

# **SHXWHÁ:Y VILLAGE**

## **FINANCIAL ADMINISTRATION LAW**

## TABLE OF CONTENTS

<b>PART I - Citation</b> .....	<b>4</b>
<b>PART II - Interpretation and Application</b> .....	<b>4</b>
<b>PART III - Administration</b> .....	<b>8</b>
<i>DIVISION 1 - Council</i> .....	<i>8</i>
<i>DIVISION 2 - Finance and Audit Committee</i> .....	<i>9</i>
<i>DIVISION 3 - Managers and Employees</i> .....	<i>14</i>
<i>DIVISION 4 - Conduct Expectations</i> .....	<i>17</i>
<b>PART IV - Financial Management</b> .....	<b>18</b>
<i>DIVISION 1 - Financial Plans and Annual Budgets</i> .....	<i>18</i>
<i>DIVISION 2 - Financial Institution Accounts</i> .....	<i>21</i>
<i>DIVISION 3 - Expenditures</i> .....	<i>21</i>
<i>DIVISION 4 - General Matters</i> .....	<i>24</i>
<i>DIVISION 5 - Borrowing</i> .....	<i>25</i>
<i>DIVISION 6 - Risk Management</i> .....	<i>27</i>
<i>DIVISION 7 - Financial Reporting</i> .....	<i>31</i>
<i>DIVISION 8 - Information and Information Technology</i> .....	<i>35</i>
<b>PART V - Capital Projects</b> .....	<b>36</b>
<b>PART VI - Borrowing Member Requirements</b> .....	<b>40</b>
<b>PART VII - Land Management</b> .....	<b>40</b>
<b>PART VIII - Oil and Gas and Moneys Management</b> .....	<b>41</b>
<b>PART IX - Miscellaneous</b> .....	<b>41</b>
<b>SCHEDULE – Avoiding And Mitigating Conflicts Of Interest</b> .....	<b>45</b>
<b>PART I - Interpretation</b> .....	<b>45</b>
<b>PART II - Councillors and Committee Members</b> .....	<b>46</b>
<b>PART III - Managers and Employees</b> .....	<b>49</b>

**PART IV - Contractors .....50**

WHEREAS:

A. Pursuant to section 9 of the *First Nations Fiscal and Statistical Management Act*, the council of a first nation may make laws respecting the financial administration of the first nation; and

B. The Council of Shxwhá:y Village considers it to be in the best interests of the First Nation to make a law for such purposes;

NOW THEREFORE the Council of Shxwhá:y Village enacts as follows:

## **PART I - Citation**

### **Citation**

1. This Law may be cited as the *Shxwhá:y Financial Administration Law, 2012*.

## **PART II - Interpretation and Application**

### **Definitions**

- 2.(1) Unless the context indicates the contrary, in this Law:

"Act" means the First Nations Fiscal and Statistical Management Act;

"annual financial statements" means the annual financial statements of the First Nation referred to in Division 7 of Part IV;

"appropriation" means an allocation of money under a budget to the purposes for which it may be used;

"auditor" means the auditor of the First Nation appointed under section 73;

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

"Board standards" means the standards established from time to time by the Board under the Act;

"budget" means the annual budget of the First Nation that has been approved by the Council;

"CEO" means the person appointed or confirmed as the Chief Executive Officer under section 18;

"code" means a code adopted by the First Nation under the *First Nations Oil and Gas and Moneys Management Act* or a land code adopted by the First Nation under the *First Nations Land Management Act*;

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

"Commission standards" means the standards established from time to time by the Commission under the Act;

"COO" means the Chief Operating Officer appointed by Council;

"Council" means the Council of the First Nation;

“Council chair” means the person appointed or elected to act as the chair of the Council;

“Council vice-chair” means the person appointed or elected to act as the vice-chair of the Council;

“councillor” means a member of the Council of the First Nation;

“dependent” means, in relation to an individual,

(a) the individual’s spouse,

(b) a person under the age of majority in respect of whom the individual or the individual’s spouse is a parent or acting in a parental capacity,

(c) a person in respect of whom the individual or the individual’s spouse is acting as guardian, or

(d) a person, other than an employee, who is financially dependent upon the individual or the individual’s spouse;

“Finance and Audit Committee” means the Finance and Audit Committee established under section 12; “financial administration” means the management, supervision, control and direction of all matters relating to the financial affairs of the First Nation;

“finance director” means the person appointed finance director under section 19;

“financial institution” means the First Nations Finance Authority, a bank, credit union or caisse populaire;

“financial competency” means the ability to read and understand financial statements that present accounting issues reasonably expected to be raised by the First Nation’s financial statements;

“financial records” means all records respecting the financial administration of the First Nation, including the minutes of meetings of the Council and the Finance and Audit Committee;

“First Nation” means Shxwhá:y Village, formerly known as the Skway Indian Band, ;

“First Nation’s financial assets” means all money and other financial assets of the First Nation;

“First Nation’s lands” means all reserves of the First Nation within the meaning of the *Indian Act*;

“First Nation law” means any law, including any by-law or code, of the First Nation made by the Council or the membership of the First Nation;

“First Nation’s records” means all records of the First Nation respecting its governance, management, operations and financial administration;

“fiscal year” means the fiscal year of the First Nation set out in section 24;

“GAAP” means generally accepted accounting principles of the Canadian Institute of Chartered Accountants, as revised or replaced from time to time;

“land code” means the Shxwhá:y Village Land Code passed under the *First Nations Land Management Act*;

“Law” means this *Financial Administration Law*;

“local revenue account” means the local revenue account referred to in section 13 of the Act;

“local revenue law” means a local revenue law made by the First Nation under the Act;

“local revenues” means money raised under a local revenue law;

“manager” means the CEO, the Chief Operating Officer (COO), the finance director, the tax administrator and any other employee of the First Nation designated by the Council as a manager;

“multi-year financial plan” means the plan referred to in section 25;

“record” means anything on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

“related body” means

(a) any agency of the First Nation,

(b) any corporation in which the First Nation has a material interest or that is controlled by the First Nation,

(c) any partnership in which the First Nation or another related body of the First Nation is a partner, or

(d) a trust of the First Nation;

“special purpose report” means a report described in subsection 71(4);

“spouse” means, in relation to an individual, a person to whom the individual is married or with whom the individual has lived as a common law partner for at least one (1) year in a marriage-like relationship;

“standards” means the standards established from time to time under the Act; and

“tax administrator” means the tax administrator appointed under the First Nation’s local revenue laws.

(2) Except as otherwise provided in this Law, words and expressions used in this Law have the same meanings as in the Act.

(3) Unless a word or expression is defined under subsection (1) or (2) or another provision of this Law, the definitions in the *Interpretation Act* apply.

(4) All references to named enactments in this Law are to enactments of the Government of Canada.

### **Interpretation**

3.(1) In this Law, the following rules of interpretation apply:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) words importing female persons include male persons and corporations and words importing male persons include female persons and corporations;
- (c) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;
- (d) the expression “must” is to be construed as imperative, and the expression “may” is to be construed as permissive;
- (e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”; and
- (f) a reference to an enactment includes any amendment or replacement of it and every regulation made under it.

(2) This Law must be considered as always speaking and where a matter or thing is expressed in the present tense, it must be applied to the circumstances as they arise, so that effect may be given to this Law according to its true spirit, intent and meaning.

(3) Words in this Law referring to a manager, by name of office or otherwise, also apply to any person designated by the Council to act in the manager’s place or to any person assigned or delegated to act in the manager’s place under this Law.

#### **Posting of Public Notice**

4.(1) If a public notice must be posted under this Law, the public notice is properly posted if a written notice is placed in a conspicuous and accessible place for public viewing in the principal administrative offices of the First Nation.

(2) Unless expressly provided otherwise, if a public notice of a meeting must be posted under this Law the notice must be posted at least thirty (30) days before the date of the meeting.

#### **Calculation of Time**

5. In this Law, time must be calculated in accordance with the following rules:

- (a) where the time limited for taking an action ends or falls on a holiday, the action may be taken on the next day that is not a holiday;
- (b) where there is a reference to a number of days, not expressed as “clear days”, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included;
- (c) where a time is expressed to begin or end at, on or within a specified day, or to continue to or until a specified day, the time includes that day;
- (d) where a time is expressed to begin after or to be from a specified day, the time does not include that day; and

(e) where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

#### **Conflict of Laws**

6.(1) If there is a conflict between this Law and another First Nation law, other than a code or a local revenue law, this Law prevails.

(2) If there is a conflict between this Law and the Act, the Act prevails.

(3) If there is a conflict between this Law and a local revenue law, the local revenue law prevails.

#### **Scope and Application**

7. This Law applies to the financial administration of the First Nation.

### **PART III - Administration**

#### ***DIVISION 1 - Council***

##### **Responsibilities of Council**

8.(1) The Council is responsible for all matters relating to the financial administration of the First Nation whether or not they have been assigned or delegated to a manager, employee, committee, contractor or agent by or under this Law.

(2) Subject to paragraph 5(1)(f) of the Act, this Law and any other applicable First Nation law, the Council may delegate to any of its managers, employees, committees, contractors or agents any of its functions under this Law except the following:

- (a) the approval of Council policies, procedures or directions;
- (b) the appointment of members, Chair and Vice-Chair of the Finance and Audit Committee;
- (c) the approval of budgets and financial statements of the First Nation; and
- (d) the approval of borrowing of the First Nation.

##### **Council Policies, Procedures and Directions**

9.(1) Subject to subsection (2), Council may establish policies and procedures and give directions respecting any matter relating to the financial administration of the First Nation.

(2) Council must establish policies or procedures or give directions respecting the acquisition, management and safeguarding of First Nation assets.

(3) Council must not establish any policies or procedures or give any directions relating to the financial administration of the First Nation that are in conflict with this Law, the Act or GAAP.

(4) Council must ensure that all human resources policies and procedures are designed and implemented to facilitate effective internal financial administration controls.



(5) Council must document all its policies, procedures and directions and make them available to any person who is required to act in accordance with them or who may be directly affected by them.

#### **Reporting of Remuneration, Expenses and Contracts**

10.(1) Annually the finance director must prepare a report separately listing the following:

(a) the total amount of remuneration, expenses and benefits, including coverage under policies for insurance or medical, dental or related services, paid or provided by the First Nation to a councillor and to each of the dependents of the councillor;

(b) any contracts between the First Nation and a councillor and between the First Nation and a dependent of the councillor for the supply of goods or services, including a general description of the nature of the contracts;

(c) the total amount of remuneration, expenses and benefits, including coverage under policies for insurance or medical, dental or related services, paid or provided by the First Nation to the CEO and to each of the dependents of the CEO; and

(d) any contracts between the First Nation and the CEO and between the First Nation and a dependent of the CEO for the supply of goods or services, including a general description of the nature of the contracts.

(2) Subsection (1) does not require the reporting of remuneration, expenses or benefits received

(a) in common by all members of the First Nation;

(b) under a program or service universally accessible to all members of the First Nation on published terms and conditions; or

(c) from a trust arrangement according to the terms of the trust.

### ***DIVISION 2 - Finance and Audit Committee***

#### **Interpretation**

11. In this Division, "Committee" means the Finance and Audit Committee.

#### **Committee Established**

12.(1) The Finance and Audit Committee of the First Nation is established to provide Council with advice and recommendations in order to support Council's decision-making process respecting the financial administration of the First Nation.

(2) Council must appoint not less than three (3) members of the Committee, a majority of whom must have financial competency and, subject to subsection (4), all of whom must have independence.

(3) Council must establish policies or procedures or give directions

(a) specifying that an individual has independence if the individual does not have a direct or indirect relationship with the First Nation government that could, in the opinion of Council, reasonably interfere with the individual's exercise of independent judgment as a member of the Committee;

- (b) specifying that the independence of each member of the Committee be tracked, including the annual documented confirmation by each member of their independence;
- (c) ensuring that all members of the Committee have independence including specifying that the following individuals do not have independence:
  - (i) an individual who is an employee of the First Nation,
  - (ii) an individual whose immediate family member is an officer of the First Nation, and
  - (iii) an individual who has a direct or indirect relationship with the First Nation by which the individual may accept any consulting, advisory, or other compensatory fee paid by the First Nation to the individual (other than remuneration paid for acting in his or her capacity as a councillor or as a member of any committee or as fixed retirement compensation), to a dependent of the individual or to an entity in which the individual is a partner, owner, member or officer and which provides accounting, consulting, legal or any financial services to the First Nation or to a related body of the First Nation.
- (4) The Council may establish a policy that permits the Council to exempt an individual from the application of the policy referred to in paragraph (3)(c) but only under the following circumstances:
  - (a) an exemption may be given on one occasion only for a particular individual and the term of appointment of the individual must not be more than three consecutive years; and
  - (b) the Council, in temporary and exceptional circumstances, determines in its reasonable opinion that
    - (i) the individual is able to exercise the independent judgment necessary for the individual to fulfill his or her responsibilities as a member of the Committee regardless of the individual's relationship with the First Nation, and
    - (ii) the appointment of the individual to the Committee is considered to be in the best interests of the First Nation and its members.
- (5) At least two (2) of the Committee members must be councillors.
- (6) Subject to subsection (8), the Committee members must be appointed to hold office for staggered terms of not less than three (3) complete fiscal years.
- (7) Each Committee member must
  - (a) provide a criminal record check, the results of which are satisfactory to Council; and
  - (b) sign a code of conduct and agree to abide by it.
- (8) A Committee member may be removed from office by a Council resolution if
  - (a) the member misses three (3) consecutively scheduled meetings of the Committee without having given advance notice to the Chair; or

(b) the chair of the Committee recommends removal.

(9) The Committee must appoint, designate or contract a person to act as Secretary and Coordinator/Recorder to the Committee and to take minutes and any non-Committee member in this role must sign a confidentiality agreement.

#### **Chair and Vice-chair**

13. (1) Council must appoint a chair and a vice- chair of the Committee, one of whom must be a councillor.

(2) If Council appoints a non-councillor as chair of the Committee,

(a) Council must send to the chair notices and agendas of all council meetings,

(b) on request of the chair, Council must provide the chair with any materials or information provided to council respecting matters before it, and

(c) the chair may attend and speak at Council meetings.

#### **Committee Procedures**

14.(1) The quorum of the Committee is fifty percent (50%) of the total number of Committee members, including at least one (1) councillor.

(2) Except where a Committee member is not permitted to participate in a decision because of a conflict of interest, every Committee member may take part in all discussions and recommendations and has one (1) vote in all Committee decisions.

(3) In the event of a tie vote in the Committee, the chair of the Committee may cast a second tiebreaking vote.

(4) Subject to subsection (5), the CEO and the finance director must be notified of all Committee meetings and, subject to reasonable exceptions, must attend those meetings.

(5) The CEO or the finance director may be excluded from all or any part of a Committee meeting by a recorded vote if:

(a) the subject matter relates to a confidential personnel or performance issue respecting the CEO or the finance director; or

(b) it is a meeting with the auditor.

(6) The Committee must meet

(a) at least once every three (3) months in each fiscal year as necessary to conduct the business of the Committee; and

(b) as soon as practical after it receives the audited annual financial statements and report from the auditor.

(7) The Committee must provide minutes of its meetings to the Council and report to the Council on the substance of each Committee meeting as soon as practicable after each meeting.

(8) Subject to this Law and any directions given by the Council, the Committee may make rules for the conduct of its meetings.

(9) After consultation with the CEO, the Committee may retain a consultant to assist in the performance of any of its responsibilities.

#### **Financial Planning Responsibilities**

**15.(1)** The Committee must carry out the following activities in respect of the financial administration of the First Nation:

(a) annually review or develop, and recommend to the Council for approval, short, medium and long-term

(i) strategic plans, projections and priorities,

(ii) operational plans, projections and priorities,

(iii) business plans, projections and priorities, and

(iv) financial plans, projections and priorities;

(b) review draft annual budgets and recommend them to the Council for approval;

(c) on an ongoing basis, monitor the financial performance of the First Nation against the budget and report any significant variations to the Council; and

(d) review the quarterly financial statements and recommend them to the Council for approval.

(2) The Committee may make a report or recommendations to Council on any matter respecting the financial administration of the First Nation that is not otherwise specified to be its responsibility under this Law.

#### **Audit and Risk Management Responsibilities**

**16.** The Committee must carry out the following audit activities in respect of the financial administration of the First Nation:

(a) make recommendations to the Council on the selection, engagement and performance of an auditor;

(b) receive assurances on the independence of a proposed or appointed auditor;

(c) review and make recommendations to the Council on the planning, conduct and results of audit activities;

(d) review and make recommendations to the Council on the audited annual financial statements, including the audited local revenue account financial statements and any special purpose reports;

- (e) periodically review and make recommendations to the Council on policies, procedures and directions on reimbursable expenses and prerequisites of the councillors, managers and employees of the First Nation;
- (f) monitor financial reporting risks and fraud risks and the effectiveness of mitigating controls for those risks taking into consideration the cost of implementing those controls;
- (g) conduct a review of this Law under section 104 and, where appropriate, recommend amendments to the Council; and
- (h) periodically review and make recommendations to the Council on the terms of reference of the Committee.

#### **Council Assigned Responsibilities**

17. The Council may assign to the Committee or another committee of the Council the following activities in respect of the financial administration of the First Nation:

- (a) to develop, and recommend to the Council for approval, performance measurements and goals designed to confirm that management activities, including financial management, occur as planned;
- (b) to prepare, and recommend to the Council for approval, cash management plans;
- (c) to review and report to the Council on the financial content of any First Nation reports;
- (d) to review, monitor and report to the Council on the appropriateness of the First Nation's accounting and financial reporting systems, policies and practices;
- (e) to review, and recommend to the Council for approval, any proposed significant changes in the First Nation's accounting or financial reporting systems, policies, procedures or directions;
- (f) to monitor the collection and receipt of the First Nation's financial assets, including debts owed to the First Nation;
- (g) to review and report to the Council on the First Nation's risk management policies and control and information systems and, where appropriate, recommend improvements to the Council;
- (h) to review the adequacy of security of information, information systems and recovery plans and, where appropriate, recommend improvements to the Council;
- (i) to monitor compliance with the legal obligations of the First Nation, including legislative, regulatory and contractual obligations, and report to the Council;
- (j) to review and report to the Council on the adequacy of financial administration personnel and resources;
- (k) to review, monitor and report to the Council on the adequacy and appropriateness of the First Nation's insurance coverage respecting significant First Nation risks; and
- (l) to review, monitor and report to the Council on material litigation and its impact on financial administration and reporting.

### ***DIVISION 3 - Managers and Employees***

#### **CEO**

18.(1) Council must appoint, and ensure that the First Nation continues to have, a person as Chief Executive Officer (the “CEO”) of the First Nation and may set the terms and conditions of that appointment.

(2) Reporting to Council, the CEO is responsible for leading the planning, organization, implementation and evaluation of the overall management of all the day-to-day operations of the First Nation, including the following duties:

(a) to develop and recommend to Council for approval, human resources policies and procedures for the hiring, management and dismissal of managers and employees of the First Nation;

(b) to prepare and recommend to Council for approval, descriptions of the powers, duties and functions of all employees of the First Nation;

(c) if directed by Council or Shxwhá:y policies established by Council, to hire the employees of the First Nation, as the CEO considers necessary, and to set the terms and conditions of their employment;

(d) to oversee, supervise and direct the activities of all managers and employees of the First Nation;

(e) to oversee and administer the contracts of the First Nation;

(f) to prepare, recommend to Council and maintain and revise as necessary the organization chart referred to in section 21;

(g) to identify, assess, monitor and report on financial reporting risks and fraud risks;

(h) to monitor and report on the effectiveness of mitigating controls for the risks referred to in paragraph (g) taking into consideration the cost of implementing those controls;

(i) to perform any other duties of the CEO under this Law; and

(j) to carry out any other activities specified by the Council that are not contrary to the Act or inconsistent with the CEO’s duties specified in this Law.

(3) The CEO may assign the performance of any of the CEO’s duties or functions

(a) to a manager or employee of the First Nation; and

(b) with the written approval of the Council, to a contractor or agent of the First Nation.

(4) Any assignment of duties or functions under subsection (3) does not relieve the CEO of the responsibility to ensure that these duties or functions are carried out properly.

## **Finance Director**

**19.(1)** Council must either appoint a person as finance director of the First Nation or designate the CEO to carry out the role of the finance director on an interim basis, and may set the terms and conditions of that appointment.

(2) Reporting to the CEO, the finance director is responsible for the day-to-day management of the systems of the financial administration of the First Nation, including the following duties:

- (a) to ensure the financial administration systems, policies, procedures, directions and internal controls are appropriately designed and operating effectively;
- (b) to administer and maintain the accounts of the First Nation, including the local revenue account;
- (c) to prepare the draft annual budgets and any draft amendments to the component of the annual budget respecting the First Nation's local revenue account;
- (d) to prepare the monthly financial information required in section 69, the quarterly financial statements required in section 70 and the draft annual financial statements required in section 71;
- (e) to prepare the financial components of reports to Council and of any short, medium and long-term plans, projections and priorities referred to in subsection 15(1);
- (f) to actively monitor compliance with any agreements and funding arrangements entered into by the First Nation;
- (g) to administer and supervise the preparation and maintenance of financial records and the financial administration reporting systems;
- (h) to administer and supervise the maintenance of the records of all receipts and expenditures of the First Nation to facilitate the annual audit;
- (i) to actively monitor compliance with the Act, this Law, any other applicable First Nation law, applicable standards and any policies, procedures and directions of the Council respecting the financial administration of the First Nation, other than those matters that are the responsibility of the tax administrator under this Law, another First Nation law or the Act;
- (j) to prepare or provide any documentation and financial information required by the Council or the Finance and Audit Committee to discharge its responsibilities;
- (k) to evaluate the financial administration systems of the First Nation and recommend improvements;
- (l) to develop and recommend procedures for the safeguarding of assets and to ensure approved procedures are followed;
- (m) to develop and recommend procedures for identifying and mitigating financial reporting and fraud risks and to ensure approved procedures are followed;
- (n) to perform any other duties of the finance director under this Law; and

(o) to carry out any other activities specified by the CEO that are not contrary to the Act and not inconsistent with the finance director's duties under this Law.

(3) With the written approval of the CEO, the finance director may assign the performance of any of the duties or functions of the finance director to any manager, employee, contractor or agent of the First Nation, but this assignment does not relieve the finance director of the responsibility to ensure that these duties or functions are carried out properly.

#### **Tax Administrator**

20.(1) The tax administrator reports to the CEO in respect of the performance of any of the tax administrator's duties or functions under this Law.

(2) With the written approval of the CEO, the tax administrator may assign the performance of any of the duties or functions of the tax administrator under this Law to any manager, employee, contractor or agent of the First Nation, but this assignment does not relieve the tax administrator of the responsibility to ensure that these duties or functions are carried out properly.

#### **Organizational Structure**

21.(1) The Council, with the assistance of the CEO, must establish and maintain a current organization chart for the governance, management and administrative systems of the First Nation.

(2) The organization chart under subsection (1) must include the following information:

(a) all governance, management and administrative systems of the First Nation;

(b) the organization of the systems described in paragraph (a), including the linkages between them;

(c) the specific roles and responsibilities of each level of the organization of the systems described in paragraph (a); and

(d) all governance, management and administrative positions at each level of the organization of the systems described in paragraph (a), including

(i) the membership on the Council, Finance and Audit Committee and all other committees of the Council and the First Nation,

(ii) the CEO, the COO, the finance director, the tax administrator and other managers of the First Nation, and

(iii) the principal lines of authority and the responsibility between the Council, the committees referred to in subparagraph (i) and the managers referred to in subparagraph (ii).

(3) On request, the CEO must provide a copy of the organization chart under subsection (1) to a councillor, a member of a committee referred to in subparagraph (2)(d)(i), a manager, employee or contractor or agent of the First Nation and a member of the First Nation.

(4) In the course of discharging his or her responsibilities under this Law, the CEO must recommend to Council for approval and implementation human resource policies and procedures that facilitate effective internal financial administration controls.



(5) Council must take all reasonable steps to ensure that the First Nation hires or retains qualified and competent personnel to carry out the financial administration activities of the First Nation.

#### ***DIVISION 4 - Conduct Expectations***

##### **Conduct of Councillors**

**22.(1)** When exercising a power, duty or responsibility relating to the financial administration of the First Nation, including when participating as a member of the Finance and Audit Committee, a councillor must

- (a) comply with this Law, the Act, any other applicable First Nation law and any applicable standards;
- (b) act honestly, in good faith and in the best interests of the First Nation;
- (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances; and
- (d) avoid conflicts of interest and comply with the requirements of the Schedule: Avoiding and Mitigating Conflicts of Interest, including required disclosures of private interests.

(2) If it has been determined under this Law or by a court of competent jurisdiction that a councillor has contravened this section, the Council must post a public notice of the details of the determination for a period of not less than thirty-one (31) days as soon as practicable after the contravention was determined.

##### **Conduct of Managers, Employees, Contractors, etc.**

**23.(1)** This section applies to

- (a) a manager, employee, contractor and agent of the First Nation;
- (b) a person acting under the delegated authority of the Council or the First Nation; or
- (c) a member of a committee of the Council or the First Nation who is not a councillor.

(2) If a person is exercising a power, duty or responsibility relating to the financial administration of the First Nation, that person must

- (a) comply with this Law, the Act, any other applicable First Nation law and any applicable standards;
- (b) comply with all policies, procedures and directions of the Council; and
- (c) avoid conflicts of interest and comply with any applicable requirements of the Schedule: Avoiding and Mitigating Conflicts of Interest, including required disclosure of potential conflicts of interest.

(3) Council must incorporate the relevant provision of this section into

- (a) the terms of employment or appointment of every manager or employee of the First Nation;

- (b) the terms of every contract of a contractor of the First Nation;
  - (c) the terms of appointment of every member of a committee who is not a councillor; and
  - (d) the terms of appointment of every agent of the First Nation.
- (4) If a person contravenes subsection (2), the following actions may be taken:
- (a) a manager or employee may be disciplined, including dismissal;
  - (b) a contractor's contract may be terminated;
  - (c) the appointment of a member of a committee may be revoked; or
  - (d) the appointment of an agent may be revoked.

## **PART IV - Financial Management**

### ***DIVISION 1 - Financial Plans and Annual Budgets***

#### **Fiscal Year**

- 24.** The fiscal year of the First Nation is April 1 to March 31 of the following year.

#### **Multi-year Financial Plan**

- 25.** No later than March 31 of each year, the Council must approve a multi-year financial plan that
- (a) has a planning period of five (5) years comprised of the current fiscal year and the four (4) succeeding fiscal years;
  - (b) is based on the projections of revenues, expenditures and transfers between accounts;
  - (c) in respect of projected revenues, sets out separate amounts for income from taxes, fees and charges, transfers from Canada or a provincial or territorial government, grants and business operations, and proceeds from borrowing;
  - (d) in respect of projected expenditures, sets out separate amounts for payments, including payments of principal and interest on debt, payments required for capital projects as defined in Part V, payments required to address any deficits and payments for all other purposes;
  - (e) in respect of transfers between accounts, sets out the amounts from the tangible capital asset reserve account;
  - (f) shows all categories of restricted cash; and
  - (g) indicates whether in any of the five (5) years of the plan a deficit or surplus is expected from the projection of revenues and expenditures for that year.

## **Content of Annual Budget**

26.(1) The annual budget must encompass all the operations for which the First Nation is responsible and must identify

(a) each anticipated source of revenue and estimate the amount of revenue from each of these sources, including taxes, fees and charges, transfers from Canada or a provincial or territorial government, grants and business operations, and proceeds from borrowing;

(b) each anticipated category of expenditure and estimate the amount of expenditure for each category, including those for payments of principal and interest on debt, payments required for capital projects as defined in Part V, payments required to address any deficits and payments for all other purposes; and

(c) any anticipated annual and accumulated surplus or annual and accumulated deficit and the application of year-end surplus.

(2) The revenue category of moneys derived from the First Nation's lands under the land code must be shown separately in the annual budget from other revenues and must include a sub-category for revenues from natural resources obtained from the First Nation's lands under the land code.

(3) In subsection (2), "natural resources" means any material on or under the First Nation's lands in their natural state which when extracted has economic value.

## **Budget and Planning Process Schedule**

27.(1) On or before January 31 of each year, the finance director must prepare and submit to the Finance and Audit Committee for review a draft annual budget and a draft multi-year financial plan for the next fiscal year.

(2) On or before February 15 of each year, the Finance and Audit Committee must review

(a) the draft annual budget and recommend an annual budget to the Council for approval; and

(b) the draft multi-year financial plan and recommend a multi-year financial plan to the Council.

(3) On or before March 31 of each year, Council must review and approve the annual budget for the First Nation for the next fiscal year.

(4) To accommodate the timing of property tax assessments and setting taxation rates, on or before June 15 of each year, the finance director must prepare and submit to the Finance and Audit Committee for review a draft amendment of the component of the annual budget respecting the First Nation's local revenue account.

(5) On or before June 30 of each year, the Finance and Audit Committee must review the draft amendment of the component of the annual budget respecting the First Nation's local revenue account and recommend an amendment to the annual budget to the Council for approval.

(6) No later than July 15 of each year, the Council must approve the amendment of the component of the annual budget respecting the First Nation's local revenue account.

### **Additional Requirements for Budget Deficits**

- 28.** If a draft annual budget contains a proposed deficit, the Council must ensure that
- (a) the multi-year financial plan of the First Nation demonstrates how and when this deficit will be addressed and how it will be serviced; and
  - (b) the deficit does not have a negative impact on the credit worthiness of the First Nation.

### **Amendments to Annual Budgets**

**29.(1)** The annual budget of the First Nation must not be changed without the written approval of Council.

(2) Subject to subsection 27(6) and section 37, unless there is a substantial change in the forecasted revenues or expenses of the First Nation or in the expenditure priorities of the Council, Council must not approve a change to the annual budget of the First Nation.

### **Local Revenue Account Budget Requirements**

**30.** Despite any other provisions of this Law, any part of a budget relating to the local revenue account must be prepared, approved and amended in accordance with applicable provisions of the Act and of the Commission standards.

### **Policy for First Nation Information or Involvement**

**31.(1)** Council must establish policies or procedures or give directions respecting the means by which members of the First Nation must be informed about or involved in consideration of

- (a) the annual budget, including any component of the annual budget respecting the First Nation's local revenue account;
- (b) the multi-year financial plan; and
- (c) budget deficits or extraordinary expenditures.

(2) Council must post a public notice of each Council meeting when each of the following is presented for approval:

- (a) the multi-year financial plan;
- (b) the annual budget; and
- (c) an amendment to the annual budget.

(3) Members of the First Nation may attend that part of the Council meeting when the matters referred to in subsection (2) are being considered.

## ***DIVISION 2 - Financial Institution Accounts***

### **Financial Institution Accounts**

**32.(1)** No account may be opened for the receipt and deposit of money of the First Nation unless the account

- (a) is in the name of the First Nation;
- (b) is opened in a financial institution;
- (c) is authorized by the CEO or the finance director; and
- (d) has signing authorities authorized in writing by Council.

(2) If the First Nation has funds or revenues in the following categories, the First Nation must establish the following accounts in a financial institution:

- (a) a general account for money from any sources other than those described in paragraphs (b) to (e);
- (b) a local revenue account for money from local revenues;
- (c) a trust account if the First Nation has money held in trust;
- (d) a land and resources account for money from revenues from the First Nation's lands under the land code; and
- (e) a tangible capital asset reserve account for money set aside for purposes of section 85.

(3) The First Nation may establish any other accounts not referred to in subsection (2) as may be necessary and appropriate to manage the First Nation's financial assets.

### **Accounts Management**

**33.(1)** The finance director must ensure the safekeeping of all money received by the First Nation.

(2) The finance director:

- (a) must ensure the deposit all money received by the First Nation as soon as practicable into the appropriate accounts described in section 32; and
- (b) must ensure that payment of money from an account described in section 32 is not authorized unless the payment relates to the subject matter for which the account was established and is otherwise authorized or permitted under this Law.

## ***DIVISION 3 - Expenditures***

### **Prohibited Expenditures**

**34.(1)** Money or financial assets in a trust account must not be used for a purpose other than that permitted under the terms of the trust.

(2) Money in a local revenue account must not be used for any purpose other than that permitted under a local revenue law.

(3) Money in a tangible capital asset reserve account must not be used for any purpose other than that described in Part V.

#### **Prohibited Agreements**

**35.** The First Nation must not enter into an agreement or undertaking that requires the First Nation to expend money that is not authorized by or that contravenes this Law.

#### **No Expenditure Without Appropriation**

**36.(1)** Subject to subsection 37(1), money must not be paid out of any account unless the expenditure is authorized under an appropriation.

(2) Subsection (1) does not apply to expenditures from a trust account where the expenditure is authorized under the terms of the trust.

#### **Emergency Expenditures**

**37.(1)** The CEO may approve an expenditure for an emergency purpose that was not anticipated in the budget if the expenditure is not expressly prohibited by or under this Law or another First Nation law.

(2) Council must establish policies and procedures to authorize expenditures under subsection (1).

(3) The expenditure under subsection (1) must be reported to Council as soon as practicable and Council must amend the budget to include the expenditure.

(4) Subsection (1) does not give the CEO the authority to borrow for the purpose of making an expenditure for an emergency purpose.

#### **Appropriations**

**38.(1)** An amount that is appropriated in a budget must not be expended for any purpose other than that described in the appropriation.

(2) The total amount expended by the First Nation in relation to an appropriation must not exceed the amount specified in the budget for the First Nation for that appropriation.

(3) Every person who is responsible for managing an appropriation must establish and maintain a current record of commitments chargeable to that appropriation.

#### **Payments after Fiscal Year-end**

**39.(1)** Money appropriated in a budget for a fiscal year must not be expended after the end of the fiscal year except to discharge a liability incurred in that fiscal year.

(2) If the liabilities for an appropriation under subsection (1) exceed the unexpended balance of the appropriation at the end of the fiscal year, the excess must be

(a) charged against a suitable appropriation for the following fiscal year; and

(b) reported in the financial statements for the fiscal year in which the liability was incurred.

### **Requisitions for Payment**

40.(1) No money may be paid out of any account without a requisition for payment as required under this section.

(2) No requisition may be made or given for a payment of money unless it is a lawful charge against an appropriation or an authorized use of money in a trust.

(3) No requisition may be made or given for payment of money that results in expenditures from a trust account in excess of the unexpended balance of the trust account.

(4) No requisition may be made or given for payment of money that reduces the balance available in an appropriation or trust account so that it is not sufficient to meet the commitments chargeable against it.

(5) A requisition may apply to one or more expenditures chargeable against one or more appropriations.

(6) A requisition must identify the appropriation or trust account out of which payment is to be made and must include a statement certifying that the expenditure is not prohibited under this section and that it is

(a) in accordance with the appropriation identified in the certified statement; or

(b) allowed without the authority of an appropriation under this Law.

(7) If a requisition is for the payment of performance of work or services or the supply of goods, the requisition must include a statement certifying that

(a) the work or services have been performed or the goods supplied, any conditions in an agreement respecting the work, services or goods have been met and the price charged or amount to be paid is in accordance with an agreement or, if not specified by agreement, is reasonable; or

(b) if payment is to be made before completion of the work or services, delivery of the goods or satisfaction of any conditions in an agreement, the payment is in accordance with the agreement.

(8) The CEO or the finance director must authorize payment out of, or sign a requisition for payment from, a trust account.

(9) The tax administrator must authorize payment out of a local revenue account.

(10) Subject to subsection (9), the CEO or finance director may authorize a payment out of, or sign a requisition for payment from, any appropriation.

(11) Subject to subsections (8) and (9), a person who is responsible for managing an appropriation may authorize payment out of, or sign a requisition for payment from, the appropriation.

### **Form of Payment**

41. Payments by the First Nation may be made by cheque, draft, electronic transfer or other similar instrument signed by any two (2) of the persons referred to in subsections 40(8) to (10).

## ***DIVISION 4 - General Matters***

### **Advances**

42.(1) The CEO or the finance director may approve an advance to prepay expenses that are chargeable against an appropriation in the current fiscal year or an appropriation in the next fiscal year.

(2) The tax administrator may approve an advance to prepay expenses that are chargeable against an appropriation from the local revenue account in the current fiscal year or an appropriation from that account in the next fiscal year.

### **Holdbacks**

43. If the First Nation withholds an amount payable under an agreement, the payment of the amount withheld must be charged to the appropriation from which the agreement must be paid even if the fiscal year for which it was appropriated has ended.

### **Deposit Money**

44.(1) Money received by the First Nation as a deposit to ensure the doing of any act or thing must be held and disposed of in accordance with

- (a) the agreement under which the deposit has been paid; and
- (b) in the absence of any provisions respecting that matter, any policy or directions of Council.

(2) Council must make policies or procedures or give directions in respect of the disposition of deposit money referred to in subsection (1).

### **Interest**

45.(1) All interest earned on the accounts described in subsection 32(2), other than a trust account, local revenue account, or tangible capital asset reserve account must be deposited in the general account referred to in paragraph 32(2)(a).

- (2) All interest earned on
  - (a) a trust account must be retained in that account;
  - (b) the local revenue account must be retained in that account; and
  - (c) the tangible capital asset reserve account must be retained in that account.

(3) Subject to the *Interest Act*, the First Nation may charge interest at a rate set from time to time by the Council on any debts or payments owed to the First Nation that are overdue.

### **Refunds**

46.(1) Money received by the First Nation that is paid or collected in error or for a purpose that is not fulfilled may be refunded in full or in part as circumstances require.



(2) The Council must establish policies and procedures respecting the refund of money under subsection (1).

**Write Off of Debts**

47. All or part of a debt or obligation owed to the First Nation may be written off

- (a) if approved in writing by Council; or
- (b) if done under the authority of a policy or direction of Council.

**Extinguishment of Debts**

48. All or part of a debt or obligation owed to the First Nation may be forgiven only

- (a) if approved by the Council in writing; or
- (b) if done under the authority of a policy or direction of Council.

**Year-end Surplus**

49.(1) Subject to subsections (2) and (3), an operating surplus at the end of the fiscal year must be paid into the general account described in paragraph 32(2).

(2) An operating surplus in the local revenue account at the end of the fiscal year must be retained in that account.

(3) An operating surplus in the tangible capital asset reserve account at the end of the fiscal year must be retained in that account.

***DIVISION 5 - Borrowing***

**Limitations on Borrowing**

50.(1) Except as specifically authorized in this Law or in a local revenue law, the First Nation must not borrow money or grant security.

(2) Subject to this Law, if the First Nation is authorized in this Law to borrow money or grant security, the Council may authorize the finance director to borrow money or grant security in the name of the First Nation

- (a) as specifically approved in writing by Council; or
- (b) in accordance with the policies, procedures or directions made by Council.

**Borrowing for Ordinary Operations**

51.(1) The First Nation may incur trade accounts or other current liabilities payable within normal terms of trade for expenditures provided for in the budget for the fiscal year if the debt will be repaid from money appropriated under an appropriation for the fiscal year or is in respect of an expenditure that may be made without the authority of an appropriation under this Law.

(2) The First Nation may enter into agreements with financial institutions for overdrafts or lines of credit and, for the purpose of securing any overdrafts or lines of credit, may grant security to the financial institution in a form, amount and on terms and conditions that Council approves in writing.

(3) The First Nation may enter into a general security agreement or a lease for the use or acquisition of lands, materials or equipment required for the operation, management or administration of the First Nation.

#### **Financial Agreements**

**52.(1)** The First Nation may enter into the following agreements in the name of the First Nation:

(a) for the purpose of efficient management of the First Nation's financial assets, agreements with financial institutions and related services agreements; and

(b) for the purpose of reducing risks or maximizing benefits in relation to the borrowing, lending or investing of the First Nation's financial assets, agreements with financial institutions respecting currency exchange, spot and future currency, interest rate exchange and future interest rates.

(2) Unless otherwise specified by Council, the finance director may enter into any agreements referred to in subsection (1) on behalf of the First Nation.

#### **Borrowing for Authorized Expenditures**

**53.(1)** If the general account described in paragraph 32(2)(a) is not sufficient to meet the expenditures authorized to be made from it and the finance director recommends that money be borrowed to ensure that the general account is sufficient for these purposes, the First Nation may borrow an amount not exceeding a maximum amount specified by Council and to be repaid within a specified period of time.

(2) Despite the repayment terms specified in subsection (1), if the money borrowed under subsection (1) is no longer required for the purpose for which it was borrowed, the money must be repaid as soon as possible.

#### **Borrowing Member Requirements**

**54.(1)** This section applies if the First Nation is a borrowing member.

(2) The First Nation must not obtain long-term financing secured by property tax revenues from any person other than the First Nations Finance Authority.

(3) The First Nation may only obtain long-term financing referred to in subsection (2) as permitted under its local revenue law and the Act.

(4) Money borrowed under subsection (2) may only be used for the purposes permitted under the Act.

#### **Borrowing for New Capital Projects**

**55.(1)** The Council must establish policies or procedures or give directions respecting the means by which members of the First Nation must be informed about or involved in consideration of borrowing for new capital projects described in subsection 89(2) (new construction of tangible capital assets).

(2) Council must post a public notice of each Council meeting when borrowing for new capital projects described in subsection 89(2) is presented for approval.

(3) Members of the First Nation may attend that part of the Council meeting when the matters referred to in subsection (2) are being considered.

#### **Borrowing for Repayment of Debts**

**56.** Subject to this Law and a local revenue law, the First Nation may borrow money that is required for the repayment or refinancing of any debt of the First Nation, other than a debt in relation to money borrowed under subsection 53(1).

#### **Use of Borrowed Money**

**57.(1)** Subject to this section and any local revenue law, money borrowed by the First Nation for a specific purpose must not be used for any other purpose.

(2) All or some of the money borrowed for a specific purpose by the First Nation and not required to be used immediately for that purpose may be temporarily invested under subsection 63(1) until required for that purpose.

(3) If some of the money borrowed for a specific purpose is no longer required for that purpose, that money must be applied to repay the debt from the borrowing.

#### **Execution of Security Documents**

**58.(1)** Subject to subsection (2), a security granted by the First Nation must be signed by a councillor designated in writing by Council and by the CEO or the finance director.

(2) A security granted by the First Nation in respect of local revenues must be signed by a councillor designated in writing by Council and by the tax administrator.

#### **Operational Controls**

**59.** Council must establish policies or procedures or give directions respecting the establishment and implementation of an effective system of internal controls that ensures the orderly and efficient conduct of the First Nation's operations.

### ***DIVISION 6 - Risk Management***

#### **Limitation on Business Activity**

**60.(1)** Subject to subsections (2) and (3), the First Nation must not

- (a) carry on business as a proprietor;
- (b) acquire an interest in a partnership as a general partner; or
- (c) act as a trustee respecting property used for, or held in the course of, carrying on a business.

(2) The First Nation may carry on a business that

- (a) is ancillary or incidental to the provision of programs or services or other functions of First Nation governance; or
- (b) derives income from the granting of a lease or licence of or is in respect of
  - (i) an interest in, or natural resources on or under, the First Nation's lands or lands owned in fee simple by or in trust for the First Nation, or
  - (ii) any other property of the First Nation.
- (3) The First Nation may carry on business activities for the primary purpose of profit if the Council determines that the business activities
  - (a) do not result in a material liability for the First Nation; or
  - (b) do not otherwise expose the First Nation's financial assets, property or resources to significant risk.
- (4) Council may impose terms and conditions on the conduct of any business activity permitted under this section in order to manage any risks associated with that activity.

**Guarantees and Indemnities**

**61.(1)** The First Nation must not give a guarantee unless Council has considered the report of the finance director under subsection (2).

(2) Before Council authorizes a guarantee under subsection (1), the finance director must prepare a report for Council identifying any risks associated with giving the guarantee and assessing the ability of the First Nation to honour the guarantee should it be required to do so.

- (3) The First Nation must not give an indemnity unless it is
  - (a) authorized under section 103;
  - (b) necessary and incidental to and included in another agreement to which the First Nation is a party; or
  - (c) in relation to a security granted by the First Nation that is authorized under this Law or another First Nation law.
- (4) Subject to a resolution described in section 103, the Council must make policies and directions respecting guarantees and indemnities as follows:
  - (a) specifying circumstances under which an indemnity may be given without Council approval;
  - (b) designating the persons who may give an indemnity on behalf of the First Nation and specifying the maximum amount of any indemnity which may be given by them;
  - (c) specifying any terms or conditions under which a guarantee or indemnity may be given; and
  - (d) specifying the records to be maintained of all guarantees and indemnities given by the First Nation.

### **Authority to Invest**

**62.(1)** Except as specifically authorized in this Law or another First Nation law, the First Nation must not invest the First Nation's financial assets.

(2) If the First Nation is authorized in this Law to invest the First Nation's financial assets, Council may authorize the finance director to invest the First Nation's financial assets

- (a) as specifically approved by Council in writing; or
- (b) in accordance with the policies, procedures or directions made by the Council.

### **Approved Investments**

**63.(1)** Money in an account described in section 32 that is not immediately required for expenditures may be invested by the First Nation in one or more of the following:

- (a) securities issued or guaranteed by Canada, a province or the United States of America;
- (b) fixed deposits, notes, certificates and other short-term paper of, or guaranteed by, a financial institution, including swaps in United States of America currency;
- (c) securities issued by the First Nations Finance Authority or by a local, municipal or regional government in Canada;
- (d) commercial paper issued by a Canadian company that is rated in the highest category by at least two (2) recognized security-rating institutions;
- (e) any class of investments permitted under an Act of a province relating to trustees; or
- (f) any other investments or class of investments prescribed by a regulation under the Act.

(2) Subject to the terms of the trust, money held in trust that is not immediately required for expenditures may be invested by the First Nation as permitted under the terms of the trust or under the laws of the jurisdiction in which the majority of the First Nation's lands are located.

(3) If the First Nation has established an investment account under section 32, the First Nation may invest money in that account in

- (a) a company that is incorporated under the laws of Canada or of a province or territory and in which the First Nation is a shareholder;
- (b) a trust in which the First Nation is a beneficiary;
- (c) a limited partnership in which the First Nation is a partner; or
- (d) a member investment program described in section 64.

(4) Despite any other provision in this section, government transfer funds and local revenue funds may only be invested in investments specified in subsection 82(3) of the Act and in investments in securities issued by the First Nations Finance Authority.

### **Permitted Investments in First Nation Member Activities**

64.(1) The First Nation may only make a loan to a member of the First Nation or to an entity in which a member of the First Nation has an interest if the loan is made from a program of the First Nation that has been approved by Council and that meets the requirements of this section.

(2) Before Council establishes a program under this section, the finance director must prepare a report for Council identifying any risks associated with the program and the costs of administering the program.

(3) A program referred to in subsection (1) must satisfy the following criteria:

(a) the program must be universally available to all members of the First Nation;

(b) the terms and conditions of the program must be published and accessible to all members of the First Nation;

(c) all loans made from the program and all payments received from those loans must be set out in an annual report that includes details about the amounts loaned, the purposes of the loans, the names of those receiving a loan and repayments of principal and interest on the loans; and

(d) all loans must be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

(4) Council must make policies or procedures or give directions for the operation of the program referred to in this section.

### **Administration of Investments and Loans**

65.(1) If the First Nation is authorized to make an investment or loan under this Law, the finance director may do all things necessary or advisable for the purpose of making, continuing, exchanging or disposing of the investment or loan.

(2) If the First Nation is authorized to make a loan under this Law, the Council must establish policies or procedures or give directions respecting the terms and conditions under which loans may be made, including a requirement that all loans be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

### **Risk Assessment and Management**

66.(1) Annually, and more often if necessary, the CEO must identify and assess any significant risks to the First Nation's financial assets, the First Nation's tangible capital assets as defined in Part V and the operations of the First Nation.

(2) Annually, and more often if necessary, the CEO must report to the Finance and Audit Committee on proposed plans to mitigate the risks identified in subsection (1) or, where appropriate, to manage or transfer those risks by agreement with others or by purchasing insurance.

## **Insurance**

67.(1) Council must procure and maintain in force all insurance coverage that is appropriate and commensurate with the risks identified in section 66 and any other risks associated with any assets, property or resources under the care or control of the First Nation.

(2) Council may purchase and maintain insurance for the benefit of a councillor or a manager or their personal representatives against any liability arising from that person being or having been a councillor or a manager.

## ***DIVISION 7 - Financial Reporting***

### **GAAP**

68. All accounting practices of the First Nation must comply with GAAP.

### **Monthly Financial Information**

69.(1) At the end of each month the finance director must prepare financial information respecting the financial affairs of the First Nation in the form and with the content approved by Council on the recommendation of the Finance and Audit Committee.

(2) The finance director must provide the financial information in subsection (1) to Council, the Finance and Audit Committee, and the CEO not more than forty-five (45) days following the end of the month for which the information was prepared.

### **Quarterly Financial Statements**

70.(1) At the end of each quarter of the fiscal year the finance director must prepare financial statements for the First Nation for that quarter in the form and with the content approved by the Council on the recommendation of the Finance and Audit Committee.

(2) The finance director must provide the quarterly financial statements in subsection (1) to Council, the Finance and Audit Committee, and the CEO not more than forty-five (45) days after the end of the quarter of the fiscal year for which they were prepared.

(3) The quarterly financial statements in subsection (1) must be

(a) reviewed by the Finance and Audit Committee; and

(b) reviewed and approved by the Council.

### **Annual Financial Statements**

71.(1) At the end of each fiscal year the finance director must prepare the annual financial statements of the First Nation for that fiscal year in accordance with GAAP and to a standard that is at least comparable to that generally accepted for governments in Canada.

(2) The annual financial statements must be prepared in a form approved by Council on the recommendation of the Finance and Audit Committee.

(3) The annual financial statements must include the following information:

- (a) the financial information of the First Nation for the fiscal year;
- (b) the financial information for the local revenue account that is required to meet the Board standards respecting audit of the local revenue account; and
- (c) the revenue categories for the First Nation's lands referred to in subsection 26(2).
- (4) The annual financial statements must include the following special purpose reports:
  - (a) a report setting out all payments made to honour guarantees and indemnities for that fiscal year;
  - (b) a report setting out the information required in section 10(Reporting of remuneration, expenses and contracts for councilors and dependents);
  - (c) a report setting out all debts or obligations forgiven by the First Nation;
  - (d) a report setting out the information required in paragraph 64(3)(c)(Loans to members under programs);
  - (e) if the First Nation has a land code in force, a report setting out moneys of the First Nation derived from First Nation lands, categorized and shown separately from other revenues and that includes a sub-category respecting revenues from natural resources obtained from First Nation lands; and
  - (f) any other report required under the Act or an agreement.
- (5) The finance director must provide draft annual financial statements to the Finance and Audit Committee for review within forty-five (45) days following the end of the fiscal year for which they were prepared.
- (6) The Finance and Audit Committee must provide any comments on the draft annual financial statements to Council for review within sixty (60) days following the end of the fiscal year for which they were prepared.

**Audit Requirements**

- 72.(1) The annual financial statements of the First Nation must be audited by the auditor.
- (2) The auditor must conduct the audit of the annual financial statements in accordance with generally accepted auditing standards established by the Canadian Institute of Chartered Accountants.
- (3) The auditor must conduct that part of the annual financial statements respecting the local revenue account in accordance with Board standards for the audit of local revenue accounts and must report on that account separately from other accounts.
- (4) When conducting the audit, the auditor must provide
  - (a) an audit opinion of the annual financial statements; and
  - (b) an audit opinion or review comments on the special purpose reports referred to in subsection 71(4).



### **Appointment of Auditor**

73.(1) The First Nation must appoint an auditor for each fiscal year to hold office until the later of

(a) the end of the Council meeting when the audited annual financial statements for that fiscal year are being considered; or

(b) the date the auditor's successor is appointed.

(2) The terms and conditions of the appointment of the auditor must be set out in an engagement letter recommended by the Finance and Audit Committee and approved by Council and must include the auditor's obligation to confirm that the annual financial statements and the audit of them comply with this Law, the Act, and Board standards.

(3) To be eligible for appointment as the auditor of the First Nation, an auditor must

(a) be independent of the First Nation, its related bodies, councillors and managers and members; and

(b) be a public accounting firm or public accountant

(i) in good standing with the Canadian Institute of Chartered Accountants, the Certified General Accountants Association of Canada or the Society of Management Accountants of Canada and their respective counterparts in British Columbia; and

(ii) licensed or otherwise authorized to practice public accounting in British Columbia.

(4) If the auditor ceases to be independent, the auditor must as soon as practicable after becoming aware of the circumstances

(a) advise the First Nation in writing of the circumstances; and

(b) eliminate the circumstances that resulted in loss of independence or resign as the auditor.

### **Auditor's Authority**

74.(1) To conduct an audit of the annual financial statements of the First Nation, the auditor must be given access to

(a) all records of the First Nation for examination or inspection and given copies of these records on request; and

(b) any councillor, manager, employee, contractor or agent of the First Nation to ask any questions or request any information.

(2) On request of the auditor, every person referred to in paragraph (1)(b) must

(a) make available all records referred to in paragraph (1)(a) that are in that person's care or control; and

(b) provide the auditor with full information and explanation about the affairs of the First Nation as necessary for the performance of the auditor's duties.

(3) The auditor must be given notice of

(a) every meeting of the Finance and Audit Committee; and

(b) the Council meeting where the annual audit, including the annual financial statements, will be considered and approved.

(4) Subject to subsection (6), the auditor may attend any meeting for which he or she must be given notice under this section or to which the auditor has been invited and must be given the opportunity to be heard at those meetings on issues that concern the auditor as auditor of the First Nation.

(5) The auditor may communicate with the Finance and Audit Committee, as the auditor considers appropriate, to discuss any subject that the auditor recommends be considered by the Committee.

(6) The auditor may be excluded from all or any part of a meeting of the Finance and Audit Committee or the Council by a recorded vote if the subject matter relates to the retaining or dismissal of the auditor.

#### **Review of Audited Annual Financial Statements**

75.(1) The audited annual financial statements must be provided to the Finance and Audit Committee for its review and consideration not more than one hundred and five (105) days after the fiscal year-end for which the statements were prepared.

(2) The Council must review and approve the audited annual financial statements not more than one hundred and twenty (120) days after the fiscal year-end for which the statements were prepared.

#### **Access to Annual Financial Statements**

76.(1) Before the annual financial statements may be published or distributed, they must

(a) be approved by the Council;

(b) after approval by Council, be signed by

(i) the Chief of the First Nation or the Council chair,

(ii) the chair of the Finance and Audit Committee, and

(iii) the finance director or the CEO; and

(c) include the auditor's audit report of the annual financial statements and the auditor's audit opinion or review comments of the special purpose reports referred to in subsection 71(4).

(2) The audited annual financial statements and special purpose reports must be available for inspection by members of the First Nation at the principal administrative office of the First Nation during normal business hours, however, members are not entitled to copy or remove the reports from the office.

(3) The audit report relating to the local revenue account must be available for inspection by any person referred to in subsection 14(2) of the Act at the principal administrative office of the First Nation during normal business hours, however, people are not entitled to copy or remove the reports from the office.

## **Annual Report**

77.(1) Not later than one hundred and eighty (180) days after the end of each fiscal year, the Council must prepare an annual report on the operations and financial performance of the First Nation for the previous fiscal year.

(2) The annual report referred to in subsection (1) must include the following:

(a) a description of the services and operations of the First Nation;

(b) a progress report on any established financial objectives and performance measures of the First Nation; and

(c) the audited annual financial statements of the First Nation for the previous fiscal year, including special purpose reports.

(3) The annual report referred to in subsection (1) must

(a) be made available to the members of the First Nation at the principal administrative offices of the First Nation; and

(b) be provided to the Board and the First Nations Finance Authority.

## ***DIVISION 8 - Information and Information Technology***

### **Ownership of Records**

78.(1) All records that are produced by or on behalf of the First Nation or kept, used or received by any person on behalf of the First Nation are the property of the First Nation.

(2) The Council must establish policies or procedures or give directions to ensure that the records referred to in subsection (1) remain the property of the First Nation.

### **Operations Manual**

79.(1) The CEO must prepare and maintain a current operations manual respecting every element of the First Nation's administrative systems, including any financial administration systems referred to in this Law.

(2) The operations manual under subsection (1) must be made available to councillors, members of the Finance and Audit Committee and all other Council committees and managers and employees of the First Nation.

(3) If any part of the operations manual under subsection (1) is relevant to the services being provided by a contractor or agent of the First Nation, that part of the operations manual must be made available to the contractor or agent.

### **Record Keeping and Maintenance**

80.(1) The CEO must ensure that the First Nation prepares, maintains, stores and keeps secure all of the First Nation's records that are required under this Law or any other applicable law.

(2) The First Nation's records may not be destroyed or disposed of except as permitted and in accordance with the policies, procedures or directions of the Council.

(3) All financial records must be stored for at least seven (7) years after they were created.

(4) Council must establish policies and procedures or give directions respecting access of any persons to First Nation's records.

#### **Local Revenue Account Records**

81.(1) The CEO must ensure the preparation, maintenance, storage and security of all records respecting the First Nation's local revenue system, including all records referred to in section 5 of the Local Revenue Management Implementation Regulations and must ensure the Tax Administrator has access to these records.

(2) The CEO, or under the direction of the CEO, the Tax Administrator, must ensure that the records referred to in subsection (1) are sufficiently organized and accessible to allow easy access if any inspections or review of the records is required.

#### **Confidentiality of Information**

82.(1) No person may be given access to the First Nation's records containing confidential information except as permitted by and in accordance with the policies, procedures and directions of the Council.

(2) All persons who have access to the First Nation's records must comply with all policies, procedures or directions of Council respecting the confidentiality, control, use, copying or release of that record or information contained in those records.

#### **Information Technology**

83. Council must establish policies or procedures or give directions respecting information technology used by the First Nation in its operations to ensure the integrity of the First Nation's financial administration system and its database.

## **PART V - Capital Projects**

#### **Definitions**

84. In this Part:

“capital project” means the construction, rehabilitation or replacement of the First Nation's tangible capital assets and any other major capital projects in which the First Nation or its related bodies are investors;

“First Nation's tangible capital assets” means all non-financial assets of the First Nation having physical substance that

(a) are held for use in the production or supply of goods and services, for rental to others, for administrative purposes or for the development, construction, maintenance or repair of other tangible capital assets,

- (b) have useful economic lives extending beyond an accounting period,
- (c) are to be used on a continuing basis, and
- (d) are not for sale in the ordinary course of operations;

“life-cycle management program” means the program of inspection, review and planning for management of the First Nation’s tangible capital assets as described in section 88;

“rehabilitation” includes alteration, extension and renovation but does not include routine maintenance;

“replacement” includes substitution, in whole or in part, with another of the First Nation’s tangible capital assets.

**Council General Duties**

85. Council must take reasonable steps to ensure that

- (a) the First Nation’s tangible capital assets are maintained in a good and safe condition and to the same standard as a prudent owner of those assets;
- (b) the rehabilitation or replacement of the First Nation’s tangible capital assets is in accordance with a life-cycle management program described in this Part; and
- (c) capital projects for the construction of buildings or other improvements are financed, planned and constructed in accordance with procedures and to standards that generally apply to the financing, planning and construction of public buildings and other improvements of organized communities in the region in which the majority of the First Nation’s lands are located.

**Tangible Capital Assets Reserve Fund**

86. Council must establish a tangible capital asset reserve fund for the purpose of funding expenditures for capital projects carried out under this Part.

**Reports on Capital Projects**

87. At each Finance and Audit Committee meeting, the CEO must report on the following subjects:

- (a) year to date borrowings, loans and payments in respect of each capital project;
- (b) the status of a capital project, including
  - (i) a comparison of expenditures to date with the project budget,
  - (ii) a detailed description of any identified legal, financial, technical, scheduling or other problems, and
  - (iii) the manner in which a problem identified in subparagraph (ii) has been or will be addressed; and
- (c) steps taken to ensure compliance with section 90 for every capital project.

### **Life-cycle Management Program**

**88.(1)** The CEO must establish and keep current a register of all the First Nation's tangible capital assets that identifies each of these assets and includes the following information:

- (a) location and purpose of the asset;
- (b) ownership and restrictions over ownership of the asset;
- (c) year of acquisition;
- (d) last inspection date of the asset;
- (e) expected life of the asset at the time of acquisition;
- (f) assessment of condition of the asset and its remaining useful life;
- (g) estimated residual value of the asset;
- (h) insurance coverage for the asset; and
- (i) any other information required by the Council.

(2) On or before November 30 of each year, the CEO must arrange for the inspection and review of the state of each of the First Nation's tangible capital assets to establish or update information respecting the following matters:

- (a) its present use;
- (b) its condition and state of repair;
- (c) its suitability for its present use;
- (d) its estimated remaining life;
- (e) its estimated replacement cost;
- (f) estimated dates and costs of its required future rehabilitation;
- (g) a comparison of annual operating and maintenance costs, other than rehabilitation costs, for the last five (5) fiscal years;
- (h) maintenance records for all periods up to the date of inspection; and
- (i) property and liability insurance covering the capital asset and its use or operation.

(3) On or before December 31 of each year, the finance director must prepare the following:

- (a) a schedule of annual routine maintenance, other than rehabilitation, for each of the First Nation's tangible capital assets for the next fiscal year;

- (b) five (5), ten (10) and thirty (30) year forecasts of the estimated cost for rehabilitation or replacement of the First Nation's tangible capital assets;
- (c) the proposed budget for rehabilitation of the First Nation's tangible capital assets for the next fiscal year, setting out
  - (i) each proposed rehabilitation project and its schedule,
  - (ii) the estimated cost, including contingencies, of each proposed rehabilitation project, and
  - (iii) the estimated amounts and timing of money that is required to carry out each proposed rehabilitation project; and
- (d) the proposed budget for replacement of the First Nation's tangible capital assets for the next fiscal year setting out
  - (i) each proposed replacement project and its schedule,
  - (ii) the description of each asset to be replaced,
  - (iii) the estimated cost, including contingencies, of each proposed replacement project, and
  - (iv) the reasons why each proposed acquisition should be regarded as a replacement for the capital asset to be replaced.

**Review by Finance and Audit Committee**

**89.(1)** On or before January 15 of each year, the Finance and Audit Committee must review the information, schedules and budget prepared under section 88 for the following purposes:

- (a) to identify any means to reduce the costs of each rehabilitation or replacement project included in the proposed budgets;
- (b) to know the effect that each rehabilitation or replacement project included in the proposed budgets will have on the annual operating costs and routine maintenance costs in future years; and
- (c) to determine whether any significant savings might be effected by coordinating the scheduling of projects, deferring any projects or carrying out rehabilitation projects rather than replacement projects.

(2) On or before January 15 of each year, the Finance and Audit Committee must review any plans for new construction of the First Nation's tangible capital assets, including the proposed schedule, budget and impact on annual operating costs and routine maintenance costs in future years.

**Capital Projects – Contracts and Tenders**

**90.(1)** Council must establish policies or procedures or give directions respecting the management of capital projects, including the following:

- (a) project planning, design, engineering, safety and environmental requirements;
- (b) project costing, budgeting, financing and approval;

- (c) project and contractor bidding requirements;
- (d) tender, contract form and contract acceptance;
- (e) course of construction insurance;
- (f) project performance guarantees and bonding;
- (g) project control, including contract management; and
- (h) holdbacks, work approvals, payment and audit procedures.

(2) All First Nation capital projects must be managed in accordance with the policies, procedures or directions referred to in subsection (1).

#### **Capital Project Consultants**

91. The CEO may retain the services of a professional engineer or other consultant to assist the CEO, Finance and Audit Committee and Council to carry out their obligations under this Part.

#### **Policy for Information or Involvement of Members**

92. The Council must establish policies or procedures or give directions for
- (a) the provision of information to members of the First Nation respecting capital projects; or
  - (b) the involvement of members of the First Nation in consideration of capital projects.

### **PART VI - Borrowing Member Requirements**

#### **Application**

93. This Part applies to the First Nation if it is a borrowing member as defined in the Act.

#### **Compliance with Standards**

94.(1) The First Nation must comply with all the applicable Board standards.

(2) If the Council becomes aware that the First Nation is not complying with a Board standard referred to in subsection (1), the Council must as soon as practicable take the required actions to bring the First Nation into compliance with the Board standard.

### **PART VII - Land Management**

#### **Application**

95. This Part applies to the First Nation if it has a land code under the *First Nations Land Management Act*.



## **Obligations**

96.(1) The First Nation must comply with the *First Nations Land Management Act* and any land code made by the First Nation as required or permitted under that Act.

(2) Council must establish and implement a policy that provides a method consistent with the requirements of the First Nation's land code for being accountable to members of the First Nation for the management of the First Nation's lands under the land code and for moneys earned from those lands to satisfy paragraph 6(1)(e) of the *First Nations Land Management Act*.

## **PART VIII - Oil and Gas and Moneys Management**

### **Application**

97. This section applies to the First Nation if it has a financial code under the *First Nations Oil and Gas and Moneys Management Act*.

### **Obligations**

98. The First Nation must comply with the *First Nations Oil and Gas and Moneys Management Act* and any financial code made by the First Nation as required or permitted under that Act.

## **PART IX - Miscellaneous**

### **Reports of Breaches and Financial Irregularities, etc.**

99.(1) Subject to subsections (2) and (3), if any person has reason to believe that

(a) an expenditure, liability or other transaction of the First Nation is not authorized by or under this Law or another First Nation law,

(b) there has been a theft, misappropriation or other misuse or irregularity in the funds, accounts, assets, liabilities and financial obligations of the First Nation,

(c) a provision of this Law has been contravened, or

(d) a person has failed to comply with the Schedule that forms part of this Law,

the person may disclose the circumstances to the chair of the Finance and Audit Committee.

(2) If a councillor becomes aware of any circumstances described under subsection (1), the councillor must report them to the chair of the Finance and Audit Committee.

(3) If a manager, employee, contractor or agent of the First Nation becomes aware of any circumstances described under subsection (1), the manager, employee, contractor or agent, as the case may be, must report them to the CEO or the chair of the Finance and Audit Committee.

### **Inquiry into Report**

100.(1) If a report is made to the CEO under subsection 99(3), the CEO must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(2) If a report is made to the chair of the Finance and Audit Committee under section 99, the chair must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(3) The Finance and Audit Committee may make a further inquiry into any findings reported to it under this section but, in any event, must make a report to the Council respecting any circumstances reported to the Finance and Audit Committee under this section, including the Committee's recommendations, if any.

### **Protection of Parties**

101.(1) All reasonable steps must be taken by the CEO, the members of the Finance and Audit Committee and the councillors to ensure that the identity of the person who makes a report under section 99 is kept confidential to the extent practicable in all the circumstances.

(2) A person who makes a report in good faith under section 99 must not be subjected to any form of reprisal by the First Nation or by a councillor, manager, employee, contractor or agent of the First Nation as a result of making that report.

(3) The CEO and the chair of the Finance and Audit Committee must take all necessary steps to ensure that subsection (2) is not contravened and must report any contravention or suspected contravention to the Council.

(4) The Council must establish policies or procedures or give directions

(a) for the recording and safeguarding of reports made under section 99 and any records prepared during the inquiry or investigation into those reports;

(b) for the inquiry or investigation into reports made under section 99; and

(c) concerning the fair treatment of a person against whom a report has been made under section 99.

### **Liability for Improper Use of Money**

102.(1) A councillor who votes for a resolution authorizing an amount to be expended, invested or used contrary to this Law or the First Nation's local revenue law is personally liable to the First Nation for that amount.

(2) Subsection (1) does not apply if the councillor relied on information provided by a manager or employee of the First Nation and the manager or employee was guilty of dishonesty, gross negligence or malicious or willful misconduct when providing the information.

(3) An amount owed to the First Nation under subsection (1) may be recovered for the First Nation by the First Nation, a member of the First Nation or a person who holds a security under a borrowing made by the First Nation.

(4) It is a good defence to any action brought against a manager or employee of the First Nation for unauthorized expenditure, investment or use of the First Nation's financial assets if it is proved that the manager or employee gave a written and signed warning to the Council that in his or her opinion, the expenditure, investment or use would be unlawful.

#### **Indemnification against Proceedings**

**103.(1)** In this section:

“indemnify” means to pay amounts required or incurred

(a) to defend an action or prosecution brought against a person in connection with the exercise or intended exercise of the person's powers or the performance or intended performance of the person's duties or functions, or

(b) to satisfy a judgment, award or penalty imposed in an action or prosecution referred to in paragraph (a);

“First Nation official” means a current or former councillor, manager or employee of the First Nation.

(2) Subject to subsection (3), the Council may by resolution indemnify or provide for the indemnification of a named First Nation official, a category of First Nation official or all First Nation officials in accordance with the terms specified in the resolution.

(3) The Council may not pay a fine that is imposed as a result of a First Nation official's conviction for an offence unless the offence is a strict or absolute liability offence.

#### **Periodic Review of Law**

**104.(1)** On a regular, periodic basis established by a policy of the Council, the Finance and Audit Committee must conduct a review of this Law

(a) to determine if it facilitates effective and sound financial administration of the First Nation; and

(b) to identify and recommend to Council any amendments to this Law that may better serve this objective.

(2) The Council must establish policies or procedures or give directions for

(a) the provision of information to members of the First Nation respecting any proposed amendment of this Law; or

(b) the involvement of members of the First Nation in consideration of an amendment to this Law.

(3) The Council must post a public notice of each Council meeting when a proposed amendment to this Law is presented for approval.

(4) Members of the First Nation may attend that part of the Council meeting when the matter referred to in subsection (3) is being considered.

**Provision of Law to First Nations Finance Authority**

**105.** As soon as practicable after the Board approves the Financial Administration Law of the First Nation, the Council must provide a copy of the Law to the First Nations Finance Authority.

**Coming into Force**

**106.(1)** The following provisions of this Law come into force on the day after the date this Law is approved by the Board under section 9 of the Act:

sections 1 to 8; subsection 9(1) and (3); sections 11 to 14; paragraphs 16 (a) to (e); section 17; subsections 18(1) and (2); subsection 19(1) and (3); section 20; subsection 22(1) and (2); subsection 23(1), (2)(a) to (c), (3) and (4); sections 24 and 26; subsection 27(1) and (3) to (6); sections 29 and 30; subsections 32(1) to (3); sections 68 to 78, 81, 82 and 95; subsection 96(1); sections 99-101; sections 105 to 106 and Schedule "A".

(2) Subject to subsection (1), this Law comes into force on the third anniversary of the date the provisions of the Law referred to in subsection (1) come into force.

**THIS LAW IS HEREBY DULY ENACTED** by Council on the 5 day of Sept, 2012, at Shxwáiy Village, in the Province of British Columbia.

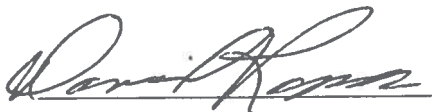
A quorum of Council consists of three (3) members of Council.

  
Chief Councillor

  
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# **SCHEDULE – Avoiding And Mitigating Conflicts Of Interest**

## **PART I - Interpretation**

### **Interpretation**

1.(1) In this Schedule, “this Law” means the Financial Administration Law to which this Schedule is attached and forms a part.

(2) Except as otherwise expressly provided in this Schedule, words and expressions used in this Schedule have the same meanings as in this Law.

(3) Sections 3 and 5 of this Law apply to this Schedule.

(4) If there is a conflict between a provision of this Schedule and this Law, the provision of this Law applies.

### **Definition of Conflict of Interest**

2.(1) In this Schedule, an individual has a “conflict of interest” when the individual exercises a power or performs a duty or function and at the same time knows or ought reasonably to have known that in the exercise of the power or performance of the duty or function there is an opportunity to benefit the individual’s private interests.

(2) In this Schedule, an individual has an “apparent conflict of interest” if a reasonably well-informed person would perceive that the individual’s ability to exercise a power or perform a duty or function of their office or position must be affected by the individual’s private interests.

(3) In this Schedule, an individual’s “private interests” means the individual’s personal and business interests and include the personal and business interests of

(a) the individual’s spouse;

(b) a person under the age of eighteen (18) years in respect of whom the individual or the individual’s spouse is a parent or acting in a parental capacity;

(c) a person in respect of whom the individual or the individual’s spouse is acting as guardian;

(d) a person, other than an employee, who is financially dependent upon the individual or the individual’s spouse or on whom the individual is financially dependent; and

(e) an entity in which the individual or the individual in combination with any other person described in this subsection has a controlling interest.

(4) Despite subsections (1) and (2), an individual’s private interests do not give rise to a conflict of interest if those interests

(a) are the same as those of a broad class of members of the First Nation of which the individual is a member; or

(b) are so remote or insignificant that they could not be reasonably regarded as likely to influence the individual in the exercise of a power or performance of a duty or function.

## **PART II - Councillors and Committee Members**

### **Application**

3. This Part applies to all councillors of the First Nation and, where applicable, to all members of Council committees.

### **General Obligations**

4.(1) Councillors must avoid circumstances that could result in the councillor having a conflict of interest or an apparent conflict of interest.

(2) Councillors must avoid placing themselves in circumstances where their ability to exercise a power or perform a duty or function could be influenced by the interests of any person to whom they owe a private obligation or who expects to receive some benefit or preferential treatment from them.

### **Disclosure of Interests**

5.(1) In paragraph (2)(c) “real property” includes an interest in a reserve held under

- (a) a certificate of possession under the *Indian Act*; or
- (b) the First Nation’s traditional land holding system pursuant to a band council resolution.

(2) A councillor must file a written disclosure of the following information with the CEO:

- (a) the names of the councillor’s spouse and any persons or entities referred to in subsection 2(3);
- (b) the employer of the councillor and the councillor’s spouse;
- (c) real property owned by the councillor or the councillor’s spouse; and
- (d) business interests and material investments of the councillor or the councillor’s spouse, including in an entity referred to in paragraph 2(3)(e).

(3) A councillor must file a written disclosure under subsection (2) on the following occasions:

- (a) within thirty (30) days of being elected to the Council;
- (b) as soon as practical after a material change in the information previously disclosed; and
- (c) on April 15 of each year that the councillor holds office.

(4) The CEO must establish and maintain a register of all information disclosed by a councillor under this section and section 6.

(5) On request of a member of the First Nation or any person engaged in any aspect of the financial administration of the First Nation, the CEO must permit that member or person to view the register referred to in subsection (4).

#### **Gifts and Benefits**

6.(1) A councillor or a person referred to in paragraphs 2(3)(a) to (d) in relation to that councillor must not accept a gift or benefit that might reasonably be seen to have been given to influence the councillor in the exercise of the councillor's powers or performance of the councillor's duties or functions.

(2) Despite subsection (1), a gift or benefit may be accepted if the gift or benefit

(a) would be considered within

(i) normal protocol exchanges or social obligations associated with the councillor's office;

(ii) normal exchanges common to business relationships; or

(iii) normal exchanges common at public cultural events of the First Nation;

(b) is of nominal value;

(c) is given by a close friend or relative as an element of that relationship; or

(d) is of a type that the policies or directions of the Council have determined would be acceptable if offered by the First Nation to another person.

(3) Where a gift with a value greater than fifty dollars (\$50) is given to a councillor or a person referred to in subsection (1), the councillor must make a written disclosure of the gift to the CEO under section 5, and the gift must be treated as the property of the First Nation.

(4) Subsection (3) does not apply to a gift received during a public cultural event of the First Nation.

#### **Confidential Information**

7.(1) Councillors must keep confidential all information that the councillors receive while performing their duties or functions unless the information is generally available

(a) to members of the public; or

(b) to members of the First Nation.

(2) Councillors must only use confidential information referred to in subsection (1) for the specific purposes for which it was provided to the councillors.

(3) Councillors must not make use of any information received in the course of exercising their powers or performing their duties or functions to benefit the councillor's private interests or those of relatives, friends or associates.

### **Procedure for Addressing Conflict of Interest**

8.(1) As soon as a councillor becomes aware of circumstances in which the councillor has a conflict of interest, the councillor must disclose the circumstances of the conflict of interest at the next Council meeting.

(2) A councillor must leave any part of a Council meeting where the circumstances in which the councillor has a conflict of interest are being discussed or voted on.

(3) The minutes of a Council meeting must record the councillor's disclosure under subsection (1) and note the councillor's absence from the Council meeting when the circumstances in which the councillor has a conflict of interest were being discussed or voted on.

(4) A councillor must not take part in any discussions or vote on any decision respecting the circumstances in which the councillor has a conflict of interest.

(5) A councillor must not influence or attempt to influence in any way before, during or after a Council meeting any discussion or vote on any decision respecting the circumstances in which the councillor has a conflict of interest.

### **Procedure for Undisclosed Conflict of Interest**

9.(1) If a councillor has reason to believe that another councillor has a conflict of interest or an apparent conflict of interest in respect of a matter before the Council, the councillor may request clarification of the circumstances at a Council meeting.

(2) If, as a result of a clarification discussion under subsection (1), a councillor is alleged to have a conflict of interest or an apparent conflict of interest and the councillor does not acknowledge the conflict of interest or apparent conflict of interest and take the actions required under section 8, the Council must determine whether the councillor has a conflict of interest or an apparent conflict of interest before the Council considers the matter referred to in subsection (1).

(3) The minutes of the Council meeting must record any determination made by the Council under subsection (2).

(4) If the Council determines under subsection (2) that a councillor has a conflict of interest or an apparent conflict of interest, the councillor must comply with section 8.

### **Obligations of Committee Members**

10.(1) This section applies to all members of Council committees.

(2) Sections 4 and 6 to 9 apply to a member of a Council committee and all references in those sections to

(a) a councillor are considered to be references to a member of a Council committee; and

(b) a Council meeting are considered to be references to a committee meeting.



## **PART III - Managers and Employees**

### **Application**

11. This Part applies to all managers and employees of the First Nation.

### **General Obligations**

12.(1) In the performance of their duties and functions, a manager or employee must act honestly and in good faith and in the best interests of the First Nation.

(2) A manager or employee must avoid circumstances that could result in the manager or employee having a conflict of interest or an apparent conflict of interest.

(3) A manager or employee must avoid placing themselves in circumstances where their ability to exercise a power or perform a duty or function of their office or position could be influenced by the interests of any person to whom they owe a private obligation or who expects to receive some benefit or preferential treatment from them.

(4) The CEO must ensure that every manager and employee is informed of their obligations under this Part and must take steps to ensure that employees comply with these obligations.

### **Disclosure of Conflict of Interest**

13. If a manager or employee believes he or she has a conflict of interest, the manager or employee must

(a) disclose the circumstances in writing as soon as practical to the CEO or, in the case of the CEO, to the chair of the Finance and Audit Committee; and

(b) refrain from participating in any discussions or decision-making respecting the circumstances of the conflict of interest until advised by the CEO or the chair, as the case may be, on actions to be taken to avoid or mitigate the conflict of interest.

### **Gifts or Benefits**

14.(1) A manager or employee or a member of their family must not accept a gift or benefit that might reasonably be seen to have been given to influence the manager or employee in the exercise of their powers or performance of their duties or functions.

(2) Despite subsection (1), a gift or benefit may be accepted if the gift or benefit

(a) would be considered within

(i) normal exchanges common to business relationships, or

(ii) normal exchanges common at public cultural events of the First Nation;

(b) is of nominal value;

(c) is given by a close friend or relative as an element of that relationship; or

(d) is of a type that the policies or directions of the Council have determined would be acceptable if offered by the First Nation to another person.

#### **Outside Employment and Business Interests**

15.(1) If a manager or employee is permitted under their terms of employment to have outside employment or business interests, the manager or employee must disclose these employment or business interests in writing to the CEO or, in the case of the CEO, to the chair of the Finance and Audit Committee.

(2) A manager or employee must ensure that any permitted outside employment or business interests do not unduly interfere with the exercise of their powers or performance of their duties and functions and that these activities are conducted on their own time and with their own resources.

#### **Confidential Information**

16.(1) A manager or employee must keep confidential all information that the manager or employee receives while exercising their powers or performing their duties or functions unless the information is generally available

- (a) to members of the public; or
- (b) to members of the First Nation.

(2) A manager or employee must only use any confidential information referred to in subsection (1) for the specific purposes for which it was provided to the manager or employee.

(3) A officer or employee must not make use of any information received in the course of exercising their powers or performing their duties or functions to benefit the manager or employee's private interests or those of relatives, friends or associates.

#### **First Nation Property and Services**

17.(1) Managers and employees must not use any personal property or services of the First Nation for any purposes unrelated to performance of their duties or functions unless that use is otherwise acceptable under the policies or directions of the Council.

(2) Managers and employees must not acquire any personal property of the First Nation unless it is done in accordance with policies or directions of the Council.

### **PART IV - Contractors**

#### **Application**

18.(1) This Part applies to all contractors of the First Nation, other than a person who has an employment contract with the First Nation.

(2) In this Part, a reference to a contractor includes a reference to each employee or agent of the contractor who is engaged to perform duties or functions under the contract with the First Nation.

### **Contractor Acting as Manager or Employee**

19. If a contractor is retained to exercise the powers or perform the duties or functions of a manager or employee, the contractor must comply with Part III of this Schedule as if the contractor were a manager or employee of the First Nation.

### **General Obligations**

20.(1) A contractor must act at all times with integrity and honesty

(a) in its dealings with the First Nation; and

(b) in its dealing with any third party when the contractor is representing or acting on behalf of the First Nation.

(2) A contractor must not attempt to obtain preferential treatment from the First Nation by offering gifts or benefits that a councillor, committee member, manager or employee is prohibited from accepting under this Schedule.

(3) A contractor must ensure that every employee or agent of the contractor who is engaged to perform duties or functions under the contract with the First Nation is informed of their obligations under this Part and must take steps to ensure that these employees or agents comply with these obligations.

### **Confidential Information**

21.(1) A contractor must keep confidential all information that the contractor receives in the course of performing their duties or functions unless the information is generally available to members of the public.

(2) A contractor must only use any confidential information referred to in subsection (1) for the specific purposes for which it was provided to the contractor.

(3) A contractor must not make use of any information received in the course of performing its duties or functions to benefit the contractor's interests or those of the contractor's relatives, friends or associates.

### **Business Opportunities**

22. A contractor must not take advantage of a business or investment opportunity being considered by the First Nation and which the contractor becomes aware of while performing services for the First Nation unless the First Nation has determined not to pursue the opportunity.

### **First Nation Property and Services**

23. If a contractor has been provided the use of any property or services of the First Nation in order to perform services for the First Nation, the contractor must not use the property or services for any purposes unrelated to performance of those services.