

## EBB AND FLOW

(REFINANCING AND ECONOMIC/SOCIAL DEVELOPMENT)

### BORROWING LAW 2015

#### (Other Revenues)

#### WHEREAS:

- A. Under section 74(b) of the *First Nations Fiscal Management Act*, the Authority has as one of its mandates to secure for its borrowing members financing through the use of other revenues prescribed by regulation for purposes prescribed by regulation;
- B. The *Financing Secured by Other Revenues Regulations* made under section 142 of the Act prescribes other revenues and purposes for which such other revenues can be used to secure financing from the Authority and adapts and restricts the *First Nations Fiscal Management Act* for the purposes of section 74(b);
- C. The Act provides pursuant to section 5(1)(d) that the council of a First Nation may make laws respecting the borrowing of money from the Authority;
- D. The First Nation is a borrowing member of the Authority and has entered into a Borrowing Agreement with the Authority;
- E. The First Nation is in compliance with the Borrowing Agreement and the Act;
- F. The Council of the First Nation has determined that it is in the interests of the First Nation to use Other Revenues to secure financing for the Purpose, which is a purpose prescribed under the Act;
- G. The estimated cost of undertaking the Purpose is \$9,000,000.00;
- H. The Council of the First Nation deems it necessary to borrow the sum of \$9,000,000.00 from the Authority to finance all or a portion of the costs of the Purpose using the Other Revenues described in the Certificate of Calculation of Borrowing Capacity attached as Schedule "A" to this Law to secure the financing from the Authority;
- I. The First Nation has enacted a financial administration law under section 9(1)(a) of the Act, which law has been approved by the First Nations Financial Management Board;
- J. The First Nation estimates that \$850,000.00 per year will be paid into the Secured Revenues Trust Account by the Payor;
- K. The estimated amount of annual debt servicing costs in connection with the financing from the Authority is \$591,442.00 as certified by Elena Kalish, Financial Manager for the First Nation as set forth in the Certificate of Calculation of Borrowing Capacity attached as Schedule "A" to this Law;
- L. The First Nation has sufficient unutilized borrowing capacity to undertake the borrowing authorized under this Law; and
- M. The First Nation has obtained a Financial Performance Certificate from the First Nations Financial

Management Board, a copy of which certificate is attached as Schedule “B” to this Law.

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

1. This Law may be cited as the *Ebb and Flow Borrowing Law - OR 2015*, whose purpose is Economic/Social Development and refinancing.
2. In this Law (including the recitals):

“**Act**” means the *First Nations Fiscal Management Act* and regulations as adapted by the *Financing Secured by Other Revenues Regulations* and any amendments thereto;

“**Authority**” means the First Nations Finance Authority established under the Act;

“**Borrowing Agreement**” means the borrowing agreement entered into between the Authority and the First Nation on 15/04/2015;  
dd mm yyyy

“**Completion**” means in relation to the Purpose for which the Authority has provided financing to the First Nation, that the Authority, acting reasonably, is satisfied on the basis of documentation provided to the Authority by the First Nation that the Purpose has been implemented substantially as described in this Law:

“**Financial Performance Certificate**” means a certificate issued by the First Nations Financial Management Board under section 50(3) of the Act that the First Nation’s financial performance is in compliance with the First Nations Financial Management Board standards;

“**Financing Secured by Other Revenues Regulations**” means the regulation made under section 142 of the Act that prescribes other revenues and purposes for which such other revenues can be used to secure financing from the Authority and adapts and restricts the Act for the purposes of section 74(b);

“**First Nation**” means Ebb and Flow;

“**Interim Long Term Financing**” means financing provided by the Authority to the First Nation in anticipation of the inclusion and replacement of such financing in an issue of debt securities by the Authority by the earlier of (i) five years from the date on which the first advance of such Interim Long Term Financing is provided to the First Nation, or (ii) Completion of the Purpose;

“**Law**” means this borrowing law;

“**Other Revenues**” means the other revenues prescribed in the Act;

“**Payor**” means the persons, firms or corporations with obligations to make payments to the First Nation of Other Revenues used or to be used by the First Nation to secure financing from the Authority, whose names and addresses are set out in Schedule “C” attached hereto or any updated replacement Schedule “C” provided by the First Nation and accepted by the Authority;

“**Purpose**” means the purpose of the financing by the First Nation from the Authority generally

described in a Borrowing Law, for which the Act permits the First Nation to use Other Revenues of the First Nation to secure financing for such purpose, generally described as:

1. Choose from the following: capital infrastructure; rolling stock (machinery and equipment); land (wholly or partly owned by First Nation); shares or ownership (power generating, waste or waste water); other economic or social development purposes)

Purpose: Economic/social development purposes

and

2. Provide a description of the Purpose. Refinancing, infrastructure, housing improvements, capacity development and economic development.

**“Promissory Note”** means a contractual promise to pay made by the First Nation to the Authority in respect of the repayment by the First Nation of money borrowed by the First Nation from the Authority, that sets out a schedule of repayment of principal and interest, in the form specified by the Authority;

**“Secured Revenues Trust Account”** means an account established by the Authority and the First Nation in which other revenues to be used for financing under the Act are deposited;

**“Secured Revenues Trust Account Management Agreement”** means the agreement under which the Secured Revenues Trust Account is managed in accordance with the Act;

**“Secured Revenues Trust Account Manager”** means the third party that is responsible for management of the Secured Revenues Trust Account in accordance with the Act, the Borrowing Agreement and the Secured Revenues Trust Account Management Agreement; and

**“Security Issuing Council Resolution”** means a Council resolution in the form specified by the Authority whereby the First Nation formally requests to drawdown all or a portion of the loan amount authorized in the Borrowing Law, and that is to be completed when the borrowing member’s loan needs arise. Drawdown requests can be all at once, or in increments over time as a Purpose progresses.

3. Unless the context otherwise requires, words and expressions used in the Law and not otherwise defined have the same meaning as in the Act.
4. The Council is hereby authorized and empowered to borrow upon the credit of the First Nation for the Purpose using the Other Revenues described in the Certificate of Calculation of Borrowing Capacity attached as Schedule “A” to this Law to secure the financing from the Authority, and the Authority is requested and authorized to finance from time to time the Purpose at the sole cost and on behalf of the First Nation, a sum not exceeding \$9,000,000.00 in lawful money of Canada (provided that the First Nation may borrow all or part of such amount in such currency as the Authority determines but the aggregate amount in lawful money of Canada and in Canadian dollar equivalents so borrowed must not exceed the amount set out in this clause ), together with such interest and with such discounts or premiums and expenses as the Authority determines appropriate in consideration of the market and economic conditions.
5. If a Secured Revenues Trust Account has not previously been established by the First Nation and the

Authority, then after passage of this Law the First Nation and the Authority shall establish a Secured Revenues Trust Account in accordance with the Act and the Borrowing Agreement and a quorum of the members of Council are hereby authorized to execute the Secured Revenues Trust Account Management Agreement and the Notice of Secured Financing and a quorum of the members of Council is hereby authorized to execute such other documents or agreements on behalf of the First Nation, when requested by the Authority, as required in relation to the Secured Revenues Trust Account.

6. When from time to time the First Nation wishes to borrow all or a portion of the amount authorized under this Law, the Council shall pass a Security Issuing Council Resolution approving the borrowing of the specified amount and requesting that the Authority either include the requested amount as part of its next issue of debt securities or provide the specified amount by way of Interim Long Term Financing.
7. On completion by the Authority of the financing undertaken pursuant to this Law and the Security Issuing Council Resolution, the First Nation:
  - (a) shall execute and deliver to the Authority such Promissory Notes as are requested by the Authority; and
  - (b) hereby authorizes and directs a quorum of the members of Council to execute such Promissory Notes on behalf of the First Nation when requested by the Authority.
8. The First Nation shall in each fiscal year after a Promissory Note has been signed provide in its annual budget for payments of all amounts payable to the Authority during the fiscal year to which its annual budget applies.
9. The First Nation shall make payments to the Authority in accordance with the Act and the Borrowing Agreement.
10. The First Nation must repay the financing obtained from the issuance of debt securities by the Authority no later than 20 years from the date on which the Authority provided the first advance of such financing to the First Nation.
11. Unless pre-paid by the First Nation in accordance with its borrowing agreement with the Authority, the First Nation must repay the interim long-term financing to the Authority by replacing such financing with financing obtained from the issuance of debt securities by the Authority, no later than the earlier of
  - (a) five (5) years from the date on which the Authority provided the first advance of the interim long-term financing to the First Nation; or
  - (b) the date of Completion of the Purpose.
12. Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.
13. This Law shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.
14. The Schedules attached to this Law form integral parts of this Law.

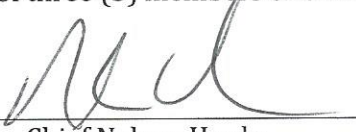
15. The authority to borrow under this Law ends on the earlier of:

- (a) the date that the amount authorized by this Law has been fully borrowed by the First Nation, as evidenced by the Security Issuing Council Resolutions passed by Council; and
- (b) five years from the date that this Law comes into force for any part of the amount authorized by this Law that has not been borrowed, as evidenced by Security Issuing Council Resolutions passed by Council.


16. This Law comes into force and effect on the 23rd day of April, 2015.

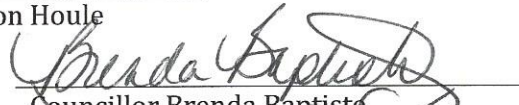
THIS LAW IS HEREBY DULY ENACTED by Council on the 23rd day of April, 2015, at Winnipeg in the Province of MB.

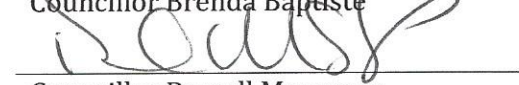
A quorum of Council consists of three (3) members of Council.

  
\_\_\_\_\_  
Chief Nelson Houle

  
\_\_\_\_\_  
Councillor Clifford Baptiste

  
\_\_\_\_\_  
Councillor Wayne Desjarlais

  
\_\_\_\_\_  
Councillor Brenda Baptiste

  
\_\_\_\_\_  
Councillor Darrell Mousseau

**SCHEDULE "A"**

**CERTIFICATE OF CALCULATION OF BORROWING CAPACITY**

# CERTIFICATE of CALCULATION of BORROWING CAPACITY (OTHER REVENUES)

Ebb and Flow in relation to

Ebb and Flow Borrowing Law - OR 2015

This form supplies information on the revenue stream supporting the Borrowing Law request. To calculate the Borrowing Capacity of each revenue stream and Annual Loan Service Estimates see our website at [www.fnfa.ca](http://www.fnfa.ca) - Go to "Calculators" choose "Borrowing Capacity - Other Revenues".

The following revenues may be used to secure financing . Please check the box or boxes that will be securing this loan request.

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> (a) Federal or Provincial Transfer as Permitted | <input type="checkbox"/> (f) Contracts and Leases (IPP's, benefit agreements, services, etc) |
| <input type="checkbox"/> (b) Municipal Transfers                                    | <input type="checkbox"/> (g) Band Business   |
| <input type="checkbox"/> (c) Independent Power Projects (IPP)                       | <input type="checkbox"/> (h) Taxes and Fees (other than local revenues)                      |
| <input type="checkbox"/> (d) Gaming Revenues - Provincial                           | <input type="checkbox"/> (i) Royalties from FNLMA or FNOGMMA                                 |
| <input type="checkbox"/> (e) Land Benefit Agreements                                | <input type="checkbox"/> (j) Interest Earnings   |

Date data is entered:	<u>23-Apr-15</u>	Project Description:
Desired term of loan: Years =	<u>20 years (10 Locked)</u>	<u>Refinancing, Economic Development, Infrastructure, Capacity Development</u>
Estimated Interest Rate:	<u>2.85 %</u> <small>(see FNFA website)</small>	

### Calculation of Net Revenue using the previous year's financial statements:

Gross Revenue (Letter from list above)	a	\$	<u>600,000.00</u>	<u>Tobacco Tax Rebate</u>
Less Expenses against revenue stream			_____	
Less annual capital liability payments			_____	(i.e. loan payments, capital lease payments, etc.)
<b>Net Revenue =</b>			<u>600,000.00</u>	(enter in FNFA website calculator Borrowing Capacity)

**Borrowing Capacity per revenue stream (from FNFA's Website calculator)** \$6,754,832

Gross Revenue (Letter from list above)	a	\$	<u>250,000.00</u>	<u>Fuel Tax Rebate</u>
Less Expenses against revenue stream			_____	
Less annual capital liability payments			_____	(i.e. loan payments, capital lease payments, etc.)
<b>Net Revenue =</b>			<u>250,000.00</u>	(enter in FNFA website calculator Borrowing Capacity)

**Borrowing Capacity per revenue stream (from FNFA's Website calculator)** 2,251,615

Gross Revenue (Letter from list above)	a	\$	_____	
Less Expenses against revenue stream			_____	
Less annual capital liability payments			_____	(i.e. loan payments, capital lease payments, etc.)
<b>Net Revenue =</b>			<u>-</u>	(enter in FNFA website calculator Borrowing Capacity)

**Borrowing Capacity per revenue stream (from FNFA's Website calculator)** \_\_\_\_\_

<b>TOTAL BORROWING CAPACITY</b>	<b>\$ 9,006,447</b>	<b>100%</b>
<b>BORROWING REQUEST FOR THIS PROJECT =</b>	<b>\$ 9,000,000</b>	<b>-100%</b>
<b>UNUSED BORROWING CAPACITY</b>	<b>\$ 6,447</b>	<b>0%</b>


**TOTAL ANNUAL REVENUE** \$ 850,000 100%

**LESS: Annual loan payments on new loan request** 591,442 -70%  
(use FNFA website - Annual Loan Service Estimates - How much will your loan cost)

**TOTAL UNUSED ANNUAL REVENUE:** \$ 258,558 30%

The undersigned Financial Officer or Auditor also hereby authorizes the FNFA's legal counsel, who must issue a legal opinion on the debenture, to rely on this Certificate's calculations in giving any opinion in connection with any borrowing by the FNFA and the issuance of bonds, debentures, and other securities by the FNFA in respect of the borrowing and the Security Issuing Council Resolution or other liability for which certification is being made, referred to above.

DATED this 23rd day of April, 2015.

  
\_\_\_\_\_  
Financial Officer  
*Elena Kalish, Financial Manager*

or

\_\_\_\_\_  
Auditor  
*(Please print full name & company)*

**SCHEDULE “B”**

**FINANCIAL PERFORMANCE CERTIFICATE**

(To be provided to the First Nation by the First Nations Financial Management Board pursuant to subsection 50(3) of the Act)



## FINANCIAL PERFORMANCE CERTIFICATE ISSUED TO EBB AND FLOW

The First Nations Financial Management Board (“the Board”) completed its review of Ebb and Flow’s Financial Performance for compliance with the *Financial Performance Standards* established under section 55 of the *First Nations Fiscal Management Act* (“the Act”). The Board has not audited or otherwise attempted to verify the underlying financial information upon which the review is based. On the basis of its review and after consideration of its findings, the Board is of the opinion and certifies that, as at March 31, 2014, Ebb and Flow was in compliance with the *Financial Performance Standards*.

The Board has provided Ebb and Flow with a Report and attached Schedule dated March 31<sup>st</sup>, 2015 as required under section 50(2) of the Act and upon which the Board’s opinion and certification is based.

This Certificate has been issued to Ebb and Flow under section 50(3) of the Act solely for the purpose of enabling Ebb and Flow to satisfy the requirements of the Act. It should not be used or relied upon Ebb and Flow or by any other person for any other purpose and the Board accepts no responsibility for any loss or damages resulting from any unauthorized use of or reliance on this Certificate.

This Certificate is issued on the 31<sup>st</sup> day of March, 2015.

*First Nations Financial Management Board*

**SCHEDULE "C"**

**EBB AND FLOW PAYOR LIST**

**Name and Address of Payor(s):**

**The Province of Manitoba**

Native Refunds for Tobacco & Gasoline  
101-401 York Avenue  
Winnipeg, Manitoba, R3C 0P8