

METLAKATLA

ECONOMIC, SOCIAL DEVELOPMENT & REFINANCING

BORROWING LAW, 2014 (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 purpose and estimated cost of this undertaking is *Seven Million Dollars* (\$7,000,000);
- H. The Council of the First Nation deems it necessary to borrow the sum of *Seven Million Dollars* (\$7,000,000) 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 the sum of *One Million Ninety-Nine Thousand Six Hundred and Eighteen Dollars* (\$1,099,618), per Schedule "C" will be paid into the Secured Revenue Trust Account by the Payor;
- K. The estimated amount of annual debt servicing costs in connection with the financing from the Authority is *Four Hundred and Eleven Thousand Eight Hundred and Eleven Dollars* (\$411,811) as certified by Gordon Tomlinson, Executive Director 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 *Metlakatla Borrowing Law - OR 2014*, whose purpose is Economic and 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 04/04/2014;
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 Metlakatla; (referred to as “Metlakatla First Nation” in the schedule to the First Nations Fiscal Management Act, S.C. 2005, c.9)

“**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:

Purpose: Economic, Social Development and Refinancing

“**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 *Seven Million (\$7,000,000)* 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 two authorized Band signatories (Gordon Tomlinson, Executive Director and Harold Leighton, Chief) are 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.

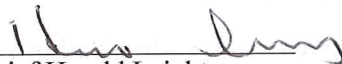
6. When from time to time the First Nation wishes to borrow all or a portion of the amount authorized under this Law, the Council shall pass a Security Issuing Council Resolution approving the borrowing of the specified amount and requesting that the Authority either include the requested amount as part 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 two Band signatories (Gordon Tomlinson, Executive Director and Harold Leighton, Chief 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 30 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 4th day of April, 2014.

THIS LAW IS HEREBY DULY ENACTED by Council on the 4th day of April, 2014, at Metlakatla in the Province of BC.

A quorum of Council consists of four (4) members of Council.



Chief Harold Leighton



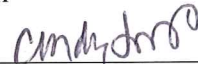
Councillor Alvin W. Leask




Councillor Alrita Leask

Councillor Wayne Haldane






Councillor Cindy Smith



Councillor James Nelson, Sr.



Councillor Robert Nelson

SCHEDULE "A"

CERTIFICATE OF CALCULATION OF BORROWING CAPACITY

CERTIFICATE OF CALCULATION of BORROWING CAPACITY (OTHER REVENUES)

Metlakatla

in relation to

Metlakatla Borrowing Law - OR 2014

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 - Go to "Calculators" choose "Borrowing Capacity - Other Revenues".

Date data is entered: April 4-14 Project Description: _____
 Desired term of loan: Years = 30 yrs (10 locked) Economic, Social Development & Refinancing
 Estimated Interest Rate: 3.9 % _____
(see FNFA website)

- | | |
|---|--|
| <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 checked="" 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 |

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

Gross Revenue (Letter from list above) a \$ 217,750.00 FCRSA
 Less Expenses against revenue stream _____
 Less annual capital liability payments _____ (i.e. loan payments, capital lease payments, etc.)
Net Revenue = 217,750.00 (enter in FNFA website calculator Borrowing Capacity)

Borrowing Capacity per revenue stream (from FNFA's Website calculator) 2,730,722

Gross Revenue (Letter from list above) g \$ 881,868.00 Dev. Corp.
 Less Expenses against revenue stream _____
 Less annual capital liability payments _____ (i.e. loan payments, capital lease payments, etc.)
Net Revenue = 881,868.00 (enter in FNFA website calculator Borrowing Capacity)

Borrowing Capacity per revenue stream (from FNFA's Website calculator) 7,773,010

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

Borrowing Capacity per revenue stream (from FNFA's Website calculator) _____

TOTAL BORROWING CAPACITY	\$ 10,503,732	100%
BORROWING REQUEST FOR THIS PROJECT =	\$ 4,737,000	-45%
UNUSED BORROWING CAPACITY	\$ 5,766,732	55%

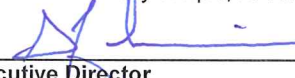
TOTAL ANNUAL REVENUE \$ 1,099,618 100%

LESS: Annual loan payments on new loan request \$ 270,000 -25%
(use FNFA website - Annual Loan Service Estimates - How much will your loan cost)

TOTAL UNUSED ANNUAL REVENUE: \$ 829,618 75%

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 4th day of April, 2014.



Executive Director
 Gordon Tomlinson

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 THE METLAKATLA FIRST NATION**

The First Nations Financial Management Board (“the Board”) completed its review of the Metlakatla First Nation’s Financial Performance for compliance with the *Financial Performance Standards* established under section 55 of the *First Nations Fiscal and Statistical Management Act* (“the Act”). 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, 2012, the Metlakatla First Nation was in compliance with the *Financial Performance Standards*.

The Board has provided the Metlakatla First Nation with a Report and attached Schedule dated September 24, 2012 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 the Metlakatla First Nation under section 50(3) of the Act solely for the purpose of enabling the Metlakatla First Nation to satisfy the requirements of the Act. It should not be used or relied upon by the Metlakatla First Nation 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 24th day of SEPTEMBER 2012.

First Nations Financial Management Board

SCHEDULE "C"

PENTICTON PAYOR LIST

Name and Address of Payor(s):

Revenue Stream Name	Type of Revenue	Revenue Stream Payment Schedule	Annual Amount
Development Corp. "Recoveries & Other"	Net Profit	Annual	\$881,868
FCRSA – BC Forestry Agreement	Provincial Contract	Quarterly	\$217,750
Revenue Stream Annual Total:			\$1,099,618