

_____ **FIRST NATION**
DEVELOPMENT COST CHARGES LAW, 20__

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SCHEDULES

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WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands and interests in reserve lands, including the imposition of development cost charges;

B. The Council of the _____ First Nation deems it to be in the best interests of the First Nation to make a law for the imposition of development cost charges to assist the First Nation to pay the capital costs of providing, constructing, altering, or expanding **[list those types of works included in this Law and delete the others: sewage, water, drainage and transportation facilities, providing and improving park and recreation land]**, in order to serve, directly or indirectly, the development in respect of which such charges are imposed;

C. The Council has developed the **[insert name of long-term capital plan]** to support the development cost charges imposed by this Law; and

[OR

C. The First Nation participates in regional planning and, in the opinion of Council, the development cost charges imposed by this Law are related to capital costs attributable to projects included in the **[insert supporting regional plans]**;

OR

C. The First Nation has a service agreement with **[insert name of local government]** under which it contributes to the development cost charges levied by the local government, and the First Nation has considered the **[insert name of local government]**'s development costs charges in setting the development cost charges in this Law;] and

D. The Council has given notice of this Law and has considered any representations received by the Council, in accordance with the requirements of the *First Nations Fiscal Management Act*;

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

**PART I
CITATION**

Citation

1. This Law may be cited as the _____ *First Nation Development Cost Charges Law, 20__* .

**PART II
DEFINITIONS AND REFERENCES**

Definitions and References

2.(1) In this Law:

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

“administrator” means a person appointed by Council under subsection 3(1) to administer this Law;

“assist factor” means that percentage of the capital costs of each development cost charge class that will be paid by the First Nation;

“building” means any structure used or intended for supporting or sheltering any use or occupancy and includes a manufactured home;

[Note to First Nation: The First Nation will need to determine when it will collect DCCs: building approval, development approval or subdivision approval. The law, by-law or policy that sets out the approval process will be referenced in this Law, so that there is clarity respecting the time for DCC payment.]

“building approval” means a permit or other authorization issued by the First Nation under the **[insert name of law, by-law or policy under which approvals are given]** authorizing the construction, alteration or extension of a building or structure;

“capital costs” includes planning, engineering and legal costs directly related to the work for which a capital cost may be incurred, and interest costs incurred by the First Nation that are directly related to the work;

“commercial development” means a development used or intended to be used for the carrying on of any business, including the provision or sale of goods, accommodation, entertainment, meals or services, but excludes an industrial or residential development;

“Council” has the meaning given to that term in the Act;

“developer” means a person undertaking a development on the reserve;

“development” includes a subdivision of a parcel and any construction, alteration, excavation or improvement of land, buildings or structures, including the installation of works or services;

“development approval” means a permit or other authorization issued by the First Nation under the **[insert name of law, by-law or policy under which approvals are given]** authorizing a development;

“development cost charge” means an amount levied under subsection 5(1);

“development cost charge class” means a class of works, or park and recreation land acquisition and improvement, for which development cost charges are levied under this Law;

“dwelling unit” means one (1) or more habitable rooms having collectively its or their own entrance from the exterior, used or intended to be used for the residential accommodation of not more than one (1)

person or family, having provision for living, sleeping and sanitary facilities and containing or providing for not more than one (1) cooking facility;

“expenditure law” means an expenditure law enacted by Council under paragraph 5(1)(b) of the Act;

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

“Board” means the First Nations Financial Management Board established under the Act;

“gross floor area” means the combined area of all floors within a building, including any basement or cellar, measured to the inside surface of the exterior walls of the building;

“gross site area” means the total area of land that is proposed for development in a building approval application, including access, parking, loading and landscape areas;

“improvement” means any building, fixture, structure or similar thing constructed, placed or affixed on, in or to land, or water over land, or on, in or to another improvement and includes a manufactured home;

“industrial development” means a development used or intended to be used for manufacturing, production, assembly, testing, warehousing, distribution or storage of products or materials;

“institutional development” means a building or structure used or intended to be used only on a non-profit basis for cultural, recreational, social, religious, governmental, public hospital or educational purposes, and also includes any building or structure that is serviced with sewer, water or drainage and which is not a residential, commercial or industrial development;

“interest”, in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“manufactured home” means a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to

(a) be moved from one place to another by being towed or carried, and

(b) provide

(i) a dwelling house or premises,

(ii) a business office or premises,

(iii) accommodation for any other purpose,

(iv) shelter for machinery or other equipment, or

(v) storage, workshop, repair, construction or manufacturing facilities;

“manufactured home park development” means a residential development where spaces and utilities are provided for two (2) or more manufactured homes;

“parcel” means a parcel, block or other defined area of land on the reserve;

“parcel area” means the total area of land of a parcel;

“park improvements” means fencing, landscaping, drainage and irrigation, trails, restrooms, changing rooms, and playground and playing field equipment;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“reserve” means a reserve of the First Nation within the meaning of the *Indian Act*;

“residential (multi-family) development” means a development for residential purposes that does not include single-family residential, two-family residential or three-family residential development;

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting;

“secondary suite” means an additional dwelling unit that is contained within a single-family residential building;

[Note to First Nation: insert this definition only if the First Nation has a service agreement under which it pays a portion of development cost charges to the local government.]

“service agreement” means the **[insert title of service agreement]** between the First Nation and the **[insert name of local government]** under which the First Nation must pay to the local government all or a portion of development costs charges it collects under this Law;

“single-family residential” means a detached building consisting of only one (1) dwelling unit, and may also include a secondary suite;

“structure” means a construction of any kind whether fixed to, supported by or sunk into land or water;

“subdivision” means the division of land into two (2) or more parcels by any means, including by survey plan or by a metes and bounds description;

“subdivision approval” means an authorization issued by the First Nation under the **[insert name of law, by-law or policy under which approvals are given]** authorizing the subdivision of a parcel;

“three-family residential” means a detached building consisting of three (3) dwelling units; and

“two-family residential” means a detached building consisting of two (2) dwelling units.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 3(5)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III ADMINISTRATION

Administration

3.(1) Council must appoint an administrator to administer and enforce this Law on the terms and conditions set out in the resolution.

(2) The administrator must administer and enforce this Law and undertake such further duties as specified by Council.

(3) The administrator must maintain a separate development cost charge reserve fund for each development cost charge class under this Law.

(4) The administrator must maintain records for all development cost charges imposed and collected.

(5) The administrator must report annually to Council on the administration of this Law, which report must include, for each development cost charge class,

(a) the amount of development cost charges received;

(b) the expenditures from each development cost charge reserve fund;

(c) the balance in each development cost charge reserve fund account at the start and at the end of each calendar year;

(d) any exemptions, credits, rebates or refunds of development cost charges;

(e) the amount of all outstanding installment payments of development cost charges; and

(f) a summary of the works completed and the works to be undertaken within each development cost charge class.

(6) The administrator must make available to the public, upon request, the considerations, information and calculations used to determine the development cost charges imposed under this Law, except that information respecting the contemplated acquisition costs and locations of specific properties need not be provided.

PART IV

IMPOSITION AND PAYMENT OF DEVELOPMENT COST CHARGES

Establishment and Imposition of Development Cost Charges

[Note to First Nation: The First Nation will need to decide which DCC classes it will establish and set them out in this section. Any classes not being established should be deleted.]

4.(1) The following development cost charge classes are established:

- (a) sewer;
- (b) water;
- (c) drainage;
- (d) transportation; and
- (e) park and recreation land and improvement.

[Note to First Nation: The Law must set out when DCCs will be levied. This will depend on what laws and systems the First Nation has in place for reviewing and approving developments on its lands. Once this decision is made, appropriate changes should be made to this Part and Part V of the Law.]

(2) Development cost charges are hereby imposed on, and must be paid by, every person who obtains

- (a) a building approval;
- (b) a development approval, where Council requires payment of the development cost charges at that time in accordance with subsection 6(2); or
- (c) a subdivision approval, where Council requires payment of the development cost charges at that time in accordance with subsection 6(2).

Calculation of Development Cost Charges

5.(1) Where a person, in compliance with all applicable laws, by-laws and policies, applies for

- (a) a building approval,
- (b) a development approval, or
- (c) a subdivision approval,

the administrator must calculate the amount of development cost charges payable in relation to the application in accordance with this section and using the applicable charges and formula set out in Schedule I.

(2) Where a type of development is not identified in Schedule I, the amount of development cost charges to be paid to the First Nation must be equal to the development cost charges that would have been payable for the most comparable type of development, as determined by the administrator.

(3) Where a development contains two (2) or more uses, the development cost charges must be calculated separately for each use within the development, and the total amount payable must be the sum

of the development cost charges levied for all uses in the development.

(4) Where a building approval relates only to the expansion or alteration of an existing building, the development cost charges must be levied only on that portion of the building that expands the existing building. **[Note to First Nation: Delete this provision if building approval is not being used as a trigger for the payment of DCCs.]**

(5) Where required by the administrator, the developer must provide to the administrator the calculation of the development cost charges payable under this Law, as determined and certified by a professional engineer who is registered and licensed under applicable provincial legislation.

Payment of Development Cost Charges

6.(1) Except as provided in this section, development cost charges levied under this Law must be paid in full to the First Nation at the time of, and as a condition of, the issuance of a building approval.

(2) Council may, in its sole discretion, require a developer to pay development cost charges in full at the time of, and as a condition of, subdivision approval or at the time of, and as a condition of, a development approval.

(3) In the case of a phased development, development cost charges paid at the time of subdivision approval or development approval are payable only in respect of the phase respecting which a subdivision approval or development approval is given.

(4) On written request by a developer, the Council may, in its sole discretion, allow the developer to pay development cost charges in installments as follows: **[insert details of installment payment plan, including any qualifying criteria, the maximum number of installments, the timing for payment of each installment, and how the amount of each installment is determined.]**

(5) Where a developer pays the development cost charges by installments and fails to pay an installment within any time required for payment, the total balance becomes due and payable immediately.

(6) If at any time all or a portion of a development cost charge remains unpaid after the day it becomes due and payable, that unpaid amount accrues interest at the rate of _____ percent (___ %) per year from the due date until paid or recovered.

(7) Council may require a developer to provide, at the time of the first installment payment, an irrevocable standby letter of credit or undertaking from a bank, credit union or a trust company, or a bond of a licensed surety, or a security duly assigned, which ensures to the satisfaction of Council that upon default the balance of the unpaid development cost charges will be recoverable from the person, the bank, the surety or from the proceeds of the realization of the security, as the case may be.

Application of Development Cost Charges

7.(1) Despite subsection 4(2), no development cost charges are required to be paid where

- (a) the development does not impose any new capital cost burdens on the First Nation; or
- (b) development cost charges have previously been paid for the same development unless, as a result of a further development, new capital cost burdens will be imposed on the First Nation.

(2) For the purposes of subsection (1), a development imposes new capital cost burdens where it creates any new or additional demand on, or usage of, an existing or planned service or facility that is in a development cost charge class.

Exemptions from Development Cost Charges

[Note to First Nation: The First Nation may provide for exemptions from DCCs in accordance with the FNTC Standards. Any exemptions a First Nation wishes to provide must be set out in this Law.]

The following provides wording where the First Nation uses building approval as a trigger for payment of DCCs and wishes to exempt members from DCCs.]

8. Despite paragraph 4(2)(a), no development cost charges are required to be paid where a building approval authorizes the construction, alteration or extension of a building that will be owned and occupied by a member of the First Nation, provided that in such cases the First Nation must pay, using moneys that are not local revenues, into the appropriate development cost charge reserve funds an amount equivalent to the development cost charges that would have been payable had the exemption not applied.

Developer Contributions under Written Agreement

9.(1) If a developer has, pursuant to a written agreement with the First Nation, provided or paid the cost of providing a specific service outside the boundaries of the parcel being developed that is included in the calculations used to determine the amount of development cost charges, the cost of the service must be deducted from the development cost charges otherwise owing for that development cost charge class.

(2) Where a service is included in the calculations used to determine the amount of a development cost charge and a developer has, pursuant to a written agreement with the First Nation,

- (a) provided that service outside the boundaries of the parcel being developed, and
- (b) provided the service to a standard that exceeds the standard required by the First Nation,

the First Nation must offer a rebate of development cost charges for the incremental portion of costs beyond the standard required by the First Nation for that development cost charge class.

PART V

USE OF DEVELOPMENT COST CHARGES

Management and Use of Development Cost Charges

10.(1) The First Nation must establish by an expenditure law a separate development cost charge reserve fund for each development cost charge class.

(2) All development cost charges paid to the First Nation under this Law, including for greater certainty amounts paid under section 8, must be deposited in the appropriate development cost charge reserve fund established for each development cost charge class.

(3) Money in development cost charge reserve funds, together with interest on it, must be used only

(a) to pay the capital costs of providing, constructing, altering, improving, replacing or expanding sewer, water, drainage and transportation facilities that relate directly or indirectly to the development in respect of which the development cost charge was collected;

(b) to pay the capital costs of

- (i) acquiring park and recreation land or reclaiming land as park and recreation land, and
- (ii) providing park improvements on park and recreation land,

subject to the restriction that the capital costs must relate directly or indirectly to the development in respect of which the development cost charge was collected;

(c) to pay the principal of and interest on a debt incurred by a First Nation as a result of an expenditure under paragraphs (a) or (b); and

(d) to pay a person subject to a development cost charge for some or all of the capital costs the person incurred in completing a project described in paragraph (a) or (b) if

- (i) the project was completed under a written agreement between the person and the First Nation, and

(ii) the project is included in the calculations used to determine the amount of that development cost charge.

(4) All payments made under subsection (3) must be authorized by an expenditure law.

[Note to First Nation: Include the following subsection if there is a service agreement that requires the First Nation to pay all or a portion of its development cost charges to the local government.]

(5) Payments under paragraphs (3)(a) and (b) may be made to **[insert name of local government]** in accordance with the terms of the **[insert name of service agreement]** between the First Nation and the **[insert name of local government]** under which the First Nation contributes to the development cost charges levied by the **[insert name of local government]**.

(6) Moneys in a development cost charge reserve fund that are not immediately required may be invested or reinvested by the administrator only in one or more of the following:

- (a) securities of Canada or of a province;
- (b) securities guaranteed for principal and interest by Canada or by a province;
- (c) securities of a municipal finance authority or the First Nations Finance Authority;
- (d) investments guaranteed by a bank, trust company or credit union; or
- (e) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

Transfer of Development Cost Charges

11.(1) The First Nation may transfer moneys in a development cost charge reserve fund to another development cost charge reserve fund, where the amount to the credit of a reserve fund is greater than required for the purpose for which the reserve fund was established.

(2) A transfer under subsection (1) must be authorized by an expenditure law.

Borrowing from a Development Cost Charge Reserve Fund

12.(1) The First Nation may borrow from a development cost charge reserve fund for the purposes of a capital purpose reserve fund where

- (a) the moneys in the originating reserve fund are not currently required for its purpose; and
- (b) the First Nation has a reserve fund established for a capital purpose for which it requires the moneys.

(2) Where moneys are borrowed under subsection (1), the First Nation must repay to the originating reserve fund, no later than the time when the money is needed for the purposes of that reserve fund,

- (a) the amount borrowed; and
- (b) an amount equivalent to the interest that would have been earned on the amount had it remained in the originating reserve fund.

(3) Interest paid under paragraph (2)(b) must be at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation.

(4) In the event the Board assumes third-party management of the First Nation's local revenue account in accordance with the Act, the Board may, acting in the place of the Council, borrow moneys from a development cost charge reserve fund where it determines that such borrowing is necessary to meet the financial obligations of the First Nation.

(5) Borrowing from a reserve fund under this section must be authorized by an expenditure law.

PART VI
REFUNDS OF DEVELOPMENT COST CHARGES

Refund of Development Cost Charges

13.(1) A developer may apply to the administrator for a refund of development cost charges previously paid by the developer in whole or in part when the building, subdivision or development approval is cancelled, provided that an application for a refund is made within six (6) months of the cancellation, as the case may be, and a new or replacement building, subdivision or development approval application has not been received or approved in respect of the parcel.

(2) Upon application under subsection (1), the administrator must determine whether the applicant qualifies for a refund of development cost charges and, if so, refund the development cost charges.

PART VII
COMPLAINTS TO ADMINISTRATOR

Complaints to Administrator

14.(1) A developer may, within seven (7) days of receiving from the administrator the calculation of development cost charges under subsection 5(1), make a complaint to the administrator in writing.

(2) A complaint may only be made respecting one or more of the following:

- (a) there is an error or omission respecting the calculation of the development cost charges; and
- (b) an exemption has been improperly applied.

(3) A complaint must be made in the form set out in Schedule II and delivered to the administrator and must include any reasons in support of the complaint.

(4) Within fourteen (14) days after receipt of a complaint, the administrator must review the matter and attempt to resolve the complaint.

(5) If the administrator concludes that the development cost charges were improperly calculated or levied and the developer is owed a refund, the administrator must correct the error and refund to the developer the excess development cost charges paid.

(6) If the administrator concludes that the development cost charges were improperly calculated or levied and that further amounts are owed by the developer, the developer must pay the balance of the development cost charges owing within ten (10) days of notice from the administrator.

(7) The administrator must provide a report to Council in respect of each complaint received under this section, which report must include the nature of the complaint and the resolution of the complaint, if any.

(8) Where a developer makes a complaint under this Law, the developer must pay when due the full amount of the development cost charges assessed and such payment will not prejudice the developer's rights in respect of the complaint.

PART VIII
PARK AND RECREATION LAND ACQUISITION

Acquisition of Park and Recreation Land

15.(1) With respect to development cost charges to provide and improve park and recreation land, all or part of the development cost charges may be paid by providing an interest in reserve lands in accordance with this section.

(2) An interest in reserve lands to be provided must

(a) have a location and character acceptable to the First Nation; and

(b) on the day the development cost charge is payable, have a market value that is at least equal to the amount of the development cost charge.

(3) If the developer and the First Nation are not able to agree on the market value, the developer and the First Nation may agree that the market value is to be determined by an appraiser acceptable to the developer and the First Nation.

(4) If the developer and the First Nation are not able to agree on an appraiser, the First Nation may decide to not accept the interest in reserve lands in lieu of development cost charges for park and recreation land.

(5) Unless otherwise agreed, the cost of an appraiser must be borne equally by the developer and the First Nation.

(6) If partial payment of a development cost charge for park and recreation land in the form of an interest in reserve lands is made, the remainder must be paid in accordance with this Law.

(7) Where an interest in reserve lands is provided under this section, the developer must transfer its interest in the reserve lands to the First Nation, at the developer's cost, in the manner directed by the First Nation.

(8) Where an interest in reserve lands is acquired under this section, the First Nation may use interest earned on money in the park and recreation land development cost charge reserve fund to provide for park improvements on the interest in reserve lands that is acquired.

PART IX GENERAL PROVISIONS

Validity

16. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay a development cost charge under this Law be affected by

(a) an error or omission in a valuation or a determination made by the administrator; or

(b) a failure of the First Nation or the administrator to do something within the required time.

Notices

17.(1) Where in this Law a notice is required to be given and where the method of giving the notice is not otherwise specified, it must be given

(a) by mail to the recipient's ordinary mailing address;

(b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or

(c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address.

(2) Except where otherwise provided in this Law,

(a) a notice given by mail is deemed received on the fifth day after it is posted;

(b) a notice posted on property is deemed received on the second day after it is posted; and

(c) a notice given by personal delivery is deemed received upon delivery.

Interpretation

18.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of

the remaining portions of this Law.

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

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

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

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of the enactment and must be construed as being inserted for convenience of reference only.

Force and Effect

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

THIS LAW IS HEREBY DULY ENACTED by Council on the ____ day of _____ , 20__ , at _____ , in the Province of _____ .

A quorum of Council consists of _____ (__) members of Council.

[Name]
Chief [please spell out the name]

[Name]
Councillor [please spell out the name]

[Name]
Councillor [please spell out the name]

[Name]
Councillor [please spell out the name]

SCHEDULE I
CALCULATION OF DEVELOPMENT COST CHARGES

[Note to First Nation: This Schedule should set out the development cost charges imposed for each development cost charge class. For each development cost charge class, the schedule should set out the charge per unit for each type of development, the assist factor (if applicable), and any exceptions applicable only to that class. The following wording is an example of wording for sewer development cost charge.]

A. Development cost charges for sewer facilities

1. Development cost charges are payable for sewer facilities as follows:

<u>Type of development</u>	<u>Development cost charge</u>
Single-family residential	\$ ____ per dwelling unit
Two-family residential	\$ ____ per dwelling unit
Three-family residential	\$ ____ per dwelling unit
Residential (multi-family)	\$ ____ per dwelling unit
Manufactured home park	\$ ____ per pad space
Commercial	\$ ____ per metre ² of gross floor area
Institutional	\$ ____ per metre ² of gross floor area
Industrial	\$ ____ per metre ² of gross site area

2. The assist factor for sewer facilities is ____ percent (___%).]

SCHEDULE II
COMPLAINT TO ADMINISTRATOR RESPECTING
DEVELOPMENT COST CHARGES

TO: Administrator for the _____ First Nation
[address]

PURSUANT to the provisions of the _____ *First Nation Development Cost Charges Law*, 20__, I hereby make a complaint respecting the imposition of development cost charges on the development on the following interest in reserve lands:

[description of the development/interest]

This complaint is based on the following reasons:

- (1)
- (2)
- (3)

(describe the reasons in support of the complaint in as much detail as possible)

Applicant's mailing address to which a reply to the complaint is to be sent:

Name of Complainant (please print)

Signature of Complainant (or representative)

Dated: _____, 20__.