

**STANDARDS FOR THE FORM AND CONTENT OF
FIRST NATION BORROWING LAWS**

[Consolidated to 2016-12-14]

**PART I
PREAMBLE**

WHEREAS:

- A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;
- B. Standards are established by the Commission to further the policy objectives of the Commission and the Act, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues; and
- C. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

**PART II
PURPOSE**

These Standards set out the requirements that must be met for First Nation laws enacted under paragraph 5(1)(d) of the Act. These Standards are used by the Commission in its review and approval of First Nations' borrowing laws and borrowing agreement laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. These Standards are intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY AND PUBLICATION**

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

**PART IV
APPLICATION**

These Standards apply to every law made under paragraph 5(1)(d) of the Act submitted to the Commission for approval under the Act.

**PART V
DEFINITIONS**

In these Standards:

- “Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;
- “Authority” means the First Nations Finance Authority established under the Act;
- “borrowing agreement” means an agreement between the Authority and the First Nation that includes their contractual obligations respecting borrowing authorized under a borrowing law;
- “borrowing agreement law” means a law made under paragraph 5(1)(d) of the Act that authorizes a First Nation to enter into a borrowing agreement with the Authority respecting the borrowing of money and

does not authorize borrowing by a First Nation;

“borrowing law” means a law made under paragraph 5(1)(d) of the Act respecting the borrowing of money from the Authority for a capital infrastructure project;

“capital infrastructure project” means the project respecting which the First Nation wishes to undertake the borrowing to be authorized by a borrowing law;

“Commission” means the First Nations Tax Commission established under the Act;

“First Nation” means a band named in the schedule to the Act;

“interim long-term financing” means financing provided by the Authority to a First Nation in anticipation of the inclusion and replacement of such financing by long-term financing in an issue of debt securities by the Authority;

“promissory note” means a contractual promise to pay that sets out a schedule of repayment of principal and interest;

“refinancing” means the replacement of an existing debt obligation with financing authorized under a borrowing law;

“security issuing council resolution” means a Council resolution containing the requirements set out in subsection 4.2; and

“undertaking agreement” means an agreement among the First Nation, the Authority and one (1) or more creditors of the Authority (or a trustee on behalf of such creditors) under which such creditors or such trustee may, among other things, exercise the Authority’s rights in respect of a loan to the First Nation.

Except as otherwise provided in these Standards, words and expressions used in these Standards have the same meaning as in the Act.

[am. FNTC Resolution 2011-12-15; 2012-12-12; 2016-12-14.]

PART VI STANDARDS

1. Required Information

1.1 A borrowing law must

- (a) set out the estimated cost of undertaking the capital infrastructure project or, where the borrowing law is for refinancing, the actual cost of the capital infrastructure project;
- (b) state the amount of the First Nation’s capital liabilities authorized as of the date of the borrowing law, and attach a certificate from an authorized officer of the First Nation in the form attached to these Standards as a Schedule;
- (c) state that the First Nation has sufficient unutilized borrowing capacity to undertake the borrowing authorized by the borrowing law;
- (d) state that the First Nation has enacted a financial administration law under paragraph 9(1)(a) of the Act that has been approved by the First Nations Financial Management Board in accordance with subsection 9(2) of the Act; and
- (e) state that the First Nation has obtained the required certificate under subsection 50(3) of the Act, and attach a copy of the certificate as a schedule to the borrowing law.

[am. FNTC Resolution 2011-12-15; 2012-12-12; 2016-12-14.]

1.2 A borrowing agreement law must

- (a) state that the First Nation has enacted a financial administration law under paragraph 9(1)(a) of the Act that has been approved by the First Nations Financial Management Board in accordance with

subsection 9(2) of the Act;

- (b) state that the First Nation has obtained the required certificate under subsection 50(3) of the Act, and attach a copy of the certificate as a schedule to the borrowing agreement law;
- (c) authorize the First Nation to enter into the borrowing agreement and authorize and direct authorized signatories to execute the borrowing agreement on behalf of the First Nation; and
- (d) attach the authorized form of the borrowing agreement as a schedule to the borrowing agreement law.

[am. FNTC Resolution 2008-12-16; 2016-12-14.]

2. Authorization to Borrow

A borrowing law must

- (a) provide a description of the capital infrastructure project respecting which the First Nation wishes to borrow from the Authority;
- (b) authorize the First Nation to borrow upon the credit of the First Nation
 - (i) to finance the capital infrastructure project, or
 - (ii) where the borrowing law is for refinancing, to refinance the capital infrastructure project,and request and authorize the Authority to undertake the borrowing on behalf of and at the sole cost of the First Nation;
- (c) set out the full amount of the borrowing authorized under the borrowing law; and
- (d) provide that the borrowing will be at the sole cost and on behalf of the First Nation, and that the First Nation will pay the principal together with such interest and with such discounts or premiums and expenses as the Authority determines appropriate in consideration of the market and economic conditions.

[am. FNTC Resolution 2012-12-12.]

3. Budgeting and Expenditures

A borrowing law must

- (a) require the First Nation, in each budget year after the borrowing law comes into force, to provide for payments of all amounts payable to the Authority during that budget year and to reserve such local revenues as are required to ensure that all amounts authorized to be paid to the Authority are actually paid in that year; and
- (b) prohibit an expenditure law made under paragraph 5(1)(b) of the Act from authorizing the expenditure of moneys raised under a local revenue law unless the First Nation's budget provides for the payment of all amounts payable to the Authority during that budget year.

[am. FNTC Resolution 2016-12-14.]

4. Security Issuing Council Resolution

4.1 A borrowing law must require the First Nation to pass a security issuing council resolution when it wishes to borrow all or a portion of the borrowing authorized under the borrowing law.

4.2 A borrowing law must require the security issuing council resolution to include

- (a) Council approval for the borrowing of a specified amount from the Authority;
- (b) a request by Council that the Authority undertake the borrowing of the specified amount on Council's behalf, and to
 - (i) include the specified amount as part of the Authority's next issue of debt securities, or

- (ii) provide the specified amount to the First Nation as interim long-term financing; and
- (c) the number of years, from the date of the first advance, that the financing must be repaid by the First Nation.

[am. FNTC Resolution 2011-12-15; 2012-12-12.]

5. Repayment by First Nation

5.1 A borrowing law must require the First Nation, on completion by the Authority of all or part of the financing authorized and undertaken pursuant to the law and a security issuing council resolution, to

- (a) execute and deliver to the Authority such promissory notes as requested by the Authority, in the form required by the Authority;
- (b) execute and deliver to the Authority an undertaking agreement when requested by the Authority and in the form required by the Authority; and
- (c) authorize and direct signatories to execute the documents referenced in this section on behalf of the First Nation when requested by the Authority.

5.2 A borrowing law must set the number of years, from the date on which the Authority provides the first advance to the First Nation, that the First Nation must repay the financing authorized in the borrowing law, which must be the lesser of

- (a) thirty (30) years, and
- (b) where the borrowing law is for refinancing, the remaining reasonable life expectancy of the capital infrastructure project, or where the borrowing law is for borrowing other than refinancing, the reasonable life expectancy of the capital infrastructure project.

[am. FNTC Resolution 2011-12-15; 2012-12-12; 2016-12-14.]

6. Term of Authorization

A borrowing law must provide that the authorization to borrow under the law ends on the earlier of

- (a) the date that the amount authorized by the borrowing law has been fully borrowed by the First Nation, as evidenced by security issuing council resolutions passed by the Council, and
- (b) five (5) years from the date that the borrowing law comes into force for any part of the amount authorized by the law that has not been used to secure borrowing through the Authority, as evidenced by security issuing council resolutions passed by the Council.

PART VII

COMING INTO FORCE

These Standards are established and in effect as of September 17, 2008.

PART VIII

ENQUIRIES

All enquiries respecting these Standards should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857

SCHEDULE

CERTIFICATE OF CAPITAL LIABILITIES AND CALCULATION OF BORROWING CAPACITY

The _____ (the "First Nation") in relation to _____ (insert the name of the long-term capital borrowing law) (the "borrowing law")

The undersigned officer assigned responsibility as the senior financial officer under the authority of the First Nation's financial administration law hereby certifies as of _____ (insert date), as follows:

Previous year's local revenues in aggregate (excluding service tax revenues, if any) = \$ _____ a
(sections 5, 6, and 7 of the Commission *Standards Establishing Criteria for the Approval of First Nation Borrowing Laws*)

(1) (i) Annual debt servicing limit ("a" above x 25%) **GROSS** \$ _____ b

(Where section 1.3 of the Commission *Standards Establishing Criteria for the Approval of First Nation Borrowing Laws* applies, use the following calculation instead.)

OR (ii) Annual debt servicing limit ("a" above x 40%) **GROSS** \$ _____ b

(2) Annual debt servicing cost payable from local revenues for previous year (audited F/S) **LESS:** \$ _____ c
(section 4 of the Commission *Standards Establishing Criteria for the Approval of First Nation Borrowing Laws*)

(3) Account for: <u>New local revenue capital liabilities since audited F/S (if any)</u>	<u>Annual servicing cost</u>	
_____	_____	d
_____	_____	e
_____	_____	f
Total of lines d through f	LESS:	\$ _____ g

(4) Account for: <u>capital liabilities which have matured after audited F/S (and previous year's debt to be refinanced)</u>	<u>Annual servicing cost</u>	
_____	_____	h
_____	_____	i
_____	_____	j
Total of lines h through j	ADD:	\$ _____ k

(5) Available net revenue from property tax: (b-c-g+k) **NET:** \$ _____ l

(6) Available revenue from service tax: (+s) **ADD:** \$ _____ m

(7) Total available revenues to service debt **EQUALS:** \$ _____ n

(8) Estimated annual servicing cost of the Authority loan from local revenues (r) **LESS:** \$ _____ o

(9) Estimated cash flow exceeds (deficient) to service loan (lines n-o = p) **EQUALS** \$ _____ p

(10) Amount of new loan or refinancing requested from the Authority \$ _____ q
Term of new loan: _____ years

Interest rate used to determine annual servicing cost for this Certificate: _____ %

Estimated annual servicing cost of new or refinancing the Authority loan \$ _____ r
(see www.fnfa.ca for loan cost estimating tool)

(11) Estimated unutilized borrowing capacity remaining after new loan (p) \$ _____

Complete the following only if the First Nation is enacting a Service Tax Law to pay all or a portion of the costs of this borrowing, as set out in section 2 of the Commission Standards Establishing Criteria for the Approval of First Nation Borrowing Laws, 2016:

Name of Service Tax Law: _____

First Year the Service Tax will be levied: _____

Number of Years the Service Tax will be levied: _____

Portion of Service Tax revenues allocated to servicing new loan or refinancing: _____%

Annual Service Taxes to be collected: \$ _____

Leveragability rate for Service Tax: 90%

Available Service Tax revenue each year: \$ _____ s

In accordance with subsection 5.2 of the Commission *Standards for the Form and Content of First Nation Borrowing Laws*, the debt to be contracted under the borrowing law will not exceed the lesser of thirty (30) years and the reasonable life expectancy of the capital infrastructure project for which the loan is to be contracted, or where the borrowing law is for refinancing, the remaining reasonable life expectancy of the capital infrastructure project.

This Certificate is not determinative of the actual amount of any loan that may be made by the Authority to the First Nation, which will be determined by the Authority in its sole discretion, subject to the limitations in the First Nation's borrowing law. The actual interest rate or rates applicable to any loan may differ from the interest rate used by the First Nation for the purposes of this Certificate.

This Certificate is provided to the First Nations Tax Commission as required under paragraph 1.1(b) of the Commission's *Standards for the Form and Content of First Nation Borrowing Laws*, and may be relied on by the Commission in its determination of the First Nation's unutilized borrowing capacity for the purposes of the review and approval of the borrowing law.

DATED this _____ day of _____, 20__

Senior Financial Officer

(please print full name)