer or water line contract between owners and a licensed side sewer or water line contractor shall be subject to the following requirements:

- (a) The contract between the owner and the licensed side sewer or water line contractor shall provide that the side sewer or water line contractor shall connect all outlets from plumbing fixtures existing at the time the work is done unless specifically noted otherwise on the approved permit application.
- (b) The contractor shall, when requested by the owner, furnish the owner with a release of lien or claims of both labor and material or with an affidavit stating the same have been paid before payment is accepted for the side sewer or water line work.

16.06.050 Wyes, Tees, Stubs: Location, Inspection Riser

Wyes, tees and stubs shall be located in the

following manner:

(a) Connection will be made at the point designated by the Manager.

(b) If a side sewer or water line tee or stub is not found at the measurement given by the Manager, the contractor shall prospect three (3) feet in all directions from the measurement given and if not found, then notify the Manager. [Cross reference: See Policy on Stubs, LCL §16.06.120]

(c) Wyes may be used only if the Manager permits and at a location approved by the Manager.

(d) An inspection tee with a riser to not less than one foot from the surface of the ground shall be placed on every building sewer at or near the connection to a common sewer, the location to be approved by the manager. The tee shall be capped with a traffic rated cover. If the inspection tee is located on private property, the District shall have the right to enter onto that private property and excavate to the inspection tee at any time where there is reasonable doubt on the legal use of the building sewer, but the District shall restore the surface after such excavation.

16.06.060 Costs of Building Sewer or Water Line Borne by Owner

All cost and expense incident to the installation and connection of the building sewer or water line shall be borne by the owner. The owner shall indemnify the District from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer or water line.

16.06.070 Building Sewer or Water Line For Each Building: Exceptions

A single building sewer or water line shall be provided for every building unless the connection of more than one building to a single building sewer or water line is approved by the Manager prior to the construction of such building sewer or water line. No more than one multiple dwelling, industrial or commercial building shall be connected to a building sewer or water line, unless otherwise approved by the Manager. If the building sewer or water line is to exist on more than one building site, approved documents assuring that all properties involved shall have perpetual use of the side sewer or water line, and having provisions for

maintenance and access for repair purposes, shall be signed by the record owners. This document shall be acknowledged and recorded with the County auditor.

16.06.080 Reuse of Old Building Sewers

Old building sewers, including septic tank lines, may be used only when they are found, on examination and test by the Manager, to meet all requirements of this Ordinance. The owner or his agent shall demonstrate to the Manager that no connection to such building sewer or septic tank line exists which conveys any material prohibited by Chapter 16.09 of this Ordinance.

16.06.090 Plumbing and Building Sewer: Specifications

All building waste plumbing shall be constructed in conformance with the International Conference of Building Officials Uniform Plumbing Code as adopted by the Lummi Tribe. Building sewers (side sewers) shall be constructed of approved materials and shall conform to applicable provisions of the Washington Chapter of the American Public Works Association standard specifications or such other standard specifications as shall be in general use within the State of Washington. All pressure side sewers shall be constructed of suitable air- and water-tight joint and conduit as approved by the District.

16.06.100 Building Sewer: Size and Slope

The size and slope of the building sewer shall be subject to the approval of the Manager, but in no event shall the diameter be less than four (4) inches for single connections and six (6) inches for multiple connections. The slope of such building sewers shall be not less than one-fourth (1/4) inch per foot for four (4) inch pipe or one-eighth (1/8) inch per foot for six (6) inch pipe unless the depth of the public sewer requires a lesser slope and such lesser slope is approved by the Manager.

16.06.110 Building Sewer: Elevation and Direction

Whenever possible the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid under any building or within two and one half (2 1/2) feet of any foundation wall, unless the building sewer is constructed of cast iron pipe.

The minimum depth of a trench shall be two (2) feet. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe fittings, as approved by the Manager. Fittings shall be used at all major changes of direction and cleanout shall be provided at such fittings. Cleanouts shall also be provided at any bend that exceeds 22.5 degrees and cleanout shall be provided for every two (2) bends which are 22.5 degrees or less. Whenever any building drain is constructed too low to permit gravity flow to the public sewer, sewage carried by such drain shall be lifted by approved artificial means and discharged to the public sewer at the owner's expense.

16.06.120 Information From District

The owner of any building shall be responsible for obtaining from the Manager the location and elevation of the sewer or water line tee or sewer or water line stub at the point of connection and, in the case of new construction, for planning the building and plumbing to provide adequate slope for the building sewer. The applicant for permit shall be responsible for determining the available grade between building drain and sewer tee or stub. The District shall not be liable to the owner if the stub or tee is not located as shown on the District's plans. The District's sole responsibility to the owner shall be to accurately convey to the owner information contained in the District's plans.

16.06.130 Building Sewer or Water Line: Excavation and Pipe Laying

All excavations required for the installation of a building sewer or water line shall be open trench work unless otherwise approved by the Manager. Pipe laying and backfill shall be performed in accordance with the specifications of the District adopted as part of the Administrative Code. The specifications shall address pipe bedding, fill size, pipe orientation, timing of backfill, inspection requirements, and other technical matters in the discretion of the Board.

16.06.140 Building Sewer or Water Line: Connection to Public Sewer or Water Line

The connection of the building sewer into the public sewer or water line shall be made at the water main or sewer stub, if such stub is available at a suitable location. If no properly located stub

is available, a tapping saddle may be used provided that the design of the tap shall be approved by the Manager prior to installation and further provided that the tap shall not be covered over until installation is approved by the Manager.

16.06.150 Building Sewer: Inspection

The applicant or his authorized agent for the building permit shall notify the Manager when the building sewer or water line is ready for inspection. The applicant shall provide sufficient advance notice for each inspection as determined by the Manager. All building sewers or side sewers shall be tested by a method prescribed by the Manager. The test shall be performed by the applicant or his representative and the District Representative shall inspect and observe the testing. Proof that downspouts are not connected to building sewers may be established by watering roof gutters and observing flow through inspection tee or by any other test acceptable to the Manager.

16.06.160 Protection of Excavations: Restoration of Public Property

All excavations for building sewer or water line installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the District and/or the Whatcom County Engineer, when applicable.

16.06.170 Unlawful Connections to Public Sewer or Water Line

Any person who makes or causes to be made any connection to a public sewer or water line of the District without receiving a permit therefore or executing the standard participation contract provided by the District before such connection, shall be subject to the penalties set forth in Chapters 16.11 through 16.13 and ten thousand dollars (\$10,000.00) in additional charges payable to the District.

16.06.180 Private Sewers or Water Line: Conveyance to District

A private sewer or water line constructed in a public right-of-way or in an easement conveyed to the District may be conveyed to the District subject to acceptance by the District. The

District may also accept existing lines on such terms as it deems appropriate. If the District accepts a conveyance, the sewer or water line thereafter shall be a public sewer or water line under the jurisdiction of the District. Prior to accepting the conveyance, the District may require that the grantor of the private sewer or water line satisfy certain construction, and other reasonable standards, including, but not limited to, the payment of a connection charge and inspection fee, the execution of a standard participation contract, and the execution of an owner developer extension agreement.

16.06.190 Connection of Outside Property

The owners of property outside the boundaries of the District may, if the Board consents, connect to the District facilities and obtain service by entering into a standard participation contract, provided for by Chapter 16.07 of this Title.

16.06.200 Building Sewer: Cost from Property Line to Public Sewer

The cost of constructing that portion of the building sewer or water line between the main sewer or water line and the property line of a public right-of-way or easement shall be borne by the District and the owner shall pay to the District such connection charge as established by this Ordinance.

16.06.210 Disconnection of Building Sewer

No structure may be disconnected from a building sewer, and no building sewer may be disconnected from a public sewer, for any reason without prior written notification to, and approval of, the District (acting through its Manager). No approval shall be given unless the disconnection is lawful under this Ordinance and other applicable laws, and satisfactory protection is given by the owner or his contractor to the public sewers and sewer works of the District, including but not limited to, the satisfactory capping of the building sewer or public sewer. Sewer service charges for any structure disconnected or to be disconnected shall continue until such disconnection is approved by the District and the building and public sewer capped and otherwise protected to the satisfaction of the Manager. No dwelling which is habitable under the building codes as adopted by the Lummi

Tribe and which has been connected to the public sewer pursuant to this Ordinance shall be disconnected from the public sewer.

Chapter 16.07 Standard Participation Contract

16.07.010 Standard Participation Contract: Eligibility

Properties, eligible for services, may be connected to the public sewer or water lines of the District and served thereby, when the owner thereof executes a standard participation contract and the Manager concurs therewith. Separate contracts may be used for water and sewer if these services are extended at separate times.

16.07.020 Standard Participation Contract: Terms

The standard participation contract shall provide the following:

- (a) That the property owner warrants that he is the owner of that property or a tenant on Tribal or assigned lands or the beneficial owners of land held in trust by the United States, with full authority to bind the property with the covenants and conditions contained in the contract.
- (b) That the property owner shall subject his property to the terms of the contract and shall use the public sewer or water of the District in accordance with the rules and regulations of the District as they may be amended from time to time, and that the property shall be subject to the regular schedule of sewer or water service charges as may from time to time be fixed by the District for its use classification, and shall also be subject to the terms and conditions of this Ordinance and all amendments thereto.
- (c) That the building or structure described in the contract shall be the only structure on the property served with sewer or water service pursuant to that contract.
- (d) That the property subject to the contract shall be subject to liens, penalties and interest for nonpayment of sewer or water service charges to the same extent as any other property served by the District.
- (e) The contract shall constitute a charge against that property and a covenant running with the

land and shall bind the property and all future owners thereof.

16.07.030 Charges for Trunkage, Connection, Permit Fees, and Charges

The standard participation contract shall provide that before the property shall receive sewer or water service, the property owner must pay to the District, such trunkage, connection and other charges as provided by this Ordinance and the contract. The charge must be paid in full or such arrangement as the Board shall approve for time payments shall be agreed to before connection to the public sewers of the District is permitted. Any such arrangement shall also provide for interest to be charged upon the unpaid balance of the fees at a rate of one percent (1%) per month upon the unpaid balance compounded annually. Failure to complete payment of the connection fee shall become a lien against the property. Instead of any charge the District, at the discretion of the Board, may accept from the property owner a sewer or water pipeline of sufficient value installed in an easement or public right-of-way, or some other performance reflecting value approximating the charge.

16.07.040 Standard Participation Contract: Other Terms

To protect the interests of the District, the Board may require other conditions and provisions to be inserted in the standard participation contract as the individual case may warrant.

16.07.050 Developer's Extension Agreement Contracts

The District may also enter into contracts with developers of real estate for construction of public sewer or water facilities by such developers under LCL §16.07.070 through LCL §16.07.120 and such other terms and conditions as the Board deems proper. These sections shall govern all expansions of the sewer or water system which involve more than five connections.

16.07.060 Sewer Extensions

All sewer and water extensions to the District systems shall be designed by the District or by a qualified engineering firm approved by the District and all construction in progress shall be observed by the District. All extensions shall be constructed and tested in conformance with

District standards and shall be tested in the presence of a representative of the District. Upon the successful completion of the work, all lines and other sewer and water facilities within the public rights-of-way and private easements required for such extensions shall be conveyed to the District. Easements, where required shall be granted to the District prior to acceptance of the work. The owner or contractor shall furnish to the District upon acceptance of the work, a one (1) year guaranty of the labor and materials installed; and this guaranty shall be insured by an adequate performance and indemnity bond. The Board shall adopt a standard procedure for developer extension agreements as a part of its administrative manual.

16.07.070 Review of Plans

All design plans and specifications which are prepared by qualified engineering firms shall be submitted to the District for review. No construction shall be initiated prior to written approval of the plans and specifications by the District. Approval by the District shall in no way be a warranty of the adequacy of said plans and specifications by the District or relieve the applicant from providing functioning facilities constructed in accordance with applicable codes and standards.

16.07.080 Minimum Plan Requirements

The District shall adopt as part of its administrative code, minimum requirements for sewer or water plans which are to be submitted to the District for review. These standards shall include, but are not limited to, number of plan sets to be submitted, plat submission, location maps, contour maps, plan and profiles, road grades, etc.

16.07.090 Minimum Construction Requirements

The District shall adopt as part of its administrative code, minimum requirements for sewer or water construction for projects which are submitted to the District for review.

16.07.100 Permits for Sewer Construction

The applicant shall obtain all necessary permits at his own expense and shall pay all fees and connection charges (if applicable) before proceeding with construction.

16.07.110 Fees for Design and Engineering

Where extensions are to be designed by the District at the option of the applicant, fees for engineering and inspection and other services required to be performed by the District shall be in such sums as are agreed upon by the applicant and the owner, unless otherwise provided by regulations of the District.

16.07.120 "As Built" Plans

Upon completion and acceptance of such construction, duplicate sets of plans and specifications indicating any deviations "as built" from plans and specifications previously submitted shall be submitted to the District by the applicant.

16.07.130 Bill of Sale

Transfer of ownership of such construction shall be evidenced by a bill of sale running from the developer-owner to the District.

Chapter 16.08 Sewer and Water District Charges and Fees

16.08.010 Charges and Fees

Permit fees, connection charges, service charges, and other fees shall be charged by the District in such sums as the Board, with approval of the LIBC, shall fix by resolution from time to time.

No distinction in connection fees shall be made on the basis of race, color, creed, religion or tribal membership of the owner or occupier of the property served, nor shall any distinction be made on the basis of ownership of the land, whether fee, trust, tribally or individually owned.

16.08.020 Billings and Delinquent Charges

Billings and delinquency charges shall be adopted by District Board as necessary.

16.08.030 Rates and Charges - Classification of Service

The Board shall provide for revenues by fixing rates and charges for the furnishing of sewage disposal service to those to whom the service is

available. Such rates and charges may be combined for the furnishing of more than one type of sewer service, such as but not limited to, storm or surface water or sanitary. The Board shall also fix rates and charges for water service to those actually connected to the District's water system. Such rates and charges are to be fixed as deemed necessary by the Board, so that uniform charges will be made for the same class of customer or service. No distinction in rates and charges shall be made on the basis of race, color, creed, religion, or tribal membership of the owner of the property served, nor shall any distinction be made on the basis of ownership of land, whether fee, trust, tribally or individually owned.

In classifying customers served or service furnished by the Board, the Board may in its discretion consider any or all of the following factors: the difference in cost of service to various customers, the location of the various customers within and without the District, the difference in cost of maintenance, operation, repair, and replacement of various parts of the system, the different character of service furnished various customers, the quantity and quality of sewage delivered or water consumed by the customer and its time of delivery, capital contributions made to the system, including but not limited to assessments, and any other matters which present a reasonable difference as a ground for distinction.

Such rates are to be made on a monthly basis and shall produce revenues sufficient to pay in a timely manner the costs of maintenance and operation, revenue bond and warrant interest, unbonded indebtedness, and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. Rates and charges shall be set by the Board.

16.08.031 Stand-By Charges Authorized

The Lummi Sewer Board is authorized to impose a service availability fee, also known as a stand-by charge, in an amount to be set by the Lummi Sewer Board for all property located

adjacent to a gravity flow sewer collector line maintained by the District, and from which the owner or occupier of such property could obtain sewer service from the District upon request and compliance with the applicable provisions of this Ordinance.

16.08.040 Connection Fees

The Board shall adopt connection fees. Connection fee shall be set to provide reasonable revenues for District functions.

In classifying customers for connection fees, the Board may consider any or all of the following factors: difference in cost of construction, amortization and depreciation schedules for the portions of the system serving that property, capital contributions made to the system or portions thereof by the owners of surrounding property, and any other matters which present a reasonable difference, or ground for distinction in connection fees. The Board may provide for additional connection fees based upon a “latecomer’s” schedule and applicable assessment under which the fees are collected to reimburse a developer or the District for the construction of a specific portion of the system specially benefiting the property connecting to the system.

16.08.050 Nature of Obligations and Remedies

The fees and charges of the District, whether imposed for service available or delivered, for the privilege of connection to the system, or to defray the costs of construction or repair of the system, shall be a lien against the property so benefiting, and shall also be a joint and several personal obligation of the record owners of the property on the date the service is provided or billed. The District may collect its fees and charges by foreclosing its lien and by proceeding against any or all of the individuals personally liable, but when it shall have satisfied any judgment, it shall enter a satisfaction of judgment and thereby release the remaining defendants, if any, to the extent of such

satisfaction. Any remedy used by the Board to collect any funds owed the Board or the District shall be applicable to all users within a class of users, without regard to the race, color, creed, religion, or tribal membership of the owner, and without regard to the status of the land involved, whether fee or trust, individually or tribally owned, provided that, lessees or occupiers of tribal land shall be deemed a separate class of users for the purpose of this Section only.

16.08.060 Collection of Charges – Lien

The Board shall enforce connection charges, service fees, service availability fees, and other rates and charges imposed under this Ordinance against property to which and its owners to whom the service is available and the charges are assessed, such charges being deemed charges against the property to which service is available. The Board may provide by Resolution that where charges and fees are delinquent for any specified period of time, that the District shall certify the delinquencies to the Treasurer and Auditor of Whatcom County in the case of fee patent land, and to the Puget Sound Agency, Bureau of Indian Affairs, or its successor administrative body, in the case of trust land, and the charge and fees and any interest and penalties added thereto shall be a lien against the property to which the service was available, subject only to the lien for general tribal taxes. Liens filed against trust land shall affect only the beneficial interest in the use and occupation of the land, and shall not affect or touch and concern the fee of the land.

16.08.070 Foreclosure of Liens

Any lien filed pursuant to this Ordinance may be foreclosed if the charges and fees represented by the lien are delinquent for more than one hundred twenty (120) days. The District shall initiate foreclosure action by civil action in the Lummi Tribal Court. The Court may allow, in addition to the costs and disbursements actually incurred by the District, a reasonable attorney’s fee. The costs, including a reasonable attorney’s fee, of the District incurred in any

challenge to the jurisdiction of the Lummi Tribal Court shall be included in any judgment foreclosing the lien. The civil action shall be in rem against the property, and may be brought in the name of the District against an individual parcel, or against all of those parcels whose owners are delinquent for similar charges and fees. A judgment foreclosing a lien against trust property shall have effect only against the beneficial interest in the use and occupation of the land, and shall not affect or touch and concern the fee of the land.

Chapter 16.09 Use of the Public Sewer and Water Systems

16.09.010 Unlawful Discharge of Storm and Other Waters into Sewers

No person shall discharge or cause to be discharged any storm water, surface water, roof runoff, subsurface drainage, cooling water, or unpolluted industrial process waters to any sanitary sewer.

16.09.020 Unlawful Wastes

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- (a) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit.
- (b) Any water or waste which may contain more than 30 parts per million, by weight, of fat, oil, or grease.
- (c) Any gasoline, benzene, naphtha, fuel oil, lube oil or other flammable or explosive liquid, solid or gas.
- (d) Any garbage that has not been properly shredded.
- (e) Any ashes, cinders, sand, mud, straw, shavings, metals, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer works.
- (f) Any waters or wastes having pH lower than 5.5 or higher than 9.0 or having any other

corrosive property capable of causing damage or hazard to structures, equipment and personnel of the District.

(g) Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, or create any hazard in the receiving waters of the sewage treatment plant.

(h) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

(i) Any noxious or malodorous gas or substance capable of creating a public nuisance.

(j) Fees for cost of correction per §16.13.030

16.09.030 Separators

Grease, oil and sand separators shall be provided when, in the opinion of the Manager, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients. Such separators shall be of a type and capacity approved by the Manager and shall be so located as to be readily and easily accessible for cleaning and inspection. Grease and oil separators shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers, which when bolted in place shall be gastight and watertight.

16.09.040 Separators: Maintenance

Where installed, all grease, oil and sand separators shall be maintained by the owner, at his expense, for continuously efficient operation at all times. A record of such maintenance shall be furnished to the Manager upon request.

16.09.050 Forbidden Wastes: Preliminary Treatment and Approval

The admission into the public sewer of any waters or wastes having:

- (a) a five-day B.O.D. greater than 300 parts per million weight; or
- (b) containing more than 350 parts per million by weight of suspended solids; or

(c) containing any quantity or substance having the characteristics described in LCL §16.09.020;

(d) having an average daily flow greater than two percent (2%) of the average daily sewage flow of the District; or

(e) any other substance or practice which is prohibited or regulated by the rules and regulations of the District as codified in the administrative code as presently existing or hereafter amended shall be subject to the review and approval of the Manager.

(f) Where necessary in the opinion of the Manager, the owner shall provide, at his expense, such preliminary treatment as may be necessary to

1. reduce the B.O.D. to 300 parts per million by weight, and the suspended solids to 350 parts per million by weight; or

2. reduce objectionable characteristics or constituents to within the maximum limits provided for in LCL §16.09.020; or

3. control the quantities and rates of discharge of such water or wastes; or

4. comply with any other restrictions imposed by the District.

Plans, specifications and other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Manager and the appropriate federal agencies when required by law, and no construction of such facilities shall be commenced until such approvals are obtained in writing. Any expenses incurred by the District in reviewing such plans, specifications and information shall be paid by the property owner or his representative before the District's approval shall issue.

The District shall adopt such other, further restrictions and requirements for the use of the public sewers as in its judgment are wise and prudent for the system. The District shall also adopt such requirements and restrictions on the use of the public water supply system as it shall deem wise and prudent. All such restrictions and requirements shall be included within the District's administrative code when adopted.

16.09.060 Preliminary Treatment Facilities: Maintenance

Where preliminary treatment facilities are

provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

16.09.070 Industrial Wastes: Control Manhole

When required by the Manager, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Manager. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

16.09.080 Tests of Wastes: Location of Sampling

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in LCL §16.09.020 and LCL §16.09.050 shall be determined in accordance with "Standard Methods for the Examination of Water and Wastewater," and shall be determined at the control manhole provided for in LCL §16.09.070, or from suitable samples taken at such control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

16.09.090 Special Agreements

Nothing in this Chapter shall be construed as preventing any special agreement or arrangement between the District and the manufacturer of any industrial waste whereby industrial waste of unusual strength or character may be accepted by the District for treatment, subject to payment therefore by the manufacturer.

Chapter 16.10 Protection From Damage

16.10.010 Entry on Property

The Manager and other duly authorized employees or representatives of the District bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation,

measurement, sampling and testing in accordance with the provisions of this Ordinance. Any person who willfully obstructs or prevents a District employee or representative from entering or remaining upon property for a lawful purpose under this Ordinance shall be subject to a penalty in accordance with LCL §16.13.040 of this Ordinance for each such incident and in addition to such penalty, shall be liable to the District in a civil action for all damages, costs, and attorney's fees suffered by the District as a result of the obstruction.

16.10.020 Meters

All meters for the measurement of water supplied or sewage flows shall be installed in accordance with the requirements of the District in such locations as the Manager shall direct. All such meters shall be the property of the District and shall be maintained by it. All meters shall remain accessible to District personnel and no person shall obstruct or tamper with any meter. Such obstruction or tampering shall be a violation of this Ordinance and subject the violator to actual damages and civil penalties under LCL §16.13.040 of this Ordinance. The owner of the property on which the meter is located shall be responsible for all damages for tampering with such meter.

16.10.030 Obtaining Service without Authorization

No person shall obtain water or sewer service from the District facilities without authorization. Any person who obtains such unauthorized service by connecting to the District facilities without authorization or by bypassing or tampering with any meter shall be liable to the District for three times the value of the actual service obtained in addition to the costs of correction.

16.10.040 Manager: Responsibilities and Limitations

The Manager shall be the administrator of the District and all instructions and decisions made by him shall be final, but appeals from such instructions or decisions may be made to the Board in writing at any regular meeting of the Board. Where this Ordinance requires approval by, permission or decision of, or instruction from the Manager, the Manager shall be guided solely

by generally recognized engineering standards and practices, the operational demands and requirements of the sewer works and the peculiarities of construction, topography, soil condition or other relevant special factors affecting the specific decision to be made by the Manager.

Chapter 16.11 Side Sewer or Water Line Contractors

16.11.010 Side Sewer or Water Line Contractor License Required

For the purpose of assuring safe and quality construction of building sewer and water lines, safe and quality connection of building sewers and water lines to the public sewers and water lines of the District, and affording satisfactory protection to the sewer or water line users of the District, no person, other than the owner of the property involved, may construct, install, repair, reconstruct, excavate or connect to the public sewers or water lines of the District any building sewer or water lines, unless he is a side sewer or water line contractor holding a valid license of the District.

16.11.020 License: Standards and Application

Side sewer or water line contractor licenses shall be issued by the Board based on information contained on application and obtained from other reliable sources relating to the experience, ability to perform the necessary work and reputation of the applicant to his satisfying the requirements of this Ordinance. All applicants for the license shall complete an application furnished by the District which shall require the applicant to comply with all current licensing requirements. The application may be in the form of a contract whereby the applicant shall agree to abide by the building sewer and side sewer or water line contractor requirements of this Ordinance.

16.11.030 Side Sewer or Water Line Contractors: Bond, Insurance

Every applicant for a license must, prior to the issuance of the license to him, deposit with the District

(a) a surety bond in favor of the District with a surety or sureties thereon approved by the Board

and conditioned that he will perform the obligations of the application contract (if the application is in contract form) and the resolutions and requirements of the District relating to building sewers and side sewer or water line contractors, and

(b) satisfactory proof that the applicant currently carries the following insurance coverages in the amount to be determined by the Board:

- (1) public liability insurance; and
- (2) property damage and fire insurance.

As long as a side sewer or water line contractor has a license, he shall maintain such bond and insurance, and such additional limits as may be required from time to time, and shall furnish proof thereof to the District whenever required by the Manager or Board.

16.11.040 Side Sewer or Water Line Contractors: Responsibilities

Every licensed side sewer or water line contractor shall

(a) post a valid building sewer or water line permit at the site of the work prior to commencing the work relating thereto.

(b) contract for work using only the standard form of side sewer or water line contract approved by the Board or the Manager, executed in duplicate or more copies, which shall provide

- (1) a clear description, including sketch, of the work to be performed and the materials to be used; and
- (2) that workmanship and materials shall be guaranteed for a period of one (1) year after installation and acceptance thereof.

(c) adhere at all times to the then current requirements of the District for building sewers and side sewer contractors, including such reasonable requirements of the Manager relating to construction, installation, reconstruction and repair.

16.11.050 License: Revocation, Suspension

The license of a side sewer or water line contractor may be revoked by the Board or temporarily suspended by the Manager until the next meeting of the Board for any one of the following causes:

(a) Fraud or misrepresentation in applying for or maintaining the license.

(b) Failure to observe the rules and regulations of the District relating to building sewers and side sewer or water line contractors.

(c) Failure to pay for labor or materials used in the construction of building sewers or water lines.

(d) Fraud or misrepresentation to the owner, occupant or agent or representative thereof for the purpose of obtaining a contract for the construction of a building sewer or water line, or during the course of work done pursuant to such a contract, and including the failure to adhere to the standard side sewer or water line contract.

(e) Failure to correct work or pay any default covered by the guaranty in the standard side sewer or water line contract.

(f) Failure to pay for work performed by the Manager or District, or caused to be performed thereby, for which the contractor may be liable.

(g) Failure to maintain or when requested, prove the maintenance of the surety bond and insurance required to be maintained by LCL §16.11.030.

Prior to the meeting of the Board at which suspension or revocation of a license will be taken, the contractor shall be notified and shall be afforded an opportunity to be heard by the Board at that meeting. If the license is revoked, or suspended, the contractor must forthwith cease any building sewer or water line construction work being performed by him within the District.

16.11.060 License: Renewal

The side sewer or water line contractor's license may be renewed annually by application as aforesaid and satisfaction of the requirements of this Code.

Chapter 16.12 Utility Local Improvement District

16.12.010 Local District Authorized

(a) The Board shall have the power to establish utility local improvement districts within its territory, and to levy special assessments under a mode of annual installments extending over a period not to exceed twenty years on all property specially benefited by any local improvement on the basis of the special benefits to pay in whole

or in part the damages or costs of any improvements ordered in the District. The procedures for the levying, collection and enforcement of all public assessments shall be in the manner now and hereafter provided by the laws of the State of Washington for the levying, collection, and enforcement of local improvement districts by cities of the first class, insofar as this procedure shall not be inconsistent with the provisions of this Ordinance; provided, however, that in addition to a lien against the property benefiting from any improvement, the costs of such improvement, together with interest and penalties, shall be a joint and several personal obligation of the landowner or owners. The duties of the city Treasurer under such law shall be imposed upon the District Treasurer. The mode of assessment shall be determined by the Board by resolution. Assessments in any utility local improvement district may be made on the basis of special benefits up to but not in excess of the total of any comprehensive scheme or plan payable by the issuance of revenue bonds. No warrants or bonds shall be issued in any such utility local improvement district, but the collection of principal and interest on all assessments in such utility local improvement district shall, when collected, be paid into the revenue bond fund of the District.

(b) Prior to initiating the formation of any utility local improvement district, the Board shall present its preliminary plans to the Council for such a District. No further action shall be taken by the Board unless the Council shall approve the formation of the utility local improvement district.

16.12.020 Resolution to Form Local District-Procedure-Written Protest

Utility local improvement districts to carry out all or any portion of the comprehensive plan, or additions, and betterments thereof adopted for the sewer district may be initiated by resolution of the Board.

In case the Board shall desire to initiate the formation of a utility local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvements, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed utility local improvement districts, describing the boundaries thereof, stating the estimated cost and

expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time and place for a public hearing on the formation of the proposed local district, which date shall, unless there is an emergency, be no less than thirty (30) days and no more than ninety (90) days from the date the resolution of intention was adopted.

Notice of the adoption of the resolution of intention shall be published in at least two (2) consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen (15) days prior to the date fixed by such resolution for hearing before the Board. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land or other property within the proposed improvement district by mailing said notice at least fifteen (15) days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county Treasurer at the address shown thereon or by the records of the Bureau of Indian Affairs. Whenever such notices are mailed, the Board shall maintain a list of such reputed property owners which lists shall be kept on file at a location within the District and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. Said notice shall also

(a) state that all persons desiring to object to the formation of the Board may do so before the time fixed for said public hearing;

(b) state that if owners of at least forty percent (40%) of the area of land within the proposed district file written protests with the secretary of the Board, the power of the Board to proceed with the creation of the proposed district shall be divested;

(c) provide the name and address of the secretary of the Board; and

(d) state the hours and location within the sewer district where the names of the property owners within the proposed district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated cost and expense of such improvement to be borne by the particular lot, tract, parcel of land or other property.

16.12.030 Improvement Ordered-Divestment of Power to Order-Assessment Roll

(a) The Board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the Board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in plans for proposed improvement as shall be deemed necessary; provided, that the Board may not change the boundaries of the district to include property not previously included therein, unless requested to do so by the owners of the property to be included, without first passing a new resolution of intention and giving a new notice to affected property owners in the manner and form and within the time herein provided for in the original notice.

(b) After said hearing the Board shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution; provided, that the jurisdiction of the Board to proceed with any improvement initiated by resolution shall be divested

(1) by protests filed with the secretary of the Board prior to said public hearing signed by the owners, according to the records of the County Auditor or of the Bureau of Indian Affairs of at least forty percent (40%) of the area of land within the proposed local district; or

(2) by the Board not adopting a resolution ordering the improvement at a public hearing held not more than ninety (90) days from the day the resolution of intention was adopted.

(c) If the Board finds that the district should be formed, it shall by resolution order the improvement, provide the general funds of the district to be applied thereto, adopt detailed plans of the utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefore and pay all damages caused thereby. The Board shall proceed with the work and file with the Tribal Treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property therein from the improvement.

16.12.040 Notice of Filing Roll

Before the approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen (15) or more than thirty (30) days from the date of the first publication of the notice, within which the protest must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the commission on the protests. The notice shall also be given by mailing at least fifteen (15) days before a hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the Treasurer of Whatcom County or the Bureau of Indian Affairs.

16.12.050 Hearing on Protests-Order

At such hearing of a protest to an assessment, or any adjournment thereof, the Board shall have the power to correct, revise, raise, lower, change, or modify such roll, or any part thereof, and to set aside such roll, and order that such assessment be made de novo, as to such body shall appear equitable and just and may then by resolution approve the same. In the event of any assessment being raised, a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the Board. Whenever any property shall have been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto shall be considered by the Board or any court on appeal unless such objection be made in writing at or prior to the date fixed for the original hearing upon such roll.

16.12.060 Enlarged Local District May be Formed

In the event that any portion of the system after its installation in such utility local improvement district is not adequate for the purpose for which it was intended, or that for any reason changes, alterations or betterments are necessary in any portion of the system after its installation, then such district, with boundaries which may include one or more existing utility local improvement districts, may be created in the District in the same manner as is provided herein for the creation of utility local improvement districts.

Upon the organization of such utility local improvement district as provided for in this Section, the plan of improvement and the payment of the cost of the improvement shall be carried out and the paying for the improvement in the utility local improvement districts previously provided for in this Ordinance.

16.12.070 Conclusiveness of Roll When Approved

Whenever any assessment roll for local improvements has been confirmed by the Board as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefore, including the action of the Board upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this Title. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefore, or the foreclosure of any lien issued therefore; provided, that this Section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds

- (a) that the property about to be sold does not appear upon the assessment roll; or
- (b) that said assessment has been paid.

16.12.080 Segregation of Special Assessment-Fees

Whenever any land against which there has been levied any special assessment under this Ordinance shall have been sold in part or subdivided, the Board shall have the power to order a segregation of the assessment. Any person desiring to have such special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the Board for such segregation. If the Board shall in its discretion determine that such segregation shall be made, they shall by resolution instruct the Tribal Treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall as nearly as possible be made on the same basis as the

original assessment was levied and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment and shall define the boundaries of the divided parts and the amount of assessment chargeable to each part. A certified copy of the resolution shall be delivered to the Tribal Treasurer, who shall proceed to make the segregation upon receipt of a fee in an amount set by the Treasurer for each tract of land into which the segregation is to be made. In addition to such charge, the Board may require as a condition of the order of segregation that the person seeking the same pay the District reasonable engineering, clerical, and legal costs incident to making the segregation.

Chapter 16.13 Violations of Ordinance

16.13.010 Liability to District

Any person who shall violate any provision of this Ordinance shall be liable to the District for any expense, loss, damage, cost of inspection, or cost of correction incurred by the District by reason of such violation, including any expenses incurred by the District in collecting from such person any such loss, expenses, cost of inspection or cost of correction.

16.13.020 Notice of Violation

Any person found to be violating any provision of this Ordinance shall be served by the District with or mailed written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations and make all necessary corrections.

16.13.030 Costs of Correction

The District shall be empowered to order the correction of any violation of this Ordinance and charge the costs of this correction, including a fee of the lesser of one hundred dollars (\$100.00) and ten percent (10%) of the actual costs of correction, to the owner of the property upon which the violation occurs. Such order for correction shall be made by resolution of the Board, provided that the Manager may order such correction when, in his opinion, the health,

safety or welfare of Reservation or trust land residents is threatened with immediate harm. The order of the Manager may be appealed to the Board. The Board shall make orders for corrections by resolution of the Board. The order of the Board may be stayed by application to the Lummi Tribal Court for a stay and by the contemporaneous filing of the bond indemnifying the Board as obligee in twice the estimate cost of the correction.

16.13.040 Civil Penalty

Any person who continues to violate this Ordinance beyond the time limit for correction specified in the notice served pursuant to LCL §16.13.020 shall be liable for a civil penalty of not less than one hundred dollars (\$100.00) per day for each such day after the expiration of the time limit found in the notice. This penalty shall be assessed by the Lummi Tribal Court upon the filing of a complaint by the Board, and the proceeds of the civil penalty, less the costs of the filing and other court costs, shall be placed in the general fund of the District.

16.13.050 Initial Connections

The service of a Notice to Connect upon an owner, whether for connection to the system prior to its initial operation or connection to the system at a later time, shall be deemed a notice of violation of the Ordinance under LCL §16.13.020 hereof.

Chapter 16.14 Judicial Review

16.14.010 Initial Resolution of Disputes

Any disputes regarding the right to use the sewer or water system, refusal or failure to provide service, operational problems affecting service, and other service related issues shall be resolved according to this Chapter. Any person aggrieved by an order or decision of the Sewer or Water Board relating to any of these areas shall first petition the Sewer or Water Board for a hearing. This petition shall be in writing, although this requirement may be waived by the Sewer or Water Board. The hearing shall be on the record and the Sewer or Water Board shall cause a verbatim record of the hearing to be kept and transcribed. The Sewer or Water Board shall issue a written decision which shall become a

part of the written record and shall be open for inspection at the offices of the District during regular working hours.

16.14.020 Lummi Indian Business Council Review

The decision of the Sewer or Water Board shall be reviewable by the LIBC. Any person who desires any review of the Sewer or Water Board Decision shall petition the LIBC for such review within ten (10) working days of the date of the Sewer or Water Board Decision. The review power of the LIBC shall be limited to ascertaining whether a fair hearing upon the dispute was held. The LIBC shall take up the review within thirty (30) calendar days of the date of the receipt of the petition for review. Failure of the LIBC to act within this period shall be deemed to be an affirmation of the Sewer or Water Board Decision.

16.14.030 Judicial Review

Any party dissatisfied with the decision of the LIBC may petition the Lummi Tribal Court for judicial review of the decision. For the purposes of this review the LIBC agrees not to raise as a defense to the appeal any immunity from this type of action which it or the Lummi Nation may possess in the Lummi Tribal Court. This petition for review shall be filed within ten (10) working days of the date of the decision of the LIBC, or if the LIBC fails to act, within forty (40) calendar days of the date of the petition for review to the LIBC. The Tribal Court shall conduct a review upon the written record, and shall permit time for each party to present oral argument in support of his position. The standard used in this review shall be whether there was substantial evidence in the record to support the decision of the Sewer or Water Board. The Tribal Court shall issue a written decision.

16.14.040 Arbitration

Any party to a dispute dissatisfied with the decision of the Lummi Tribal Court may invoke arbitration under the rules and auspices of the American Arbitration Association. The arbitrator shall conduct a de novo review upon the written record before the Tribal Court and shall issue a written decision. For the purpose of this arbitration, the LIBC agrees not to assert any immunity from arbitration, provided that this agreement shall be strictly construed and shall

not be considered or construed as an agreement not to assert any such immunity in any action brought or maintained in the courts of the State of Washington.

16.14.050 Costs

As a condition of appealing or petitioning in any of the above steps, the party wishing to file the appeal or petition shall first pay all costs of the previous step from which the appeal or petition is sought. Costs shall include, but not be limited to, the preparation of the written transcript of each hearing or meeting, reasonable filing fees, and other costs, provided that these costs shall not include attorney's or spokesman's fees for any of the above stages of proceeding.

16.14.060 Minor Disputes

Operational problems or complaints of a minor nature may, at the option of the complaining party, be resolved informally through contact with the Manager or staff of the Water or Sewer Board. The use or nonuse of these informal proceedings shall not affect a complaining party's right to pursue the appeal right set out in this Chapter.

16.14.070 Other Appeals

Any other decisions of the Sewer or Water Board, including rate setting and class of service decisions, may be reviewed by the LIBC pursuant to the Constitution and By-Laws of the Lummi Nation, Article VI, Section 1 (p). Any such decision of the Sewer or Water Board or of the LIBC may be reviewed in the Lummi Tribal Court by filing an appeal therein within ten (10) working days of the date at which the decision of the Sewer and Water Board or of the LIBC was taken. The procedures and rules of the Tribal Court governing civil actions shall be applicable to such an appeal, and the decision of the Tribal Court shall be final.

Chapter 16.15 Miscellaneous

16.15.010 Notices, Billings

Any person who has the care, custody, control or management of any premises or building, or who has control of the operation thereof or the collection of rentals therefrom, shall, for the purpose of this Ordinance, be deemed to be the

agent of the owner of such premises or building, and the giving of all notices herein provided to that agent shall be deemed due notice to the owner. The mailing or delivery of bills for sewer service charges, permit fees, connection or trunkage charges, or other charges to that agent shall be deemed mailing or delivery to the owner.

16.15.020 Validity: Severability

The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any part of this Ordinance which can be given effect without such invalid part or parts.

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