

Cook's Ferry

FINANCIAL ADMINISTRATION LAW, 2016

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TABLE OF CONTENTS

PART I - Citation..... 1

PART II - Interpretation and Application 1

PART III - Administration 5

DIVISION 1 - Council 5

DIVISION 2 - Finance and Audit Committee 8

DIVISION 3 - Officers and Employees 13

DIVISION 4 - Conduct Expectations 17

PART IV - Financial Management 19

DIVISION 1 - Financial Plans and Annual Budgets 19

DIVISION 2 - Financial Institution Accounts 22

DIVISION 3 - Expenditures 23

DIVISION 4 - General Matters 25

DIVISION 5 - Borrowing 27

DIVISION 6 - Risk Management 29

DIVISION 7 - Financial Reporting 34

DIVISION 8 - Information and Information Technology 40

PART V - Capital Projects 41

PART VI - Miscellaneous 45

SCHEDULE A – Dealing With Conflicts Of Interest 52

PART I - Interpretation 52

PART II - Councillors and Committee Members 53

PART III - Officers and Employees 57

PART IV - Contractors 60

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WHEREAS:

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

B. The Council of Cook's Ferry considers it to be in the best interests of the First Nation to make a law for such purposes;

NOW THEREFORE the Council of Cook's Ferry enacts as follows:

PART I - Citation

Citation

1. This Law may be cited as the *Cook's Ferry Financial Administration Law, 2016*.

PART II - Interpretation and Application

Definitions

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

"Act" means the *First Nations Fiscal 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 program, project or purposes for which it may be used;

"auditor" means the auditor of the First Nation appointed under section 77;

"Band Manager" means the person appointed as the First Nation's band manager under section 18;

"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;

"borrowing member" means a first nation that has been accepted as a borrowing member under section 76 (2) of the Act and has not ceased to be a borrowing member under section 77 of the Act;

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

"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;

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“Cook’s Ferry” being a band named in the schedule to the Act;

“Council” means the duly elected councillors and chief of the First Nation;

“Council chair” means the chief of the First Nation unless he or she is absent from a Council meeting, in which case, the Council chair for that meeting shall be a person selected by the councillors to be the chair of the Council for that meeting;

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

“Finance and Audit Committee” means the Finance and Audit Committee established under section 12;

“financial administration” means the implementation, conduct, management, supervision, control and direction of all matters relating to the financial affairs of the First Nation;

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

“financial officer” means the person appointed financial officer under section 19;

“financial competency” means the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be 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 Cook’s Ferry;

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

“First Nation’s reserve 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 25;

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

“local revenue account” means an account with a financial institution into which local revenues are deposited separately from other moneys of the First Nation;

“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;

“multi-year financial plan” means the plan referred to in section 26;

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“officer” means the Band Manager, financial officer, tax administrator and any other employee of the First Nation designated as an officer in the Council approved organizational chart for the First Nation;

“other revenues” means other revenues as defined in section 3 of the *Financing Secured by Other Revenues Regulations* made under the Act;

“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 10% or greater interest,

(c) any partnership, joint venture, or any other unincorporated association or organization in which the First Nation or another related body of the First Nation is a partner, member, or participant with a 10% or greater interest, or

(d) a trust of the First Nation; and

for greater certainty includes a corporation or a partnership, a joint venture or any other unincorporated association or organization, the financial transactions of which are consolidated in the annual financial statements of the First Nation in accordance with GAAP;

“special purpose report” means a report described in section 76;

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

“tax administrator” means the person appointed as the tax administrator under section 20 or 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;

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(d) the expressions "must" and "shall" are 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 an officer, by name of office or otherwise, also apply to any person designated by the Council to act in the officer's place or to any person assigned or delegated to act in the officer'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 and on the First Nation's website.

(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 fifteen (15) days before the date of the meeting.

(3) The accidental omission to post public notice of any meeting on the First Nation's website does not invalidate any proceeding at that meeting if the public notice is posted at the other required location.

(4) A failure to post notice of any meeting on the First Nation's website in a timely manner due to circumstances beyond the reasonable control of the person responsible, does not invalidate any proceeding at that meeting provided all reasonable steps are taken to remove, curtail, or contain the cause of the failure and to post the notice on the website with minimal delay.

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 an officer, employee, committee, contractor or agent by or under this Law.

(2) For greater certainty, and subject to this Law, the First Nation may enter into contracts, agreements, and transactions relating to financial administration of the First Nation which are not otherwise prohibited by this Law, another First Nation law, or the Act, provided such contracts, agreements and transactions are approved or ratified by Council or are otherwise authorized by this Law.

(3) If Council is permitted to authorize a contract, agreement, or transaction, Council may exercise its power by passing a resolution or by passing a law.

(4) The Council shall meet regularly for the dispatch of business relating to financial administration of the First Nation, and shall conduct such meetings and pass its resolutions in accordance with the following provisions:

(a) the Council chair shall preside as chair of the Council meetings;

(b) subject to this Law, the Councillors may regulate their meetings as they think fit;

(c) unless otherwise provided, a motion on a resolution or a law or on any other question before Council must be decided by a majority of votes of the councillors present at the meeting; and

(i) unless a councillor is prohibited from voting by this law due to a conflict of interest, each councillor present and participating in a meeting shall be entitled to speak and have one vote thereat; and

(ii) in the case of an equality of votes the Council chair shall not have a second or casting vote and the resolution or motion shall be defeated;

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(d) any councillor may call a meeting of the Council upon fifteen (15) days notice of such meeting being given to all of the councillors specifying the place, day, and time of such meeting and the proposed agenda, which notice must be given by email, mail, other means of communication previously consented to by each councillor, or by leaving the notice at the councillor's usual business or residential address; and

(i) a councillor may provide a written waiver of notice of any past, present, or future Council meeting;

(e) councillors may participate in a Council meeting by means of conference telephones or other communications facilities by which all councillors participating in the meeting can hear each other;

(f) a councillor prohibited from voting at a Council meeting due to a conflict of interest shall still be counted in the quorum for the meeting;

(g) a contract, transaction, or other matter in respect of which one (1) or more councillors have a conflict of interest may be approved:

(i) by the rest of the councillors present at and participating in the meeting, provided there are at least two (2) councillors that do not have a conflict of interest in the matter; or

(ii) subject to subsection (6), by a resolution at a meeting of members of the First Nation for which fifteen (15) days notice is provided and at which at least 10% of the First Nation's adult members participate in person, or by teleconference, video conference, or other means of registering their vote;

(h) a resolution of the Council maybe passed at a meeting of the Council or may be passed without a meeting if consented to in writing, whether by document or any method of transmitting legibly recorded messages, by all of the councillors, or in the case of a resolution to approve a contract, transaction or matter in respect of which a councillor has or may have a conflict of interest, if each of the other councillors (a minimum of two (2)) consents in writing to the resolution; and

(i) such written consent resolution shall be as valid and effectual as if it had been passed at a meeting of the Council duly called and held;

(ii) such resolution may be in two or more counterparts which together shall be deemed to constitute one resolution in writing; and

(iii) such resolutions shall be filed with the minutes of the proceedings of the Council and shall be effective on the date stated thereon or on the latest date stated on any counterpart;

(i) subject to this Law, all acts done by any meeting of the councillors shall, notwithstanding that it be afterwards discovered that there was some defect in the qualification or election of a councillor or that they or any of them were disqualified, be as valid as if every such person had been duly elected and was qualified to be a councillor.

(5) A contract or transaction with the First Nation is not invalid merely because

(a) a councillor or officer of the First Nation has or had an interest, direct or indirect, in the contract or transaction;

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- (b) a councillor or officer of the First Nation has not disclosed an interest he or she has in the contract or transaction; or
- (c) the Council or members of the First Nation have not approved the contract or transaction in which the councillor or officer of the First Nation has or had an interest, provided the contract or transaction is authorized by the Band Manager in compliance with this Law and the Band Manager is not conflicted with respect to the contract or transaction.

(6) 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 officers, 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, the chair and the 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) The Council may establish policies and procedures and give directions respecting any matter relating to the financial administration of the First Nation.

(2) The Council must establish policies or procedures or give directions, and monitor their implementation, respecting the acquisition, management and safeguarding of the First Nation's assets.

(3) The 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) The Council must establish and monitor the implementation of human resources policies and procedures that are designed to facilitate effective internal financial administration controls.

(5) The 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.

Remuneration and Expenses

10.(1) In this section:

"expenses" includes the costs of transportation, accommodation, meals, hospitality and incidental expenses; and

"remuneration" means any salaries, wages, commissions, bonuses, fees, honoraria and dividends and any other monetary and non-monetary benefits.

(2) The Council may, after considering any recommendations of the Finance and Audit Committee or the Band Manager, authorize the remuneration paid by the First Nation to each councillor for acting in the capacity of a councillor.

(3) If Council has authorized the payment of remuneration under subsection (2), Council must establish policies or procedures or give directions respecting the remuneration paid by the First Nation to each councillor for acting in the capacity of a councillor, and by any related body to a councillor who is also a director or other similar capacity of a related body.

(4) The Council must establish policies or procedures or give directions respecting the expenses paid by the First Nation to each councillor while acting in the capacity of a councillor, and by any related body to a councillor who is also a director or other similar capacity of a related body.

(5) Annually, within forty five (45) days of the end of the fiscal year, each councillor must provide a written report to the Council and the financial officer separately listing the remuneration paid and expenses reimbursed by any related body to the councillor.

(6) Annually the financial officer must prepare a report separately listing the remuneration paid and expenses reimbursed by the First Nation, and by any related body, to each councillor whether such amounts are paid to the councillor while acting in that capacity or in any other capacity.

DIVISION 2 - Finance and Audit Committee

Interpretation

11. In this Division,

(1) "Committee" means the Finance and Audit Committee.

(2) For the purposes of section 12 an individual does not lose independency nor have a financial relationship with the First Nation or its related bodies as a result of the individual's receipt of any of the following payments from the First Nation or any of its related bodies

(a) remuneration for acting in his or her capacity as a councillor, a member of the Committee or other committee of the Council or First Nation, or as a director of a related body;

(b) fixed retirement compensation;

(c) payments or benefits paid in common with all members of the First Nation;

(d) payments or benefits under a program or service universally available to all members of the First Nation on published terms and conditions; and

(e) payments from a trust arrangement according to the terms and conditions of the trust agreement.

Committee Established

12.(1) The Council must establish the Committee of the First Nation, which shall be a standing committee, 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) The Committee must have three (3) members appointed by Council, a majority of whom must have financial competency and all of whom must be independent.

(3) For purposes of this section, an individual is considered to be independent if the individual does not have a direct or indirect financial relationship with the First Nation government that could, in the

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opinion of Council, reasonably interfere with the exercise of independent judgment as a member of the Committee.

(4) Notwithstanding anything else in this Law, an individual is considered to not be independent if the individual:

(a) or the individual's spouse is or has been an officer of the First Nation at any time in the last two (2) fiscal years of the First Nation;

(b) or the individual's spouse has or had a direct or indirect material financial relationship with the First Nation or any of its related bodies at any time in the last two (2) fiscal years of the First Nation; or

(c) or the individual's spouse is or has been the First Nation's accountant, auditor, lawyer or financial consultant at any time in the last two (2) fiscal years of the First Nation.

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

(a) setting criteria to determine if an individual is eligible to be a voting member of the Committee and is independent;

(b) requiring confirmation, before appointment, that each potential voting member of the Committee is eligible to be a member and is independent; and

(c) requiring each voting member of the Committee annually to sign a statement confirming that the member continues to meet the criteria referred to in paragraph (a).

(6) The Committee must have at least two (2) councillors as its members.

(7) Council must also appoint two (2) ex officio members of the Committee, one of whom must be a youth member of the First Nation between the ages of fourteen (14) and twenty four (24), and one of whom must be an elder member of the First Nation that is 60 years or older.

(8) The ex officio members shall be entitled to speak at the Committee meetings, but they must not be counted in the quorum, nor shall they have a vote on questions or motions before the Committee. The ex officio members of the Committee do not need to be financially competent, nor independent of the First Nation.

(9) Subject to subsection (10), the voting members of the Committee must be appointed to hold office for staggered terms of not less than three (3) complete fiscal years, provided that the terms of appointment at the initial set up of the Committee may be for less than three (3) years.

(10) A Committee member may be removed from the Committee by the Council if

(a) the member misses three (3) consecutively scheduled meetings of the Committee;

(b) the member ceases to meet the eligibility criteria; or

(c) the majority of the Committee members recommend removal.

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(11) If a Committee member is removed from office, resigns or dies before the member's term of office expires, the Council must as soon as practicable appoint a new Committee member to hold office for the remainder of the first member's term of office.

Chair and Vice-chair

13. (1) The 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 a simple majority 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 has one (1) vote in all Committee decisions.

(3) In the event of a tie vote in the Committee, the chair of the Committee shall not have a second tiebreaking vote, and the resolution or motion is defeated.

(4) Subject to subsection (5), the Band Manager and the financial officer must be notified of all Committee meetings and, subject to reasonable exceptions, must attend those meetings.

(5) The Band Manager or the financial officer 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 Band Manager or the financial officer; or

(b) it is a meeting with the auditor.

(6) The Committee must meet

(a) at least once every quarter 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) The rules for conduct of Council meetings set out in this Law shall apply to the Committee.

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

(10) The Committee may retain a consultant to assist in the performance of any of its responsibilities, provided

(a) the costs of hiring such consultant are covered by an appropriation for such a purpose; or

(b) the Committee becomes aware of credible evidence of financial impropriety involving the First Nation and the Committee has determined it needs to retain a consultant to properly address the issue.

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 develop or review, and recommend to the Council for approval, short, medium and long-term operational and business plans for the First Nation, including financial 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 the 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 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 annual financial statements respecting the local revenue account and any special purpose reports;

(e) periodically review and make recommendations to the Council on policies, procedures and directions on remuneration and reimbursable expenses and perquisites of the councillors, officers 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 108 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.

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DIVISION 3 - Officers and Employees

Band Manager

18.(1) The Council must appoint a person as Band Manager who is the chief executive officer of the First Nation, and may set the terms and conditions of that appointment.

(2) Reporting to, and taking directions from, the Council, the Band Manager is responsible for leading the planning, organization, implementation and evaluation of the overall management of all the day-to-day operations and financial administration of the First Nation, including the following duties:

- (a) to develop and recommend to the Council for approval, human resources policies and procedures for the hiring, management and dismissal of officers and employees of the First Nation;
- (b) to prepare and recommend to the Council for approval, descriptions of the powers, duties and functions of all employees and other officers of the First Nation;
- (c) to hire the employees and other officers of the First Nation, as the Band Manager considers necessary, and to set the terms and conditions of their employment; and
 - (i) for greater certainty, the Band Manager must not hire persons for positions that are not specified in the organizational chart for the First Nation approved by Council, nor hire any officer or employee whose salary is not provided for in the applicable budget; and
 - (ii) the Band Manager must consult with the Council prior to filling any officer positions and on the terms and conditions of such engagements;
- (d) to approve and enter into contracts and agreements on behalf of the First Nation with a maximum monetary value of twenty thousand dollars (\$20,000) and/or a maximum length of two (2) years in accordance with any policies and procedures established by Council;
- (e) to develop and annually up-date for approval by Council short, medium and long-term operational and business plans for the First Nation, including financial projections and priorities;
- (f) to prepare the draft annual budget and, with advice and input from the tax administrator, to prepare of any draft amendments to the component of the annual budget respecting the First Nation's local revenues;
- (g) to oversee, supervise and direct the activities of all officers and employees of the First Nation, and subject to prior consultation with Council, to terminate full-time employees and officers of the First Nation as determined necessary by the Band Manager;
- (h) to oversee and administer the contracts of the First Nation;
- (i) to prepare for Council approval the organization chart referred to in section 21 and any changes thereto;
- (j) to design the charts of accounts of the First Nation;
- (k) to design effective financial administration systems, policies, procedures, and internal controls of the First Nation;

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- (l) to monitor and report on the effectiveness of the implementation of the financial administration systems, policies, procedures, and internal controls of the First Nation;
- (m) to identify, assess, monitor and report on financial reporting risks and fraud risks;
- (n) to monitor and report on the effectiveness of mitigating controls for the risks referred to in paragraph (m) taking into consideration the cost of implementing those controls;
- (o) to perform any other duties of the Band Manager under this Law; and
- (p) to carry out any other activities specified by the Council that are not contrary to the Act or inconsistent with the Band Manager's duties specified in this Law.

(3) The Band Manager may assign the performance of any of the Band Manager's duties or functions

- (a) to an officer or employee of the First Nation; and
- (b) with the 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 Band Manager of the responsibility to ensure that these duties or functions are carried out properly.

Financial Officer

19. (1) Subject to available funding in the annual budget and the Council approved financial plans of the First Nation,

- (a) the Band Manager, after consultation with the Council, must appoint a person as financial officer of the First Nation and may set the terms and conditions of that appointment, and
- (b) if a separate individual is not appointed the financial officer of the First Nation under paragraph 19(1)(a), then the Council must appoint the Band Manager as the finance officer to perform the duties and responsibilities of the financial officer under this Law.

(2) Reporting to the Band Manager, the financial officer 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 implement the financial administration systems, policies, procedures, and internal controls of the First Nation;
- (b) to monitor and report on the implementation of the financial administration systems, policies, procedures, and internal controls of the First Nation;
- (c) to administer and maintain all charts of accounts of the First Nation;
- (d) to assist with the preparation of the draft annual budgets and, with advice and input from the tax administrator, to assist with the preparation of any draft amendments to the component of the annual budget respecting the First Nation's local revenues;

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- (e) to prepare the monthly financial information required in section 72, the quarterly financial statements required in section 73 and the draft annual financial statements required in sections 74 and 75;
 - (f) to prepare the financial components of reports to the Council and of any short, medium and long-term plans, projections and priorities referred to in subsection 15(1);
 - (g) to actively monitor compliance with any agreements and funding arrangements entered into by the First Nation;
 - (h) to administer and supervise the preparation and maintenance of financial records and the financial administration reporting systems;
 - (i) to administer and supervise the maintenance of the records of all receipts and expenditures of the First Nation to facilitate the annual audit;
 - (j) 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;
 - (k) to prepare or provide any documentation and financial information required by the Council or the Finance and Audit Committee to discharge its responsibilities;
 - (l) to evaluate the financial administration systems of the First Nation and recommend improvements;
 - (m) to develop and recommend procedures for the safeguarding of assets and to ensure approved procedures are followed;
 - (n) to develop and recommend procedures to Council for identifying and mitigating financial reporting and fraud risks and to ensure approved procedures are followed;
 - (o) to perform any other duties of the financial officer under this Law; and
 - (p) to carry out any other activities specified by the Band Manager that are not contrary to the Act or inconsistent with the financial officer's duties under this Law.
- (3) With the approval of the Band Manager, the financial officer may assign the performance of any of the duties or functions of the financial officer to any officer, employee, contractor or agent of the First Nation, but this assignment does not relieve the financial officer of the responsibility to ensure that these duties or functions are carried out properly.

Tax Administrator

20.(1) If the First Nation is collecting local revenues, the Council, after consulting with the Band Manager, must appoint an officer or employee of the First Nation as the tax administrator, responsible for administering the First Nation's local revenue laws.

(2) Reporting to and taking directions from the Band Manager, the tax administrator is responsible for performing the tax administrator's duties or functions under the First Nation's local revenue laws, the Act and this Law.



(3) In addition to any duties or functions under the First Nation's local revenue laws and the Act, the tax administrator is responsible for the following:

- (a) to manage local revenues and the local revenue account on a day-to-day basis;
- (b) to recommend to the Band Manager and the financial officer the draft and amended budgets for the component of the annual budget respecting local revenues;
- (c) to recommend to the Band Manager and the financial officer the local revenues components of the multi-year financial plan;
- (d) on request, to provide advice to the Band Manager, financial officer, Finance and Audit committee and the Council respecting local revenues matters; and
- (e) to monitor compliance with the Act, the First Nation's local revenue laws and this Law in the administration of local revenues and the local revenue account.

(4) With the approval of the Band Manager, the tax administrator may assign the performance of any of such duties or functions to any officer, 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 must establish and maintain a current organization chart for effective and efficient 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 Band Manager, financial officer, the tax administrator and other officers 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 officers referred to in subparagraph (ii).

(3) On request, the Band Manager 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), an officer, or an employee of the First Nation, a member of the First Nation, and to a contractor or agent where it was required in order to perform their duties.

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

(5) The Council must establish and monitor the implementation of policies and procedures for the hiring of qualified and competent personnel to carry out the financial administration activities of the First Nation.

DIVISION 4 - Conduct Expectations

Conduct of Councillors and Committee Members

22.(1) When exercising a power, duty or responsibility relating to the financial administration of the First Nation, a councillor, voting member of a Council committee, or a person acting under the delegated authority of the Council must

(a) comply with all applicable laws including without limitation this Law, the Act and its regulations, any other applicable First Nation law, and any applicable policies, procedures and directions approved or made by the Council and any applicable standards;

(b) act honestly, in good faith, and with a view to the best interests of the First Nation;

(c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances;

(d) take all reasonable steps to avoid conflicts of interest, and in circumstances of a conflict of interest, must comply with the requirements of, and otherwise be in compliance with, the provisions in Schedule A: Dealing with Conflicts of Interest; and

(e) comply with the requirements of the Schedule A: Dealing with Conflicts of Interest, including required disclosures of conflicts of office or property.

(2) The councillors shall upon their election swear an oath of office that incorporates the relevant provisions of this section and of Schedule A.

(3) Without limitation to the remedies available at law or equity to the First Nation and its members, if it has been determined by a court of competent jurisdiction that a councillor, voting member of a Council committee, or a person acting under the delegated authority of the Council 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.

(4) In a legal proceeding dealing with whether or not there was a breach of duty of care or other contravention of this Law, by a councillor, voting member of a Council committee, or a person acting under the delegated authority of the Council, such individual shall be afforded the opportunity to establish a defence of due diligence.

(5) In a legal proceeding dealing with whether or not there was a breach of fiduciary duty by a councillor, voting member of a Council committee, or a person acting under the delegated authority of the Council, all of the circumstances of the case must be taken into consideration, including circumstances connected with the person's election or appointment, and the person may be relieved, either wholly or

partially, from liability, on the terms that a court having jurisdiction considers appropriate, if it appears to the court that the person has acted honestly and reasonably and ought fairly to be excused.

Conduct of Officers

23.(1) When exercising a power, duty or responsibility relating to the financial administration of the First Nation, the Band Manager or an officer must

- (a) comply with all applicable laws including without limitation this Law, the Act and its regulations, any other applicable First Nation law, and any applicable policies, procedures and directions approved or made by the Council and any applicable standards;
- (b) act honestly, in good faith, and with a view to the best interests of the First Nation;
- (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances;
- (d) take all reasonable steps to avoid conflicts of interest, and in circumstances of a conflict of interest, must comply with the requirements of, and otherwise be in compliance with, the provisions in Schedule A: Dealing with Conflicts of Interest; and
- (e) comply with the requirements of the Schedule A: Dealing with Conflicts of Interest, including required disclosures of conflicts of office or property.

(2) Without limitation to the remedies available at law or equity to the First Nation and its members, if it has been determined by a court of competent jurisdiction that the Band Manager, an officer, 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.

(3) The Council and the Band Manager must incorporate the relevant provisions of this section and of Schedule A into

- (a) the terms of employment or appointment of the Band Manager and all officers of the First Nation; and
- (b) the terms of appointment of every voting member of a Council Committee, including the Finance and Audit Committee.

(4) In a legal proceeding dealing with whether or not there was a breach of duty of care or other contravention of this Law by an officer, the officer shall be afforded the opportunity to establish a defence of due diligence.

(5) In a legal proceeding dealing with whether or not there was a breach of fiduciary duty by an officer, all of the circumstances of the case must be taken into consideration, including circumstances connected with the person's election or appointment, and the person may be relieved, either wholly or partially, from liability, on the terms that a court having jurisdiction considers appropriate, if it appears to the court that the person has acted honestly and reasonably and ought fairly to be excused.

Conduct of Employees, Contractors, etc.

24.(1) This section applies to

- (a) an employee, contractor and agent of the First Nation or.
- (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 all applicable laws including without limitation this Law, the Act and its regulations, any other applicable First Nation law and any applicable standards;
 - (b) comply with all applicable policies, procedures and directions approved or made by the Council;
 - (c) take all reasonable steps to avoid conflicts of interest, and in circumstances of a conflict of interest, must comply with the requirements of, and otherwise be in compliance with, the provisions in Schedule A: Dealing with Conflicts of Interest; and
 - (d) comply with any applicable requirements of the Schedule A: Dealing Conflicts of Interest, including required disclosure of conflicts of office or property.
- (3) The Band Manager must ensure the applicable requirements of this Law, the Act, any other First Nation Law, and Council policies, procedures and directions, as well as the requirements of the relevant provisions of this section and Schedule A are incorporated into
- (a) the terms of employment or appointment of every employee of the First Nation;
 - (b) the terms of every contract of a contractor of the First Nation; and
 - (c) the terms of appointment of every agent of the First Nation.
- (4) If a person has contravened this section, the Council or the Band Manager may take the following actions:
- (a) an employee may be disciplined, including dismissal;
 - (b) a contractor's contract may be terminated; or
 - (c) the appointment of an agent may be revoked.

PART IV - Financial Management

DIVISION 1 - Financial Plans and Annual Budgets

Fiscal Year

25. The fiscal year of the First Nation is April 1 to March 31 of the following year.

Multi-year Financial Plan

26. No later than March 31 of each year, the Council must approve a multi-year financial plan that

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- (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) sets out projected revenues, segregated by significant category;
- (d) sets out projected expenditures, segregated by significant category;
- (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

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

- (a) anticipated revenues, segregated by significant category, with estimates of the amount of revenue from each category;
- (b) anticipated expenditures, segregated by significant category, with estimates of the amount of expenditure for each category; and
- (c) any anticipated annual and accumulated surplus or annual and accumulated deficit and the application of year-end surplus.

(2) If the First nation has a code in force, the revenue category of moneys derived from the First Nation's reserve lands 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 reserve lands.

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

Budget and Planning Process Schedule

28.(1) On or before January 31 of each year, the Band Manager 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, the Council must review and approve the annual budget for the First Nation for the next fiscal year.

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(4) On or before June 30 of each year, the Band Manager 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 revenues.

(5) On or before July 15 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 revenues and recommend an amendment to the annual budget to the Council for approval.

(6) No later than July 31 of each year, the Council must approve the amendment of the component of the annual budget respecting the First Nation's local revenues.

Additional Requirements for Budget Deficits

29. If a draft annual budget contains a proposed deficit, the Council must ensure that

- (a) no portion of the proposed deficit originates in or relates to local revenues; and
- (b) the multi-year financial plan of the First Nation demonstrates how and when the deficit will be addressed and how it will be serviced.

Amendments to Annual Budgets

30.(1) Forthwith upon the Band Manager becoming aware of the need to amend the annual budget the Band Manager shall prepare a report and recommendations to Council and the Finance and Audit Committee for amendment of the budget.

(2) The annual budget of the First Nation may only be amended by resolution of the Council following receipt of a report of the Band Manager or the Finance and Audit Committee recommending the amendment.

Local Revenues Budget Requirements

31. Despite any other provisions of this Law, any part of a budget relating to local revenues 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

32.(1) The Council must establish policies or procedures or give directions, and monitor their implementation, 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 revenues;
- (b) the multi-year financial plan; and
- (c) budget deficits or extraordinary expenditures.

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

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- (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

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

- (a) in the name of the First Nation;
- (b) opened in a financial institution;
- (c) authorized by the Council; and
- (d) requires that all cheques and withdrawals are authorized by
 - (i) the Band Manager together with any one councillor that is not an employee or officer in the finance or accounting departments of the First Nation, nor the tax administrator; or
 - (ii) any two (2) councillors, neither of whom are, an employee or officer in the finance or accounting departments of the First Nation, nor the tax administrator.

(2) The Council shall cause the following accounts to be established and maintained for and in the name of the First Nation with 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 reserve lands if the First Nation has a land code; and
- (e) a tangible capital asset reserve account for money set aside for purposes of section 90.

(3) The Council 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

34.(1) The financial officer must ensure the safekeeping of all money received by the First Nation.

(2) The financial officer must deposit all money received by the First Nation as soon as practicable into the appropriate accounts described in section 33.

(3) The Band Manager, the financial officer, and a councillor must not authorize payment of money from an account described in section 33 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

35.(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 authorized in a local revenue law or as permitted under section 13.1 of the Act.

Prohibited Agreements

36. (1) The Council must not approve or authorize the First Nation entering into a contract, agreement or transaction which requires the First Nation to expend money if

(a) the expenditure is for a purpose or transaction prohibited by or that contravenes this Law, a local revenue law, or the Act; or

(b) the expenditure is not authorized under an appropriation in a budget. For greater certainty, this does not apply to an expenditure due to an unforeseen event in relation to a program or project provided the total budget for that program or project is not exceeded, nor an emergency expenditure under section 38.

(2) The Band Manager (or his or her designate) must not approve or authorize the First Nation entering into a contract, agreement or transaction which requires the First Nation to expend money if

(a) the expenditure is for a purpose or transaction prohibited by or that contravenes this Law, a local revenue law, or the Act; or

(b) the expenditure is not authorized under an appropriation in a budget. For greater certainty, this does not apply to an expenditure due to an unforeseen event in relation to a program or project provided the total budget for that program or project is not exceeded, nor an emergency expenditure under section 38.

No Expenditure Without Appropriation

37.(1) Subject to subsection 38(1), money must not be paid out of any account unless the expenditure is authorized under an appropriation. For greater certainty, this does not apply to an expenditure due to an unforeseen event in relation to a program or project provided the total budget for that program or project is not exceeded.

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

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Emergency Expenditures

38.(1) The Band Manager or Council 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) The Council must establish policies and procedures to authorize expenditures under subsection (1).

(3) An expenditure authorized by the Band Manager under subsection (1) must be reported to the Council as soon as practicable and the Council must amend the budget to include the expenditure.

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

(5) For clarity, this section does not authorize an expenditure of local revenues.

Appropriations

39.(1) An amount that is appropriated in a budget must not be expended for any program, project or purposes other than that described in the appropriation. For greater certainty, this does not apply to an expenditure due to an unforeseen event in relation to a program or project provided the total budget for that program or project is not exceeded.

(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. For greater certainty, this does not apply to an expenditure due to an unforeseen event in relation to a program or project provided the total budget for that program or project is not exceeded.

(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

40.(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 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

41.(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 charge against an appropriation, an expenditure under subsection 38(1), 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 so that it is not sufficient to meet the commitments chargeable against it without written notification being given to the Band Manager and the financial officer as soon as practicable.

(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 Law 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 Band Manager (or his or her designate) 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 Band Manager (or his or her designate) may authorize a payment out of, or sign a requisition for payment from, any appropriation.

Form of Payment

42. Payments by the First Nation may be made by cheque, draft, electronic transfer or other similar instrument signed by

(i) the Band Manager together with any one (1) councillor that is not an employee or officer in the finance or accounting departments of the First Nation, nor the tax administrator; or

(ii) any two (2) councillors, neither of whom are, an employee or officer in the finance or accounting departments of the First Nation, nor the tax administrator.

DIVISION 4 - General Matters

Advances

43.(1) The Band Manager 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.

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

Holdbacks

44. 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

45.(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 the Council.

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

Interest

46.(1) All interest earned on the accounts described in subsection 33(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 33(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

47.(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

48. (1) The Council must establish policies and procedures respecting the write off of debts owed to the First Nation.

(2) All or part of a debt or obligation owed to the First Nation may be written off

(a) if approved by the Council; or

(b) by the Band Manager, subject to paragraph 18(2)(d), if done under the authority of a policy or direction of the Council.

Extinguishment of Debts

49. (1) The Council must establish policies and procedures respecting the forgiveness of debts owed to the First Nation.

(2) All or part of a debt or obligation owed to the First Nation may be forgiven only

(a) if approved by the Council; or

(b) by the Band Manager, subject to paragraph 18(2)(d), if done under the authority of a policy or direction of the Council.

Year-end Surplus

50.(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 33(2)(a).

(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

51.(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 borrowing of money, obtaining an overdraft or line of credit, credit card limits, or granting of security must first be authorized by Council.

(3) Council may authorize the Band Manager to borrow money or grant security in the name of the First Nation as specifically approved by the Council.

Borrowing for Ordinary Operations

52.(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 such debts will be repaid on or before the due date without the need for a separate borrowing of money, with money appropriated under an appropriation for the fiscal year or in respect of an expenditure that may be made without the authority of an appropriation under this Law.

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

(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 in a form, amount, and on terms and conditions that the Council approves.

Financial Agreements

53.(1) The First Nation may enter into the following agreements in the name of the First Nation in a form, amount, and on terms and conditions that the Council approves:

(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.

Borrowing for Authorized Expenditures

54.(1) If the general account described in paragraph 33(2)(a) is not sufficient to meet the expenditures authorized to be made from it and the Band Manager 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 the 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

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

(2) If the First Nation has obtained long-term financing secured by property taxes from the First Nations Finance Authority, the First Nation must not subsequently obtain long-term financing secured by property tax revenues from any other person.

(3) The First Nation may only obtain long-term financing from the First Nations Finance Authority 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.

(5) Money borrowed by the First Nation from the First Nations Finance Authority that is secured by other revenues may only be used for the purposes set out in section 4 of the *Financing Secured by Other Revenues Regulations* made under the Act.

Notice of Borrowing

56.(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 the First Nation borrowing moneys or granting security, including borrowing for new capital projects.

(2) The Council must post a public notice of each Council meeting when borrowing of money or granting of security 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

57. 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 in a form, amount, and on terms and conditions that the Council approves.

Use of Borrowed Money

58.(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 64(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

59.(1) Subject to subsection (2), a security granted by the First Nation must be signed by at least two (2) councillors or a councillor and the Band Manager as designated by the Council.

(2) A security granted by the First Nation in respect of local revenues must be signed by at least two (2) councillors or a councillor and the tax administrator as designated by the Council.

Operational Controls

60. The Council must establish policies or procedures or give directions, and monitor their implementation, for a system of internal controls designed to ensure the orderly and efficient conduct of the First Nation's operations.

DIVISION 6 - Risk Management

Limitation on Business Activity

61.(1) Subject to subsections (2) and(3), neither the Council, nor any officer shall authorize or permit the First Nation to directly

(a) carry on business as a proprietor;

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- (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, as a proprietor or general partner, carry on a business, or act as a trustee respecting property used for, or held in the course of, carrying 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 reserve lands, crown 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 directly carry on business activities for the primary purpose of profit if the Council determines that the business activities

(a) do not pose a risk of 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) The 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

62.(1) The First Nation must not give a guarantee unless the Council has considered the report of the Band Manager under subsection (2) and Council specifically authorizes the giving of the guarantee.

(2) Before the Council authorizes a guarantee under subsection (1), the Band Manager 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 106; or

(b) 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) The Council may make policies and directions respecting guarantees and indemnities (other than indemnities authorized under section 106) as follows:

(a) specifying circumstances under which an indemnity may be given without Council approval;

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- (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

63.(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, the investment must first be authorized by Council. Council may authorize the Band Manager to invest the First Nation's financial assets

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

Approved Investments

64.(1) Money in an account described in section 33 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 investments a trustee may make under an enactment 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 reserve lands are located.

(3) The First Nation may invest money 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;

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- (c) securities issued by the First Nations Finance Authority or by a local, municipal or regional government in Canada;
- (d) a limited partnership in which the First Nation is a partner;
- (e) an interest in crown lands or fee simple lands; or
- (f) a member investment program described in section 64.

(4) Despite any other provision in this section, the First Nation may only invest the following types of funds in investments specified in subsection 82(3)(a), (b), (c) or (d) of the Act and in investments in securities issued by the First Nations Finance Authority or a municipal finance authority established by a province:

- (a) government transfer funds;
- (b) local revenues; and
- (c) other revenues, if the First Nation has a loan from the First Nations Finance Authority secured by other revenues.

Permitted Investments in First Nation Member Activities

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

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

(3) The Council must post a public notice of each Council meeting when a program or changes to a program under this section are presented for Council approval.

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

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

- (a) the program must be universally available to all persons in the category of persons for which the loan program is designed, or in the case of payroll advances to all full-time employees of the First Nation or agencies of the First Nation;
- (b) the recipients of loans or advances must consent in advance of receiving the loans or advances to the disclosure of their names, the terms of the loan, and outstanding amount of the loans, to the members of the First Nation in the event the loans or advances are not repaid on the due date;
- (c) the terms and conditions of the program must be published and accessible to all members of the First Nation;

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(d) 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

- (i) the amounts loaned,
- (ii) the purposes of the loans,
- (iii) subject to applicable privacy laws, the names of those receiving a loan, and
- (iv) repayments of principal and interest on the loans; and

(e) the report referenced in subsection (5)(d) must be available for inspection by members of the First Nation at the principal administrative offices of the First Nation during normal business hours.

(f) 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.

(6) Before the Council establishes a program under this section the 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

66.(1) If the First Nation is authorized to make an investment or loan under this Law, subject to Council authorizations required under this Law, the Band Manager 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.

(3) If Council authorizes an investment under this Law, the Council must establish policies or procedures or give directions respecting the terms and conditions under which the investment may be made, continued, or disposed of.

Risk Assessment and Management

67.(1) Annually, and more often if necessary, the Band Manager 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 Band Manager must report to the Finance and Audit Committee or Council 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

68.(1) The Council, after consideration of recommendations from the Band Manager or the Finance and Audit Committee must procure and maintain in force insurance coverage for any assets, property or resources under the care or control of the First Nation and may procure and maintain public liability coverages in relation to the operations of the First Nation and its related bodies.

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(2) The Council may purchase and maintain insurance for the benefit of a councillor or an officer or their personal representatives against any liability arising from that person being or having been a councillor or an officer of the First Nation or a director or officer of a related body.

Fraud Risks

69.(1) In this section:

“fraudulent financial reporting” means an intentional act in financial reporting that is designed to deceive users of financial reports and that may result in a material omission from or misstatement of financial reports;

“fraudulent non-financial reporting” means an intentional act in non-financial reporting that is designed to deceive users of non-financial reports; and

“misappropriation of assets” means the theft of First Nation assets in circumstances where the theft may result in a material omission or misstatement in financial reports.

(2) The Council must establish procedures for the identification and assessment of the following types of potential fraud in the First Nation:

- (a) fraudulent financial reporting;
- (b) fraudulent non-financial reporting;
- (c) misappropriation of assets; and
- (d) corruption and illegal acts.

DIVISION 7 - Financial Reporting

GAAP

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

Separate Accounting

71.(1) The financial officer must account for local revenues of the First Nation separately from other moneys of the First Nation.

(2) If the First Nation has a loan from the First Nations Finance Authority that is secured by other revenues, the financial officer must

- (a) account for all other revenues of the First Nation separately from other moneys of the First Nation; and
- (b) provide the First Nations Finance Authority or the Board, on its request, with accounting information respecting the other revenues.

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Monthly Financial Information

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

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

Quarterly Financial Statements

73.(1) At the end of each quarter of the fiscal year, the financial officer 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 financial officer must provide the quarterly financial statements in subsection (1) to the Council and the Finance and Audit Committee 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 recommended to Council for approval; and

(b) reviewed and approved by the Council.

Annual Financial Statements

74.(1) This section does not apply to the annual financial statements respecting local revenues referred to in subsection 75(1).

(2) At the end of each fiscal year the financial officer 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.

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

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

(a) the financial information of the First Nation for the fiscal year; and

(b) the revenue categories for the First Nation's reserve lands referred to in subsection 27(2) if the First Nations has a code in force.

(5) The financial officer 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 present draft annual financial statements to the Council for review within sixty (60) days following the end of the fiscal year for which they were prepared.

Local Revenues Annual Financial Statements

75.(1) The financial officer must prepare separate annual financial statements respecting the First Nation's local revenues in accordance with Board standards respecting financial reporting of local revenues.

(2) The council must establish policies and procedures respecting the annual preparation, review, audit and approval of the annual financial statements referred to in subsection (1) including any required deadlines for completing these activities.

(3) The policies and procedures referred to in subsection (2) must be consistent with any requirements of the Board standards respecting financial reporting of local revenues.

(4) The provisions of this Law, including this section, respecting separate annual financial statements for local revenues do not apply if Board standards respecting financial reporting of local revenues permit the First Nation to report on its local revenues in its audited annual financial statements as a distinct segment of the activities that appear in those statements and the First Nation chooses to report on its local revenues in that manner.

Special Purpose Reports

76.(1) The financial officer must prepare the following special purpose reports:

- (a) a report setting out all payments made to honour guarantees and indemnities, including indemnities under section 106, for that fiscal year;
- (b) a report setting out the information required in section 10;
- (c) a report setting out all debts or obligations forgiven by the First Nation;
- (d) a report setting out the information required in paragraph 65(5)(d);
- (e) if the First Nation has a code in force, a report setting out moneys of the First Nation derived from First Nation reserve lands, categorized and shown separately from other revenues and that includes a sub-category respecting revenues from natural resources obtained from First Nation reserve lands;
- (f) a report on all of the First Nation's investments in capital assets other than the assets described in subsection (d) describing the type and amount of the investment; and
- (g) any other report required under the Act or an agreement.

(2) The financial officer must provide the special reports referred to in subsection (1) to the Council and the Finance and Audit Committee not more than sixty (60) days after the end of the fiscal year for which they were prepared.

(3) The special reports referred to in subsection (1) must be

- (a) reviewed by the Finance and Audit Committee and recommended to Council for approval not more than ninety (90) days after the end of the fiscal year; and

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(b) reviewed and approved by the Council not more than one hundred and twenty (120) days after the end of the fiscal year.

(4) After receiving Council approval, the special reports referred to in subsection (1) must be available for inspection by members of the First Nation at the principal administrative offices of the First Nation during normal business hours.

Appointment of Auditor

77.(1) The Council shall make recommendations to the First Nation members on the appointment of the auditor for the First Nation. The members of the First Nation shall 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 approved by the Finance and Audit Committee and must include the auditor's obligation

(a) to confirm in writing that the annual financial statements and the audit of them comply with this Law, the Act and Board standards, where applicable, or

(b) to identify in writing consequential non-compliance matters and

(c) to comply with subsection (4).

(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 officers and members; and

(b) be a public accounting firm or public accountant

(i) in good standing with the Chartered Professional Accountants of Canada, 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 the province or territory in which the public accounting firm or public accountant is practicing, and

(ii) licensed or otherwise authorized to practice public accounting in the province or territory in which the majority of the First Nation reserve lands are located.

(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

78.(1) To conduct an audit of the annual financial statements of the First Nation, the Council, Band Manager and financial officer must ensure the auditor is 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, officer, 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.

Audit Requirements

79.(1) The annual financial statements of the First Nation referred to in section 74 must be audited by the auditor not more than one hundred and twenty (120) days after the fiscal-year end.

(2) The separate annual financial statements respecting local revenues referred to in section 75 must be audited by the auditor at least once every calendar year.

(3) The auditor must conduct the audit of the annual financial statements referred to in both sections 74 and 75 in accordance with generally accepted auditing standards established by the Chartered Professional Accountants of Canada.

(4) When conducting the audit, the auditor must provide

- (a) an audit opinion of the annual financial statements; and

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(b) an audit report or review engagement report on the special purpose reports referred to in section 76.

Review of Audited Annual Financial Statements

80.(1) This section does not apply to the annual financial statements respecting local revenues referred to in section 75.

(2) 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.

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

Access to Annual Financial Statements

81.(1) Before the annual financial statements referred to in both sections 74 and 75 may be published or distributed, they must

- (a) be approved by the Council; and
- (b) 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 financial officer; and
- (c) include the auditor's audit report of the annual financial statements.

(2) The audited annual financial statements referred to in section 74 must be available for inspection by members of the First Nation at the principal administrative offices of the First Nation during normal business hours.

(3) The following documents must be available for inspection by any person referred to in subsection 14(2) of the Act at the principal administrative offices of the First Nation during normal business hours:

- (a) the audited annual financial statements respecting local revenues referred to in section 75, or
- (b) the audited annual financial statements referred to in section 74 if those statements include a report on local revenues as a distinct segment of the activities that appear in those statements.

Annual Report

82.(1) Not later than one hundred and twenty (120) 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:

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- (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;
 - (c) the audited annual financial statements referred to in subsection 74 for the previous fiscal year; and
 - (d) any special purpose reports referred to in section 76, including the auditor's report or review engagement report, as applicable.
- (3) The Band Manager must provide the annual report referred to in subsection (1)
- (a) to a member of the First Nation as soon as practicable after a request is made by the member;
 - (b) to the Board as soon as practicable after the report's publication, if the First Nation has a certificate issued by the Board under subsection 50(3) of the Act; and
 - (c) to the First Nations Finance Authority as soon as practicable after the report's publication, if the First Nation is a borrowing member.
- (4) The Council must establish policies or procedures respecting, or give directions respecting, an accessible process and remedy available to First Nation members who have requested but have not been provided with the annual report of the First Nation including requiring
- (a) the maintenance of a register for the annual report that identifies all members who have requested a copy of the annual report, the date each request was received and the date the annual report was provided to the member; and
 - (b) the Band Manager to report quarterly to the Finance and Audit Committee on the steps taken to ensure compliance with subsection (3) and any Council policy made under this subsection.

DIVISION 8 - Information and Information Technology

Ownership of Records

83.(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, and monitor their implementation, for the storage and preservations of the records referred to in subsection (1).

Operations Manual

84.(1) The Band Manager must prepare and maintain a current operations manual respecting 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 officers and employees of the First Nation.

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(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

85.(1) The Band Manager 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 by, and in accordance with, the policies, procedures or directions of the Council.

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

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

Confidentiality of Information

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

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

Account Records

87.(1) The person performing the tax administration functions must prepare, maintain, store and keep secure a complete set of all records respecting the local revenue system of the First Nation, including all records referred to in section 5 of the *Revenue Management Implementation Regulations*.

(2) If the First Nation has a loan from the First Nations Finance Authority that is secured by other revenues, the Band Manager must prepare, maintain, store and keep secure a complete set of all records respecting other revenues of the First Nation, including all records referred to in section 5 of the *Revenue Management Implementation Regulations* as amended by the *Financing Secured by Other Revenues Regulations*.

Information Technology

88. The Council must establish policies or procedures or give directions, and monitor their implementation, respecting information technology used by the First Nation in its operations that are designed to ensure the integrity of the First Nation's financial administration system and its database.

PART V - Capital Projects

Definitions

89. In this Part:

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“capital project” means the construction, rehabilitation or replacement of the First Nation’s tangible capital assets and any other major capital projects funded by local revenues 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 93;

“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

90. The 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 reserve lands are located.

Tangible Capital Assets Reserve Fund

91. The 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

92. At each Finance and Audit Committee meeting, the Band Manager must report on the following subjects:

- (a) year to date borrowings, loans and payments in respect of each capital project;

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- (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 94 for every capital project.

Life-cycle Management Program

93.(1) The Band Manager 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 Band Manager 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 Band Manager 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

94.(1) On or before January 15 of each year, the Finance and Audit Committee must review the information, schedules and budget prepared under section 93 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

95.(1) The Council must establish, and monitor the implementation of, 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

96. The Band Manager, subject to paragraph 18(2)(d), may retain the services of a professional engineer or other consultant to assist the Band Manager, Finance and Audit Committee and Council to carry out their obligations under this Part.

Policy for Information or Involvement of Members

97. 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 - Miscellaneous

Board Standards

98.(1) If the First Nation is a borrowing member or has a certificate issued by the Board under subsection 50(3) of the Act, 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.

Delegated Authority on Intervention

99.(1) Without limiting section 53 of the Act, if

- (a) the First Nation is
 - (i) making local revenue laws under subsection 5(1) of the Act, or
 - (ii) using its local revenues to secure a loan from the First Nations Finance Authority, and
- (b) the Board gives notice to the First Nation under section 53 of the Act that third-party management of the First Nation's local revenues is required,

the Council of the First Nation delegates to the Board

- (c) the powers and authorities described in subsection 53(2) of the Act, and
 - (d) any other of the Council's powers required to give effect to third-party management of the First Nation's local revenues and local revenue account under the Act.
- (2) Without limiting section 53 of the Act as adapted by the *Financing Secured by Other Revenues Regulations*, if

- (a) the First Nation is using its other revenues to secure a loan from the First Nations Finance Authority, and
- (b) the Board gives notice to the First Nation under section 53 of the Act that third-party management of the First Nation's other revenues is required,

the Council of the First Nation delegates to the Board

- (c) the powers and authorities described in subsection 53(2) of the Act as adapted by the *Financing Secured by Other Revenues Regulations*, and
- (d) any other of the Council's powers required to give effect to third-party management of the First Nation's other revenues under the Act.

Land Management Obligations

100.(1) If the First Nation has a land code under the *First Nations Land Management Act*, 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) If the First Nation has a land code under the *First Nations Land Management Act*, the 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 reserve lands and for moneys earned from those lands to satisfy paragraph 6(1)(e) of the *First Nations Land Management Act*.

Oil and Gas Obligations

101. If the First Nation has a financial code under the *First Nations Oil and Gas and Moneys Management Act*, the First Nation must comply with that Act and any financial code made by the First Nation as required or permitted under that Act.

Reports of Breaches and Financial Irregularities, etc.

102.(1) 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 Band Manager and if the matter involves the Band manager then to the Council and to 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 other councillors and to the chair of the Finance and Audit Committee.

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

Inquiry into Report

103.(1) If a report is made to the Band Manager under section 102, the Band Manager must inquire into the circumstances reported as soon as practicable and report the findings to the Council and 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 102, the Finance and Audit Committee must inquire into the circumstances reported as soon as practicable and report its findings and recommendations to the Council as soon as practicable.

(3) If a report is made to the Council under section 102 or subsection 103(1), the Council must inquire into the circumstances reported as soon as practicable and

(a) give directions and/or take measures to correct or remediate the situation as soon as practicable; and

(b) notify the Band Manager and the Finance and Audit Committee of the Council's directions and measures taken to correct or remediate the situation.

Protection of Parties

104.(1) All reasonable steps must be taken by the Band Manager and the councillors to ensure that the identity of the person who makes a report or disclosure under section 102 is kept confidential to the extent practicable in all the circumstances.

(2) A person who makes a report in good faith under section 102 must not be subjected to any form of reprisal by the First Nation or by a councillor, officer, employee, contractor or agent of the First Nation as a result of making that report.

(3) The Band Manager 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 102 and any records prepared during the inquiry or investigation into those reports;

(b) for the inquiry or investigation into reports made under section 102; and

(c) concerning the fair treatment of a person against whom a report has been made under section 102.

Liability for Improper Use of Money

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

(2) A councillor is not liable under subsection (1) if the councillor relied, in good faith, on

(a) financial statements of the First Nation represented to the councillor by an officer of the First Nation or in a written report of the auditor of the First Nation to fairly reflect the financial position of the First Nation;

(b) a written report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to the a statement made by that person;

(c) a statement of fact represented to the councillor by an officer or employee of the First Nation to be correct; or

(d) the councillor honestly, in good faith, and reasonably held the belief that the expenditure, investment, or use was lawful.

(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) A member of the First Nation or a person who holds a security under a borrowing made by the First Nation that is successful in recovering an amount for the First Nation under section 104 must be indemnified by the First Nation for their proper and reasonable legal expenses incurred in doing so.

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(5) It is a good defence to any action brought against an officer 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 officer 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

106.(1) In this section:

“eligible proceeding” means 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;

“indemnify” or “indemnification” means to pay amounts required or incurred to

- (a) defend an eligible proceeding, or
- (b) satisfy a judgment, award or penalty imposed in an eligible proceeding;

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

(2) Subject to subsections (3) to (6), 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.

(4) The Council may provide indemnification to a First Nation official, if, in relation to the subject matter of the eligible proceeding

- (a) the First Nation official acted honestly and in good faith with a view to the best interests of the First Nation; or
- (b) in the case where the First Nation official has or had a direct or indirect personal interest in a contract or transaction that is the subject matter of the eligible proceeding, the First Nation Official acted honestly, disclosed the conflict of interest and abstained from voting on the matter when it was approved by Council, or the First Nation official acted honestly and the Council or the Court determine contract or transaction in question is or was fair and reasonable to the First Nation.

(5) Where the Council provides for indemnification of a First Nation official in advance of the final disposition of an eligible proceeding, the First Nation must not make any such indemnity payments unless the First Nation first receives from the First Nations official a written undertaking that if it is ultimately determined by a court that the First Nation official does not meet the criteria in subsection (4), the First Nation official will repay the amounts advanced.

(6) The Council must establish policies or procedures or give directions respecting the provision of indemnification in advance of the final disposition of an action or prosecution against a First Nation official.

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Immunity from Prosecution

107. (1) Subject to subsection (2), neither the Council nor the First Nation may seek indemnity against a current or former councillor, officer or employee of the First Nation, in respect of any conduct of the person that results in a claim for damages against the First Nation.

(2) The restriction in subsection (1) does not apply if a court makes a finding in the action that the person has been guilty of dishonesty, gross negligence or malicious or wilfully unlawful misconduct.

Periodic Review and Changes of Law

108.(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 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.

(5) If the First Nation is a borrowing member, it may only repeal this Law if it replaces it at the same time with another financial administration law which has been reviewed by the Board and issued a compliance approval under section 9 of the Act.

(6) Any amendment of this Law must be reviewed by the Board and issued a compliance approval under section 9 of the Act.

Provision of Law to First Nations Finance Authority

109. If the First Nation intends to apply to become a borrowing member, the Council must provide a copy of this Law to the First Nations Finance Authority as soon as practicable after the Board approves the Law.

Coming into Force

110. (1) This section and the operative portions of sections 1-8, 9(1), 9(3), 9(5), 10, 18 - 20, 22, 23(1)-(2), 23(4)-(5), 24(1)-(2), 24(4)-(5), 25, 27, 28, 30, 31, 33 - 35, 36(1)(a), 36(2)(a), 42 - 44, 46 - 47, 50, 51 - 55, 57 - 59, 61 - 65, 67 - 68, 70- 81, 82(1)-(3), 86 - 87, 91 - 92, 98 - 103, 104(1) - (3), 105 -


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107, 109, 110 and Schedule A come into force the day after this Law is approved by the Board under section 9 of the Act.

(2) Subject to subsection (1), this Law comes into force by resolution of the Council or on the day that is 36 months after the date when the First Nation becomes a borrowing member of the First Nations Finance Authority.

THIS LAW IS HEREBY DULY ENACTED by Council on the 10th day of December, 2016, at Spences Bridge, in the Province of British Columbia at a duly called and conducted Council meeting at which the required quorum of three (3) members of Council was present throughout.


Chief W. David Walkem


Councillor Pearl Hewitt


Councillor Tina Draney


Councillor Christine Minnabarriet

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SCHEDULE A – Avoiding And Mitigating Conflicts Of Interest

PART I - Interpretation

Interpretation

1.(1) In this Schedule:

“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 and the individual and his or her spouse are not separated permanently; and

“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) In this Schedule a reference to a particular section or subsection is a reference to that numbered section or subsection of this Schedule.

(4) For greater certainty, Sections 3 and 5 of this Law apply to this Schedule.

(5) 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) An individual has a “conflict of interest” when the individual exercises a power or performs a duty or function in respect of a matter 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 in respect of the matter.

(2) 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 in respect of a matter must be affected by the individual’s private interests in respect of the matter or the individual’s personal or business relationship with one of the persons listed in paragraphs (3)(a) to (f).

(3) An individual’s “private interests” means the individual’s financial and business interests and include the financial and business interests of

(a) the individual’s spouse,

(b) a person under the age of nineteen (19) 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) the individual’s parents, adult children and their spouses, and brothers and sisters;

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(e) 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

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

(4) Despite subsections (1) and (2), an individual's private interests or personal or business relationship with one of the persons listed in subsection (3)(a) to (f) do not give rise to a conflict of interest or "apparent conflict of interest" if those interests or relationship

(a) relate to a general indemnity agreement for all councillors under section 106 of this Law or insurance for all councillors under section 68 of this Law being approved by Council;

(b) relate to rates of remuneration, expense reimbursement policies, or scope of benefits payable to all of the councillors being approved by Council;

(c) relate to a contract or transaction between the First Nation and a related body being approved by the Council and the conflict arises solely because one (1) or more of the councillors are also a director or officer of the related body;

(d) are a financial interest in common with a broad class of members of the First Nation of which the individual is a member;

(e) relate to the individual being entitled to receive any service, commodity or other benefit offered by the First Nation, directly or indirectly, in like matter and subject to the like conditions as are applicable to persons who are not a councillor or official of the First Nation;

(f) rise by reason of being eligible for appointment, or having been appointed, by the Council to a committee of the Council or to a board or senior office of a related body; or

(g) 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 voting members of Council committees.

General Obligations

4.(1) Councillors must take all reasonable steps to avoid circumstances that could result in the councillor having a conflict of interest or an apparent conflict of interest, and in circumstances of a conflict of interest or apparent conflict of interest, must comply with the requirements of, and otherwise be in compliance with, the other provisions of this Schedule A: Dealing with Conflicts of Interest.

(2) The Councillors must take all reasonable steps to avoid placing themselves in circumstances where a reasonably well informed person would find that their ability to exercise a power or perform a duty or function could be influenced by the interests of

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(a) any person to whom they owe a private obligation or who has offered or given them a benefit or advantage; or

(a) any person listed in paragraphs 2(3)(a) to (f) who expects to receive some benefit or preferential treatment from them as a result of their personal or business relationship with the Councillor, and

(b) if such circumstances arise, the councillor must comply with the requirements of, and otherwise be in compliance with, the other provisions in this Schedule for dealing with a conflict of interest, and for greater certainty, circumstances arising under paragraphs 4(2)(a) and (b) shall be consider a "private interest" for the purposes of the application of subsection 2(4) to such circumstances.

Disclosure of Interests

5.(1) In subsection (2) "property" includes an interest in the First Nation reserve lands 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 disclose their private interest, defined for purposes of this subsection only as relevant information with respect to any office the councillor holds and any property, right or interest that the councillor holds that could result, directly or indirectly, in the creation of a duty or interest that conflicts with that individual's duty or interest as a councillor of the First Nation.

(3) The disclosure required from a councillor under subsection (2) must be made to the other councillors promptly

(a) after the individual becomes a councillor and annually thereafter; or

(b) if that individual is already a councillor, as soon as practicable after that individual begins to hold the office or possess the property, right or interest for which disclosure is required or becomes aware of a conflict or potential conflict of interest.

(4) The disclosure must be evidenced in the minutes of a Council meeting, a consent resolution, or any other written record provided to the Council.

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

(6) 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 Band Manager must permit that member or person to view the register referred to in subsection (5).

Procedure for Addressing Conflict of Interest

6.(1) As soon as a councillor becomes aware of circumstances in which the councillor has a conflict of interest or an apparent conflict of interest, the councillor must disclose the circumstances of the conflict of interest at the next Council meeting. References to conflicts of interest in this section shall be read to include "apparent conflict of interest"

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(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

7.(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 6, the Council must seek legal advice on the matter from a lawyer acceptable to the Council and the councillor alleged to have a conflict of interest or apparent conflict of interest, and Council must, in accordance with the legal advice so obtained, 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 acknowledgement by a Councillor of having a conflict of interest or 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 6, and references to conflicts of interest in section 6 shall be read to include "apparent conflict of interest".

Gifts and Benefits

8.(1) A councillor must not directly or indirectly, or through the persons referred to in paragraphs 2(3)(a) to (c) and (e) of this Schedule, 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) is of a value of \$300 or less;
- (b) its acceptance is approved by the Council; or
- (c) it is a gift received during a public cultural event of the First Nation.

(3) Where a gift is given to a councillor or a person referred to in subsection (1), the councillor must as soon as practicable make a written disclosure of the gift to the Band Manager under section 5, and, if

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the gift does not meet the conditions in subsection (2) the gift must be treated as the property of the First Nation unless the Council determines otherwise.

Confidential Information

9.(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 non-public 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.

Obligation to Account for Gains

10.(1) If a councillor, officer or employee of the First Nation has contravened this Schedule and realized financial gain in relation to that contravention, the councillor, officer or employee is personally liable to the First Nation for that amount.

(2) An amount owed to the First Nation under subsection (1) may be recovered for the First Nation by the First Nation or a member of the First Nation.

(3) A member of the First Nation that is successful in recovering an amount for the First Nation under this section must be indemnified by the First Nation for their proper and reasonable legal expenses incurred in doing so.

(4) A councillor, officer or employee of the First Nation is not liable to account to the First Nation for any financial gain referred to in subsection (1) of this section in any of the following circumstances:

- (a) the contract, transaction or matter in question is approved by the councillors (other than the councillor in question) after the nature and extent of the conflict of interest is disclosed to the councillors;
- (b) the contract, transaction or matter in question is approved by the members of the First Nation after the nature and extent of the conflict of interest is disclosed to the members by a resolution at a meeting of members of the First Nation for which fifteen (15) days notice is provided and at which at least 10% of the First Nation's adult members participate in person, or by teleconference, video conference, or other means of registering their vote; or
- (c) a court determines that the contract, transaction or matter in which the councillor is interested was fair and reasonable to the First Nation and order the councillor is not liable to account for any financial gain that accrues to the councillor as a result of the contract, transaction, or matter.

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Business Opportunities

11. A councillor must not take advantage of a business or investment opportunity being considered by the First Nation and which the councillor becomes aware of while serving as councillor unless the Council has determined not to pursue the opportunity and the councillor's pursuit of the business or investment opportunity is approved by the members of the First Nation at a meeting of members of the First Nation for which fifteen (15) days notice is provided and at which at least 10% of the First Nation's adult members participate in person, or by teleconference, video conference, or other means of registering their vote.

Obligations of Committee Members

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

(2) Sections 4 to 11 apply to a voting member of a Council committee and all references in those sections to

- (a) a councillor are considered to be references to a voting member of a Council committee; and
- (b) a Council meeting are considered to be references to a committee meeting.

PART III - Officers and Employees

Application

13. This Part applies to all officers and employees of the First Nation.

14. The Band Manager must ensure that every officer and employee is informed of their obligations under this Part and must take steps to ensure that officers and employees comply with these obligations.

General Obligations

15.(1) In the performance of their duties and functions, an officer or employee must act honestly and in good faith and with a view to the best interests of the First Nation.

(2) An officer or employee must take all reasonable steps to avoid circumstances that could result in the officer or employee having a conflict of interest or an apparent conflict of interest, and in circumstances of a conflict of interest or apparent conflict of interest, must comply with the requirements of, and otherwise be in compliance with, the other provisions of this Schedule A: Dealing with Conflicts of Interest.

(3) An officer or employee must take all reasonable steps to avoid placing themselves in circumstances where a reasonably well informed person would find that their ability to exercise a power or perform a duty or function of their office or position could be influenced by the interests of

- (a) any person to whom they owe a private obligation or who has offered or given them a benefit or advantage; or

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(b) any person listed in paragraphs 2(3)(a) to (f) who expects to receive some benefit or preferential treatment from them as a result of their personal or business relationship with the officer or employee, and

(c) if such circumstances arise, must comply with the requirements of, and otherwise be in compliance with, the other provisions of this Schedule for dealing with a conflict of interest, and for greater certainty, circumstances arising under paragraphs 15(3)(a) and (b) shall be considered a "private interest" for the purposes of the application of subsection 2(4) to such circumstances.

(4) The senior manager must ensure that every officer 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

16. (1) If an officer or employee believes he or she has a conflict of interest, the officer or employee must

(a) disclose the circumstances in writing as soon as practical to the Band Manager or, in the case of the Band Manager, to the Council and 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 Band Manager or the chair, as the case may be, on actions to be taken to avoid or mitigate the conflict of interest.

(2) The Band Manager must establish and maintain a register of all information disclosed by an officer or employee under this section.

Gifts or Benefits

17.(1) An officer or employee must not directly or indirectly, or through the persons referred to in paragraphs 2(3)(a) to (c) and (e) of this Schedule, accept a gift or benefit that might reasonably be seen to have been given to influence the officer 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) is of a value of \$300 or less;

(b) its acceptance is approved by the Council or Council policies; or

(c) it is a gift received during a public cultural event of the First Nation.

(3) Where a gift is given to a person referred to in subsection (1), the person must as soon as practicable make a written disclosure of the gift to the Band Manager, and if the gift does not meet the conditions in subsection (2), the gift must be treated as the property of the First Nation unless the Council determines otherwise.

Outside Employment and Business Interests

18.(1) If an officer or employee is permitted under their terms of employment to have outside employment or business interests, the officer or employee must disclose these employment or business interests in writing to the Band Manager or, in the case of the Band Manager, to the Council and the Finance and Audit Committee.

(2) An officer 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

19.(1) An officer or employee must keep confidential all information that the officer 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) An officer or employee must only use any confidential information referred to in subsection (1) for the specific purposes for which it was provided to the officer or employee.

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

Business Opportunities

20. An officer must not take advantage of a business or investment opportunity being considered by the First Nation and which the officer becomes aware of while performing services for the First Nation unless the Council has determined not to pursue the opportunity and the officer's pursuit of the business or investment opportunity is ratified by the members of the First Nation at a meeting of members of the First Nation for which fifteen (15) days notice is provided and at which at least 10% of the First Nation's adult members participate in person, or by teleconference, video conference, or other means of registering their vote.

First Nation Property and Services

21.(1) Officers 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) Officers 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

22.(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 Officer or Employee

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

General Obligations

24.(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, officer 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

25.(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 non-public 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

26. 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.

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First Nation Property and Services

27. 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.

Disclosure of Conflict of Interest

28.(1) If an contractor believes he or she has a conflict of interest, the contractor must

- (a) disclose the circumstances in writing as soon as practical to the Band Manager; and
- (b) refrain from participating in any discussions or decision-making as a representative of the First Nation respecting the circumstances of the conflict of interest until advised by the Band Manager, on actions to be taken to avoid or mitigate the conflict of interest.

(2) The Band Manager must establish and maintain a register of all information disclosed by a contractor under this section.

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