

HUU-AY-AHT FIRST NATIONS



GOVERNANCE AND FISCAL AGREEMENT REGULATION

Provisions of the *Economic Development Act*, HFNA 2013, relevant to the enactment of this regulation: sections 6 (g), 20 (1) and 42.

REGISTRY OF LAWS CERTIFICATION

I certify that the *Governance and Fiscal Agreement Regulation* was passed by Executive Council on:

Chief Councillor Jeff Cook

I certify that the *Governance and Fiscal Agreement Regulation* is enacted as law on:

Ta'yii Hawilth Derek Peters

I certify that the *Governance and Fiscal Agreement Regulation* came into force on:

Law Clerk Connie Waddell

GOVERNANCE AND FISCAL AGREEMENT REGULATION

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SCHEDULE

PART 1 – INTRODUCTORY PROVISIONS

Application

- 1 This regulation
 - (a) authorizes and directs the Chief Councillor to execute the governance and fiscal agreement on behalf of the Huu-ay-aht First Nations,
 - (b) provides a right of review to the tribunal to individuals who have been removed from an operating board,
 - (c) makes disputes arising under the governance and fiscal agreement subject to the jurisdiction of the tribunal, and
 - (d) establishes minimum expected financial performance requirements for Huu-ay-aht business enterprises.

Definitions

2 In this regulation:

“Act” means the *Economic Development Act*;

“governance and fiscal agreement” means the agreement referred to in Part 4 of the Act;

“tribunal” means the tribunal under the *Tribunal Act*.

Schedule

3 The form of the governance and fiscal agreement is set out in the Schedule.

PART 2 – AUTHORIZATION**Executive Council approval**

4 Executive Council must enter into the governance and fiscal agreement on behalf of the Huu-ay-aht First Nations for the purpose of clearly defining the respective roles and responsibilities of the Huu-ay-aht First Nations and each Huu-ay-aht business enterprise relating to the governance and finances of Huu-ay-aht business enterprises.

Authorized signatory

5 The Chief Councillor is authorized and directed to execute the governance and fiscal agreement on behalf of the Huu-ay-aht First Nations in substantially the form set out in the Schedule with any non-substantive changes to correct technical, grammatical, spelling or other similar errors as may be approved by the Chief Councillor, that approval being conclusively proved by the signature of the Chief Councillor to that agreement.

Chief Councillor authorization

6 The Chief Councillor is authorized to

- (a) do all such other acts and things, and
- (b) execute on behalf of the Huu-ay-aht First Nations such other acts, assurances and things

as may be reasonably necessary or desirable to conclude the governance and fiscal agreement.

Amendments

7 (1) For certainty, any amendment to the governance and fiscal agreement requiring the approval of the Huu-ay-aht First Nations may only be approved by resolution of Executive Council.

(2) The Chief Councillor is the authorized signatory for amendments approved under subsection (1).

PART 3 - BUSINESS SUSTAINABILITY

Minimum expected financial performance

- 8 (1) Each annual plan approved under the governance and fiscal agreement must provide for
- (a) earnings before interest, taxes, depreciation and amortization (EBITDA) to be equal to or greater than \$0,
 - (b) an annual percentage return on investment equal to or greater than the average annual percentage return on investment earned on the Invested Wealth Fund for the previous 2 fiscal years,
 - (c) payments or other compensation to the Huu-ay-aht to properly compensate the Huu-ay-aht for the fair market value of land and natural resource interests granted to the Huu-ay-aht business enterprise, and
 - (d) an annual distribution to the limited partner in the Huu-ay-aht business enterprise equal to or greater than the amount calculated as:
 - Average annual percentage return on investment earned on the Invested Wealth Fund for the previous 2 fiscal years
 - X
 - Dollar value of interest of the limited partner interest in the Limited Partnership at the end of the previous fiscal year as evidenced by the audited financial statements= minimum annual distribution to limited partner.
- (2) Subject to subsection (3), if it is in the best interests of the Huu-ay-aht, Executive Council may exempt a Huu-ay-aht business enterprise for a specified period of time from one or more of the financial performance requirements under subsection (1).
- (3) The exemption from one or more financial performance requirements under subsection (2) may only be granted once to a specific Huu-ay-aht business enterprise.
- (4) Executive Council may specify how the calculations are to be made under one or more of subsections (1) (a) to (d).

PART 4 – DISPUTE RESOLUTION

Interpretation

- 9** This Part applies to any dispute under the governance and fiscal agreement and if such a dispute arises, this Part must be utilized to interpret the obligations and powers of a person as they relate to the adjudication of that dispute in accordance with the *Tribunal Act*.

Governance and fiscal agreement dispute

- 10** (1) If a dispute arises regarding the interpretation, construction, compliance with or breach of the governance and fiscal agreement or its termination, and the dispute is not resolved under section 9.1 of the governance and fiscal agreement, a party to the agreement may refer that dispute to the tribunal for a determination under Part 3 of the *Tribunal Act* after giving notice to the chair of the HDC board.
- (2) For the purposes of a referral under subsection (1),
- (a) the dispute is deemed to be one to which section 17 (1) (e) of the *Tribunal Act* applies, and
 - (b) the parties are deemed
 - (i) to have consented to the jurisdiction of the tribunal for the purposes of section 31 (2) (a) (i) of the *Tribunal Act*, and
 - (ii) to have agreed to accept as binding the final decision made by the tribunal.

Review of board member removal

- 11** (1) If a dispute under section 2.6 of the governance and fiscal agreement arises regarding the removal of a board member from an operating board and the individual who has been removed from the operating board gives notice to the chair of the HDC board of the dispute, that individual may appeal to the tribunal under Part 3 of the *Tribunal Act* from the decision to remove him or her from the operating board.
- (2) For the purposes of an appeal under subsection (1),
- (a) the chair of the HDC board is deemed to be the person who made the administrative decision appealed from, and
 - (b) the decision to remove the applicant from an operating board is deemed to be an administrative decision made under this regulation to which section 17 (1) (a) of the *Tribunal Act* applies.
- (3) If under section 23 of the *Tribunal Act* the tribunal makes an order setting aside the decision to remove the applicant from an operating board, the HFN Development Limited Partnership must take all necessary steps to reinstate the applicant as a board member of the applicable operating board.

- (4) A dispute under section 2.6 of the governance and fiscal agreement regarding the removal of a board member from an operating board must not be referred to a committee under section 9.1 of the governance and fiscal agreement.

Tribunal powers confirmed

- 12** For greater certainty, the tribunal has the power to order the payment of money as part of any decision made in respect of a dispute referred to in section 10 or 11.

Tribunal costs and expenses

- 13** In addition to the powers conferred by section 47 of the *Administrative Tribunals Act* (British Columbia), the tribunal has the power to require a party to pay part or all of the actual costs and expenses of the tribunal in connection with all or part of a hearing of a dispute referred to in section 10 or 11.

PART 5 –CONSEQUENTIAL AMENDMENTS AND REPEAL

Repeal of *Economic Development Policy Regulation*

- 14** *The Economic Development Policy Regulation is repealed.*

Consequential Amendments

Cash Management Policy Regulation

- 15** *Section 2 of the Cash Management Policy Regulation is amended by*

- (a) adding “and” at the end of paragraph (b),*
(b) striking out “, and” at the end of paragraph (c), and
(c) repealing paragraph (d).

- 16** *Section 4 (3) of the Cash Management Policy Regulation is repealed.*

Purchasing Policy Regulation

- 17** *Section 2 (c) of the Purchasing Policy Regulation is repealed.*

- 18** *Section 4 (7) is amended by*

- (a) striking out “or business enterprise” and “or the Chief Executive Officer of the Huu-ay-aht Development Corporation”,*

- (b) adding “or” at the end of paragraph (a),*
- (c) striking out “, or” at the end of paragraph (b), and*
- (d) repealing paragraph (c).*

Risk Management Policy Regulation

- 19** *Section 1 of the Risk Management Policy Regulation is amended by*
 - (a) adding “and” at the end of paragraph (a),*
 - (b) striking out “, and” at the end of paragraph (b), and*
 - (c) repealing paragraph (c).*
- 20** *Section 2 is amended by striking out “, Huu-ay-aht public bodies and Huu-ay-aht business enterprises” and substituting “and Huu-ay-aht public bodies”.*
- 21** *Section 3 (3) is repealed.*

SCHEDULE

GOVERNANCE AND FISCAL AGREEMENT

[SCHEDULE FOLLOWS]