



First Nations Tax Commission
Commission de la fiscalité des premières nations

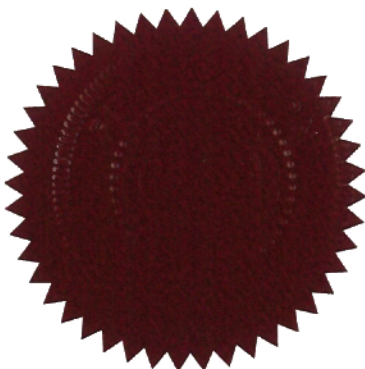
The First Nations Tax Commission, pursuant to the *First Nations Fiscal Management Act*, hereby approves the following law made by the Skowkale First Nation in the Province of British Columbia,

Skowkale First Nation Borrowing Agreement Law, 2017

Dated at Kamloops, British Columbia this 24th day of July, 2017.

On behalf of the First Nations Tax Commission

C.T. (Manny) Jules – Chief Commissioner
First Nations Tax Commission



**SKOWKALE FIRST NATION
BORROWING AGREEMENT LAW, 2017**

WHEREAS:

A. Pursuant to paragraph 5(1)(d) of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting the borrowing of money from the Authority, including any authorization to enter into a borrowing agreement with the Authority;

B. The Skowkale First Nation wishes to become a borrowing member of the Authority;

C. The Skowkale First Nation wishes to enter into a borrowing agreement with the Authority as provided in this Law;

D. The Skowkale First Nation has enacted a financial administration law under paragraph 9(1)(a) of the Act, which law has been approved by the First Nations Financial Management Board, as required by section 4 of the Act; and

E. The Skowkale First Nation has obtained a certificate from the First Nations Financial Management Board, as required by subsection 32(1) of the Act, a copy of which certificate is attached as Schedule "A" to this Law.

NOW THEREFORE the Council of the Skowkale First Nation duly enacts as follows:

1. This Law may be cited as the *Skowkale First Nation Borrowing Agreement Law, 2017*.

2. In this Law:

"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 the borrowing member agreement between the Authority and the First Nation in the form attached to this Law as Schedule "B";

"certificate" means a Financial Performance Certificate issued by the First Nations Financial Management Board under subsection 50(3) of the Act;

"First Nation" means the Skowkale First Nation; and

"Law" means this borrowing agreement law.

3. Unless the context otherwise requires, words and expressions used in the Law and not otherwise defined have the same meaning as in the Act.

4. The Council is authorized to enter into the Borrowing Agreement with the Authority and a quorum of Council are authorized and directed to execute the Borrowing Agreement on behalf of the First Nation.

5. Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

6. This Law shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

7. The Schedules attached to this Law form integral parts of this Law.

8. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the 26th day of June, 2017, at Chilliwack in the Province of British Columbia.

A quorum of Council consists of three (3) members of Council.



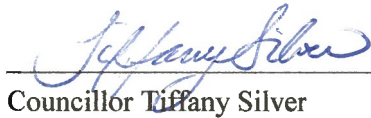
Chief Mark Point

Councillor Dustin Hall



Councillor Derek Hansom

Councillor Darcy Paul



Councillor Tiffany Silver

SCHEDULE “A”

FINANCIAL PERFORMANCE CERTIFICATE

(FMA, Subsection 50(3) – to be provided to the First Nation by the FMB)

FINANCIAL PERFORMANCE CERTIFICATE ISSUED TO SKOWKALE

The First Nations Financial Management Board ("the Board") has completed its review of Skowkale's Financial Performance for compliance with the *Financial Performance Standards* established under section 55 of the *First Nations Fiscal Management Act* ("the Act"). The Board has not audited or otherwise attempted to verify the underlying financial information upon which the review is based.

On the basis of its review and after consideration of its findings, the Board is of the opinion and certifies that, as at March 31, 2016, Skowkale was in compliance with the *Financial Performance Standards*.

The Board has provided Skowkale with a Report and attached Schedule dated March 30, 2017 as required under subsection 50(2) of the Act and upon which the Board's opinion and certification is based.

This Certificate has been issued to Skowkale under subsection 50(3) of the Act solely for the purpose of enabling Skowkale to satisfy the requirements of the Act. It must not be used or relied upon by Skowkale or by any other person for any other purpose and the Board accepts no responsibility for any loss or damages resulting from any unauthorized use of or reliance on this Certificate.

This Certificate is issued on the 30th day of March, 2017.

First Nations Financial Management Board

SCHEDULE “B”
FORM OF BORROWING AGREEMENT

**BORROWING AGREEMENT
(Property Tax Revenues)**

This Borrowing Agreement, hereinafter referred to as the "Agreement", is made the ____ day of _____, 20__

BETWEEN:

FIRST NATIONS FINANCE AUTHORITY, a non-profit corporation with a head office at 202-3500 Carrington Road, Westbank, British Columbia

(the "Authority")

AND

INSERT FN NAME, being a band named in the schedule to the Act, (referred to as " " in the schedule to the *First Nations Fiscal Management Act*, S.C. 2005, c.9), with an office at insert address, City, Prov., as represented by its Chief and Council,

(the "First Nation")

WHEREAS:

- A. First Nations have lacked the institutional framework by which to gain access to private capital at affordable rates;
- B. The Act creates a mechanism of financing for First Nations;
- C. Section 58 of the Act creates the Authority as a non-profit corporation without share capital;
- D. One of the purposes of the Authority under paragraph 74(a) of the Act is to secure for its Borrowing Members, through the use of Property Tax Revenues, long-term financing of capital infrastructure for the provision of local services on reserve lands;
- E. Section 75 of the Act gives the FNFA Board powers in relation to the issuance of securities;
- F. The Authority reviews outstanding requests for financing from Borrowing Members and, in consideration of the relevant market and economic conditions, authorizes the issue and sale of securities to raise a specified amount in the manner determined by the FNFA Board;
- G. The Authority can provide Interim Long Term Financing to Borrowing Members in anticipation of including the applicable Borrowing Member's financing request in an issue of securities by the Authority;
- H. The Act sets out a procedure for First Nations to become Borrowing Members of the Authority;
- I. The Act also sets out the requirements for Borrowing Members to enact Borrowing Laws and to obtain the necessary certifications and approvals as part of the borrowing process;
- J. The First Nation is a Borrowing Member of the Authority;
- K. The First Nation, as part of the process of obtaining financing from the Authority, will enact one or more Borrowing Laws;

- L. This Agreement sets out the contractual terms and conditions of the First Nation being a Borrowing Member and the contractual terms and conditions under which the Authority agrees to provide financing to the First Nation using the First Nation's Property Tax Revenues; and
- M. The First Nation intends to use its Property Tax Revenues, in accordance with the provisions of the Act, to pay interest on and repay principal of financing provided by the Authority to the First Nation pursuant to this Agreement.

NOW THEREFORE, THE AUTHORITY AND THE FIRST NATION AGREE TO THE FOLLOWING:

1.0 INTERPRETATION

- 1.1 In this Agreement, including the recitals, the following terms shall have the following meanings:

"Act" means the *First Nations Fiscal Management Act*, the regulations enacted under that Act and any amendments thereto;

"Authority" means the First Nations Finance Authority established under the Act;

"Board" means the First Nations Financial Management Board established under the Act;

"Borrowing Agreement Law" means the First Nation Borrowing Agreement Law cited as the *insert FN name Borrowing Agreement Law, 2013*, enacted by the First Nation under and in accordance with paragraph 5(1)(d) of the Act that came into force the __ day of __ 2013;

"Borrowing Law" means a law enacted by the First Nation under paragraph 5(1)(d) of the Act to secure long term financing through the Authority of capital infrastructure for the provision of local services on the First Nation reserve lands by the use of the First Nation's Property Tax Revenues;

"Borrowing Member" means a first nation that has been accepted by the Authority as a borrowing member under subsection 76(2) of the Act and has not ceased to be a borrowing member under section 77 of the Act;

"Borrowing Room Calculation Certificate" means a certificate in a form required by the Authority, setting out financial information of the First Nation including its unused annual debt servicing capacity based on its previous fiscal year's audited consolidated financial statements;

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Capital Infrastructure Project" means the project generally described in a Borrowing Law;

"Chief" means Chief (insert name) or his or her duly elected successor to the office of Chief of the First Nation;

"Commission" means the First Nations Tax Commission established under the Act;

"Completion" of a Capital Infrastructure Project means that the project is substantially completed, not necessarily totally completed. A project will be considered to have achieved Completion when the Authority is provided with a certificate from a registered professional engineer or architect to the effect that the project has been substantially completed;

"Council" means the governing Council of the First Nation;

"Debt Reserve Fund" means the fund established by the Authority under section 84 of the Act for financing secured by Property Tax Revenues;

“Financial Administration Law” means the *FN name Financial Administration Law*, 2013 enacted by the First Nation under and in accordance with paragraph 9(1)(a) of the Act that has been approved by the Board;

“Financial Management System Certificate” means a certificate issued by the Board under subsection 50(3) of the Act confirming that the First Nation’s financial management system is in compliance with the Board’s standards;

“Financial Performance Certificate” means a certificate issued by the Board under subsection 50(3) of the Act confirming that the First Nation’s financial performance is in compliance with the Board’s standards;

“First Nation” means (insert FN name), being a band named in the schedule to the Act, with an office at insert address, City, Prov, as represented by its Chief and Council;

“FNFA Board” means the Board of Directors of the Authority as described in section 61 of the Act;

“Interim Long Term Financing” means financing provided by the Authority to the First Nation in anticipation of the inclusion and replacement of such financing in an issue of debt securities by the Authority by the earlier of

- (a) five years from the date on which the first advance of such Interim Long Term Financing is provided to the First Nation,
- (b) Completion of the Capital Infrastructure Project;

“Local Revenue Account” means the account established by the First Nation pursuant to paragraph 13(1) of the Act into which the First Nation is required to place, among other things, Property Tax Revenues;

“Local Revenue Law” means a law of the First Nation made under paragraph 5(1)(b), (d), (f) or (g) of the Act;

“LRA Management Agreement” means the agreement in the form specified by the Authority under which the Local Revenue Account is managed in accordance with this Agreement;

“Material Adverse Change” means a change in the financial, operational or other condition of the First Nation that affects or is likely to affect the ability of the First Nation to perform its obligations under this Agreement, a Borrowing Law, a Security Issuing Council Resolution, any LRA Management Agreement or a Promissory Note as and when they fall due;

“Person”, in addition to its ordinary meaning, includes a corporation, society, a local, provincial or federal government, partnership or party and the personal or legal representative or successors or assigns of such person to whom the context can apply according to law;

“Promissory Note” means a contractual promise to pay made by the First Nation to the Authority in respect of the repayment by the First Nation of money borrowed by the First Nation from the Authority for a Purpose set out in a Borrowing Law, in the form specified by the Authority;

“Property Tax Revenues” means the property tax revenues described in section 57 of the Act; and

“Security Issuing Council Resolution” means a resolution of Council in the form specified by the Authority whereby the First Nation formally requests to drawdown all or a portion of the loan amount authorized by a Borrowing Law.

- 1.2 Unless the context otherwise requires, words and expressions used in this Agreement and not otherwise defined have the same meaning as in the Act.

- 1.3 Any computation of days or business hours in relation to borrowing under this Agreement shall be determined based on days and hours during which banks are open for general banking business in the Province of Ontario.
- 1.4 Words importing the singular include the plural and vice versa and words importing gender include the neuter, feminine and masculine genders.
- 1.5 The division of this Borrowing Agreement into articles (1), sections (1.1), paragraphs (1.1(a)), subparagraphs (1.1(a)(i)) and sub-subparagraphs (1.1(a)(i)(A)) and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- 1.6 In the event that any day on or before which any action is required to be taken under this Agreement is not a Business Day, then such action shall be required to be taken on or before the requisite time on the next succeeding day that is a Business Day.

2.0 APPLICATION OF THE ACT

- 2.1 The Authority and the First Nation agree that the Act and this Agreement shall apply to the relationship between the Authority and the First Nation and to any borrowing by the First Nation from the Authority using Property Tax Revenues.
- 2.2 In the event of a conflict between the Act and this Agreement, the Act shall prevail to the extent of the conflict.

3.0 AUTHORIZATION FOR AGREEMENT AND THE FIRST NATION BORROWING

- 3.1 The First Nation and the Authority acknowledge and agree that entering into this Agreement establishing the contractual terms and conditions of the First Nation being a Borrowing Member and the contractual terms and conditions for borrowing from the Authority by the First Nation is authorized by the Borrowing Agreement Law and the contractual terms so established are in addition to any terms and conditions contained in a Borrowing Law, a Security Issuing Council Resolution, any LRA Management Agreement and a Promissory Note.

4.0 CONSIDERATION

- 4.1 In consideration of the Authority agreeing to comply with the terms and conditions of this Agreement and agreeing to consider, under section 9.1, the First Nation's request for the Authority to raise monies to lend to the First Nation to finance a Capital Infrastructure Project by the issuance of securities, the First Nation agrees to comply with the terms and conditions of this Agreement.
- 4.2 Without limiting the generality of section 4.1, if the Authority provides financing to the First Nation in accordance with the Act, a Borrowing Law, or a Security Issuing Council Resolution for a Capital Infrastructure Project, the First Nation agrees to make payments as set out in the Promissory Note and this Agreement and to comply with the terms and conditions of this Agreement.

5.0 TERM OF AGREEMENT

- 5.1 This Agreement shall remain in force until the First Nation ceases to be a Borrowing Member under section 77 of the Act.

6.0 FIRST NATION REPRESENTATIONS & WARRANTIES

- 6.1 The First Nation represents and warrants to the Authority as set forth in this section, and acknowledges that the Authority is relying on such representations and warranties without independent inquiry in entering into this Agreement:

- (a) the Financial Administration Law has been approved by the Board and the First Nation has not repealed or amended its provisions without Board approval;
- (b) before becoming a Borrowing Member, the First Nation obtained a Financial Management System Certificate or a Financial Performance Certificate and provided the Authority with a copy of the [Financial Management System Certificate or Financial Performance Certificate] and a copy of the Board's report given under subsection 50(2) of the Act in relation to that certificate;
- (c) the First Nation has obtained all approvals necessary, including all approvals necessary from the Commission, to enact the Borrowing Agreement Law;
- (d) the execution and delivery of this Agreement and the performance by the First Nation of its obligations in this Agreement and the transactions contemplated under this Agreement are all within the First Nation's powers, and have been duly authorized under the Borrowing Agreement Law;
- (e) all information provided by or on behalf of the First Nation in writing to the Authority, Commission and Board in connection with this Agreement, the certification and approval of the First Nation becoming a Borrowing Member, and the enacting of the Borrowing Agreement Law was true and correct in all material respects as at the date such information was provided and was not misleading or deceptive in any material respect whether by its inclusion or by omission of any other information, and did not omit any material fact necessary in order to make such information not misleading, and any further information provided by the First Nation to the Authority, Commission and Board will be true and correct as at the date such information is provided to the Authority, Commission and Board and will not be misleading or deceptive in any material respect whether by its inclusion or by omission of any other information and will not omit any material fact necessary to make such information not misleading;
- (f) all material financial transactions of the First Nation have been recorded by the First Nation and accurately reflect in all material respects the basis for the financial condition of the First Nation shown in the most recent audited consolidated annual financial statements and other information provided by the First Nation to the Authority, Commission and Board;
- (g) no Material Adverse Change has occurred since the date of the First Nation's most recent audited consolidated annual financial statements, except as has been expressly disclosed in writing to the Authority, Commission and Board;
- (h) there are no current or pending actions, suits, arbitrations, proceedings or claims, nor to the best of the First Nation's knowledge are any threatened, which in any such case could result in a Material Adverse Change;
- (i) the First Nation is not in breach or violation in any material respect of any of the terms of any material agreement, contract, instrument, lease or other commitment to which it is a party which could result in a Material Adverse Change;
- (j) the First Nation is in compliance in all material respects with its Financial Administration Law, Local Revenue Laws and all applicable standards of the Board and Commission in relation to any approvals or certifications issued by the Board or Commission;
- (k) the First Nation is in compliance in all material respects with the Act;
- (l) in addition to compliance under paragraphs (j) and (k) above, the First Nation is in compliance in all material respects with all other applicable provisions of laws, rules, regulations, licenses, permits, approvals and orders of any applicable governmental authority in relation to the Capital Infrastructure Project or any of the First Nation's obligations under this Agreement; and
- (m) there is no current or pending investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other Person, nor to the best of the First Nation's

knowledge are any threatened, with respect to any non-compliance with or violation of the requirements of any environmental law by the First Nation or the threatened or actual release, spill or discharge of any hazardous material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any hazardous materials or any other environmental, health or safety matter.

7.0 COVENANTS OF THE FIRST NATION

7.1 The First Nation covenants and agrees that for the term of this Agreement it shall:

- (a) comply with applicable Board and Commission standards made under the Act and obtain and maintain in good standing all necessary certifications and approvals from the Board and Commission;
- (b) provide the Authority with a copy of the Financial Management System Certificate within 36 months after the First Nation's acceptance as a Borrowing Member;
- (c) notify the Authority, Board and Commission promptly in writing if there is a Material Adverse Change to any of the information provided by the First Nation under this Agreement or during the process of becoming a Borrowing Member, entering into this Agreement, obtaining any necessary certifications and approvals from the Board and Commission or passing a Security Issuing Council Resolution;
- (d) not grant a security interest in the Local Revenue Account to any Person other than the Authority without the prior written consent of the Authority;
- (e) not change the financial institution at which the Local Revenue Account is located or change the account number of the Local Revenue Account without the prior written consent of the Authority;
- (f) comply with the Financial Administration Law and the Local Revenue Laws;
- (g) comply in all material respects with the Act and all of the Authority's by-laws, rules, regulations, orders and policies, as amended from time to time, and make all payments required in relation thereto;
- (h) advise the Authority in writing as soon as possible if there is a change in the First Nation's representative to the Authority and provide the Authority with a copy of the resolution of Council designating a new representative;
- (i) use the funds loaned by the Authority to the First Nation only for the payment of permitted expenditures in relation to the Capital Infrastructure Project, provided that any funds loaned by the Authority that are used for an unauthorized purpose shall not affect the obligations of the First Nation under the Act, this Agreement, a Borrowing Law, a Security Issuing Council Resolution, a Promissory Note or any LRA Management Agreement;
- (j) in construction of a Capital Infrastructure Project comply in all material respects with all applicable provisions of laws, rules, regulations, licenses, permits, approvals and orders of any applicable governmental authority and with all applicable conditions and standards issued by the Commission in approving a Borrowing Law;
- (k) deliver to the Authority:
 - (i) the First Nation's annual budget including the component respecting its Local Revenue Account applicable to the borrowing for the First Nation's current year, and a five year capital expenditure plan, in each case in a form acceptable to the Authority, within 120 days after the First Nation's last fiscal year end,

- (ii) the First Nation's audited consolidated annual financial statements and audited Local Revenue Account financial statements within 120 days after its fiscal year end together with an opinion on such financial statements by an independent auditor who is a member in good standing of the Canadian Institute of Chartered Accountants or an association of accountants or auditors incorporated under the laws of a province or territory in Canada,
 - (iii) an executed Borrowing Room Calculation Certificate within 120 days after the First Nation's fiscal year end,
 - (iv) the First Nation's most recent taxable assessment valuation by property classification and applicable property tax rates by property classification,
 - (v) promptly upon receipt of notice thereof, a report of any current, pending or threatened actions, suits, arbitrations, proceedings or claims against the First Nation, and
 - (vi) a copy of the current strategic plan and multi-year financial plan, a copy of any existing operating plans and any other financial information or statistics of the First Nation as the Authority may reasonably request from time to time;
- (l) if required by the Authority, execute such documents and agreements as the Authority considers necessary to grant to the Authority a security interest in the Local Revenue Account (including, for greater certainty, all sums at any time on deposit in the Local Revenue Account); the Authority may also require the First Nation to obtain an agreement from any Person (in this paragraph called a "third party") that has a security interest in the Local Revenue Account as of the date the First Nation becomes a Borrowing Member in form satisfactory to the Authority under which the security interest held by the third party in the Local Revenue Account is subordinated and postponed to any security interest held by the Authority in the Local Revenue Account;
- (m) permit representatives of the Board (including accountants, counsel, financial advisors, technical advisors and consultants, and other representatives) to visit the First Nation's premises at all reasonable business hours and to have access to and take copies and excerpts, where applicable, from all of the First Nation's books, accounts, records, reports, files, properties and assets in whatever form they take as are deemed appropriate by the Board, acting honestly and in good faith, relating to compliance with Board standards, the First Nation's status as a Borrowing Member, or any obligation under the Act, this Agreement, a Borrowing Law, Security Issuing Council Resolution or Promissory Note and to the receipt of and administration of the funds borrowed under this Agreement or a Borrowing Law, as may be reasonably necessary to conduct a review and make a report under subsections 86(2) and (3) of the Act, to enter into and carry out a co-management arrangement under section 52 of the Act or to act as third-party manager under section 53 of the Act;
- (n) upon request by the Authority, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered every and all such further acts and deeds as the Authority shall deem necessary or appropriate to give effect to the purposes of
- (i) this Agreement,
 - (ii) the Act,
 - (iii) a Borrowing Law,
 - (iv) a Security Issuing Council Resolution,
 - (v) any LRA Management Agreement,
 - (vi) a Promissory Note, and

(vii) by-laws or policies of the Authority,

and the First Nation shall promptly provide the Authority with evidence of the foregoing satisfactory to the Authority;

- (m) if the Authority provides Interim Long Term Financing to the First Nation, the First Nation must, and hereby covenants to, by the earlier of five years after the date on which the first advance of such Interim Long Term Financing is provided to the First Nation, or Completion of the Capital Infrastructure Project, either:
 - (i) replace such Interim Long Term Financing by inclusion and replacement of such financing in and by an issue of debt securities by the Authority, or
 - (ii) prepay all unpaid principal of and accrued and unpaid interest on such Interim Long Term Financing in full in accordance with sections 12.11 and 12.12 of this Agreement; and
- (n) advise the Authority in writing as soon as possible if the First Nation is to enter into a treaty, land claims agreement or self-government agreement with the Crown.

8.0 SECURITY ISSUING COUNCIL RESOLUTION

- 8.1 When, from time to time, the First Nation wishes to borrow all or a portion of the amount authorized under a Borrowing Law, the Council will pass a Security Issuing Council Resolution approving the borrowing of the specified amount and either:
 - (a) request the Authority to include that amount as part of its next issue of debt securities, or
 - (b) request the Authority to provide the specified amount by way of Interim Long Term Financing to the First Nation.
- 8.2 The Security Issuing Council Resolution shall specify the date by which the First Nation requests the amount specified in the Security Issuing Council Resolution be loaned by the Authority to the First Nation, it being acknowledged by the First Nation that there can be no assurance that the Authority will loan such amount by such date.
- 8.3 The First Nation shall promptly send an originally executed or a certified copy of the Security Issuing Council Resolution to the Authority. If the Security Issuing Council Resolution requests the Authority to include the specified amount in the Authority's next issue of debt securities, an originally executed or a certified copy of the Security Issuing Council Resolution must be delivered to the Authority by the date specified in writing by the Authority in order for the First Nation to participate in the Authority's next issue of debt securities.
- 8.4 If financing is provided by the Authority to the First Nation by way of Interim Long Term Financing, the Authority may by written notice to the First Nation specify the date by which the First Nation must give written notice to the Authority by way of a new Security Issuing Council Resolution to confirm that the First Nation intends such Interim Long Term Financing to be replaced by inclusion of such financing in the next issue of debt securities by the Authority.

9.0 COVENANTS OF THE AUTHORITY

- 9.1 If the First Nation has obtained all necessary certifications and approvals from the Board and the Commission and complied with this Agreement, any LRA Management Agreement, the Act, the by-laws and policies of the Authority and a Borrowing Law, the Authority shall review the request for financing of the First Nation set out in a Security Issuing Council Resolution and, in consideration of relevant market and economic conditions may, in accordance with the Act, authorize the issue and sale of debt securities to raise funds requested by the First Nation or provide Interim Long Term Financing to the First Nation, in either case to be loaned to the First Nation to finance a specified Capital Infrastructure Project.
- 9.2 The Authority agrees that for the term of this Agreement it shall:
- (a) provide the First Nation full opportunity to participate in the governance of the Authority in accordance with the Act and the by-laws of the Authority;
 - (b) provide the First Nation with notice of any significant changes to the borrowing regime, requirements for Borrowing Members and other material information that could significantly affect the First Nation's rights as a Borrowing Member or its obligations to the Authority; and
 - (c) provide the First Nation with notice of any changes of fees or charges.

10.0 FINANCING BY THE AUTHORITY

- 10.1 The Authority is authorized to finance a Capital Infrastructure Project from time to time, at the sole cost and on behalf of the First Nation as set out in a Security Issuing Council Resolution, up to but not exceeding the least of:
- (a) the amount authorized in a Borrowing Law;
 - (b) the amount remaining in the authorization in a Borrowing Law after previous loans for a Capital Infrastructure Project have been made to the First Nation by the Authority; or
 - (c) the amount of the unused annual debt servicing capacity as calculated in the most recent Borrowing Room Calculation Certificate.
- 10.2 The financing by the Authority shall be in lawful money of Canada (provided that the First Nation may borrow all or part of such amount in such currency as the FNFA Board shall determine but the aggregate amount in lawful money of Canada and in Canadian dollar equivalents so borrowed shall not exceed the limits set out in section 10.1 in Canadian dollars) together with interest and at such interest rates and with such discounts or premiums and expense as the Authority may deem appropriate in consideration of the market and economic conditions of the time.
- 10.3 Recognizing that the term to maturity of debt securities issued by the Authority may not be the same as the First Nation's requested term for financing from the Authority for a Capital Infrastructure Project, the First Nation may by resolution of the Council request that the Authority fix the interest rate on the loan from the Authority to the First Nation at the time of the borrowing described in the Security Issuing Council Resolution for the full term of the borrowing.
- 10.4 If the Authority provides Interim Long Term Financing to the First Nation, the amount of the loan withheld under subsection 84(2) of the Act and deposited in the Debt Reserve Fund in relation to the Interim Long Term Financing will be credited to the First Nation in determining the amount to be withheld under subsection 84(2) of the Act upon the subsequent issue of debt securities by the Authority to raise the funds requested by the First Nation.

11.0 CONDITIONS OF FINANCING

11.1 In addition to the provisions of sections 9.1, 10.1 and 10.2 of this Agreement, any decision of the Authority to provide financing to the First Nation under those sections is conditional upon the following:

- (a) execution of this Agreement by the First Nation and compliance by the First Nation with all terms of this Agreement;
- (b) receipt by the Authority of a Borrowing Law approved by the Commission;
- (c) receipt by the Authority of supporting documentation relating to the establishment of the Local Revenue Account by the First Nation;
- (d) receipt by the Authority of executed copies of the documents and agreements required by the Authority pursuant to paragraph 7.1(l) of this Agreement;
- (e) execution of a LRA Management Agreement by the First Nation if requested by the Authority and compliance by the First Nation with all terms of the LRA Management Agreement;
- (f) receipt by the Authority of a First Nation Security Issuing Council Resolution signed by the Council;
- (g) receipt by the Authority of a current Borrowing Room Calculation Certificate;
- (h) receipt by the Authority of the First Nation's most recent audited consolidated annual financial statements;
- (i) receipt by the Authority of a Financial Performance Certificate or a Financial Management System Certificate issued to the First Nation and a copy of the Board's report prepared in respect of that certificate under subsection 50(2) of the Act; and
- (j) receipt by the Authority of such other financial information of the First Nation as the Authority may reasonably require.

11.2 In addition to requirements under section 11.1, any decision of the Authority to provide financing to the First Nation after the financing authorized by the First Nation's first Borrowing Law is conditional upon receipt by the Authority of a Financial Management System Certificate issued to the First Nation and a copy of the Board's report prepared in respect of that certificate under subsection 50(2) of the Act.

12.0 PAYMENT BY THE FIRST NATION

12.1 Upon completion by the Authority of any financing undertaken pursuant to a Security Issuing Council Resolution, the First Nation shall, at a time that the Authority requests, execute and deliver a Promissory Note to the Authority.

12.2 The Promissory Note issued under section 12.1 shall be executed on behalf of the First Nation in accordance with the Security Issuing Council Resolution. The Promissory Note shall provide for payment by the First Nation to the Authority of the amounts required to meet the obligations of the Authority with respect to each of its borrowings undertaken pursuant to the First Nation's Borrowing Law and applicable Security Issuing Council Resolution.

12.3 The Promissory Note issued under section 12.1 shall be dated and payable in Canadian dollars and shall set out the schedule of repayment by the First Nation of the principal amount together with interest as determined by the Authority.

12.4 The obligations under a Promissory Note shall bear interest from the date specified in the Promissory Note, which date shall be determined by the Authority, at rates to be determined by the Authority.

- 12.5 The obligations under a Promissory Note as to both principal and interest shall be payable in such manner and at such time or times as determined from time to time by the Authority and as provided for in the Promissory Note.
- 12.6 The First Nation shall, in each fiscal year after a Promissory Note has been signed, provide in its annual budget for payment of all amounts payable to the Authority during the fiscal year to which its annual budget applies.
- 12.7 The First Nation shall pay the amounts to the Authority set forth in, or attached as a schedule to, a Promissory Note during a fiscal year and shall make such payments in priority to other creditors of the First Nation during that fiscal year.
- 12.8 No law enacted by the First Nation under paragraph 5(1)(b) of the Act shall authorize the expenditure of moneys raised under a Local Revenue Law unless the First Nation's annual budget provides for the payment of all amounts payable to the Authority during the budget period.
- 12.9 The First Nation shall provide and pay over to the Authority such sums as are required to discharge its obligations in accordance with the terms of a Promissory Note, provided that if sums provided for in a Promissory Note are not sufficient to meet the obligations of the Authority in relation to the issuance of securities or the provision of Interim Long Term Financing to raise the funds requested by the First Nation, any deficiency in meeting such obligations shall be a liability of the First Nation to the Authority and shall be paid to the Authority by the First Nation.
- 12.10 If the First Nation's requested repayment term for a borrowing described in a Borrowing Law does not match the term for debt securities issued by the Authority to provide for the First Nation's borrowing, the First Nation may, by way of a Council Resolution, authorize the Authority to use a derivative product to fix the loan interest rate for the full repayment term, or if no such Council Resolution is provided to the Authority, then the First Nation's loan will be refinanced by the Authority as needed to meet the First Nation's desired term of repayment set out in its Borrowing Law. Any refinancing described in this section shall take place at the Authority's calculated interest rate in issuing new securities at the time of the refinancing.
- 12.11 In the event the First Nation wishes to prepay the amount owing under a Promissory Note the prepayment shall include the full amount of the principal and interest due on the maturity of the Promissory Note, or another amount as calculated by the Authority to fully discharge the First Nation's obligations and any additional cost incurred by the Authority in relation to the prepayment.
- 12.12 The parties acknowledge that the Authority may fund advances of Interim Long Term Financing to the First Nation by the issuance of bankers' acceptances in the Canadian bank market or by the issuance of commercial paper in the Canadian capital markets. The First Nation may not prepay any amount of Interim Long Term Financing unless such prepayment is made on the maturity date of the bankers' acceptance or issue of commercial paper utilized by the Authority to fund the applicable advance of such Interim Long Term Financing, and the amount of such prepayment is sufficient to repay the relevant bankers' acceptance or commercial paper in full.
- 12.13 All payments by the First Nation to the Authority shall be made to an account specified by the Authority on the due date as set out in the Promissory Note, or if the due date is not a Business Day then on the next Business Day.
- 12.14 The First Nation agrees to repay all amounts the First Nation owes to the Authority pursuant to this Agreement or a Promissory Note, prior to entering into a treaty, land claims agreement or self-government agreement with the Crown, unless:
- (a) the Authority, in its sole discretion, is satisfied that the First Nation will continue to be subject to the Act, pursuant to:
 - (i) the terms of the treaty, land claims agreement or self-government agreement;
 - (ii) a regulation under s. 141 of the Act; or

- (iii) legislation that has otherwise been enacted; and
- (b) the First Nation has executed and delivered to the Authority all documents and instruments, and taken all other actions, required by the Authority, in its sole discretion.

13.0 DEFAULT BY THE FIRST NATION

13.1 The occurrence of any one or more of the following events or conditions is a default under this Agreement:

- (a) the First Nation defaults on a payment owing to the Authority under this Agreement, a Borrowing Law, Security Issuing Council Resolution or Promissory Note;
- (b) the First Nation fails to comply with the Act in any material respect;
- (c) the First Nation defaults in the observance or performance of any of the terms, conditions or covenants to be observed or performed by the First Nation under this Agreement;
- (d) the First Nation or a Person on its behalf made a representation, warranty or statement to the Authority that was untrue in any material respect at the time it was made or deemed to be made;
- (e) the First Nation defaults in payment of any indebtedness to any Person other than the Authority, or defaults in the performance of any term, provision or condition created in any agreement under which that indebtedness was created or is governed, where that default would allow that Person to cause the indebtedness to become due prior to its stated maturity, or any such indebtedness is declared to be due and payable other than by a regularly scheduled payment;
- (f) the First Nation commits or threatens to commit any act of bankruptcy or becomes insolvent;
- (g) the holder of a security interest delivers a notice of intention to enforce its security or take possession of all or any part of the First Nation's property, including the Local Revenue Account or any part of it, or an execution or other process of any court becomes enforceable against the First Nation;
- (h) in the opinion of the Authority, a Material Adverse Change has occurred;
- (i) the First Nation terminates, alters or fails to carry out the terms of any LRA Management Agreement;
- (j) the First Nation fails or refuses to exercise its rights and remedies to enforce collection of outstanding property tax revenues in a manner that is acceptable to the Authority to meet the First Nation's obligations to the Authority under this Agreement or a Promissory Note;
- (k) the First Nation grants a security interest in the Local Revenue Account to any Person other than the Authority without the prior written consent of the Authority; or
- (l) the First Nation changes the financial institution at which the Local Revenue Account is located or changes the account number of the Local Revenue Account without the prior written consent of the Authority.

13.2 If a default under section 13.1 occurs, the Authority, in its sole and absolute discretion, may declare all or any part of the First Nation's obligations under this Agreement or a Promissory Note immediately due and payable, without any further demand or notice of any kind.

13.3 Notwithstanding anything in this Agreement, no use of the Debt Reserve Fund or payment by other Borrowing Members to replenish the Debt Reserve Fund following a default by the First Nation on a loan

payment to the Authority relieves the First Nation of its obligations under this Agreement, a Promissory Note, any LRA Management Agreement or the Act.

13.4 If a default under section 13.1 occurs, in addition to any other remedies the Authority has under the Act or this Agreement, the Authority may take one or both of the following actions under section 86 of the Act:

- (a) request the Board to conduct a review and make a report to the Authority of the reasons for the First Nation's default, including any recommendation for an intervention under section 52 or 53 of the Act; or
- (b) require the Board to either (at the Board's discretion) impose a co-management arrangement on the First Nation or assume third-party management of the First Nation's local revenues under section 52 or 53 of the Act.

13.5 Notwithstanding any other provision of this Agreement, the Board may, at its discretion, give notice to the First Nation under section 52 of the Act requiring the First Nation to enter into a co-management arrangement in respect of the First Nation's local revenues, including its Local Revenue Account, if, in the opinion of the Board, there is a serious risk that the First Nation will default on an obligation to the Authority.

13.6 In addition to any other remedies or obligations under the Act or this Agreement, where the First Nation defaults on a loan payment to the Authority under paragraph 13(1)(a) and that default leads to a reduction in the Debt Reserve Fund which other Borrowing Members are called upon to replenish, the First Nation shall make payments to the Authority in order to repay amounts to other Borrowing Members who have been called upon to replenish the Debt Reserve Fund, together with amounts on account of investment income that would have been earned on the amount of the First Nation's default and any costs incurred by the Authority.

13.7 In each year following a default by the First Nation that led to the reduction in the balance of the Debt Reserve Fund, the Authority shall send to the Council a notice imposing a charge on the First Nation in an amount required to repay amounts outstanding under section 13.6.

13.8 Upon receipt of the notice from the Authority sent under section 13.7, the First Nation shall forthwith pay to the Authority the amounts set out in the notice.

13.9 Upon receipt of payments from the First Nation under section 13.8, the Authority shall pay to each of those Borrowing Members who have been called upon to replenish the Debt Reserve Fund a share of monies received from the First Nation proportionate to the amount of the total replenishment of the Debt Reserve Fund paid by each such Borrowing Member.

13.10 The First Nation agrees that all costs and interest incurred by the Authority as a result of a default by the First Nation under section 13.1, including all fees and disbursements paid by the Authority to its solicitors and counsel and any other Persons in connection with advising the Authority with respect to a default by the First Nation, enforcement of this Agreement and collection of monies owing, shall be payable by the First Nation to the Authority forthwith.

13.11 At all times during any default by the First Nation under section 13.1, the Authority shall be entitled to exercise all of the Authority's rights under any LRA Management Agreement, including without limitation, requiring that amounts payable to the Authority be paid to the Authority out of the Local Revenue Account.

14.0 REPAYMENTS FROM DEBT RESERVE FUND

14.1 Where upon default by another Borrowing Member that led to a reduction in the Debt Reserve Fund, the First Nation has contributed to replenishment of the Debt Reserve Fund, any repayment to the First Nation under subsection 84(6) of the Act shall be reduced by an amount equal to the repayment monies received by the First Nation from the Authority under section 13.9.

15.0 INDEMNITY

- 15.1 The Authority does not agree to undertake or assume any responsibility or duty to the First Nation to select, review, inspect, supervise, pass judgment upon, or inform the First Nation of any matter in connection with a Capital Infrastructure Project. The First Nation shall rely entirely upon its own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the Authority in connection with such matters is solely for the protection of the Authority and neither the First Nation nor any other Person is entitled to rely thereon.
- 15.2 The Authority shall not be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to such Person or damage to any Person's property caused by the action, inaction or negligence of the First Nation.
- 15.3 The First Nation shall indemnify and save harmless the Authority from and against all claims, demands, actions and costs that arise out of the performance by the First Nation of the Capital Infrastructure Project, any LRA Management Agreement and of this Agreement or by reason of any matter or thing done or omitted to be done by the First Nation or by its employees or agents in connection with their performance in relation to the Capital Infrastructure Project or this Agreement, whether occasioned by negligence or otherwise. Such indemnification shall survive termination of this Agreement.

16.0 ENFORCEMENT OF THIS AGREEMENT

- 16.1 Nothing in this Agreement or any procedures or remedies in this Agreement shall prevent or restrict the Authority from exercising or relying upon any other legal or equitable remedies or procedures available to the Authority in addition to any remedies or procedures in this Agreement, in relation to enforcement of this Agreement or a Promissory Note.

17.0 SHARING OF INFORMATION

- 17.1 The First Nation consents to the sharing of information that it may provide to the Authority, Commission and Board between those institutions as may be required by them to carry out their duties, responsibilities and functions under the Act or as may be required in relation to this Agreement, and further acknowledges and consents to the disclosure of such information to such third parties in the financial industry by the Authority as is reasonably necessary for the Authority to engage in the issuance of securities or the provision of Interim Long Term Financing secured by the First Nation's Property Tax Revenues.

18.0 WAIVER

- 18.1 No provision of this Agreement and no breach by either party of any such provision will be deemed to have been waived unless such waiver is in writing signed by the party that has not committed the breach.
- 18.2 A written waiver by either party of a breach of any provision of this Agreement will not be deemed to be a general waiver of such provision or of any subsequent breach of the same or any other provision of this Agreement.

19.0 APPLICABLE LAW

- 19.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and the parties submit and attorn to the jurisdiction of the courts of the Province of British Columbia.

20.0 TIME OF THE ESSENCE

- 20.1 Time is of the essence of this Agreement and forbearance by the Authority of a strict application of this provision shall not operate as a continuing or subsequent forbearance.

21.0 SURVIVAL OF WARRANTIES AND REPRESENTATIONS

- 21.1 All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to the Authority on the date of each loan by the Authority to the First Nation and shall be conclusively presumed to have been relied on by the Authority regardless of any investigation made or information possessed by the Authority.
- 21.2 The representations and warranties set forth in this Agreement shall be cumulative and in addition to any other representations or warranties which the First Nation shall now or hereafter give, or cause to be given, to the Authority.
- 21.3 Notwithstanding anything to the contrary contained herein, articles 15, 16, 19, 21, 22 and 23 shall survive the termination of this Agreement in accordance with its terms.

22.0 SEVERABILITY

- 22.1 If any article or portion of any article in this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid article or portion thereof shall be severed from the remainder of the Agreement.

23.0 SUCCESSORS AND ASSIGNS

- 23.1 This Agreement shall enure to the benefit of and be binding upon the First Nation and the Authority and their respective successors and permitted assigns.

24.0 NOTICES

- 24.1 Unless otherwise provided in this Agreement, all notices, requests, demands, consents or other communications to be given or made under this Agreement shall be in writing and are deemed to be well and sufficiently given if hand delivered, mailed or sent by facsimile as follows:

To the Authority: First Nations Finance Authority

Address: #202 – 3500 Carrington Road
Westbank, BC V4T 3C1

Telephone Number: 250.768.5253
Fax Number: 250.768.5258

Contact: Steve Berna, Chief Operating Officer

To the First Nation: (insert name)

Address: (insert address)
city, prov, postal code

Telephone Number: (insert phone number)
Fax Number: (insert fax number)

Contact: (FN to insert contact name)

- 24.2 Any notice or other communication so given or made shall be conclusively deemed to have been given and received:

(a) if delivered personally, at the actual time of delivery;

- (b) if sent by ordinary mail, on the date received;
- (c) if mailed by registered mail, on the second business day following the date of mailing, except in the case of the disruption of postal services, then in such event notice shall be delivered personally or by facsimile; or
- (d) if sent by facsimile, on the day of transmission.

24.3 The address or facsimile telephone number for service under section 24.1 may be changed from time to time by the party making such change notifying the other party as provided in sections 24.1 and 24.2.

25.0 IMPLEMENTATION OF THIS AGREEMENT

25.1 The First Nation shall execute such further and other documents and instruments and do such further and other things as may be necessary to implement and carry out the intent and purpose of this Agreement.

26.0 FAX AND COUNTERPARTS

26.1 This Agreement may be executed and delivered by the parties in one or more counterparts, each of which when so executed and delivered will be an original, and those counterparts will together constitute one and the same instrument.

26.2 Delivery of this Agreement by facsimile transmission, e-mail or functionally equivalent electronic transmission constitutes valid and effective delivery.

27.0 AMENDMENT

27.1 This Agreement may not be amended or modified except in writing signed by the parties.

[Remainder of this page intentionally left blank]

EXECUTED this _____ day of _____, 2015.

Accepted on behalf of the INSERT FN NAME:

A quorum of Council consists of _____ () members of Council:

Chief insert name

Councillor insert name

Councillor insert name

Councillor insert name

Councillor insert name

Councillor insert name

Councillor insert name

Councillor insert name

Witness to Signatures:

(insert name)

FIRST NATIONS FINANCE AUTHORITY

Per: _____

Chairperson

Per: _____

President/CEO