

\_\_\_\_\_ **FIRST NATION**

**SAMPLE FIRST NATION FINANCIAL ADMINISTRATION BY-LAW**

**BY-LAW NO. \_\_\_\_\_**

A by-law to regulate the management and control of First Nation funds and establish the administrative structure of the First Nation which manages the funds.

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WHEREAS the *Indian Act* provides that Council may, subject to the approval of the Minister of Indian Affairs and Northern Development, make by-laws for the following purposes:

- (a) the appropriation and expenditure of moneys of the First Nation to defray the First Nation expenses;
- (b) the appointment of officials to conduct the business of Council; and
- (c) any matter arising out of or ancillary to the exercise of the powers described in subsection 83(1) of the Act;

AND WHEREAS the Council of the First Nation has determined that it is desirable and necessary that a financial administration by-law be established for the purposes set out in subsection 83(1) of the Act;

NOW THEREFORE the Council of the First Nation, at a duly convened meeting, enacts the following by-law:

## PART 1

### TITLE

1. This By-law may be called the “\_\_\_\_\_ First Nation Financial Administration By-law”.

## PART 2

### DEFINITIONS

2. In this By-law,

“**Act**” means the *Indian Act*;

“**annual audit**” means an audit by an auditor of the First Nation’s consolidated financial statements for the preceding fiscal year according to generally accepted auditing standards and including a separate audit of the Tax Account;

“**annual budget**” means the revenues and expenditures projected and approved by Council under section 32 for the next fiscal year and includes any amendments to the annual budget made under section 31;

“**annual audited financial statements**” means the consolidated financial statements audited by an auditor as part of conducting the annual audit;

“**auditor**” means a person or company who is designated as a chartered accountant or certified general accountant and who is a member in good standing with the registered accounting association that regulates his designation;

“**band manager**” means the employee or contractor appointed by resolution as the administrator of the First Nation;

“**capital works**” means major physical assets owned or controlled by the First Nation, including roads, bridges, utilities, water supply and septic systems, ditches and water spillways, buildings, waste control facilities, land, landscaping and fencing;

“**committee**” means the Finance and Audit Committee of the First Nation established pursuant to section 11 of this By-law;

“**controller**” means the person appointed under section 23;

“**Council**” means the council of the First Nation and includes the Chief of the First Nation;

“**department**” means an administrative division or agency of the First Nation government as established from time to time and includes

- (a) internal organizational units of the First Nation administration,
- (b) any Committee, tribunal, commission or committee of the First Nation, and

(c) any corporate entity controlled by the First Nation, including a partnership;

“**employee**” includes, for the purposes of this By-law, any contractors with the First Nation who administer, manage or control First Nation funds;

“**Expenditure By-law**” means a by-law of the First Nation enacted pursuant to section 83 of the Act, specifying allowable expenditures from Tax Revenue;

“**First Nation funds**” means all moneys received and managed by Council, or its designate, for the use and benefit of the First Nation, including all revenues, grants, contributions, loans, earnings from business enterprises and, unless otherwise indicated in this By-law, includes Tax Revenue, but does not include

- (a) money received by the First Nation on behalf of an individual, corporate entity or partnership, and
- (b) any money received and managed by Council for which Council has approved an alternative arrangement under to section 8 of this By-law;

“**First Nation**” means the \_\_\_\_\_ First Nation, being a band, as defined under the *Indian Act*;

“**fiscal year-end**” means the date specified in section 26.

“**funding agreement**” means any written contract between the First Nation and another party or parties, pursuant to which money is to be paid to the First Nation;

“**General Account**” means any bank account in the name of the First Nation and created pursuant to section 48;

“**resolution**” means a decision of Council at a duly held Council meeting and recorded in writing;

“**Tax Account**” means a single bank account in the name of the First Nation for the purpose of holding all and making expenditures from Tax Revenue;

“**Taxation By-law**” means a by-law providing for the taxation of real property and enacted by the First Nation pursuant to section 83 of the Act; and

“**Tax Revenue**” means any revenue collected by the First Nation pursuant to a Taxation By-law.

### PART 3

#### APPLICATION

3. This By-law governs the management and control of First Nation funds and the administrative organization of the First Nation to manage and control First Nation funds.

4. This By-law applies to Council and all departments in receipt of First Nation funds.

**PART 4**

**COUNCIL**

**Role of Council**

5. Council must conduct the business of the First Nation in a manner that ensures sound financial management by, among other things, carrying out the following duties and responsibilities:
  - (a) ensuring that the annual budget of the First Nation does not have expenditures exceeding revenues;
  - (b) planning and budgeting financial and other resources for local services and capital works projects;
  - (c) setting policies and procedures to safeguard the resources of the First Nation and maximize the well-being of the members of the First Nation;
  - (d) ensuring Council and all employees of the First Nation have full financial accountability at all times to all members of the First Nation;
  - (e) ensuring the First Nation meets all financial obligations with third parties;
  - (f) ensuring all investments in financial instruments are made in accordance with prudent investor standards;
  - (g) overseeing the work of all employees of the First Nation, through the band manager, and ensuring that all employees of the First Nation who manage and control First Nation funds are
    - (i) responsible for maintaining accurate financial records, and
    - (ii) qualified for the position to which they are appointed;
  - (h) permitting access by all members of the First Nation, under the supervision of Council or its designate, to First Nation by-laws, annual budgets, annual audited financial statements and annual audit reports of the First Nation;
  - (i) ensuring that all financial records of the First Nation, including computer files, are kept in the administration office of the First Nation in a secure and safe condition, and are not removed from the office without the authority of Council, such authority to be evidenced by resolution; and
  - (j) ensuring the sale of any assets owned by the First Nation is for no less than fair market value.

## **Duties**

6. Each member of Council must, in exercising his powers and performing his functions under this By-law,
  - (a) act honestly and in good faith and in the best interests of the First Nation; and
  - (b) exercise the care, diligence and skill of a reasonably prudent person.

## **Alternative Arrangements for Funding Agreements**

*[Note to First Nation: sections 7 and 8 are meant to allow flexibility, in case the First Nation obtains financing from a third party (like INAC or a private party), but the financing has 'strings' attached – i.e. requirements on how the funds must be processed and spent that are different from the First Nation's normal procedures in this By-law.]*

7. Council may, by resolution, approve any funding agreement.
8. Notwithstanding the provisions of this By-law, Council may by resolution approve an alternative arrangement other than the provisions of this By-law for the management of money received pursuant to the terms of a funding agreement, if the terms of the funding agreement require the alternative arrangement.

## **PART 5**

### **FINANCE AND AUDIT COMMITTEE**

#### **Role of the Committee**

9. The Committee must ensure the control and management of First Nation funds in a manner that is consistent with prudent financial management practices by, among other things, carrying out the following duties and responsibilities:
  - (a) manage and control all transactions of First Nations funds, including the receipt, collection, expenditure and disbursement of First Nation funds;
  - (b) administer and supervise the compilation and preparation of information for the annual budget;
  - (c) present the annual budget to Council for its review and approval by resolution;
  - (d) ensure the completion and of an annual audit and presentation of the audit to Council for its review and approval by resolution;
  - (e) administer and supervise the financial records and reporting systems of the First Nation;
  - (f) ensure financial compliance of the First Nation with all contracts and funding agreements entered into by Council or any department, and report immediately any non-compliance to Council;

- (g) report to Council on financial matters;
  - (h) provide advice to Council on financial matters;
  - (i) develop and present a list of candidates to Council for the position of controller;
  - (j) supervise and oversee the role and responsibilities of the controller; and
  - (k) oversee all other matters relating to the financial affairs of the First Nation.
10. The Committee may prescribe any requirements for the form and content of the financial records and the accounting systems of the First Nation that it deems necessary.

### **Appointment of Committee**

*[Note to First Nation: this sample by-law establishes a Finance and Audit Committee of five (5) people. You should establish an appropriate sized Finance and Audit Committee for the size of your community. Any Finance and Audit Committee should contain an odd number of people, no less than three (3) members, one (1) of whom should be the band manager. Twenty-five percent (25%) of the members of committee must also be members of council.]*

11. Council hereby establishes a Finance and Audit Committee of the First Nation.
12. Council must, by resolution, appoint at least three (3) members to the Committee and those members must include
- (a) the band manager;
  - (b) at least \_\_\_\_ ( ) members of Council; and
  - (c) at least \_\_\_\_ ( ) members of the First Nation who are not members of Council.

### **Terms of Office**

13. Council must, by resolution, appoint the band manager to be a member of the Committee for as long as he is the band manager.
14. Council must, by resolution, appoint the members of the Committee prescribed under paragraphs 12(b) and (c) for a term of office that is the same duration as a term of office for a member of Council.
15. A member of the Committee may be removed from office
- (a) by the chair if the member has missed three (3) consecutive scheduled meetings of the Committee;
  - (b) by a majority of Council and with the recommendation of the chair; or
  - (c) by a unanimous vote of Council.

16. If any position on the Committee is vacated for any reason, including under section 15, then Council must appoint, by resolution, the members needed to fill any vacancies in the Committee that result from that change.

### **Election and Role of the Chair**

17. The Committee must elect from its members one (1) person to serve as chair of the Committee.
18. The term of office for the position of chair must be two (2) years and a person may serve as a chair for one (1) or more consecutive terms.
19. If the chair resigns, the Committee must elect from its members one (1) other person to serve as chair for the balance of the term remaining.
20. The chair must
  - (a) supervise and direct the work of the Committee;
  - (b) undertake administrative duties as necessary to oversee and implement the work of the Committee; and
  - (c) preside at meetings of the Committee.

### **BAND MANAGER**

#### **Role of Band Manager**

*[Note to First Nation: the following gives the financial administration responsibilities of the band manager only and is not intended to be a complete job description for a band manager.]*

21. (1) The band manager must act as the senior administrative officer of the Committee and must assist the Committee in carrying out its duties.
- (2) The duties of the band manager include
  - (a) ensuring the creation and maintenance of adequate records of Committee minutes, resolutions, decisions and other proceedings;
  - (b) maintaining security of finances and financial documents by
    - (i) establishing safe storage in security boxes or safes,
    - (ii) establishing secure storage with security codes and locks on files, cash and valuable documents, and
    - (iii) ensuring no more than two (2) people, in addition to himself, have knowledge of the security codes, combinations or possession of keys to locked files;



- (c) ensuring all cash is deposited in a drop safe located in the administration office of the First Nation at the end of each business day;
- (d) monitoring all contracts and funding agreements entered into by Council or any department for financial compliance and reporting immediately any non-compliance to the Committee; and
- (e) completing any other task assigned by the Committee.

## **CONTROLLER**

### **Role of Controller**

22. The controller reports directly to the Committee and must
- (a) conduct the administration necessary to discharge the financial administration responsibilities of the Committee, including staff supervision;
  - (b) maintain records of all information required to facilitate the annual audit;
  - (c) compile and prepare information for the annual budget and any amended annual budget;
  - (d) administer and maintain adequate and timely financial records and reporting systems that record all financial transactions of the First Nation, including but not limited to copies of all vouchers, financial statements, cancelled cheques and correspondence relating to the financial business of the First Nation and reporting systems;
  - (e) prepare and present to the Committee by the 20th day of each month, a financial statement for the previous month that includes a balance sheet and a statement of operations showing revenues and expenditures;
  - (f) receive, record and deposit, or administer the receipt, recording and deposit of all money received by the First Nation in a timely manner;
  - (g) ensure all accounts payable are paid in accordance with the procedures set out in this By-law;
  - (h) complete any other task assigned by the Committee; and
  - (i) maintain a detailed inventory of all First Nation assets having a reasonable estimate of fair market value over \_\_\_\_\_ dollars (\$\_\_\_\_\_).

### **Appointment of Controller**

23. The Committee must develop a list of at least three (3) potential candidates for the position of controller and Council must, by resolution, appoint a person as controller from the list.

24. Subject to the provisions of this By-law, the engagement and removal of any person as controller must be consistent with any personnel policies of the First Nation.

## **PART 6**

### **FISCAL YEAR**

25. **[ Note to First Nation: Normally this period is April 1<sup>st</sup> of the current year to March 31<sup>st</sup> of the following year.]**
26. The financial year-end of the First Nation is \_\_\_\_\_ to \_\_\_\_\_

### **ANNUAL BUDGET**

27. The Committee must prepare estimates of the projected revenues of the First Nation for the purpose of preparing the annual budget.
28. Each department manager must prepare the department's annual budget and any amendments thereto for the operation of the department and must submit the budget and any amendments prepared to the Committee.
29. The Committee must prepare an annual budget and submit the annual budget to Council for consideration and approval by resolution.
30. Council is solely responsible for the approval of the annual budget for each fiscal year.
31. Council may, by resolution, direct amendments to the annual budget submitted by the Committee.
32. The annual budget becomes effective upon approval by Council, by resolution.
33. The annual budget must be made available during regular working hours for inspection by any member of the First Nation, and copies are to be provided to First Nation members upon written request to the controller and payment of a fee of twenty-five dollars (\$25.00).

### **ANNUAL AUDIT**

34. Council must appoint annually, by resolution, an auditor to conduct the annual audit, and prepare an annual audit report and a separate annual audit report with respect to the Tax Account.
35. The auditor reports to Council.
36. The auditor must be entitled to access any information or records that are held by or in the control of the First Nation and are necessary to complete the annual audit, including but not limited to
  - (a) all books, records, accounts and vouchers of the First Nation;

- (b) any information held by or under the control of a department manager or any agent of the First Nation that is necessary for the completion of the audit;
  - (c) all Council resolutions and First Nation by-laws; and
  - (d) any agreements, contracts, or related documents entered into or in control of the First Nation, Council or any employee of the First Nation.
37. The annual audit must be conducted in accordance with generally accepted auditing standards, must include a general review of the adequacy of the accounting procedures and systems of control employed to preserve and protect the assets of the First Nation, and must be completed in no more than four (4) months after the fiscal year-end.
38. The controller must provide any assistance to the auditor required for the completion of the annual audit.
39. The Auditor shall within 105 days following the fiscal year end provide for review and comment the annual audited financial statements and annual audit reports by the Committee,
40. the auditor must present the statements including comments of the Committee and reports to Council .
41. Council must within 120 days following the end of the fiscal year. consider and vote on the annual audited financial statements and annual audit reports at a duly held meeting of Council and, if approved, must be signed by the Chief and one (1) other person as designated by resolution.

#### **Public Access**

42. Once Council signs the annual audited financial statements and annual audit reports, the controller must post copies of the statements and reports in such public places as determined by Council, by resolution.
43. The controller must retain the signed, annual audited financial statements and annual audit reports, and any member of the First Nation may
- (a) inspect the statements and reports during regular office hours; and
  - (b) directly or through an agent, make a copy of the statements, the reports or any part thereof, upon payment of a fee of twenty-five cents (\$.25) per page.

**PART 7**

**FINANCIAL MANAGEMENT: DEPOSITS**

**General Requirements**

44. The Committee must ensure that all operating and savings accounts in the name of the First Nation are established at a chartered bank, trust company or credit union.
45. The controller must ensure the safekeeping of all First Nation funds received and maintain a numbered receipt book for the funds.
46. Upon receipt of any First Nation funds other than Tax Revenue, the controller must
  - (a) stamp all cheques immediately upon receipt with a stamp that designates the moneys for deposit into a General Account;
  - (b) cause such funds to be deposited into a General Account within five (5) days of receipt; and
  - (c) promptly issue a receipt in the correct amount to the payor.
47. Upon receipt of any Tax Revenue, the controller must
  - (a) stamp all cheques immediately upon receipt with a stamp that designates the moneys for deposit into the Tax Account;
  - (b) cause such funds to be deposited into the Tax Account within five (5) days of receipt; and
  - (c) promptly issue a receipt in the correct amount to the payor, subject to any requirement in the Taxation By-law to issue a receipt.

**Bank Accounts and Tax Account**

48. The controller must, under the supervision of the Committee, establish at least one (1) bank account held in the name of the First Nation, into which all First Nation funds, other than Tax Revenue, must be deposited.
49. The controller must, under the supervision of the Committee, establish one (1) Tax Account into which all Tax Revenue must be deposited.
50. The Committee may authorize the controller to reallocate funds from one General Account to another General Account for investment purposes or program and services delivery.
51. Funds in any General Account and the Tax Account must be administered by the controller.

52. The interest earned on First Nation funds, other than the Tax Revenue, must be paid to a General Account.
53. The interest earned on Tax Revenue must be paid to the Tax Account.

### **FINANCIAL MANAGEMENT: RESERVE FUND**

*[Note to First Nation: the Reserve Fund provisions are added for your consideration.]*

#### **Reserve Fund**

54. Subject to the provisions of any funding arrangement, Council may, by resolution, authorize the establishment of a reserve fund, using First Nation funds other than Tax Revenue, called the "Reserve Fund" for the sole purposes of

*[Note to First Nation: the following are two examples of reasons you may wish to create a Reserve Fund.]*

- (a) constructing or upgrading capital works of the First Nation;
- (b) supplementing operational costs when projected revenues for First Nation administrative, social and educational programs are anticipated to be lower than projected expenditures.

#### **Conditions of Use**

55. The following conditions apply to the use of any Reserve Fund created under section 54:
  - (a) the Reserve Fund must be established in a separate bank account with a bank, trust company or credit union;
  - (b) Council must regularly inform the members of the First Nation about the use of the Reserve Fund;
  - (c) the members of the First Nation must give prior approval for any withdrawal from the Reserve Fund over \_\_\_\_\_ dollars (\$\_\_\_\_\_ ), such approval to be obtained in the same manner as set out in paragraph 72(b) of this By-law;
  - (d) Council must ensure that contributions are made to the Reserve Fund on an annual basis as part of normal monthly expenditure from First Nation funds and each contribution must be no less than \_\_\_\_\_ percent ( \_\_\_%) of the total projected annual revenues of the First Nation set out in the annual budget projections;
  - (e) Council can only withdraw from the Reserve Fund between April 1 and April 15 of each fiscal year and only if a balance of \_\_\_\_\_ dollars (\$\_\_\_\_\_ ) remains in the Reserve Fund account after the withdrawal, unless Council

receives approval of the members of the First Nation in the same manner as set out in paragraph 72(b) of this By-law;

- (f) Council must ensure that contributions to the Reserve Fund are budgeted as part of the annual budget, and are shown in financial statements required under paragraph 22(e) of this By-law; and
- (g) the Reserve Fund will be established and maintained on or before April 1, \_\_\_\_\_ and may not be accessed until after April, 1 \_\_\_\_\_.

## **FINANCIAL MANAGEMENT: EXPENDITURES**

### **Conditions of Expenditures**

- 56. Prior to any expenditure from a General Account, other than loans under section 70, the following conditions must be met:
  - (a) funds for the expenditure must be allocated and approved as part of the annual budget; and
  - (b) the expenditure must be consistent with prudent cash management practices.
- 57. Any expenditures from the Tax Account must be in accordance with an Expenditure By-law.

### **Authorized Signatories**

- 58. Council may, by resolution, designate up to four (4) individuals to sign any purchase order, work order, cheque, agreement or other obligation to make an expenditure from First Nation funds, provided that any obligation to make an expenditure must be signed by
  - (a) at least one (1) councillor; and
  - (b) the band manager or, if the band manager is unavailable, the director of finance.
- 59. ***[Note to First Nation: the types of expenditures and pre-approved amounts listed below are given as examples only. Please insert the types of expenditures that you wish to pre-approve, as well as reasonable amounts for your community's signing authorities. Consider the size of your administration, budget and authority level of personnel.]***

Council may, by resolution, designate the individuals described below to sign purchase orders and work orders for up to the following limits:

	<u>Employee Title</u>	<u>Limit</u>
(a)	department manager	\$_____; and
(b)	band manager	\$_____.

### **Bonding and Insurance Requirements**

*[Note to First Nation: the requirement for bonding is optional. The following provision and the sample amounts are provided for your consideration.]*

60. Council must ensure that any individual that is designated under section 58 is bonded to a minimum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) *[e.g. \$50,000]*, and any individual that is designated under section 59 is bonded to a minimum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) *[e.g. \$30,000]*.
61. Council must ensure that the First Nation obtains a reasonably prudent amount of loss and liability insurance to protect the First Nation and its assets.

### **Expenditure Procedures**

62. The controller may distribute First Nations funds, other than Tax Revenue, among more than one General Account if he determines that it is administratively prudent to do so.
63. Council may, by resolution, authorize an expenditure from the Tax Account if the expenditure has been approved by Council
  - (a) as part of the annual budget; and
  - (b) as part of the Expenditure By-law.
64. An individual designated under section 59 may sign a purchase order or work order up to the amount specified in section 59 provided the expenditure has been approved by Council as part of the annual budget.
65. The Committee must report to the Council no later than the last day of the month with the following information for the previous month:
  - (a) a summary of revenues and expenditures for the previous month;
  - (b) a cumulative summary of year-to-date revenues and expenditures;
  - (c) bank balances for all General Accounts and the Tax Account; and
  - (d) a monthly cash flow report showing annual projections for each department and year-to-date revenues and expenditures of each department.

66. Council must ensure that all expenditures for the First Nation meet the conditions set out in section 56.

### **Petty Cash**

67. Council may, by resolution, establish and maintain a petty cash fund to a maximum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) [*e.g. \$500*], provided that
- (a) the resolution designates an employee of the First Nation who is not an authorized signatory of the First Nation to be responsible for the petty cash fund;
  - (b) the designated employee must
    - (i) complete a voucher for each disbursement made,
    - (ii) ensure that the total of disbursement vouchers plus the cash on hand equals the total amount of the fund,
    - (iii) ensure reimbursement of the fund, in accordance with the vouchers, and
    - (iv) charge each expense to the appropriate department account.

### **Travel Expenses**

68. All employees of the First Nation must submit travel expenses over \_\_\_\_\_ dollars (\$\_\_\_\_\_) to the band manager for advance approval and the band manager may approve such expenses, provided that the expenses are within the annual budget.
69. (a) On an annual basis, the Committee must recommend allowable rates of travel expenses and conditions of reimbursement to Council for its consideration and approval, by resolution.
- (b) Where there have been no recommended changes the previous existing rates and conditions shall apply until amended by resolution.

## **FINANCIAL MANAGEMENT: LOANS, BORROWING AND DEBTS**

### **Loans**

*[Note to First Nation: is this a power that you wish Council to have? You could prohibit Council from making any types of loans. Or, you could limit the types of loans that Council can make (see below)].*

70. Council may make, or allow to be made, a loan from First Nation funds held in a General Account, provided that the following conditions have been met:
- (a) the loan must be for



*[Note to First Nation: if you wish to restrict the types of loans, insert allowable loans here. Restrictions could include:*

- (i) *terms that include a reasonable rate of interest, and*
- (ii) *no more than \_\_\_\_\_ dollars (\$\_\_\_\_\_)etc.;*
- (b) Council must have pre-authorized the loan by resolution;
- (c) funds for the loan must be allocated and approved as part of the annual budget;  
and
- (d) the loan must be consistent with prudent cash management practices.

### **Borrowing and Credit Powers of Council**

*[Note to First Nation: these conditions of borrowing are designed so that if the First Nation only needs to borrow a small amount, it can be done by band council resolution, but if it needs to borrow a large amount, it must be approved by the members.]*

71. Council may, by resolution, from time to time on behalf of the First Nation
- (a) borrow money in such manner and amounts, on such security, from such sources and upon such terms and conditions as they think fit,
  - (b) obtain credit for operational purposes of the First Nation,
  - (c) issue bonds, debentures, and other debt obligations either outright or as security for any liability or obligation of the First Nation or any other person, and
  - (d) mortgage, charge, whether by way of specific or floating charge, or give other security on the undertaking, or on the whole or any part of the property and assets, of the First Nation (both present and future),

provided that the conditions of borrowing in section 72 have been met.

### **Conditions of Borrowing**

72. Council must ensure that the following conditions have been met prior to passing an authorizing resolution under section 71:
- (a) if the amount to be borrowed is less than \_\_\_\_\_ dollars (\$\_\_\_\_\_) and if Council approves of the terms of the loan, then Council must pass a resolution authorizing the loan;
  - (b) if the amount to be borrowed is more than \_\_\_\_\_ dollars (\$\_\_\_\_\_), then Council must have the prior approval of the members of the First Nation authorizing the loan, such vote to be held in the following manner:
    - (i) Council must ensure that a notice is

- (A) mailed or delivered to all households of members of the First Nation, on all reserves of the First Nation,
  - (B) mailed or delivered to all members of the First Nation who live off the reserve, and
  - (C) posted at all administration offices of the First Nation,
- at least fourteen (14) days prior to a vote held under this section;
- (ii) a notice mailed or delivered under this section must set out the details of the amount of the loan, the purpose of the loan and the repayment obligations in respect of the loan, and the time, date and place of a meeting of the members of the First Nation to authorize the loan;
  - (iii) at the meeting, Council must inform the members of the First Nation of the details of the loan, including the amount of the loan, its purpose, the cost of interest and how the loan will be repaid; and
  - (iv) the loan must be approved by fifty percent (50%) plus one (1) of the members present at the meeting.

### **Collection of Debts**

- 73. The Committee must seek, or cause to be sought, agreement for a payment plan from each person or entity that owes money to the First Nation.
- 74. The Committee must ensure that the repayment plan for any debt to the First Nation under one thousand dollars (\$1,000) is for a term no longer than twelve (12) months, unless otherwise approved by resolution.
- 75. The Committee must ensure that the repayment plan for any debt to the First Nation over one thousand dollars (\$1,000) is for a term no longer than twenty-four (24) months, unless otherwise approved by resolution.
- 76. Council, or its designate, must charge interest on any debts owing to the First Nation, and Council must, by resolution, determine the amount of interest to be charged, provided that in no circumstances may it be less than \_\_\_\_\_ percent (\_\_\_%) per year.
- 77. Council may, by resolution, set off or designate another person to set off any amount owing to the First Nation against any money owed to the debtor from the First Nation.
- 78.
  - (a) The Committee may use a debt collection agency or, if approved by resolution, the court, to collect debts that are greater than \_\_\_\_\_ dollars (\$\_\_\_\_\_), more than ninety (90) days in arrears and for which the debtor has failed to agree to a repayment plan according to this By-law.
  - (b) Prior to initiating any collection action under this provision, the Committee must make reasonable efforts to enter into a repayment plan with the debtor in accordance with the provisions of this Part.

79. The band manager or his designate must render a statement of account to all debtors of the First Nation on a monthly basis.

### **FINANCIAL REPORTING: INVOICING**

80. No person may make a payment on behalf of the First Nation for the performance of work, supply of goods or rendering of services unless the charge in respect of such work, goods or services has been authorized
- (a) pursuant to a resolution; or
  - (b) by a person delegated to authorize such payment under this By-law.
81. The band manager or his designate must ensure that an invoice is rendered, in a timely manner, for all work, goods or services that are provided for payment by the First Nation.

### **AWARDING OF CONTRACTS**

82. Council may, by resolution, approve any contract on behalf of the First Nation, provided the following conditions must be met:
- (a) any expenditure required of the First Nation in the contract must meet the requirements under section 56;
  - (b) the department manager responsible for managing the contract must recommend the contract to Council; and
  - (c) the controller must state to Council that the funds are available to pay the expenditure.
83. Council may, by resolution, designate the employees described below to approve any contract for up to the following limits, provided the requirements under paragraphs 82(a) and (c) are met in advance:

	<u>Employee Title</u>	<u>Limit</u>
(a)	department manager	\$2,000; and
(b)	band manager	\$5,000.

### **Tendering Requirements**

84. The band manager may approve a capital works purchase up to \_\_\_\_\_ dollars (\$ \_\_\_\_\_) without going to tender if the purchase was approved in the annual budget.
85. The Committee must put all capital works purchases over \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to public tender and seek bids from at least three (3) independent contractors for such purchases.

86. Council may, by resolution, approve the Committee to consider less than three (3) bids if less than three (3) bids are received by the tender closing date.
87. In emergency situations telephone bids up to \_\_\_\_\_ dollars (\$\_\_\_\_\_) may be accepted by a department manager providing a written confirmation follows from the bidder and a record of telephone bids is filed.
88. Invitations to tender must include
  - (a) the time and date of closing;
  - (b) sufficient details from which comparable bids can be made;
  - (c) the time, date, and place tenders are to be opened; and
  - (d) the amount of any security deposit.
89. The tendering period is not to be less than five (5) working days, unless in an emergency situation.
90. All tenders are to be returned sealed and addressed to the First Nation, clearly marked "Tendered for [*description of project*]" and the controller must record, or cause to be recorded, the time and date of receipt on the unopened envelope of tender.
91. All tenders received must be opened in public in the presence of the band manager and any department manager responsible for the tendering process.
92. The name of the bidder and the project, and the date and amount of the bid must be recorded.
93. The Committee must accept the lowest tender received unless Council has passed a resolution that
  - (a) approves the other tender; and
  - (b) records the reasons why it is in the best interests of the First Nation to accept a higher tender.
94. Upon acceptance of a tender for the performance of work, goods, or services, the Committee must ensure that
  - (a) a written contract is signed by the party accepting the contract and the First Nation; and
  - (b) a copy of the written contract is kept as a record of the First Nation.
95. No disbursements or payment on any contract must be made without supporting documentation as required by any policies of the Committee.

96. The controller must retain a fifteen percent (15%) hold-back of final payment or such greater amount as may be determined by the Committee from all contractors until Council, by resolution, approves all work as complete and satisfactory.
97. The Committee may establish any further policies and procedures for the tender process as it considers necessary.

## **PART 8**

### **CONFLICTS OF INTEREST**

#### **Definitions**

98. The following definitions apply to this Part:
  - (a) “personal gain” means any financial benefit; and
  - (b) “family member” means a spouse, including a common law spouse, children, parent, brother, sister, father-in-law, mother-in-law, uncle, aunt, grandparent, son-in-law, daughter-in-law, and also includes any relative permanently residing in the person’s household.

#### **General Conflict of Interest Rule**

99. A person who is a member of Council or the Committee, or is otherwise employed by the First Nation or one of its departments, must not use that office or employment for his own personal gain, the personal gain of his family member or to the detriment of the interests of the First Nation.

#### **Disclosure by Members of Council and the Committee**

100. If a decision by Council or the Committee may result in a member of Council or the Committee, or his family member, receiving any personal gain, such member must make full and complete disclosure to Council or the Committee, as the case may be, of the details of the potential personal gain.
101. It shall be the duty of each member of Council and the Committee to disclose to Council or the Committee, as the case may be, any real or perceived personal gain of any other member or any other member’s family member.
102. A member of Council or the Committee must disclose his potential personal gain and the potential personal gain of his family member in one of the following ways, whichever occurs first:
  - (a) at the meeting at which the Council or the Committee, as the case may be, first considers the decision that may result in the potential personal gain;
  - (b) at the first meeting after the member becomes aware of the potential for the personal gain; or

- (c) in writing to the Council or the Committee, as the case may be, as soon as the member becomes aware of the potential for the personal gain.
103. Immediately after the disclosure set out in paragraphs 102(a) and (b), the member in potential conflict must leave the meeting room and must not participate in any discussions or vote concerning the matter and the minutes of the meeting must record the time that the member leaves and returns to the meeting room.
104. Despite section 103, the person who leaves the room may still be counted for the purpose of calculating any quorum requirement.

### **Disclosure by Employees**

105. If an employee of the First Nation or his family member may receive a personal gain from a contract with the First Nation, he must disclose his interest to the Committee in writing and thereafter refrain from taking part in any discussion or decision about the awarding of the contract.

### **Liability to Account**

106. Council may hold any person who fails to follow the proper procedure for disclosure and abstaining from involvement under this Part responsible to reimburse the First Nation for any personal gain that he or his family member received.

### **Suspension or Dismissal**

107. If any person other than a member of Council or the band manager violates the conflict of interest provision, then subject to any personnel policy of the First Nation, the band manager may
- (a) suspend the person; or
  - (b) dismiss the person from all privileges and benefits of office or employment.
108. Subject to any personnel policy of the First Nation, any person who is suspended or dismissed under section 107 must have a right to appeal the dismissal or suspension to Council.
109. If the band manager violates the conflict of interest provision, then subject to any personnel policy of the First Nation that applies to the band manager, Council must
- (a) suspend the band manager; or
  - (b) dismiss the band manager from all privileges and benefits of office or employment.
110. Subject to any personnel policy of the First Nation that applies to the band manager, Council must, in a timely manner, give a band manager who is suspended or dismissed under section 109, an opportunity to speak to Council and explain any relevant circumstances.

*[Note to First Nation: you may want to include other dispute resolution mechanisms for the band manager here.]*

**PART 9**

**NON-COMPLIANCE**

- 111. A decision made in contravention of this By-law is voidable by vote of a majority of Council.

**PART 10**

**AMENDMENTS AND REPEAL**

- 112. Amendment or repeal of this By-law must be made by a by-law enacted by Council.

**PART 11**

**GENERAL**

- 113. In this By-law, any words in the singular include the plural and words in the plural includes the singular and the masculine includes the feminine and neuter where the context requires.
- 114. If any provision of this By-law is held to be invalid, void, voidable or unenforceable for any reason, then the particular provision will be deemed severed from the remainder of this By-law and all remaining provisions of this By-law must remain in full force and effect.

This By-law is hereby enacted by Council at a duly convened meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Chief [please spell out the name]

\_\_\_\_\_  
Councillor [please spell out the name]

\_\_\_\_\_  
Councillor [please spell out the name]

\_\_\_\_\_  
Councillor [please spell out the name]

\_\_\_\_\_  
Councillor [please spell out the name]

\_\_\_\_\_  
Councillor [please spell out the name]