

PENTICTON

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 the Penticton Indian Band may make laws respecting the borrowing of money from the Authority;
 - D. The Penticton Indian Band is a borrowing member of the Authority and has entered into a Borrowing Agreement with the Authority;
 - E. The Penticton Indian Band is in compliance with the Borrowing Agreement and the Act;
 - F. The Council of the Penticton Indian Band has determined that it is in the interests of the Penticton Indian Band 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 *Eleven Million Dollars* (\$11,000,000);
 - H. The Council of the Penticton Indian Band deems it necessary to borrow the sum of *Eleven Million Dollars* (\$11,000,000) 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 Penticton Indian Band 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 Penticton Indian Band estimates that the sum of *One Million, Four Hundred and Sixteen Thousand, Seven Hundred and Seven Dollars* (\$1,416,737), 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 *Six Hundred and Forty-Seven Thousand, One Hundred and Thirty-One Dollars* (\$647,131) as certified by Bill Joyner, CFO for the Penticton Indian Band as set forth in the Certificate of Calculation of Borrowing Capacity attached as Schedule "A" to this Law;
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- L. The Penticton Indian Band has sufficient unutilized borrowing capacity to undertake the borrowing authorized under this Law; and
- M. The Penticton Indian Band 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 Penticton Indian Band duly enacts as follows:

- 1. This Law may be cited as the *Penticton Borrowing Law - OR 2014*, 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 Penticton Indian Band on 17/12/2013;
dd mm yyyy

“**Completion**” means in relation to the Purpose for which the Authority has provided financing to the Penticton Indian Band, that the Authority, acting reasonably, is satisfied on the basis of documentation provided to the Authority by the Penticton Indian Band 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 Penticton Indian Band’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);

“**Penticton**” means Penticton Indian Band;

“**Interim Long Term Financing**” means financing provided by the Authority to the Penticton Indian Band 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 Penticton Indian Band, 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 Penticton Indian Band of Other Revenues used or to be used by the Penticton Indian Band 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 Penticton Indian Band and accepted by the Authority;

“Purpose” means the purpose of the financing by the Penticton Indian Band from the Authority generally described in a Borrowing Law, for which the Act permits the Penticton Indian Band to use Other Revenues of the Penticton Indian Band 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 Penticton Indian Band to the Authority in respect of the repayment by the Penticton Indian Band of money borrowed by the Penticton Indian Band 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 Penticton Indian Band 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 Penticton Indian Band 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 Penticton Indian Band 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 Penticton Indian Band, a sum not exceeding *Eleven Million (\$11,000,000)* in lawful money of Canada (provided that the Penticton Indian Band 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

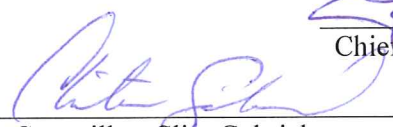
Authority determines appropriate in consideration of the market and economic conditions.

5. If a Secured Revenues Trust Account has not previously been established by the Penticton Indian Band and the Authority, then after passage of this Law the Penticton Indian Band 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 Penticton Indian Band signatories (Greg Gabriel, Band Administrator and Jonathan Kruger, Chief) are hereby authorized to execute such other documents or agreements on behalf of the Penticton Indian Band, when requested by the Authority, as required in relation to the Secured Revenues Trust Account.
6. When from time to time the Penticton Indian Band 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 Penticton Indian Band:
 - (a) shall execute and deliver to the Authority such Promissory Notes as are requested by the Authority; and
 - (b) hereby authorizes and directs two Penticton Indian Band signatories (Greg Gabriel, Band Administrator and Jonathan Kruger, Chief) to execute such Promissory Notes on behalf of the Penticton Indian Band when requested by the Authority.
8. The Penticton Indian Band 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 Penticton Indian Band shall make payments to the Authority in accordance with the Act and the Borrowing Agreement.
10. The Penticton Indian Band 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 Penticton Indian Band.
11. Unless pre-paid by the Penticton Indian Band in accordance with its borrowing agreement with the Authority, the Penticton Indian Band 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 Penticton Indian Band; 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 Penticton Indian Band, 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 February, 2014.

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

A quorum of Council consists of five (5) members of Council.

	
Chief Jonathan Kruger	
	
Councillor Clint Gabriel	Councillor Kevin Gabriel
	
Councillor Clinton George	Councillor Dolly Kruger
	
Councillor Travis Kruger	Councillor Timmothy Lezard
	
Councillor Inez Pierre	Councillor Joseph Pierre