



First Nations Tax Commission
Commission de la fiscalité des premières nations

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

Songhees First Nation Borrowing Agreement Law, 2012

Dated at Kamloops, British Columbia this 9th day of February, 2012.

On behalf of the First Nations Tax Commission

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



**SONGHEES FIRST NATION
BORROWING AGREEMENT LAW, 2012**

WHEREAS:

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

B. The Songhees First Nation wishes to become a borrowing member of the FNFA;

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

C. The Songhees 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

D. The Songhees 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 Songhees First Nation duly enacts as follows:

1. This Law may be cited as the *Songhees First Nation Borrowing Agreement Law, 2012*.

2. In this Law:

"Act" means the *First Nations Fiscal and Statistical Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

"Borrowing Agreement" means a borrowing member agreement between the FNFA 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;

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

"First Nation" means the Songhees 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 FNFA on behalf of the First Nation and a quorum of the Council is

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 31st day of January, 2012, at Victoria in the Province of British Columbia.


A quorum of Council consists of four (4) members of Council.


Chief Robert Sam


Councillor Garry Albany


Councillor Nicholas Albany


Councillor Frank George


Councillor Ron Sam


Councillor Karen Tunkara



SCHEDULE "A"

FINANCIAL PERFORMANCE CERTIFICATE ISSUED TO THE SONGHEES FIRST NATION

The First Nations Financial Management Board ("the Board") completed its review of the Songhees First Nation's Financial Performance for compliance with the *Financial Performance Standards* established under section 55 of the *First Nations Fiscal and Statistical Management Act* ("the Act"). 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, 2011, the Songhees First Nation was in compliance with the *Financial Performance Standards*.

The Board has provided the Songhees First Nation with a Report and attached Schedule dated November 23, 2011 as required under section 50(2) of the Act and upon which the Board's opinion and certification is based.

This Certificate has been issued to the Songhees First Nation under section 50(3) of the Act solely for the purpose of enabling the Songhees First Nation to satisfy the requirements of the Act. It should not be used or relied upon by the Songhees First Nation 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 23rd day of November, 2011.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD


Per: Chairperson

SCHEDULE "B"

**BORROWING AGREEMENT
(Property Tax Revenues)**

This Borrowing Agreement, hereinafter referred to as the "Agreement", is made the ___ day of _____, 201_

BETWEEN:

FIRST NATIONS FINANCE AUTHORITY

As represented by its Board of Directors, (the "Authority")

AND

FIRST NATION

As represented by its Chief and Council, (the "First Nation")

WHEREAS:

First nations have lacked the institutional framework by which to gain access to private capital at affordable rates, for public infrastructure purposes;

The Act creates a mechanism of long term financing of capital infrastructure for first nations in order to promote economic development;

Section 58 of the Act creates the Authority as a non-profit corporation without share capital, having as one of its purposes 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;

Section 75 of the Act gives the FNFA Board powers in relation to the issuance of debt securities;

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 debt securities of the Authority to raise a specified amount in the manner determined by the FNFA Board;

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 debt securities by the Authority;

The Act sets out a procedure for first nations to become Borrowing Members of the Authority;

The Act also sets out the requirements for Borrowing Members to enact Borrowing Laws and to obtain the necessary certifications and approvals of the Commission and the Board as part of the borrowing process;

The First Nation is a Borrowing Member of the Authority;

The First Nation, as part of the process of obtaining financing from the Authority, will enact one or more Borrowing Laws;

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 from time to time in relation to a Capital Infrastructure Project using the First Nation's property tax revenues; and

It is intended that the source of funds to pay interest on and repay principal of financing provided by the Authority to the First Nation pursuant to this Agreement will be from revenues derived from property taxation laws made by the First Nation under section 5(1)(a) of the Act.

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 and Statistical 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 Borrowing Agreement Law # { } enacted by the First Nation under and in accordance with section 5(1)(d) of the Act that came into force on the __ day of __ 20__;

"Borrowing Law" means a law enacted by the First Nation under section 5(1)(d) of the Act to secure through the Authority long term financing 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, signed by the duly authorized senior financial officer of the First Nation, 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;

“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;

“Chief” means [●] or his or her duly elected successor to the office of Chief of the First Nation;

“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 First Nation Financial Administration Law # { } enacted by the First Nation under and in accordance with section 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 section 50(3) of the Act 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 section 50(3) of the Act that the First Nation’s financial performance is in compliance with the Board’s standards;

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

“First Nation” means the [●] First Nation;

“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 (i) five years from the date on which the

first advance of such Interim Long Term Financing is provided to the First Nation, or (ii) Completion of the Capital Infrastructure Project;

“Local Revenue Account” means the account established by the First Nation pursuant to section 13(1) of the Act into which the First Nation is required to place its Local Revenues;

“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, Security Issuing Council Resolution or 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 other legal entity 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, in substantially the form attached to this Agreement as Schedule A; and

“Security Issuing Council Resolution” means a Council resolution in substantially the form attached to 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 number 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, sections, subsections and clauses 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 hereunder 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 any borrowing by the First Nation using property tax revenues under a Borrowing Law.

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 the Borrowing Law, a Security Issuing Council Resolution 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 clause 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, the First Nation agrees to comply with the terms and conditions of this Agreement.

4.2 Without limiting the generality of clause 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 clause 6.1, and acknowledges that the Authority is relying on such representations and warranties without independent inquiry in entering into this Agreement:

- (a) the First Nation's 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 Board's report given under section 50(2) of the Act in relation to that certificate;

- (c) the First Nation has obtained 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 hereunder are all within the First Nation's powers, and have been duly authorized under the Borrowing Agreement Law;
- (e) all information furnished 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 information hereafter furnished 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 subparagraphs (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 the Commission;
- (b) if on becoming a Borrowing Member the First Nation did not have a Financial Management System Certificate, provide the Authority with a copy of such 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 the Commission or passing a Security Issuing Council Resolution;
- (d) comply with its Financial Administration Law and local revenue laws;
- (e) 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;
- (f) 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;
- (g) 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 or a Promissory Note;

- (h) 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;
- (i) 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) the 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;
- (j) 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;
- (k) 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 sections 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;

- (l) 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) a Promissory Note; and (vi) 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; and
- (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:
 - (i) five years after the date on which the first advance of such Interim Long Term Financing is provided to the First Nation, or
 - (ii) Completion of the Capital Infrastructure Project, either:
 - (A) 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
 - (B) prepay all unpaid principal of and accrued and unpaid interest on such Interim Long Term Financing in full in accordance with clauses 12.11 and 12.12 of this Agreement.

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 shall pass a Security Issuing Council Resolution approving the borrowing of the specified amount and either: (i) requesting the Authority to include that amount as part of its next issue of debt securities, or (ii) requesting the Authority to provide the specified amount by way of Interim Long Term Financing to the First Nation. The Security Issuing Council Resolution shall also specify the date by which the First Nation wishes to receive the amount of financing specified in the Security Issuing Council Resolution.

8.2 The First Nation shall promptly send a certified copy of the Security Issuing Council Resolution to the Authority, and, for their information, to the Commission and the Board. If the Security Issuing Council Resolution requests the Authority to include the specified amount in the Authority's next issue of debt securities, the certified copy of the Security Issuing Council Resolution must be delivered to the Authority, the Commission and the Board 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.

8.3 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, the Act, 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 from time to time a Capital Infrastructure Project 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 clause 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 at the relevant 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 at the relevant time, 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 section 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 section 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 clauses 9.1, 10.1 and 10.2 of this Agreement, any decision of the Authority to provide financing to the First Nation under those clauses 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 a First Nation Security Issuing Council Resolution;
 - (d) receipt by the Authority of a current Borrowing Room Calculation Certificate;
 - (e) receipt by the Authority of the First Nation's most recent audited consolidated annual financial statements;
 - (f) receipt by the Authority of supporting documentation relating to the establishment of the Local Revenue Account by the First Nation;

- (g) receipt by the Authority of executed copies of the documents and agreements required by the Authority pursuant to clause 7.1(j) of this Agreement;
 - (h) receipt by the Authority of a Financial Performance Certificate issued to the First Nation and a copy of the Board's report prepared in respect of that certificate under section 50(2) of the Act; and
 - (i) receipt by the Authority of such other financial information of the First Nation as the Authority may reasonably require.
- 11.2 In addition to the requirements under clause 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 section 50(2) of the Act, if the First Nation did not have a Financial Management System Certificate when it became a Borrowing Member.

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 shall be executed on behalf of the First Nation by the Person named in a 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 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 shall be determined by the Authority.
- 12.4 The obligations under a Promissory Note shall bear interest from the date specified therein, which date shall be determined by the Authority, at rates to be determined by the Authority.
- 12.5 The obligations incurred 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.
- 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 expenditure law enacted by the First Nation under section 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 debt 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 the Council shall make due provision to discharge such liability.
- 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 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 a Borrowing Law. Any refinancing described in this clause shall take place at the Authority's calculated interest rate in issuing debt 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 will 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.

13.0 DEFAULT BY THE FIRST NATION

13.1 The occurrence of any one or more of the following events or conditions will be 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) 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; or
- (i) in the opinion of the Authority, a Material Adverse Change has occurred.

13.2 If a default under clause 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 or the Act.

- 13.4 If a default under clause 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 clause 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 a 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 clause 13.6.
- 13.8 Upon receipt of the notice from the Authority sent under clause 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 clause 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 clause 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, enforcement of this Agreement and

collection of monies owing, shall be payable by the First Nation to the Authority forthwith.

14.0 REPAYMENT FROM DEBT RESERVE FUND

14.1 Where, upon default of 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 section 84(6) of the Act shall be reduced by an amount equal to the repayment monies previously received by the First Nation from the Authority under clause 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 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 and among 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 debt

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, clauses 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 clause or portion of any clause 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 clause 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
#202 – 3500 Carrington Road
Westbank, BC V4T 3C1
Telephone Number: 250.768.5253
Fax Number: 250.768.5258
Contact:

To the First Nation:

Address:
Telephone Number:
Fax Number:
Contact:

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 this clause may be changed from time to time by the party making such change notifying the other party as provided in this clause.

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.

EXECUTED this _____ day of _____, 20__.

Signature of the Council:

Witness to Signatures:

Accepted on behalf of the First Nations Finance Authority:

Witness to Signatures:

SCHEDULE A

PROMISSORY NOTE (the "Promissory Note")

● (the "First Nation"), for value received, hereby acknowledges itself indebted to and promises to pay to the First Nations Finance Authority (the "Authority") of Suite 202 – 3500 Carrington Road, Westbank, British Columbia, V4T 3C1, all sums payable by the First Nation to the Authority under this Promissory Note and the Borrowing Agreement, in lawful money of Canada, in the place and in the manner as the Authority may advise the First Nation in writing. The terms of the Promissory Note are as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Promissory Note, unless there is something in the subject matter or context inconsistent therewith:

"Borrowing Agreement" means the agreement dated _____, 20__, between the First Nation and the Authority;

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

"Principal Amount" has the meaning assigned to it in Section 2.1 of this Promissory Note.

1.2 Number and Gender

Words importing the singular number include the plural and vice versa and words importing gender include the neuter, feminine and masculine genders.

1.3 Headings

The division of this Promissory Note into Articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 Applicable Law

This Promissory Note 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.

1.5 Business Day

In the event that any day on or before which any action is required to be taken hereunder 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.

1.6 Monetary Reference

Any reference in this Promissory Note to "Dollars", "dollars" or "\$" shall be deemed to be a reference to lawful money of Canada.

1.7 Invalidity of Provisions

If any Article or portion of any Article in this Promissory Note 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 Promissory Note and such unenforceable or invalid Article or portion thereof shall be severed from the remainder of the Promissory Note.

1.8 Interpretation of Terms in Promissory Note

Unless the context otherwise requires, words and expressions used in this Promissory Note and not otherwise defined have the same meaning as in the Borrowing Agreement.

ARTICLE 2 PRINCIPAL AND INTEREST

2.1 Promise to Pay

[Use the following clause where the First Nation has requested financing from the Authority's next issue of debt securities.] The First Nation shall pay to the Authority the sum of \$ _____ (the "Principal Amount") together with interest calculated semi-annually in each and every year during the currency of this Promissory Note, at such rates of interest as determined by the Authority from time to time (unless this Promissory Note shall have been previously prepaid in accordance with Section 3.1 hereof) in the manner set out in the table attached to this Promissory Note and commencing on ●, at the place and in the manner as the Authority may advise the First Nation in writing.

[Use the following clause where the First Nation has requested the Authority to provide Interim Long Term Financing to the First Nation.] The First Nation shall pay to the Authority interest on the \$ _____ principal amount of outstanding Interim Long Term Financing advanced by the Authority to the First Nation, calculated for such periods as the Authority may advise the First Nation in writing in each and every year during the currency of this Promissory Note, at such rates of interest as determined by the Authority from time to time (unless this Promissory Note shall have been previously prepaid in accordance with Section 3.1 hereof) in the manner set out in the table attached to this Promissory Note and commencing on ●, at the place and in the manner as the Authority may advise the First Nation in writing.

2.2 Promise to Pay Additional Amounts

In the event the payments of principal and interest hereunder are insufficient to satisfy the obligations of the First Nation to the Authority under the Borrowing Agreement, the First Nation shall pay to the Authority such further amounts as are sufficient to discharge the obligations of the First Nation to the Authority. These further amounts will be calculated by the Authority, communicated in writing to the First Nation and payable by the First Nation at a date specified in writing by the Authority to the First Nation.

2.3 Accelerated Payment

Notwithstanding the foregoing, if a default as described in clause 13.1 of the Borrowing Agreement occurs the Authority may, in its sole and absolute discretion, declare all or any part of the obligations of the First Nation under the Borrowing Agreement and all or any part of the obligations of the First Nation under this Promissory Note immediately due and payable, without any further demand or notice of any kind.

ARTICLE 3 PREPAYMENT

3.1 Prepayment

The First Nation may prepay all or any portion of the Principal Amount at any time, provided it does so in accordance with clauses 12.11 and 12.12 of the Borrowing Agreement, to the extent applicable.

ARTICLE 4 SATISFACTION AND DISCHARGE

4.1 Release from Covenants

Upon the payment in full of all amounts payable under this Promissory Note, including all interest then accrued and payable, the Authority shall deliver to the First Nation all such instruments as may be reasonably requested by the First Nation to evidence the release of the First Nation from its covenants in this Promissory Note.

ARTICLE 5 MISCELLANEOUS

5.1 Notice

Unless otherwise provided in this Promissory Note, all notices, requests, demands, consents or other communications to be given or made under this Promissory Note 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
#202 – 3500 Carrington Road
Westbank, BC V4T 3C1
Telephone Number: 250.768.5253
Fax Number: 250.768.5258
Contact:

To the First Nation:

[NAME]
[Address:]
Telephone Number:
Fax Number:
Contact:

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.

The address or facsimile telephone number for service under this Section may be changed from time to time by the party making such change notifying the other party as provided in this Article.

5.2 Replacement of Promissory Note

If this Promissory Note becomes mutilated or is lost, destroyed or stolen, the First Nation shall execute and deliver to the Authority a new Promissory Note of like tenor as the one mutilated, lost, destroyed or stolen in exchange for and upon surrender and cancellation of such mutilated Promissory Note or in lieu of and in substitution for such lost, destroyed or stolen Promissory Note.

5.3 Assignment

The Authority may assign this Promissory Note without the written consent of the First Nation. The First Nation may not assign its obligations under this Promissory Note without the written consent of the Authority. Any purported assignment by the First Nation without such consent is void.

5.4 Successors and Assigns

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

5.5 Waiver

No provision of this Promissory Note 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.

A written waiver by either party of a breach of any provision of this Promissory Note 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 Promissory Note.

5.6 Interpretation

In the event of a discrepancy between the amounts payable by the First Nation to the Authority calculated with reference to this Promissory Note and the amounts payable by the First Nation to the Authority calculated with reference to the Borrowing Agreement, the amount owing by the First Nation to the Authority shall be the amount calculated with reference to the Borrowing Agreement and this Promissory Note shall be amended by the parties in the manner necessary to implement such intention.

5.7 Amendment

This Promissory Note may not be amended or modified except in writing signed by the First Nation and the Authority.

IN WITNESS WHEREOF the First Nation has caused this Promissory Note to be signed by its authorized signatory as of the ____ day of _____, 20__.

[Name of First Nation]

By: _____
Authorized Signatory

**TERMS ACKNOWLEDGED AND
AGREED:
First Nations Finance Authority**

By: _____
Authorized Signatory

PRINCIPAL AND INTEREST PAYMENTS

<u>Date of Payment</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
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_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
TOTALS	\$ _____	\$ _____	\$ _____

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