

_____**FIRST NATION**
[INSERT PROJECT DESCRIPTION]
LONG-TERM REFINANCING BORROWING LAW, 20__

WHEREAS:

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

B. The _____ First Nation is a borrowing member of the Authority and has entered into a borrowing agreement with the Authority;

C. The Authority has as one of its purposes the securing for its borrowing members, through the use of property tax revenues, long-term financing of capital infrastructure for the provision of local services on reserve lands;

D. The Council of the _____ First Nation has determined that it is in the interests of the First Nation and those residing on the reserve to refinance its existing debt obligation in respect of the capital infrastructure project;

E. The total cost of undertaking the capital infrastructure project was _____ dollars (\$ _____), and the existing debt obligation in respect of the capital infrastructure project as of [insert date] is _____ dollars (\$ _____);

F. The Council of the _____ First Nation deems it necessary to borrow the sum of _____ dollars (\$ _____) from the Authority for the refinancing;

G. The amount of the _____ First Nation's existing obligations authorized as of the date of this Law is _____ dollars (\$ _____), and the estimated additional obligations authorized under this Law are _____ dollars (\$ _____), as certified by [authorized officer] for the First Nation, a copy of which certification is attached as Schedule "A" to this Law;

H. The _____ First Nation has enacted a financial administration law under paragraph 9(1)(a) of the Act, which law has been approved by the First Nations Financial Management Board in accordance with section 9(2) of the Act and as required by section 4 of the Act;

I. The _____ First Nation has sufficient unutilized borrowing capacity to undertake the borrowing authorized under this Law; and

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

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

1. This Law may be cited as the _____ *First Nation [insert project description] Long-term Refinancing Borrowing Law, 20__*.

2. In this Law:

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

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

"capital infrastructure project" means the project generally described as [insert description of the project that is being refinanced];

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

“First Nation” means the _____ First Nation;

“interim long-term financing” means financing provided by the Authority to the First Nation in anticipation of the inclusion and replacement of such financing by long-term financing in an issue of debt securities by the Authority;

“Law” means this borrowing law;

“promissory note” means a contractual promise to pay made by the First Nation to the Authority that sets out a schedule of repayment of principal and interest;

“refinancing” means the replacement of the existing debt obligation incurred in respect of the capital infrastructure project, with financing authorized under this Law;

“reserve” means any land set apart for the use and benefit of the First Nation within the meaning of the *Indian Act*;

“security issuing council resolution” means a Council resolution that includes the information required in section 5 and is in the form required by the Authority; and

“undertaking agreement” means an agreement among the First Nation, the Authority and one (1) or more creditors of the Authority (or a trustee on behalf of such creditors) under which such creditors or such trustee may, among other things, exercise the Authority’s rights in respect of a loan to the First Nation.

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

4. The Council is hereby authorized and empowered to borrow upon the credit of the First Nation for the refinancing using property tax revenues, and the Authority is requested and authorized to provide the refinancing at the sole cost and on behalf of the First Nation, a sum not exceeding _____ dollars (\$_____) in lawful money of Canada (provided that the First Nation may borrow all or part of such amount in such currency as the Authority determines, but the aggregate amount in lawful money of Canada and in Canadian dollar equivalents so borrowed must not exceed _____ dollars (\$_____) CAD), together with such interest and with such discounts or premiums and expenses as the Authority determines appropriate in consideration of the market and economic conditions.

5. When from time to time the First Nation wishes to borrow all or a portion of the amount authorized under this Law, the Council shall pass a security issuing council resolution that

- (a) approves the borrowing of the specified amount;
- (b) requests the Authority to undertake the borrowing of the specified amount on Council’s behalf and to
 - (i) include the specified amount as part of the Authority’s next issue of debt securities, or
 - (ii) provide the specified amount to the First Nation as interim long-term financing; and
- (c) states the number of years, from the date of the first advance, that the financing must be repaid by the First Nation.

6. On completion by the Authority of all or part of the financing authorized and undertaken pursuant to this Law and a security issuing council resolution, the First Nation

(a) shall execute and deliver to the Authority such promissory notes as requested by the Authority and in the form required by the Authority and hereby authorizes and directs **[insert titles of authorized**

signatories] to execute such promissory notes on behalf of the First Nation when requested by the Authority; and

(b) shall execute and deliver to the Authority an undertaking agreement when requested by the Authority and in the form required by the Authority and hereby authorizes members of Council constituting at least a quorum to execute such undertaking agreement on behalf of the First Nation when requested by the Authority.

7. The First Nation shall in each budget year after this Law comes into force provide for payments of all amounts payable to the Authority during that budget year and reserve such local revenues as are required to ensure that all amounts authorized to be paid to the Authority are actually paid in that year.

8. An expenditure law made under paragraph 5(1)(b) of the Act shall not authorize the expenditure of moneys raised under a local revenue law unless the First Nation's budget provides for the payment of all amounts payable to the Authority during the budget period.

9. The First Nation must repay the financing obtained from the issuance of debt securities by the Authority no later than ____ () years from the date on which the Authority provides the first advance of such financing to the First Nation.

10. Unless pre-paid by the First Nation in accordance with its borrowing agreement with the Authority, the First Nation must repay the interim long-term financing to the Authority by replacing such financing with financing obtained from the issuance of debt securities by the Authority, no later than five (5) years from the date on which the Authority provided the first advance of the interim long-term financing to the First Nation.

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

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

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

14. The authority to borrow under this Law ends on the earlier of

(a) the date that the amount authorized by this Law has been fully borrowed by the First Nation, as evidenced by security issuing council resolutions passed by Council, and

(b) five (5) years from the date that this Law comes into force for any part of the amount authorized by this Law that has not been borrowed, as evidenced by security issuing council resolutions passed by Council.

15. 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]

SCHEDULE "A"

CERTIFICATE OF CAPITAL LIABILITIES AND CALCULATION OF BORROWING CAPACITY

The _____ (the "First Nation") in relation to _____ (insert the name of the long-term capital borrowing law) (the "borrowing law")

The undersigned officer assigned responsibility as the senior financial officer under the authority of the First Nation's financial administration law hereby certifies as of _____ (insert date), as follows:

Previous year's local revenues in aggregate (excluding service tax revenues, if any) = \$ _____ a
(sections 5, 6, and 7 of the Commission *Standards Establishing Criteria for the Approval of First Nation Borrowing Laws*)

(1) (i) Annual debt servicing limit ("a" above x 25%) **GROSS** \$ _____ b

(Where section 1.3 of the Commission *Standards Establishing Criteria for the Approval of First Nation Borrowing Laws* applies, use the following calculation instead.)

OR (ii) Annual debt servicing limit ("a" above x 40%) **GROSS** \$ _____ b

(2) Annual debt servicing cost payable from local revenues for previous year (audited F/S) **LESS:** \$ _____ c

(section 4 of the Commission *Standards Establishing Criteria for the Approval of First Nation Borrowing Laws*)

(3) Account for: <u>New local revenue capital liabilities since audited F/S (if any)</u>	<u>Annual servicing cost</u>	
_____	_____	d
_____	_____	e
_____	_____	f
Total of lines d through f	LESS: \$ _____	g

(4) Account for: <u>capital liabilities which have matured after audited F/S (and previous year's debt to be refinanced)</u>	<u>Annual servicing cost</u>	
_____	_____	h
_____	_____	i
_____	_____	j
Total of lines h through j	ADD: \$ _____	k

(5) Available net revenue from property tax: (b-c+g+k)	NET: \$ _____	l
(6) Available revenue from service tax: (+s)	ADD: \$ _____	m
(7) Total available revenues to service debt	EQUALS: \$ _____	n
(8) Estimated annual servicing cost of the Authority loan from local revenues (r)	LESS: \$ _____	o
(9) Estimated cash flow exceeds (deficient) to service loan (lines n-o = p)	EQUALS \$ _____	p

- (10) Amount of new loan or refinancing requested from the Authority \$ _____ q
Term of new loan: _____ years
Interest rate used to determine annual servicing cost for this Certificate: _____ %
Estimated annual servicing cost of new or refinancing the Authority loan \$ _____ r
(see www.fnfa.ca for loan cost estimating tool)
- (11) Estimated unutilized borrowing capacity remaining after new loan (p) \$ _____

Complete the following only if the First Nation is enacting a Service Tax Law to pay all or a portion of the costs of this borrowing, as set out in section 2 of the Commission Standards Establishing Criteria for the Approval of First Nation Borrowing Laws, 2016:

Name of Service Tax Law: _____
First Year the Service Tax will be levied: _____
Number of Years the Service Tax will be levied: _____
Portion of Service Tax revenues allocated to servicing new loan or refinancing: _____ %

Annual Service Taxes to be collected: \$ _____
Leveragability rate for Service Tax: 90%
Available Service Tax revenue each year: \$ _____ s

In accordance with subsection 5.2 of the Commission *Standards for the Form and Content of First Nation Borrowing Laws*, the debt to be contracted under the borrowing law will not exceed the lesser of thirty (30) years and the reasonable life expectancy of the capital infrastructure project for which the loan is to be contracted, or where the borrowing law is for refinancing, the remaining reasonable life expectancy of the capital infrastructure project.

This Certificate is not determinative of the actual amount of any loan that may be made by the Authority to the First Nation, which will be determined by the Authority in its sole discretion, subject to the limitations in the First Nation's borrowing law. The actual interest rate or rates applicable to any loan may differ from the interest rate used by the First Nation for the purposes of this Certificate.

This Certificate is provided to the First Nations Tax Commission as required under paragraph 1.1(b) of the Commission's *Standards for the Form and Content of First Nation Borrowing Laws*, and may be relied on by the Commission in its determination of the First Nation's unutilized borrowing capacity for the purposes of the review and approval of the borrowing law.

DATED this _____ day of _____, 20__

Senior Financial Officer

(please print full name)

Current ver. 2016 12 14

SCHEDULE “B”
FINANCIAL PERFORMANCE CERTIFICATE
(FMA, Subsection 50(3) – to be provided to the First Nation by the FMB)

SAMPLE