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FINANCIAL PERFORMANCE

CERTIFICATION PROCEDURES

First Nations FINANCIAL MANAGEMENT BOARD

www.fnfmb.com

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TABLE 1 - LIST OF CORE DOCUMENTS

The following table lists the core documents made available by the First Nations Financial Management Board ("the FMB") for First Nations to utilize in developing, implementing and improving their financial management.

	FINANCIAL ADMINISTRATION LAW		
	A1	Financial Administration Law – **Review Procedures**	Procedures to apply when requesting a compliance approval of the First Nation's Financial Administration Law.
	A2	Financial Administration Law – **Standards**	Standards that support sound financial administration practices for a First Nation government in Canada.
	A3	**Sample** Financial Administration Law	Example of a Law which meets the requirements of the A2 Financial Administration Law – Standards.
	A4	Financial Administration Law – **Explanatory Notes**	Provides assistance on the development of a Financial Administration Law by discussing the structure and substantive content of the A3 Sample Financial Administration Law.
	A5	Financial Administration Law – **Self-Assessment**	Tool that can be utilized to compare existing or proposed Financial Administration Law(s) of the First Nation to the A2 Financial Administration Law – Standards.
	FINANCIAL MANAGEMENT SYSTEM		
	B1	Financial Management System – **Certification Procedures**	Procedures to apply when requesting a review of the First Nation's financial management system.
	B2	Financial Management System – **Standards**	Standards that support sound financial practices for the operation, management, reporting and control of the financial management system of a First Nation.
	FINANCIAL PERFORMANCE		
☑	C1	Financial Performance – **Certification Procedures**	Procedures to apply when requesting a review of the First Nation's financial performance.
	C2	Financial Performance – **Standards**	Standards that assess the historical financial performance of a First Nation over a five-year period using up to six financial ratios.
	LOCAL REVENUE FINANCIAL REPORTING		
	D1	Local Revenue Financial Reporting – **Standards**	Standards that establish requirements for the financial reporting of a First Nation's local revenues and expenditures.
	D2	Local Revenue Financial Reporting – **Illustrative Financial Statements**	Illustrative annual financial statements for a First Nation's local revenues and expenditures designed to comply with the D1 Local Revenue Financial Reporting – Standards.
	D3	Local Revenue Financial Reporting – **Illustrative Segment Note Disclosure**	Illustrative segment note disclosure for inclusion in the annual financial statements of a First Nation designed to comply with the D1 Local Revenue Financial Reporting – Standards.
	D4	Local Revenue Financial Reporting – Explanatory Notes	Explanatory notes to accompany D1 Local Revenue Financial Reporting – Standards.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

FINANCIAL PERFORMANCE CERTIFICATION PROCEDURES

1.0 AUTHORITY TO ESTABLISH PROCEDURES

1.1 Act authority – Procedures respecting the certification of a First Nation's financial performance under subsection 50(3) of the *First Nations Fiscal Management Act* ("the Act") are established by the FMB under subsection 55(2) of the Act.

1.2 Procedure revisions – Procedures established by the FMB may be amended or revised from time to time by the FMB.

1.3 Access to procedures – FMB procedures in effect from time to time are available from the FMB or may be accessed on the FMB's web site (www.fnfmb.com).

2.0 PURPOSE OF PROCEDURES

2.1 Purpose – The purpose of these procedures is to establish a process for the FMB to:

a. provide assistance to First Nations in the evaluation of their financial performance;

b. formally review a First Nation's financial performance on request of the First Nation under the Act or its regulations;

c. provide a report to the First Nation setting out the scope of the review undertaken and an opinion to the First Nation as to whether the First Nation was in compliance with the *Financial Performance Standards* or as to which aspects of these Standards were not complied with by the First Nation; and

d. issue a Financial Performance Certificate under subsection 50(3) of the Act to the First Nation if its financial performance is in compliance with the *Financial Performance Standards*.

3.0 APPLICATION OF THESE PROCEDURES

3.1 Application – These procedures apply where a First Nation is requesting the FMB to issue the First Nation a certificate stating that it was in compliance with the *Financial Performance Standards*.

3.2 Waiver – The FMB may, in accordance with its policies, waive any requirement of these procedures as they relate to a particular First Nation if the FMB is satisfied it has sufficient and credible information upon which to base its review of the First Nation's financial performance.

4.0 INTERPRETATION

4.1 Definitions – Unless the context indicates otherwise, in these procedures:

"Act" means the *First Nations Fiscal Management Act*;

"*Financial Performance Standards*" means the Financial Performance Standards established by the FMB under subsection 55(1) of the Act;

"Financial Management System Certificate" means a Financial Management System Certificate issued by the FMB under subsection 50(3) of the Act;

"*Financial Management System Standards*" means the Financial Management System Standards established by the FMB under subsection 55(1) of the Act;

"FMB" means the First Nations Financial Management Board;

"reviewer" means the person appointed by the FMB under section 7.1 of these procedures.

4.2 Interpretation – In these procedures, a reference to a determination that a First Nation was in compliance with the *Financial Performance Standards* means a determination that the First Nation was in compliance with the Standards, in all material respects, on the effective date of the review.

5.0 REQUEST FOR ASSISTANCE

5.1 Letter of cooperation – A First Nation may initiate a client relationship with the FMB by delivering to the FMB a letter of cooperation in the form and with the terms required by the FMB.

5.2 Written request for assistance – A First Nation may make a written request to the FMB for assistance in the review of its financial performance and to receive a financial performance certificate.

5.3 Nature of assistance – The FMB will determine, in its sole discretion, the nature of any assistance it provides to a First Nation including, but not limited to, conducting an informal review of its financial performance.

5.4 Template forms – The recommended template for the letter of cooperation referred to in section 5.1 is on the FMB's website (www.fnfmb.com).

6.0 REQUEST FOR REVIEW OF FINANCIAL PERFORMANCE

6.1 Required resolution for formal review – A First Nation must submit a resolution of the council to the FMB which must include the following:

a. request to formally review the First Nation's financial performance under subsection 50(1) of the Act to determine if the First Nation is in compliance with the *Financial Performance Standards*;

b. request to the FMB to issue the First Nation a Financial Performance Certificate under subsection 50(3) of the Act;

c. direction to a representative of the First Nation and the First Nation's auditor to communicate with the FMB, deliver to the FMB any documents required by the FMB to formally review the First Nation's financial performance and issue to the First Nation a Financial Performance Certificate;

d. agreement to indemnify, defend and hold harmless the FMB, its directors, officers, employees and every person acting on behalf of the FMB, its directors, officers and employees from any damages, costs, claims or causes of action regarding any aspect of the formal review including opinions, reports and whether a Financial Performance System Certificate is issued or revoked, unless the damages, costs, claims or causes of action result from gross negligence or bad faith; and

e. confirmation that the resolution was approved at a duly called and conducted council meeting at which the required quorum of councillors were present throughout and the required number of councillors approved the resolution at the meeting.

6.2 Videoconference or teleconference council meeting - the *Indian Act* allows, if exceptional circumstances arise which prevent council from meeting in person, council meetings to proceed by way of a videoconference or teleconference. In this situation, then the resolution of the council in section 6.1 must also include:

a. confirmation that the council meeting was held by videoconference or teleconference;

b. a statement describing the exceptional circumstances as to why the council meeting held by videoconference or teleconference;

c. confirmation that the council meeting allowed First Nation citizen participation;

d. a statement whether the Law may be signed in counterparts and electronically which together constitute an original instrument or a statement that the Law may be enacted without signatures; and

e. a statement whether the resolution may be signed in counterparts and electronically which together constitute an original instrument.

6.3 Template forms – The recommended template forms for the resolution required in section 6.1 are on the FMB's website (www.fnfmb.com).

7.0 REVIEWER

7.1 Appointment – On receipt of all documents required by these procedures for a request for the formal review of a First Nation's financial performance, the FMB will appoint a reviewer and advise the First Nation of the name and contact information of the reviewer.

7.2 Replacement of reviewer – The FMB may replace the reviewer at any time.

7.3 Role of reviewer – A reviewer appointed by the FMB has full authority to act for the FMB in the conduct of a review of a First Nation's financial performance including the authority to:

a. conduct a desk review of any documents supplied by the First Nation under these procedures and any additional documents requested by the reviewer;

b. conduct an on-site review at the offices of the First Nation and any other location where the documents or records of the First Nation are located or operations are conducted;

c. communicate with any persons referred to in section 6.1 a. – e.; and

d. have access to and be provided any of the First Nation's records.

8.0 FIRST NATION OBLIGATIONS

8.1 Required information – Before the reviewer appointed by the FMB will begin the formal review of the First Nation's financial performance, the First Nation is required to submit to the reviewer:

a. a copy of annual financial statements for each of the five most recent years, together with a signed independent auditor's report for each of these financial statements; and

b. any other information requested by the reviewer or the FMB respecting matters relating to the FMB's formal review of the First Nation's financial performance including, but not limited to, information respecting events subsequent to the most recent audited annual financial statements.

8.2 Cooperation – The council of the First Nation is required to direct all councillors, officers, employees and auditors of the First Nation to cooperate with the reviewer when carrying out a formal review of the First Nation's financial performance.

8.3 Nature of required cooperation – The FMB may require the First Nation to set out in writing in a council resolution, the duties of the obligation to cooperate referred to in section 8.2 which include, but are not limited to, the following:

a. giving access to and providing copies of any records of the First Nation that the reviewer requests in order to conduct the formal review;

b. giving access to all First Nation offices and premises including those of any business operations under the control of the First Nation that the reviewer requests in order to conduct the formal review;

c. making persons referred to in section 8.2 available to meet with and answer questions of the reviewer in respect of the review; and

d. authorizing and requiring persons referred to in section 8.2 to confirm the correctness and completeness of all information and documentation provided by them from time to time during the course of the formal review including any normalization adjustment under Standard 8.0 of the Financial Performance Standards that the FMB has advised it is considering;

e. disclosing to the reviewer any events subsequent to the date of the last audited annual financial statements of the First Nation that would materially impact any information provided by or on behalf of the First Nation for purposes of the review of the First Nation's financial performance or to confirm to the reviewer that there are no subsequent events, as the case may be;

f. verifying and confirming that any normalization adjustment described in Standard 8.0 of the *Financial Performance Standards* that the FMB has advised is being proposed for consideration by the FMB in the financial performance review is based upon information provided by or on behalf of the First Nation that is correct, is not misleading and does not omit any material information;

g. if the First Nation has local revenue laws made under the Act, authorization to the officers and employees of the First Nations Tax Commission to provide to the reviewer any relevant information the Commission has with respect to the First Nation;

h. if the First Nation has a law respecting financial administration for which the FMB has issued a compliance approval under section 9 of the Act, a confirmation that the First Nation has not:

i. repealed its law; and

ii. amended, or repealed and replaced, its law without requesting the FMB to review the amending or replacement law and to issue a compliance approval under section 9 of the Act;

i. if the First Nation has a Financial Management System Certificate issued by the FMB, confirmation that the First Nation is in compliance with the *Financial Management Systems Standards;*

j. if the First Nation does not have a Financial Management System Certificate issued by the FMB and intends to apply to become a borrowing member of the First Nations Finance Authority, a confirmation that the council of the First Nation commits to:

i. take all necessary actions to implement the First Nation's financial management system in accordance with the requirements of its law or laws respecting financial administration and the *Financial Management System Standards*; and

ii. obtain a Financial Management System Certificate from the FMB before the First Nation passes a borrowing law for its second loan from the First Nations Finance Authority and, in any event, not later than 36 months from when the First Nation receives proceeds for the first time from a debenture or equivalent financial instrument issued by the First Nations Finance Authority under the terms of a borrowing law and a security issuing council resolution;

k. confirming that all information and documents provided to the FMB in the request or to the reviewer under these procedures are correct as at the date the information or documents were provided, are not misleading in any respect and do not omit any material facts.

8.4 Notice of failure to cooperate – If the First Nation fails to cooperate with the reviewer as required in this section, the reviewer will give a detailed written notice to the FMB with a copy to the First Nation.

8.5 FMB suspension of review – After receipt of a notice from the reviewer under section 8.4, the FMB may direct the reviewer to suspend the review until such time as the council of the First Nation provides satisfactory assurances that the review may be conducted in accordance with these procedures.

9.0 FORMAL REVIEW AND REPORT TO FMB

9.1 Conduct – The reviewer will conduct the formal review of the First Nation's financial performance in accordance with the internal *Financial Performance Certification Guidelines* established by the FMB and as amended from time to time.

9.2 Report to FMB – The reviewer will deliver a report to the FMB setting out the reviewer's findings of the formal review.

9.3 Determination by the FMB – The FMB will consider the report of the reviewer and determine if, in its opinion, the First Nation was in compliance with *the Financial Performance Standards*.

10.0 MATERIAL ADVERSE DEVELOPMENT

10.1 Suspension of review – If, during the conduct of any stage of the formal review, the FMB becomes aware of credible and material information relating to the economic circumstances or financial performance or management of the First Nation, the FMB may suspend its consideration of the First Nation's request for a formal review of its financial performance until such time as the FMB has had the opportunity to review such information with the First Nation and receive any clarification the FMB requires.

10.2 Consideration of information – The FMB may, at its discretion, refuse to issue a Financial Performance Certificate to a First Nation that was otherwise in compliance with the *Financial Performance Standards* if there has been a material adverse development in the economic circumstances or the financial performance or management of the First Nation since the issuance of the First Nation's most recent annual audited financial statements.

11.0 REPORT TO FIRST NATION

11.1 Required report – After making its determination under section 9.3 the FMB will provide the First Nation with a report required by subsection 50(2) of the Act setting out the following:

a. the scope of the formal review undertaken;

b. an opinion as to whether the First Nation was in compliance with the *Financial Performance Standards* or as to which aspects of the Standards were not being complied with by the First Nation*;*

c. the FMB's determination referred to in section 9.3;

d. if the FMB is of the opinion that the First Nation was in compliance with the *Financial Performance Standards,* any observations the FMB may have with respect to any unique factors or circumstances which could affect the First Nation's future compliance with the Standards; and

e. if the FMB is of the opinion that the First Nation was not in compliance with the *Financial Performance Standards*, any observations the FMB may have respecting the extent of its non-compliance.

11.2 Request for meeting – Within thirty (30) days after receipt of a report containing the information set out in section 11.1.e, the council of the First Nation may request a representative of the FMB to meet with the council.

11.3 Meeting within thirty (30) days – After receipt of a request under section 11.2, the FMB will appoint a representative to meet within thirty (30) days with the council of the First Nation to discuss the report.

12.0 FINANCIAL PERFORMANCE CERTIFICATE

12.1 Certificate issued – Subject to section 10.0, if, after completing the formal review of the First Nation's financial performance, the FMB determines that the First Nation was in compliance with the *Financial Performance Standards*, the FMB will issue the First Nation a Financial Performance Certificate under subsection 50(3) of the Act.

12.2 No certificate issued – If, after completing the formal review of a First Nation's financial performance, the FMB determines that the First Nation was not in compliance with the *Financial Performance Standards*, the FMB will not issue the First Nation a Financial Performance Certificate.

12.3 Copy to institutions – With consent or on request of the First Nation, the FMB will provide the First Nations Finance Authority and/or the First Nations Tax Commission with a true copy of a certificate issued under this section and a true copy of the report provided in section 11.1.

13.0 REVOCATION OF CERTIFICATE

13.1 Notice of intention to revoke – After giving reasonable written notice to the council of a First Nation, the FMB may revoke a Financial Performance Certificate issued to the First Nation if, on the basis of financial or other information available to the FMB, it is of the opinion that grounds set out in subsection 50(4) of the Act for revoking a certificate exist.

13.2 Contents of notice – The notice in section 13.1 must:

a. include the financial or other information available to the FMB on which it intends to make its decision to revoke the Financial Performance Certificate; and

b. give the First Nation a reasonable opportunity to respond before the FMB makes its decision.

13.3 Notice of decision – The FMB will give written notice of its decision to revoke a Financial Performance Certificate to the:

a. council of the First Nation;

b. First Nations Finance Authority; and

c. First Nations Tax Commission.

13.4 Required remediation – If the FMB revokes the Financial Performance Certificate of a First Nation that is a borrowing member of the First Nations Finance Authority, the First Nation must, without delay, take any measures required to re-establish its certification.



First Nations Financial Management Board
Suite 300 – 100 Park Royal
West Vancouver, BC V7T 1A2

Tel: 604-925-6665 | Toll Free 1-877-925-6665 | Fax 604-925-6662
Website: www.fnfmb.com