OWNERSHIP MODEL HANDBOOK

First Nations Project Ownership and Access to Capital for Investment in Major Infrastructure Projects

FIRST NATIONS MAJOR PROJECTS COALITION

Ownership Model – Why is this important to you?

If you do not demonstrate a sophisticated understanding of what money lenders require to make loans or have a process in place to deal with their requirements, a guarantor and capital markets will say “no” when you seek to access capital.

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SECTION I: HANDBOOK OVERVIEW

1. Introduction

Borrowing money to pay for equity in a project is very difficult. Most often the money for investment in equity cannot be borrowed unless the lender is provided with: other security, or a guarantee of governments or other credit worthy parties. If the money can be borrowed without providing the lender with the other security or a guarantee, the interest rate on the loan is likely to be high and the resulting profit to First Nations from the project small. Accordingly the best approach for First Nations is likely to align their interests with the interests of project developers, governments and lenders.

Understanding the requirements of lenders of money and of potential guarantors of loans is necessary if First Nations are going to be successful in attracting significant capital for investment in infrastructure projects occurring on their lands. Much planning and help are going to be required.

In that regard the First Nations Major Projects Coalition mandated and approved the creation of an Ownership Model Toolbox containing the information that First Nations should have and be aware of when considering borrowing money for ownership in projects. That information has been collected and presented in this Handbook.

2. Background

First Nations have often had difficulty in gaining access to the capital they need to take an ownership position in major infrastructure projects that are occurring on their lands. Further they often have not had the tools and internal or financial capacity to know what to do when a prospective project is available on their lands.

In some instances, First Nations have negotiated to purchase equity in infrastructure projects on the assumption they would be able to borrow the money to complete the purchase. Often the result has been the same. They were either completely unable to borrow the money, or if they could, the terms of a loan and the interest rates were such that their return on their investment would be disappointingly low.

Furthermore, in at least one instance, the project in which First Nations had negotiated equity was sold before it was constructed, and the new owner wished to change the structure of the business and the terms of the agreement with First Nations.

An analysis of this situation illustrated that the equity purchase agreements had been negotiated and executed without consideration of:

- Could the First Nations access the capital to complete the purchase,
- What happens if the other party does not abide by the agreement or does something else not in the First Nations interest, and

- Who are the right advisors?

All companies and governments, when considering developing a prospective project or making an equity purchase are focused on:

- Where the capital will come from and what will it cost?
- What will be required to get it?
- Can I make an acceptable level of profit from my investment if I access that capital?
- How do I protect my interest if the contemplated deal falls through because of the actions of others?
- What experts do I need to engage to assist me with this matter?

Many things have to be put in place and negotiated in advance of proceeding to ensure the greatest probability of accessing the capital, at a cost and terms that will result in a profit.

To address this matter of First Nations lacking access to capital, Mr. Harold Calla, Executive Chairman of the First Nations Financial Management Board and retired Senator Gerry St. Germaine, visited the various branches of the Government of Canada, to discuss the matter of government support for First Nations access to capital; including the potential of a government loan guarantee. The Coalition continues the initiative of reviewing these matters with Canada.

The Coalition determined that it would be helpful if: evidence could be gathered to demonstrate the difficulty First Nations were having accessing capital, the business short comings of earlier First Nations financing efforts were documented, and recommendations developed to address the shortcomings. In that regard the Coalition authorized two things:

- The development of a financing package to be sent to the major Canadian banks to get their opinion on whether debt financing could be achieved for the purpose of purchasing equity in a major infrastructure project. The subject of the financing package was a hypothetical cost of service infrastructure project, “the Strawman”, and
- The development of an Ownership Model Toolbox to help First Nations understand those business things that should be addressed when considering ownership in a project and accessing the necessary capital for that purpose.

The Strawman financing package was sent to the heads of corporate banking and capital markets of the energy infrastructure divisions of the six major Canadian banks, with the request to advise if First Nations would be able to borrow the capital to purchase 30% equity in an infrastructure project like the Strawman. The same response was received from each of the banks. Money to purchase equity could not be borrowed without the provision of other security or a guarantee of governments or other highly credit worthy parties.

The ownership model toolbox was developed and contains memos about deal structuring matters to hopefully ensure a greater chance for First Nations to access capital. There are three broad categories of memos in the toolbox:

(1) Equity Negotiations

(2) Business Structuring

(3) Financing

All projects are different and have different requirements. The scope of this handbook is a general overview of many of the main principles of financing and owning an equity interest in a project. Not all types of financing are explained. Project financing is assumed. Project financing is a loan arrangement in which the repayment is derived from the projects cash flow and where the projects assets, rights, and interests are the collateral available for the loan. Project financing is ideal for Infrastructure projects particularly when the project has more than one direct shareholder.

3. What is the Purpose of the Handbook?

The handbook is a collection of memos describing project development and explaining financing requirements. The memos illustrate processes, conditions, timelines and decisions that are likely necessary for a group of First Nations with a common interest to achieve financing to purchase an equity interest in, or develop a project, on their lands.

The purpose of the handbook is to:

- Build and strengthen community level literacy concerning the economics of business opportunities and the corporate and governance structures required, and
- Provide Coalition members with a resource to help understand the steps involved in getting access to capital for the debt financing of: equity ownership in, or the development of, major infrastructure projects on their lands.

4. Why is the Information in the Handbook Important?

From a business perspective, when a decision is made to pursue purchasing equity or developing an economic project, the first economic questions that should be asked are: where is the money going to come from to pay for it, and will the project have an acceptable level of risk and profit?

The things that are going to be necessary to access the capital to accomplish project ownership goals need to be planned in every step along the way through conception, development and operation of the project. If a borrower is to be successful in accessing the capital they need to demonstrate an understanding of what lenders' requirements are to make a loan, and have a plan as to how those requirements will be addressed. The same applies to understanding the requirements of a guarantor. Without that, the chance of success is quite limited.

It is not the intention of the information in this handbook that First Nations will be able to do all of things that are required to access capital. First Nations are going to require the help of experts if they are going to achieve their goals. All corporations, governments and businesses seeking to access capital engage experts for these purposes.

5. How to use the Handbook

The handbook contains cross referenced sections to help you find the information you are looking for:

1. The Index
2. Question and Answers.
3. Roadmap from a Sample Business Plan to Memos.
4. Checklists of Things to be Done
5. Glossary of Terms
6. Memos and slides
7. Coalition project identification and capacity support
8. Case studies

Steps:

1. Review the index to see if the topic being searched for is listed.
2. The questions and answers section is a list of frequently asked questions. If you have a specific question in mind start here to see if it is listed. The answer provided may be the information being searched for. A memo section reference is provided for additional information.
3. The roadmap. The first thing to done when considering an investment in a project is develop a business plan with written goals and objectives. If you are working from a business plan start here. The roadmap is a linkage between the steps in a sample business plan to a relevant memo on that step.
4. Checklist is a listing of things that need to be resolved at various stages in getting to equity ownership and finance. Some of the things listed need to be resolved by First Nations participating together in a project. Other items listed will likely be handled by the teams the First Nations engage to get to equity ownership and financing.
5. Glossary of terms related to project development and finance. Look here to find a definition of a term or word used in the handbook.
6. Memos are the toolbox memos dealing with three broad categories: Equity, Business Structuring, and Finance.

SECTION II: Glossary of Terms

Access to Capital, means the ability to attract money for investment. It is about ownership. Being able to achieve a loan for First Nations investment in equity in an infrastructure project would be an example of having access to capital.

AFUDC means Allowance for Funds Used during Construction. It is the cost of capital, interest on debt and return on equity, on expenditures made during the construction period. The AFUDC is added into the capital cost of the project and also recorded as revenue during the construction period. The cost of the money spent to build a project is part of the construction cost.

BC Hydro means the BC crown corporation that has a mandate to generate, purchase, distribute and sell electricity. The BC Hydro Public Power Legacy and Heritage Contract Act require BC Hydro to purchase power from Independent Power Producers even at a loss.

Bond Rating Agencies, means companies that assess the creditworthiness of both debt issues and their issuers. Dominion Bond Rating Service, Moody's Investor Services, and Standard & Poors are examples. They use a unique letter based rating system to convey to investors whether a debt issue carries a low or high default risk and whether the issuer is financially stable. For example Standard & Poor's highest rating is AAA. A debt issue needs to have a debt rating of BBB or higher to be investment grade.

Bond or Debt Rating means a rating on debt issued by a Bond Rating Agency.

Capital markets, debt lenders or equity investors, most often require of a project or debt issuer that they obtain a Debt Rating as a pre-condition of making their assessment to make a loan or not. Banks typically make their own credit assessment but usually do not make long term loans for project financings. Capital markets make those types of loans.

The debt rating achieved from the rating agency affects the interest rate that a borrower will be required to pay. If the rating is BB+ or lower it is no investment grade and the interest rate a borrower will be required to pay is much higher than if an investment grade rating had been achieved.

The debt component of financing of infrastructure projects, usually the first 55% to 80% of capital, is very often investment grade debt.

Almost all loans for the purpose of purchasing equity will not be investment grade, and will have a much higher interest rate than investment grade debt.

Business Focus, means without regard to First Nations title and rights.

Business Plan means a formal written document containing business goals. It serves as a road map that provides direction to the business. Having a business plan for review by a lender is one requirement to obtain a bank loan or other kind of financing. See Toolbox memo "Business Plan".

Business Structure, means the type of legal entity chosen to house an investment. A limited corporation, a partnership, and a sole proprietorship are all examples of a business structure.

Capital Markets, means a market where investors, or lenders, of money are brought together with borrowers requiring money for investment. Some of the bigger lenders of money, investors in the debt issues of others, are: pension funds, hedge funds, sovereign wealth funds, insurance companies, wealthy individuals or investment banks.

Carried Interest, in the context of First Nations purchasing equity in a project, means, when First Nations do not have the capital to pay their share of project costs, some other party pays the First Nations share of costs. The amount of carried interest is subsequently repaid to the party at a later date when First Nations can raise the capital. A First Nation would not earn a share of the profits, if any exist, during this period of carried interest, and would only be entitled to a share of the forward periods profits when the repayment of the carried costs has been made.

CGL, means the Coastal Gas Link pipeline project.

Coastal Gas Link, means the pipeline that will connect the Shell LNG project at Kitimat BC to natural gas fields in northeastern BC and Alberta.

Completion Risk, means the risk that a project will not be completed to its income producing stage. It can arise if financing is cut off before completion, if a project's construction was done poorly or faced significant delays, or for any number of conditions. It is a risk that potential investors and lenders consider when determining whether to invest or make loans for a project.

Construction Phase means that period of time when a project is being constructed. It starts when Final Investment Decision ("FID") to proceed with a project has been taken by project owners. It ends when the project build is completed and ready for use. The period when a project is ready to use is the in-service phase.

Corporation means a legal entity that is recognized in law. Many businesses operate as corporations. A general partner in a partnership is a corporation but a limited partner in a partnership is not a corporation or a legal entity.

Corporate Structure means the organization of a business into its various responsibilities and the assignment of authority to effect the operation of that structure. The president may be the head of an organization with responsibility for the entire operation. Reporting to the president may be departments and department heads with responsibility and authority to effect the operation of their department.

Cost of Capital means the cost of funds (both debt and equity) or, from an investor's point of view "the required rate of return on an investment". It is used to evaluate new projects of a company.

Cost Overrun, means costs in excess of budgeted or expected amounts. The result is the project may cost more than planned and as a result may not earn the expected rate of return or level of profits.

Cost Overrun Deferred Recovery means the cost overrun is not necessarily lost money. It means the project cannot increase its charges to its customers to recover the overrun costs immediately, but through the operation of contracts with its customers, or the action of a regulatory authority,

will be able to recover the cost overrun through increased charges at a later date. This is quite common where the project return is regulated by a government authority.

Cost Overrun Risk, in financing and investing means an increase in the cost of a project over the expected or forecast cost of the project. The result of a cost overrun can mean a project may not develop expected profits.

Cost Overrun Risk Transfer, in financing and investing means all or part of the cost overrun risk is taken by some other party. For example in place of the project owner, the buyer of a service from a project, or a construction subcontractor, or an insurance company may take some or all of the cost overrun risk.

Cost of Service, means a formula for pricing of charges to the customers of a project. The cost of service model usually provides that customers must pay for their contracted use of a project whether they actually use it or not.

To the project investor it means the pricing of service will ensure that over the life of a project that investors will receive a return of all of their costs of building , operating the project plus an agreed after tax rate of return on capital.

To the project customers it means: in the absence of competition, competitive pricing from some other source, that the project owner will not be able to extract unreasonable high charges in its pricing to its customers. The model is used extensively in projects with large capital cost like pipelines, utility lines, roads etc. The pricing is known up front.

Credit Risk, means the risk of default on a loan that may arise from a borrower failing to make required payments.

Debt Service Reserve, means an amount of money put aside by a borrower. It is established for the benefit of lenders to service interest and principal payment on debt.

Distance Based Sharing Formula, means a formula for sharing profits from a project that impacts more than one First Nations lands. The concept of the formula is, a First Nations allocation of profits compared to the allocation of profit to other impacted First Nations, is dependent on how close each of their respective lands is to the project. Those First Nations that are closest to a project are impacted to a greater degree than those First Nations that have land further away from the project. Accordingly those First Nations closest to the project typically receive a greater share of the profits than those First Nations with land further away.

Dividends, means a distribution of profits by a corporation to its shareholders. It is common for a corporation to only pay a portion of its profits to its shareholders as dividends and to retain a portion for reinvestment in the business.

Dividends less than equal to the full profit in a period can be problematic for First Nations seeking to borrow money to make an equity purchase.

Equal Sharing Formula means a formula for sharing profits from projects amongst First Nations. The formula does not take into consideration the sharing methodologies: impact on the land, distance from the project, or populations.

Equity, with respect to a project means having a percentage ownership of the project and entitlement to a share of the profits or losses of the project. Equity shareholders may also be Directors of the company and have some voice in the operation of the project.

Equity - Debt financing, means money is borrowed to make an equity purchase in a project. In response to a request from the Coalition for indicative financing terms for the Strawman, five major Canadian banks responded that typically equity investments could not be debt financed without the borrower providing other security or a guarantee of governments or other credit worthy parties.

Equity Purchase Negotiation means the negotiation by First Nations to purchase a share of the equity in a major infrastructure project. Access to capital is a major consideration.

Equity Purchase/Sale Price means the price to be paid for equity. When First Nations negotiate equity purchase in exchange for their support of a project they typically negotiate to purchase the equity at the same cost price per unit as the project originators or proponents will pay. Also as a condition of their support First Nations may look to governments or project proponents for assistance in achieving access to capital at favorable interest rates and terms.

The equity purchase price in a project can be higher than the project owners cost per unit of equity if it is purchased at a different time than the project owners' equity investment.

Experienced Project Developer/Operator, means someone that has done it before and has a track record of success. Experience and track record are key requirements of rating agencies and lenders to projects if a favorable debt rating is to be achieved and capital is to be loaned.

FID means final investment decision. In project assessment FID occurs after the Feasibility Phase of project development but before the construction phase has begun. FID can be: a positive decision to proceed to construction, or a decision to perform more study or not to proceed with a project.

First Nations Environmental Standards means the Environmental work being done by the Major Projects Coalition.

First Nations Financing Authority, means a statutory not-for-profit- organization. It operates under the authority of the First Nations Fiscal Management Act. The FNFA's purposes are to provide the First Nations with investment options, capital planning advice, and access to long term loans with preferable interest rates. The FNFA is not an agent of the Crown.

First Nations Profits from a Project, means the amount of payments including dividends and return of capital that First Nations receive from a project, less any debt repayment and interest charges they occur on money they may have borrowed to purchase equity. This amount is before reduction for income tax payments, if any, that governments assess on the profits.

Forgivable Loan, for the purposes of this definition means preliminary costs of an infrastructure project paid for by someone else on behalf of a First Nation. Those costs paid by the other party form a loan to the First Nation that only becomes repayable by the First Nation if the project proceeds to the Operation phase. No amount has to be repaid by the First Nation if the project does not proceed to construction and operation. In essence the loan is forgiven.

Fort Hills Tank Farm, means the blending, storage, cooling, and pipeline connections associated with the Fort Hills Oil Sands project. First Nations borrowed the money to purchase 50% ownership in that project for approximately $500 million. The First Nations debt issue had investment grade debt ratings from DBRS and Moody's Rating Services. The financing was achievable because of the business structure that was put in place by the project sponsors to facilitate the First Nations purchase.

General Partner, means the partner that takes part in the management of a business and is the employer of people. The general partner is liable for the liabilities of a business. All partnerships have at least one general partner. Limited partners have their liability limited to their cash or value contribution to the partnership; and do not participate in the management of the business.

Guarantee of Debt, means an assurance to a lender that should a borrower default on a debt or loan that another creditworthy party will pay the obligations of the borrower to the lender.

Guarantor, means a creditworthy party that agrees to pay another borrowers debt obligations to a lender if that borrower does not pay.

Hydro Project means a project that generates electricity from fast moving water passing through turbines that spin generators.

Hydro Project Revenue Formula means the formula for determining the revenue potential of a prospective hydro project. The formula is Revenue = (Power=Head x Flow x Gravity) times (Price per KWH). In the formula: Head means the meters of drop of the water from the water pond to the Turbines and Generators, Flow is the volume of water measured in cubic meters per second, and Gravity is a range but can be illustrated by using a factor of 0.6.

Income Tax Act Section 149.(1)(c), means that section of the Income Tax Act Canada which provides for the possibility of a band to be considered a "public body performing a function of government in Canada", and therefore exempt from income tax under Part 1 of the Income Tax Act on its income earned both on and off reserve lands.

Investment Grade, means a bond or loan made with respect to an investment is considered investment grade if its credit rating is BBB- by Standard & Poor's, Baa3 by Moody's, or BBB by the Canadian Bond Rating Agency. The investment grade rating signifies that the borrower is likely enough to meet payment obligations and that certain lending institutions are allowed to invest in bonds issued by, or loans to, the borrower.

Junk Bonds, means bonds having a Rating Agency credit assessment report rating of lower than investment grade. The total amount of capital available for borrowing in the junk bond or sub investment grade category is limited.

In-Service, means a project is operating and charging its customers for its service.

Investment Banker, means an individual that works for a bank or capital corporation whose primary purpose is to assist clients in raising money in Capital Markets.

Investment Grade Debt Rating means a rating of high quality from a Bond Rating Agency. Money is generally readily available for debt financing infrastructure projects that achieve this rating which is BBB or above.

Lenders, means those individuals or entities that participate in capital markets to lend money to others for a specified repayment term and at a specified interest rate.

Limited Liability, in business structuring means an investor's liability is limited to their investment in the business.

Limited Partner, in partnership structures means partners that invest in a business for a share of the profits or losses but do not participate in the operation or management of the business. Their liability is limited to the potential loss of the money they invested in the project.

Mackenzie Valley Pipeline means the pipeline project that was proposed to bring natural gas from the Mackenzie River Delta to the pipeline system in Alberta. First Nations in the Northwest Territories negotiated to participate as equity investors in the project in exchange for their support for the project.

Major Canadian Banks, means the Royal Bank of Canada, the Bank of Nova Scotia, the Toronto Dominion Bank, the Canadian Imperial Bank of Commerce, the Bank of Montreal, and the National Bank of Canada.

Major Infrastructure Project has the meaning ascribed to it in the Coalition document located in this handbook titled Coalition Project Identification and Capacity support.

Mackenzie Valley Aboriginal Pipeline Group ("APG") means the group of First Nations along the Mackenzie Valley Pipeline that negotiated to purchase from 1 to 33% equity in the project. They were required to fund their respective share of the Feasibility phase costs and when required to fund their share of construction costs.

Other Security, in the context of First Nations access to capital to purchase equity means, a revenue stream or First Nations assets, other than the equity to be purchased, that could be posted as collateral for loan.

Partnership, means a business structure where parties agree to work together to advance their mutual interests. A partnership always has a General Partner that operates and manages the business but may also have Limited Partners that invest in the project and receive a share of the profits or losses, but do not participate in the operation or management of the business.

PRGT means the Prince Rupert Gas Transmission pipeline that was proposed to deliver natural gas from northeast BC to the proposed (now deferred) Petronas LNG project near Prince Rupert BC.

PTP means the Pacific Trails Pipeline project that was proposed to deliver northeast BC and Alberta natural gas to the proposed Chevron LNG plant at Kit mat BC. The First Nations initially negotiated to purchase equity in the project but after finding difficulty accessing the capital necessary to make the equity purchase subsequently negotiated payments approaching $200 million in place of the right to purchase equity.

Population Sharing Formula means a sharing formula sometimes used by First Nations to share profits from a project that is located on the traditional lands of more than one First Nations. The formula can be used for any type of project and can be used alone or in conjunction with other formulas. The formula is: each First Nations percentage share of the profits is determined by

dividing each First Nations population by the sum of the populations of all First Nations with a land interest in the project.

Project Benefit Agreement means an agreement between a First Nation and a project sponsor that lays out all of the required: acknowledgments, terms, protections, and accommodation. In exchange the First Nation agrees to support a project, or at least not oppose it.

Project Developer, in this context means the party that wishes to build a major infrastructure project on First Nations lands.

Project Feasibility Phase, means the work undertaken to measure the ability and likelihood that a project could be completed successfully, including all relevant factors: economic, technological, legal, regulatory, community and First Nations support. The capital required to pay the costs at this phase of a project cannot be borrowed. The end of this phase is a decision to continue to construction or to defer or abandon the project. That decision is known as Final Investment Decision ("FID").

Project Financed means the security for the debt or loans is the assets of the project itself plus further restrictions on what the project owners may do. The assets the lender will take as security will include the sales contracts and all other tangible and intangible assets of the project. The restrictions placed on the developer will include limitations on, and under what conditions, can the project have other debt.

In infrastructure financing it is typical for the debt component of financing to range from 55 to 85% of the total project cost and with the balance coming from equity investment. A project that has 85% debt is likely to have a higher interest rate on the debt than a project with a lower percentage of debt.

Project Payments means money to be paid to First Nation pursuant to a Project Benefit Agreement. The payments may include: money at signing, money at start and completion of construction and annual payments during the in-service period. Project payments are often negotiated when equity purchase is not an option or First Nations prefer project payments to an equity purchase option.

Project Sponsor, means the party that initiates and proposes to build a project on First Nations lands. They are very likely the largest shareholder.

Prospectus means a document describing the major features of a proposed project or business venture, in enough detail so that prospective investors, participants, or buyers may evaluate it. First Nations wishing to borrow money to purchase an ownership position in a project will require a document describing what they propose whether it is called Prospectus or not.

PTP, means the Pacific Trails Pipeline. First Nations along its route, negotiated to purchase a 30% equity position in the PNG pipeline. The pipeline was subsequently sold to Apache Corp and then to Chevron and it was renamed the Pacific Trails Pipeline. The pipeline was to connect northeast BC and Alberta gas to proposed Chevron LNG plant located at Kitimat. The relevant features of this are the First Nations involved were unable to access capital to make the equity purchase. They developed a formula for sharing profits amongst the First Nations with land on the pipeline route. See PTP formula.

PTP Formula means the formula developed by the First Nations on the PTP pipeline, for the sharing of profits or payments. The formula is entirely land based. Each kilometer of pipeline on a First Nations land is to the credit of that First Nation. If a kilometer of pipeline is on the land map of more than one First Nation then that kilometer is divided by the number of First Nations with those land maps and each First Nation is proportionately credited with a share of that kilometer. Each First Nations kilometers are summed and that total is divided by the total kilometers of the entire length of the pipeline. The result of the formula is a percentage of total profit or payments are established for each First Nation with the total of percentages of all First Nations being 100%.

Re Financing Risk, in banking and finance, is the possibility that a borrower will be unable to borrow to repay existing debt when repayment of such debt is due. It can arise when the borrower takes a loan for a shorter period of time than the total period of time that they will require to repay the loan. In that event the borrower has an expectation that they will simply refinance the initial loan for an extended period of time when the repayment date arrives. The refinance risk is the new loan is not available and the borrower cannot make the repayment of the initial loan.

Regulatory Risk means the risk that a government body may change the rules to which a project must comply after the project has started construction or has been completed.

Return of Capital, means an investor is repaid all or a portion of the amount paid by the investor for the investment. Get your money back.

Return on Capital, means the profit that is earned on the capital that was invested.

Revenue means the total of all sales made by a project in a period for plus any return on capital earned in a period. See AFUDC.

Run-of-the River Hydro Project means a hydroelectric generation plant whereby little or no water storage is provided. Run-of–the–River power plants may have no water storage at all or a limited amount of storage, in which case the storage reservoir is referred to as poundage.

Sharing Formula refers to the formula agreed to by First Nations for sharing of money that will flow from a project that is located on more than one First Nations lands. Some of the formulas that have been used by First Nations are: the sum of the land maps, the PTP formula, population, equal sharing, and the First Nations community's comparative respective distance from the project.

Shared Territories means those First Nations traditional lands that overlap with the traditional lands of other First Nations.

Strawman, means the major infrastructure pipeline project case study that was sent to the major Canadian banks, along with a request to comment on whether First Nations would be able to borrow the money to purchase equity in a similar infrastructure project; and if so the terms of such a loan. The Strawman is included in the case studies section of this handbook.

Strawman 2 means the case study undertaken in the Coalitions 2018 – 2019 work plan. The case study involves the investigation of various financing alternatives and their applicability to First Nations' ownership in major infrastructure projects. One such project for the case study is a Run-

of- River hydro project. Part of the objective of that component of the case study is to identify the physical structure of a Hydro Project and the related economics; for the purposes of assisting First Nations to identify potential projects on their lands. Other components of Strawman 2 look at the impact of financing structures might have on a First Nations equity purchase in the Transmountain and Coastal Gas Link pipelines.

Sum of the Land Maps, means an allocation formula used in some cases by First Nations for the sharing of profits from a linear project occurring on more than one First Nations traditional lands. Examples of such a linear project where the formula could be applied are: a pipeline, an electric power line, a road. The formula is each First Nations percentage share of profits is determined by dividing: the kilometers of the project on the land map of each First Nation (the numerator), by the number obtained by summing the kilometers of the project on all First Nations land maps (the denominator).

Three Stages of a Project, means the project feasibility, construction phase and in-service phase.

The money for the feasibility stage cannot be borrowed. It has to come from other resources of the project sponsor. If the project does not proceed to construction and in-service operation the money at this phase of a project is often lost.

The money for the construction phase of a project can often be borrowed but not until the project sponsor has first invested the required amount of equity capital.

At the in-service phase, the project can be financed long term with the agreed amount of debt and equity, assuming the project is operating as planned.

Tolls, means the term used to refer to the pricing for the service, often expressed on a per unit basis. It is typically determined by taking the total revenue that needs to be generated for a project and dividing that number by the total volume of contracts of the project.

Transcanada, means Transcanada Inc. the owner of Coastal Gas Link, the natural gas pipeline to be constructed from the gas fields in Northeast BC and Alberta to the LNG Canada project at Kitimat, BC.

Transmountain means the oil pipeline and related assets that were purchased from Kinder Morgan by the Government of Canada in 2018.

Trust Structure, means a business structure set-up to manage wealth.

SECTION III: Questions and Answers

The ownership model Handbook is a business focused tool box of information available for use by First Nations that wish to negotiate and finance the purchase of an equity interest in, or develop a project occurring on their lands.

The ownership model includes memos related to equity, business structuring, and finance. Following is a set of key questions and answers that may answer your questions or at least help

answer how the Handbook can be useful and possibly guide you to the information you are looking for.

1. Overview of Questions

1. How do I use the memos and how do I find the information I want?
2. What qualifies as a Major Infrastructure Project?
3. We have identified a project on our lands and want to investigate ownership. Now what?
4. What help can the Coalition provide?
5. The information in the handbook seems complex. Do I have to know everything that is in the memos?
6. What is a Business Plan and do I develop one?
7. Is purchasing equity better than taking payments from a project?
8. I want to own 100% of a project on my lands. What is involved?
9. I want to negotiate an equity ownership position in project on my lands. What things should I negotiate and how?
10. Who are the right experts?
11. Is there a list we can look at of the things that need to be done if we are to purchase equity in a project?
12. We do not have any money to buy equity in a project. Where will the money come from?
13. Why can First Nations not borrow money to purchase equity in a project?
14. If I sign an agreement to purchase equity what am I agreeing to?
15. Do I need to set up a company to own my project or my equity share?
16. How do I determine how much money my First Nation would receive if it were to purchase equity in a project or develop a project?
17. If I purchase equity can I sell it to someone else?
18. A project is proposed for our First Nations lands and the lands of our neighbors. How do we share the profits? Can the Coalition help?
19. Is my First Nation going to be liable if the project gets into trouble or is sued?
20. Can First Nations people participate in the management of a First Nations business owned by the band or in which they own equity?
21. What is the difference between a Corporate Structure and a Business Structure?
22. Is my First Nation going to have to pay income tax on the profits it receives from a project?
23. Is income from a project own source revenue for purposes of determining my First Nations distributions from government?

1. How do I use the memos and how do I find the information I want?

A number of ways:

- Read the Questions and Answers section and see if that gives you any guidance on how to find the information you are looking for.

- Review the index to see if you can identify the memo or memos that will help you by the wording of the title.
- See the Roadmap from the Sample Business Plan to the Memos that deal with the respective business plan items.

2. What qualifies as a Major Infrastructure Project?

See the memo Coalition Project Identification and Capacity Support. Generally a major infrastructure project is going to have a minimum capital cost of $100 million.

3. We have identified a project on our lands and want to investigate ownership. Now what?

Two things:

- Develop a business plan; and,
- Contact the Coalition to determine if you have a major infrastructure project and if they can provide assistance. See the memo Coalition Project Identification and Capacity Support.

4. What help can the Coalition provide?

There are things the Coalition can do to help and things that it cannot do.

See the memo, "Coalition Project Identification and Capacity Support".

5. The information in the handbook seems complex. Do I have to know everything that is in the memos?

No you do not have to know how to do everything in the memos. You should be aware of the things that need to be done and the Coalition can help explain them to you. If you are going to purchase equity or develop a project you are going to need the help of some experts.

While the Coalition can provide assistance there are things the First Nations are going to have to do:

- Develop a written business plan, complete with a statement of your goals and objectives. There is a sample business plan in the memos or you may find a business plan developed by other First Nations on the internet or a website that may give you some guidance. See the memo, Business Plans.

- Alignment of interests and resolution of any differences with other First Nations when the project is on shared land or are impacted by the project development. See the memos:

- Projects Benefit Sharing Amongst First Nations, and
- Checklist of Matters to be Resolved, Decisions to be Made and Negotiations to be Undertaken.

- Hire the right experts. The Coalition can provide assistance identifying the experts. See memos:
  - "Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations".

6. What is a Business Plan and do I develop one?

A business plan is a written document outlining: goals and objectives, the things that need to be evaluated and the steps taken to assess a business opportunity and move it forward to a successful venture. There is a sample business plan for an infrastructure project in the Structuring section of the handbook. Other than that, First Nations may find the business plan developed by other First Nations on the internet that maybe helpful in developing their own business plan.

See memo in Structuring section, "Business Plan".

7. Is purchasing equity better than taking payments from a project?

In many cases owning equity is probably better than taking payments from a project. First an equity owner probably has more influence in the decisions, management and direction of a business than has a First Nation that has agreed to accept payments for access to their lands.

The profits from an equity ownership position are also expected to be much larger than the payments projects make for access to First Nations lands. The amount of profit that a particular project will produce for First Nations is related to: the profitability of the project, how large of an equity ownership the First Nation will have and the First Nations cost of debt financing if First Nations have to borrow the money for the equity purchase.

A disadvantage of an equity purchase as opposed to payments is, historically it has been very difficult for First Nations to borrow the money to make the purchase. Financing is not an issue when payments are the form of compensation from a project.

First Nations should not sign off on, or agree on an equity purchase agreement, until the debt financing for that purpose has been confirmed.

See the memos in the Equity section:

- "What is Equity, Advantages of Equity over Payments, and How Do First Nations Get It".

- "Estimated Cash Flow to FN's from Equity Ownership versus Payments from Project Developer".
- "How is First Nations Profit from Equity Ownership in a Project Determined?".
- "First Nations Equity Purchase Negotiations".

8. I want to own 100% of a project on my lands. What is involved?

Owning more than 50% of a project probably means a First Nation is a project developer and the responsibilities and risks of such a position are much more significant that being an equity owner in a project developed by others. For one thing a project developer is going to have to pay the costs of the Study Phase of a project. The money for that phase cannot be borrowed by anyone.

See memos in Structuring section,

- "First Nations Project Developer of First Nations Equity Owner in a Project Developed by Others.
- "Business Plan".

See memos in the Financing section,

- "A lenders basic requirements to consider making a loan".
- "Three Phases of a Project and Financing Requirements".
- "Where will First Nations get the Money to Pay for Equity".
- "Three Business Models Compared".

9. I want to negotiate an equity ownership position in a project on my lands. What things should I negotiate and how?

First talk to the Coalition to determine what help they can provide. When negotiating the equity agreement it is necessary: to negotiate a number of things that are important to you, and to layout a framework that will be acceptable to lenders if you intend to borrow the money to make the equity purchase.

See the memos in the Equity section,

- "First Nations Equity Purchase Negotiations".
- "Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations."

See all of the memos in the Finance section

See the Checklist, "Matters to be Negotiated with Project Developer or Project Partner".

10. Who are the right experts?

There is a memo in the Structuring section of the handbook, "Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations". Positions recommended be filled by experts are not learn on the job positions.

11. Is there a list we can look at of the things that need to be done if we are to purchase equity in a project?

Yes. See the memos,

- Checklist of Matters to be Resolved, Decisions to be Made, and Negotiations to be Undertaken.
- Business Plans.

12. We do not have any money to buy equity in a project. Where will the money come from?

Typically money for the purchase of equity cannot be borrowed without security being provided for the loan. An infrastructure project is financed with 50 to 80% project debt and the balance with equity. The project debt component can be borrowed because the lenders take 100% of the project's assets and revenues as security. They likely also restrict additional project debt.

The equity component cannot typically be debt financed as the lenders only recourse to recover their loan and the related interest thereon is to the equity holder's dividends and return of capital, if any. There is no project security to support the equity loan because the 50 to 80% project debt component of total financing has taken 100% of the project security. Also the limited partnership structure does not provide for a lender to pursue the First Nations bands for any shortfalls or liabilities if they exist.

What this means is if the First Nation is to going to borrow the money for equity, the First Nation is going to have to put up security for the loan, or negotiate a guarantee or loan arrangement with governments or industry.

Look to see if your First Nation does have other security. A payment stream that your First Nation has may serve as security for a loan. Putting up other security for a loan, like a payment stream, does not mean the First Nations will be giving the payment stream to the lender. Your First Nation may be able to continue to both have the payment stream and use it as security. What it means to a lender is that if the cash flow from the project is not adequate to cover the loan repayments and interest thereon, the First Nation has cash flow, other than cash flow from the project, for that purpose. However it should be noted that once security is provided for a project it likely cannot be used again as security for another purpose.

If First Nations do not have other security to post to achieve the debt financing, and if the amount required is not too large, the First Nations Financing Authority may be a good source of low cost financing. However the First Nations Financing Authority has limits on the maximum size of a loan that they can make. Projects requiring less than $50 million of equity should examine this method of financing.

When negotiating the purchase of equity it is important to be negotiating the financing requirements at the same time. This might mean looking to governments or industry for loan support or a guarantee.

See all of the memos in the Finance section,

See the memo in the Equity section, “First Nations Equity Purchase Negotiations”.

Talk to the Coalition.

13. Why can First Nations not borrow money to purchase equity in a project?

First of all, unless a project is very rich and has very low risk of failure, typically no one, not even large corporations can borrow money to purchase equity in projects, unless the borrower has other security that a lender can access if a project fails to make enough profit to: pay interest and repay the loan. Many large corporations have other assets that fulfil the requirement of other security so they can often borrow some money for the equity component of a project.

There are lenders that will loan money for equity in some projects without other security or a guarantee. The project would need to have a high probability of earning the expected profit and that profits and return of capital are then fully distributed to equity holders on a regular basis. Those lenders will likely require a high interest rate and as a result there may not be much profit left over for First Nations after loan payments.

See the memos in the Finance section.

14. If I sign an agreement to purchase equity what am I agreeing to?

This is very important. Typically what a project developer wants in exchange for an equity agreement or a payments agreement is for your First Nation to agree to support, or at least not oppose, their project. From the First Nations perspective there are many things that you want to be sure of when signing an equity agreement. These can be included in a conditions precedent section in the equity agreement. That means the Equity Agreement being signed does not have effect until certain things happen. There is a sample listing of some of those things in the equity memo. They include: Capacity money, consultation, route adjustments, traditional knowledge studies, First Nations environmental standards, regulatory approvals and permits, jobs and contracting, achievement of First Nations debt financing for the purpose of the equity purchase.

See the memo in the Equity section, “First Nations Equity Negotiations section xvi - Conditions Precedent to Giving Effect to Equity Purchase Agreement and First Nations Project Support”.

15. Do I need to set up a company to own my project or my equity share?

Yes you are going to require a company. The most advantageous way to own your project or own your equity share is through a Limited Partnership structure that owns another Limited Partnership structure. All partnerships require at least one general partner. That general partner is the company you will set up to manage the business and be the borrower of money to complete an equity purchase. If more than one First Nation is to be a partner in the proposed business each would be limited partners in the partnership. Only one general partner would be required with each First Nation owning a share of that general partner corporation.

See the memo, “Corporate Structures and Business Structures for First Nations Ownership of an Interest in the Strawman Project”.

16. How do I determine how much money my First Nation would receive if it were to purchase equity in a project or develop a project?

You are going to need someone knowledgeable to prepare a forecast for you; or get it from the project developer. If you cannot get it from the project developer contact the Coalition to see if they can help or direct you to an expert who can advise you on the matter

See the memos in the equity section:

- “How is Total Project Profit Determined”.
- “How is First Nations Profit Determined” .

See the memo in the case study section,

- “The Strawman Infrastructure Project – Request for Indicative Terms”.

17. If I purchase equity can I sell it to someone else?

Equity in a major infrastructure project should most often be fairly easy to sell. You should be able to sell it for more than you paid for it if you purchased your equity at cost; the same price the project developer paid. There are matters in this regard that should be resolved by impacted First Nations before equity negotiations are completed related to who a First Nation can sell their equity. Secondly care should be taken that there is nothing in the Equity Purchase Agreement that prohibits selling of a First Nations equity share.

See the Checklist, “Matters that should be largely resolved directly by First Nations before completion of the equity agreement and financing agreements”.

See the memo in the Equity section, “First Nations Equity Negotiations”.

18. A project is proposed for our First Nations lands and the lands of our neighbors. How do we share the profits? Can the Coalition help?

These mandate established by the Coalition members has some restrictions on the role the Coalition can play in this process. There is a memo that may help that outlines various sharing formulas that have been used by First Nations when a project is on the lands of more than one First Nation. There is also a checklist of matters First Nations need to resolve.

See memo in Structuring section, "Benefit Sharing Models: Principles and Assessment".

See the Checklists, "Things to be Done, Matters to Resolve, Decisions to be Made".

19. Is my First Nation going to be liable if the project gets into trouble or is sued?

No. First Nations will not be liable for debts or obligations of a project as long as First Nations are limited partners in a Limited Partnership structure and First Nations bands or elected council or management do not participate in the management of the business. Liability for the project rests in the general partner. The First Nation would be a Limited Partner and liability is restricted to any financial contribution your First Nation made to the project.

See the memo in the Structuring section, "Corporate Structures and Business Structures for First Nations".

20. Can First Nations people participate in the management of a First Nations business owned by the band or in which they own equity?

Yes. First Nations people can be employees or members of the board of directors of a business that is owned by the band, or in which they equity. However to achieve limited liability afforded by the use of a limited partnership business structure, neither the band nor any of the elected chief and counselors can be employees or directors of the business that owns the equity.

See the memo in the Structuring section, "Corporate Structures and Business Structures for First Nations."

21. What is the difference between a Corporate Structure and a Business Structure?

A corporate structure refers to how a business is organized to accomplish its objectives and business structure refers to the type of legal entity chosen to hold the investment. There is a good explanation of this matter in a memo along with explanatory diagrams in a memo.

See memo in Structuring section, "Corporate and Business Structures for First Nations' Ownership of an Interest in the Strawman Project".

22. Is my First Nation going to have to pay income tax on the profits it receives from a project?

Exemptions from income tax exist for First Nations bands in certain circumstances. Each situation can be different and it is recommended that First Nations get income tax advice related to this matter.

See memo, "Corporate Structures and Business Structures for First Nations".

23. Is income from a project own source revenue for purposes of determining my First Nations distributions from government?

First Nations should get legal advice on this matter. The double limited partnership structure contemplated for First Nations bands ownership in a project is thought to be the best structure in this matter.

See memo, "Corporate Structures and Business Structures for First Nations

SECTION IV: Resources

1. Roadmap from Business Plan to the Toolbox Memos

The Business Plan steps are highlighted below and the applicable Toolbox Memos are in bullets underneath each step.

Decision to examine purchasing equity in a project

- Section V.1.B. What is equity, advantages of equity over payments, and how do FN's get it?
- Section V.1.C. Estimated cash flow to First Nations from equity ownership versus payments from Project Developer.

Prepare written goals & business plan

- Section V.2.C. Business Plan

Request coalition support

- Section VI Coalition Project Identification and Capacity Support.

Request capacity money from Project Developer and Governments.

- Section V.3.E. A Project Needs Financing in Three Different Phases.

Hire experts to assist.

- Section V.1. F. Suggested Negotiation Framework and Skillsets Required to Support Effective Negotiations.

Prepare preliminary financial forecasts of First Nations profits and assessment of developer's project information for risks and FNs financing requirements.

- Section VI. Coalition Project Identification and Capacity Support.
- Section V.3.D. Lenders Basic Requirements to Consider a Request for a Loan.
- Section V.3.E. A Project Needs Financing in Three Different Phases.
- Section VII.1. The Strawman Case Study.

Negotiate equity purchase & terms.

- Section VI. Coalition Project Identification and Capacity Support.
- Section V.1.E. First Nations Equity Purchase Negotiations.
- Section V.1.F. Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations.
- Section V.3.E. A Project Needs Financing in Three Different Phases.

Agreement for benefit sharing amongst First Nations

- Section VI. Coalition Project Identification and Capacity Support.

- Section V.2.G. Benefit Sharing Models: Principles and Assessment.

Set-up business structure

- Section V.2.D. Corporate & Business Structures for First Nations Ownership.

Implement corporate structure

- Section V.2.D. Corporate & Business Structures for First Nations Ownership.

Appoint directors and hire people.

- Section V.2.D. Corporate & Business Structures for First Nations Ownership.

Financing plan – investigate options.

- Section V.3.A. Financing of First Nations' Equity in Major Projects Occurring on their Lands.
- Section V.3.B. Why Money for Equity cannot be Borrowed Without Other Security or a Guarantee.
- Section V.3.C. How Major Infrastructure Projects are Financed.
- Section V.3.D. Lenders' Basic Requirements to Consider a Request for a Loan.
- Section V.3.E. A Project Needs Financing in Three Different Phases and Where Will First Nations get the Money to Pay for Equity.
- Section VI. Coalition Project Identification and Capacity Support.
- Section VII.1. The Strawman Case Study.
- Section V.1.F. Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations.

Request/negotiate government guarantee of First Nations' debt for purchase of equity.

- Section V.1.F. Suggested Negotiation Framework and Skill sets Required to Support Effective Negotiations.
- Section VI. Coalition Project Identification and Capacity Support.
- Section V.3.F. Form of Term Sheet for a Guarantee of Debt.

Request to bankers/capital markets for financing terms.

- Section VII.1. The Strawman Case Study.

Rating agencies - achieve investment grade rating.

- See 12 above. Financing Plan.
- Final Investment Decision.

2. Check Lists: Things to be Done, Matters to Resolve, Decisions to be Made

Things First Nations need to do before commencing with equity negotiations or project development:

- Build a business plan containing written goals and objectives.
- Ask the Coalition if they can help.
- Hire the right experts.

Questions to Answer - Matters that should be largely resolved directly by First Nations before completion of the equity agreement and financing agreements.

- Environment best practices and how they form part of the negotiation.
- Preconditions to negotiations?
- Can project negotiations proceed without 100% of First Nations having land that will be impacted agreeing the negotiations should take place?
- How will negotiations be funded?
- Who will own any particular project? Only those nations on whose land the project is to be constructed or does the ownership and sharing extend beyond that?
- Economic sharing models. First Nations come to some to agreement on how to share potential profits from a project?
- Alternative payments for First Nations not wanting equity. If some First Nations impacted by a project do not want to purchase equity in a project, can an agreement be made amongst First Nations wanting to purchase equity to give payments to those who do not want equity in place of an equity purchase?
- Are there any restrictions to who a First Nation can sell its equity share? Does a First Nations' sale of their equity share need to be offered to other First Nations first? What is the process and how will the sale price be determined?
- What is a negotiation?
- Agreement on the objectives so First Nations and the negotiating team know when they have been achieved?
- Makeup of negotiation team - experienced – not learning on the job?
- What does the negotiation team negotiate on behalf of the First Nations?
    - Preconditions to negotiations?
    - Equity and terms?
    - Things to be included in contracting opportunities?
    - Loan guarantee?
    - Financing?
- What things do the individual nations negotiate on their own behalf:
    - All of the above or responsibility of negotiation team?
    - Jobs?
    - Specific contracting opportunities?
    - Other?
- Who does the negotiating team report to?

- How are decisions made by the First Nations both during and after negotiations if consensus cannot be achieved?
- Business structure:
    - What is it? Tax structures and considerations.
    - Who will own it?
    - What will they own?
    - Staffing? Who will have to be hired and why.

Matters to be negotiated with Project Developer or Project Partner

- Who is going to fund the First Nations cost of negotiations?
- What First Nations costs can be recovered at time of negotiation and what costs require other funding or financing?
    - Can First Nations costs be included in the project costs and form part of the First Nations equity contribution?
    - What costs cannot be recovered from the project developer or the project?
- When do First Nations have to invest in the project?
    - At the project study and development stage like the Mackenzie Valley First Nations ?
    - At FID and start of construction like the PNG expansion – Pacific Trails project?
    - At completion of construction and start of operations like the Kaska Nations negotiated on the Alaska Highway Gas Pipeline Project and like the Fort McKay First Nation and the Mikasew Cree did on the Sand Hills Tank Farm project in Alberta.
- What happens if First Nations negotiate equity ownership and then cannot get the financing to complete the purchase?
- What happens if financing is committed but is delayed beyond time committed in negotiated agreement because of problems in international debt markets?
- What happens if the project developer sells the project rights to another party before the First Nations equity purchase is completed and the project is constructed and in operation?
    - PNG corporation and the First Nations, negotiated a 30% equity purchase in a pipeline to a prospective LNG plant in exchange for First Nations agreement not to oppose the project. PNG subsequently sold that project to Apache corporation without negotiating further with the First Nations. Apache corporation subsequently sold their interest to Chevron corporation. The purchasers advised First Nations that they were changing the structure of the project and it would no longer be appropriate for them to be equity partners.
    - The remedies for such a situation should be included in First Nations equity purchase agreements.

- When and what dividends and return of equity will First Nations be paid. Project companies often retain some or all of the profits in the company for capital programs instead of paying profits to shareholders. Most likely this is not going to work for First Nations or prospective lenders or guarantors of First Nations debt.
  Unless they can borrow other money to pay for their share of additional capital programs First Nations will likely need the payments of profits and return of capital to make their interest and loan payments to their lenders.
- Can individual First Nations sell their equity interest to others if they choose to do so? Project developer may seek to restrict to who a First Nation can sell its equity. Does project developer get a ROFR to purchase equity if an individual nation decides to sell its interest to other than another First Nation?
- What happens if First Nations do not want to participate in additional investment for project expansions?
- What happens if First Nations achieve taxing authority? The project developer is likely going to want to make sure that the project is not burdened with extra taxes is this happened.
- What happens if the project construction cost exceeds the estimated cost; known as a project cost overrun.
- Project Company's agreement to provide information requested and co-operate with First Nations financing requirements.
- Conditions precedent to the project proceeding such as fulfillment of consultation with the First Nations and agreement on environmental standards.

Matters to be negotiated with a Guarantor of First Nations debt for loan to purchase equity.

- Amount and term of the guarantee?
- Financing repayment term.
- Guarantor restrictions on cash distributions to First Nations? A guarantor will certainly want a test of liquidity be made and certified before a First Nation is paid project profits for any purpose other than interest and debt payments.
- Income tax treatment of project dividends in First Nations hands? If the guarantor is a government they may seek as a condition of the guarantee to gain certainty on the income tax treatment of project profits.
- Can individual First Nations sell their equity interest to others if they choose to do so before the loan is repaid?
- Rating agency requirements.
- Other things.

Matters to be negotiated with the banks and finance markets.

- Lenders financing requirements.
- Term of the financing? Amortizing loans or sinking fund?
- Lenders requirements to be met prior to distribution of cash to First Nations.
- FNs investment in subsequent project Capital Expansions.

- Conditions under which the First Nations can or cannot borrow additional money.
- Rating agency requirements.
- Other things.

Wealth management objectives that should be discussed amongst First Nations.

- Are First Nations going to work together to manage wealth that may come from project ownership?
- Do First Nations want to distribute 100% of after debt service cash to each First Nation each year, or do they want to manage their wealth through a trust arrangement; distribute only a percentage of the total cash available each year and contribute a percentage for wealth creation, for community projects, and legacy amounts for future generations:
    - % of economic benefit to be distributed to First Nations,
    - % of economic benefits in fund for First Nations projects,
    - % of economic benefits in Legacy fund for future generations and wealth creation.
- If a trust arrangement for wealth creation is selected is it one common trust, multiple trusts amongst FN's with common interests, or individual trusts for each nation that wants one?
- Can those nations that are interested in contributing some portion of project proceeds to a trust still make those arrangements even if some FNs do not want to establish a trust?
- How is any one First Nation's share of money from a pipeline kept separate and protected if one First Nations' trust is selected for all nations? This is particularly true if some nations use more of their money for current needs than other nations.

SECTION V: Toolbox Memos

Explanation of the Memos in the Toolbox Handbook

The toolbox memos are intended to help Coalition members:

- understand those matters related to project ownership and accessing capital to finance equity ownership in major projects occurring on their lands,
- understand the things that need to be in a Business Plan and why they are required,
- show sophistication to all internal and external parties in their quest to purchase equity and access capital,
- in preparation of documents required both internally and externally,
- explain matters to their communities, and
- prepare checklists for advisors and measure results achieved.

There are three categories of memos in the handbook:

- Equity Negotiations,
- Business Structuring, and
- Financing.

The **Equity section** includes memos on understanding: what equity is and its advantages, how profit is determined, things that need to be included in an equity negotiation, and the framework and suggested skill sets for successful negotiations.

The **Structuring section** includes memos on: what it means to be a project developer as compared to purchasing equity in projects developed by others, a sample business plan, example corporate and business structures, and benefit sharing models that have been used by First Nations.

The **Financing section** includes memos explaining: how major infrastructure projects are financed, why it is difficult to borrow money to purchase equity, a lender's basic requirements for making a loan, financing a project through three different phases, different business models compared, and information on a guarantee.

1. Equity Memos

A. Overview

This section of the handbook is designed to assist First Nations in understanding equity. It includes memos explaining:

- What is equity, advantages of equity, and how First Nations get it.
- Estimated cash flow to FN's from Equity Ownership versus payments from a Project Developer.
- How First Nations profit from equity ownership is determined.
- First Nations equity purchase negotiations and what should be included in those negotiations.
- Suggested negotiation framework and skill sets required to support effective negotiations.

B. What is Equity, Advantages of Equity over Payments, and How Do First Nations Get It

Equity is the money invested in a project that is not project debt. It is the money paid for ownership of the project. It has no repayment terms and does get paid interest. It is entitled to a share of any profits the project may realize.

The advantages of equity include influence on decisions on how the project is constructed and operated. This influence is directed through a seat or seats on the board of directors of the project company. Profits from ownership of equity are expected to be much larger than annual payments that can be negotiated from industry. The size of the profits as compared to the payments that can be negotiated will dependent on the total profits of the project, the percentage of total project equity that First Nations can negotiate to purchase and the interest rate that First Nations are able to achieve on the money they need to borrow to purchase the equity.

Equity has to be purchased. It is a business deal. First Nations agree to support the project and give access to their lands in exchange for the right to purchase equity and the projects adherence to consultation requirements and First Nations environmental standards. The right to purchase equity, the terms and the amount to be purchased has to be negotiated with the project companies.

If First Nations do not have the money to purchase equity or have other security for a loan, then in exchange for their project support, they will have to require governments or project developers to give a loan guarantee to lenders or put in place a supportive business framework that lenders will require to make a loan.

C. Estimated Cash Flow to FN's from Equity Ownership versus Payments from Project Developer

Analysis shows that cash flow to First Nations can be significantly higher from equity ownership in projects when compared to the payments that have been offered on major infrastructure

projects occurring on their lands. To realize those higher cash flows however First Nations will have to attract capital to make the equity purchase at low interest rates which will likely require financing guaranteed or supported by governments or major project investors.

To illustrate this difference a hypothetical pipeline called the Strawman was used.

The Strawman is a case study of the financial and operational aspects of a pipeline project . It is described further in the financing and case studies sections of the handbook. One of the components of the case study is an estimate of the cash flow to First Nations that might result if First Nations purchased a 30% interest in the Strawman and achieved a Federal Loan guarantee in support of the money they would borrow to make the purchase.

Following is a comparison, for illustrative purposes only, of that estimate of cash flow to First Nations versus and estimate of payments that the Strawman might make to First Nations in place of an equity purchase. It is assumed that a Federal Government loan guarantee was achieved for the financing. The payments in the comparison are an estimate of the total amounts that each of two natural gas pipelines to LNG projects on the westcoast have agreed to pay to First Nations over a 40 year period.

Estimated Cash Flow to FNs of 30% of Equity in $10 Billion Strawman Project with 65/35 Debt Equity Ratio

($Millions)

	5 Yrs	25 Yrs	40 Yrs
Payments	100	300	450
Buy Equity (With Guarantee)	300	1540	2280

Forecasts only. Amount remaining after payment of interest and repayment of debt.

Many things will effect the out come which will only be known when and if negotiations begin to purchase equity.

15

D. How is First Nations Profit from Equity Ownership in a Project Determined?

Once again the Strawman pipeline case study is used to illustrate the calculation of profits. The first illustration below is a calculation of the total project profit from the Strawman. The second illustration is the calculation of the First Nations share of those profits.

The total Strawman profit is the amount that is left after all costs have been paid. Those project costs include the operating costs, interest expense on the projects 65% debt, income taxes, and depreciation. The depreciation is the repayment of the 65% debt to the lenders and repayment of the amounts paid for equity by the shareholders.

The First Nations profit is 30% of the project profits minus the interest expense they would be required to pay on the money they borrow to pay for the equity purchase. In addition to the 30% of the profits of the project First Nations receive the money back they paid for the equity and that money is then used to repay the money borrowed. See the illustration below.

Financial Terms
How is Total Project Profit Determined

($ Billions)

• **Revenue = Sales $**	36
= Sales price x number of units sold, or	
= Amount charged for service pursuant to a contract.	
minus	
• **Costs** = operating costs + property tax +	- 6
depreciation (return of capital) +	-10
interest expense on companies debt +	- 8
income taxes (project company's taxes).	- 3
equals	
• **Total Project Profit**	9

(Example is $10 billion Strawman Project)

1

Financial Terms
How is First Nations Profit Determined

Total profit of project company($ billions)	$ 9.0
times	
First Nations equity share of profit	30%
equals	
FN's Share of Profit of Project Company	$ 2.7
plus	
Equity Investment $ back (Return of capital)	+1.0
minus	
Repayment of Equity Debt +	-1.0
Interest Expense on Guaranteed Equity Debt	-0.4
equals	
First Nations Profit ($billions)	$ 2.3
(Strawman example 40 years with Federal Loan Guarantee of $1 billion)	

2

E. First Nations Equity Purchase Negotiations.

There are many things to be negotiated during an equity negotiation. The reality is, as well as the basics of the percentage of equity and the price to be paid, First Nations protections and the things that a lender or guarantor are going to require for a loan for the equity are also being negotiated. As an illustration of some of the main things to be negotiated are:

- The percentage of equity that First Nations can purchase and the price to be paid.
- At what stage of the project will First Nations be required to invest money.
- A carried interest. The project developer or someone else pays the First Nations costs until First Nations financing can be achieved.
- The right of First Nations to sell all or part of their equity interest to others.
- When First Nations will be paid their share of profits and return of their investment.
- The developer to provide project information for use by First Nations in achieving financing.
- Fulfillment of project developer consultation requirements with individual First Nations.
- Project developer agreement with First Nations environmental standards.
- What happens if the project developer sells the project to someone else before First Nations have completed their equity purchase.

The following term sheet with a project developer is a more complete explanation of the key things being negotiated along with comparisons to other projects where First Nations have negotiated equity.

Form of Term Sheet with Project Developer for the Purpose of First Nations Equity Ownership Purchase in Major Infrastructure Projects Occurring on First Nations' Lands (the Strawman Project)

i. Introduction:

First Nations have many Projects occurring on their lands and need to be included in those projects in a meaningful way if the projects are to gain First Nations support and proceed in a timely manner.

First Nations have expressed a desire for an ownership position in these projects. However in most cases First Nations do not have the capital or the other security to support debt if they were to borrow the money necessary to complete a purchase of equity. Furthermore a recent review of a Strawman Project with five Major Canadian Banks has added confirmation that the debt capital that First Nations would require to make the equity purchase cannot be borrowed with only the assignment of their shares and the cash flow from the project as security. The banks further added that other security or a guarantee of governments, or other credit worthy parties, would be necessary.

The purpose of this form of term sheet is to identify important terms to be included in the negotiation of an equity interest that are deemed necessary to support financing and protect First Nations interests.

While this term sheet is primarily focused on using the Strawman as the target project it is generic in that in contemplates other projects with possible different financial characteristics.

ii. The Projects:

The projects such as the Strawman are major infrastructure projects occurring on First Nations lands. They can include but are not limited to: pipelines, LNG plants, field gas processing plants, roads, wind farms, hydro, water control and other projects. Projects such as the Strawman have, and benefit from, cost of service and other long term contracting arrangements that provide a high probability of financial success and quantifiable risk. Projects not being cost of service projects may also have a high probability of success if they have long term contracts for their service with credit worthy parties and there is an acceptable process in place that assures the project is not subject to excessive cost overrun risk.

iii. Parties to Equity Purchase Agreement

The parties to the Agreement will be the majority owner project developer ("Project Proponent") and the First Nations Corporation that will purchase the equity position ("Frist Nations Corporation").

iv. The Amount of Equity

In exchange for project support, the First Nation owners of the First Nations Corporation, subject to the conditions outlined later in this document, have a right to purchase a 30% equity ownership.

Notes:

- The Aboriginal Pipeline Group of the Mackenzie Valley ("APG") negotiated to purchase "up to 30.8%" of the Mackenzie Valley Pipeline. The project was an unincorporated joint venture and the APG was required to finance not only their share of the 30% equity component of the project but to also provide their share of the 70% debt component of the project financing. The APG right to purchase an interest in the MVP was on a sliding scale based on the volume of shipping commitments the project was able to sign. The majority owner energy companies, sponsors of the project, signed pipeline shipping contracts for 800 mmcf/d. At that level the APG interest in the pipeline was 1%. The APG would have a right to 30.8% when and if the shipping contracts reached 1,200 mmcf/d. As of the date that the Mackenzie Valley project was deferred it was anticipated the shipping contracts would be at least 900 mmcf/d; giving the APG an 8.33% interest.
- The First Nations with land along the proposed PNG pipeline expansion (later known as Pacific Trails) negotiated a 30% equity ownership position in that project.
- The Northern Gateway pipeline offered First Nations in Alberta a 33% interest in that pipeline in 2016.

v. Timing of the Equity Purchase

The First Nations Corporation will begin to make equity contributions at the start of the Construction Period equal to 30% of the equity component of the project costs incurred.

Notes:

There are three phases in project development, each having different risk profiles, when equity is required to finance a project; as follows:

1) Before the decision to build the project is taken; known as pre FID. Characteristics of this phase are: high risk the project will not be completed, a guarantee likely not available and possibly could not be debt financed even with a guarantee.

2) After FID, the start of the construction period. Characteristics of this stage are the project is de-risked pending the treatment of overrun costs in the project contracts.
3) At the in-service date. The project is de-risked and cost of services begins.

Any project developer is likely to want all equity investors to make project contributions at the pre FID stage of a project; particularly for a 30% equity position. The scenario assumed in the Strawman is First Nations would be able to negotiate the equity purchase at the post FID start of construction phase.

The Mackenzie Valley Aboriginal Pipeline Group ("APG") was required to invest at the pre FID stage. Transcanada pipelines loaned APG the money for this stage of the project in exchange for a right to purchase an equity interest in the pipeline. The loan was repayable when the project proceeded at which time APG would have been able to finance the costs and ultimately recover them through the cost of service.

The PNG pipeline required First Nations to purchase 30% equity at construction start. Debt financing was not available to First Nations. PNG likely knew or should have known this.

Transcanada offered First Nations on the Alaska Highway Pipeline in the North BC and in the Yukon Territory the right to purchase 10% equity up to two years after the in-service date. Transcanada refused to offer those First Nations a right to purchase more than 10% of the equity in the pipeline. The First Nations were not satisfied with the 10% offer and there was no agreement between the parties.

vi. Project Expansions

The First Nations Corporation has the right but not the obligation to participate in project capacity expansions.

Notes: Project capacity expansions in this definition are capacity expansions that were not contracted as of the initial FID. While the First Nations Corporation will likely negotiate to have a guarantee apply to the costs of expansion as well as the initial pipeline capacity this may or may not be achievable. It could be that both the Guarantor and the Lenders may seek to restrict debt beyond the initial debt amount.

If additional guarantees of debt financing for project expansions beyond the initial project capacity cannot be negotiated, other sources of capital to participate in project expansions might be:

- Equity income the First Nations may have accumulated since the in-service date of the initial project capacity.
- Capital to First Nations arising from their partial sale of their share of the project expansion to a third party.

vii. *First Nations Corporation Right to Sell All or Part of their Interest to a Third Party*

The First Nations Corporation has a right to sell, all or part of, its equity interest to a third party. It may occur that the First Nations Corporation needs to sell all or part of its interest in the project to a third party for the purposes of raising capital or to satisfy the terms of its arrangements with the Guarantor and the Lenders.

viii. *Project Cost Overruns*

With the exception of construction costs related to any project expansion that the First Nations agree to participate in, no equity contribution will be required from the First Nations Corporation for project costs that as a result of their incurrence, will reduce the expected return on, and of, the First Nations Corporation equity investment. All project costs are to be included in the rate base of the project and be included in the charges to the revenue generating project service contracts.

To the extent any costs are incurred that would have the effect of reducing the equity return on and of the First Nations Corporation, the Project Developer will explain to the satisfaction of the First Nations Corporation how and when the First Nations Corporation will recover its return on, and of, such costs if it did make such equity contribution.

ix. *Equity Owners Costs or Charges by a Non-Arms-Length -Party ("Equity Owners' Costs")*

Equity owners' costs that can be added to the rate base and included in the charges to the revenue generating contracts are costs of the project and will be funded by debt and equity contributions from all equity owners.

Equity owners' costs that are not included in rate base but can be included in the current operating charges to the revenue generating contracts are, along with their recovery, for the account of the owner contributing the charges.

Equity owners costs that are charged to the project and cannot be added to the rate base or charged to the revenue generating contracts are for the separate account of the owner or owners that incurred such costs. No reduction of other equity owners' return on, or of, equity from the project will occur and as result of the incurrence of such costs.

For additional clarity; preliminary and construction costs of any expansion in which the First Nations' Corporation is not participating, are for the account of equity owners participating in the expansion, and will not reduce the return on, or of, the equity cash flow to the First Nations' Corporation.

x. *Distributions of Return on, and of, Equity to the First Nations Corporation*

The majority owners of the project will covenant to make quarterly distributions to the First Nations Corporation equal to the First Nations Corporations share of the return on,

and of, equity recovered through the revenue generating contracts in the immediately preceding quarterly period.

While a reduction of the quarterly distributions of return on and of equity is normal business practice and will be allowed for budgeted maintenance capital expenditures which will be included in rate base and included in the charges to the revenue generating contracts, the amount of the distributions will not fall below a threshold amount in any quarterly or annual period.

It is understood he First Nations Corporation will have debt service and other obligations covenants that need to be serviced on a quarterly or semi-annual basis.

xi. *Change of Control of the Project*

Any sale of the project by the Majority Owners that results in a change of control is subject to a continuation of the commitments to the First Nations Corporation, by both the seller and the purchaser of the sale. Remedies to such Change of Control, that impact the First Nations rights pursuant an equity purchase agreement or rights during or subsequent to a First Nations equity purchase, will need to be negotiated before First Nations signing of the equity purchase agreement or First Nations agreeing to support the project.

xii. *First Nations Corporation' Director Position in the Project Company*

The First Nations Corporation has the right to appoint a Director to the Board of Directors of the Project Company.

xiii. *Equity Purchase Agreement Capacity Money*

The project developer will advance capacity money to the First Nations Corporation to cover the cost of the negotiation of this agreement. The costs provided are for the account of the project developer. It is assumed the cost of negotiation are project costs and will be included in the rate base and First Nations Corporation will ultimately make its proportionate share of contribution to those costs through the contemplated equity purchase.

xiv. *First Nations Corporations' Guarantor and Lender Requirements and Audit*

The project developer will provide all information required by the First Nations' Corporation or its finance Guarantor or its Lenders.

The First Nations Corporation, the Guarantor and the Lenders are anticipated to require information from the Project from time to time that only can be provided by or with the co-operation of the project company and with the agreement of the majority owners or project sponsors.

That information is expected to include the provision from time to time of certain financial, contractual and operating information, including submission of such information to a review of an Independent Engineer.

The information that may be required may include:

- A description of the project including:
    - Location and purpose,
    - Details of project guarantees and/or revenue producing contracts for service that are the financial underpinning for the project, including term and re contracting plans, risks etc.,
    - Debt equity ratio of the project,
    - The project amortization plan,
    - Details of project financing,
- Confirmation by Credit Rating Agencies of indicative ratings for the projects equal to or higher than investment grade.
- Proof of sufficient insurance coverage,
- Proof all necessary permits, approvals, land-use agreements and other authorizations,
- Proof all necessary environmental legal and policy authorities have been complied with including First Nations agreement and satisfaction with same,
- Proof all necessary aboriginal consultation obligations have been complied with,
- Review of the technical aspects of the project by an Independent Engineer confirming project plans are reasonable and in keeping with good practice.

xv. Not Trigger an Event of Default in First Nations Agreements with Guarantor or Lenders

Neither the Project Company or the Majority Equity Owners of the Project will do anything that knowing would result in an Event of Default for the First Nations Corporation with respect to its agreements with its Guarantor or its Lenders. If an event of default does occur the project company and majority equity owners will work diligently to correct the situation within 30 days.

Events of default in the First Nations Agreements contemplated above may include but are not necessarily limited to:

- Cancellation of major project revenue producing contracts without replacement by another contract of equal standing.
- Sale of material project assets.
- Abandonment of the project.
- Non – distribution of the Return of or on Equity as listed above.
- Non provision of financial and other reporting by the project that may be required by the Guarantor and the Lenders to the First Nations Corporation.

- Non submission to the anticipated requirements for an Independent Engineer to review the project on behalf of the Guarantor and Lenders to the First Nations Corporation.
- Change of control of the Project.
- Misrepresentation, fraud, or breach of material representation.

xvi. Conditions Precedent to Giving Effect to the Equity Purchase Agreement and First Nations Project Support

- Proof all First Nations Consultation obligations have been adhered with.
- Route adjustments as necessary resulting from First Nations Traditional Knowledge studies.
- Adherence to First Nations Environmental requirements.
- All regulatory approvals and permits.
- Successful completion of negotiation of jobs and contracting opportunities with First Nations.
- Successful completion of First Nations consultation negotiations with the province and federal government.
- Successful negotiation of the Equity Purchase Agreement contemplated in this term sheet.
- Successful achievement of a Guarantee of the debt and related Lender arrangements required for First Nations to achieve the debt financing they will require to make the equity purchase.

F. Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations

i. Introduction:

While there are many things to be negotiated, if the First Nations are to achieve financing and an equity ownership position in a major infrastructure project on their lands; the prime focus of this memo is the negotiations with project proponent, the guarantor and the investment bankers. It is assumed that negotiations related to the equity and First Nations environmental standards will occur at the same table with the proponent and that discussions related to consultation, jobs, contracting opportunities and capacity money for bands will happen separately in dialogues between the project proponents and the individual bands. No discussion about First Nations environmental standards is included in this memo.

A negotiation is a dialogue between two or more people with intention to reach a beneficial outcome over one or more issues over which a disagreement may exist between the parties. The negotiation is best served if both parties think of it as a joint problem solving task force. The parties are talking about being partners in the ownership and dialogue should proceed with that objective in mind.

ii. What is being negotiated?

In the example of the Strawman Infrastructure Project, the proponents seek to build a pipeline on First Nations lands. The proponents want First Nations support for the project. First Nations may want the right to purchase an equity ownership in that project, and adherence to their stated environmental standards in exchange for their support.

It is assumed that consultation, jobs, business opportunity and capacity money negotiations for the bands are separate and will continue to take place between the project proponents and the individual communities. First Nations will also need capacity money for the equity negotiations. That money may be part of the negotiation with the project developer or as part of discussions with governments.

Both parties need access to the capital to pay for their equity positions in the project. While the parties have this in common it is also a matter that may cause difficulty for them to agree and will require negotiation and development of solutions.

From the perspective of the shareholders' and directors' of the proponent companies, project risk has a price. The prime project risk, in the case of the Strawman Infrastructure project, is the money that is spent on project development, before there is a decision to start construction, will never be recovered if the project does not get built. If the proponents reduce their equity ownership, and the corresponding share of profits, through allocation of a portion of the equity and profits to First Nations, without First Nations agreeing to pay some of those costs, the proponents risk adjusted return

on the project may not be adequate for their board(s) of directors to approve the allocation of capital to construct the project.

From the First Nations perspective if they accept the risk of project development costs they may not be able to get a guarantee that would cover those costs and thus unable to meet the terms required for agreement to purchase equity.

As the requirements for consultation is assumed to occur outside of the equity and environmental standards negotiation table; what essentially is being negotiated in the case of the Strawman Project are the terms that both parties require to raise capital for the project and the risk that each will take. This will require the parties working together to find some innovative solution.

iii. Framework of the Negotiations:

If First Nations are to purchase an equity interest in a project they are likely to be in dialogue with a number of parties at the same time. The steps are as follows:

- The first step is the First Nations agree on goals which will be communicated to all parties.
- Identify a project or projects.
- Prepare a preliminary financial and technical analysis of the project.
- Reach agreement with the project developers that they will enter into a dialogue about First Nations purchasing an equity interest in the project.
- Notify the guarantor and investment bankers that you have agreement to enter into equity dialogue with the project developers.
- Ensure capacity money is in place for equity and financing dialogues.
- Identify and recruit the negotiation team and support resources.
- Open dialogues with the project proponents, the guarantor and the investment bankers about the specific project.

The reason for engaging the guarantor and the lenders at this point in time is to advise them of the project, get certainty that they will be considering the request and to get specific feedback on their requirements so they can be included in the equity negotiations with the project proponents. In the case of the Strawman Project the guarantor is the Government of Canada and the five major Canadian banks are the investment bankers.

iv. Skill Sets Required for Effective Negotiations:

An effective negotiation team will have a number of skills and access to significant technical, financial and legal resources. This is not a "learn on the job" task. The negotiation team should have done this before. The team needs to understand all aspects of the business of the project including: how the project makes money, potential project risks, how the project is financed and the real interests of both parties. Great care should be taken in assembling this team.

Not all members of the team will need to attend all meetings. Some of the members of the team and their required skill sets are:

1) First Nations Representatives.
    - The first contact with the project proponent about First Nations purchasing an equity interest in a project should be handled by a representative of the First Nations. Likely a coalition member.
    - They probably will be in attendance at the equity table and will be the prime contacts with the Coalition and the First Nations bands and communities.
2) A lead communicator:
    - The lead communicator of the negotiations with the project developer is a very skilled person. They should have very good listening and communicating skills but should also have knowledge of the business. That person will need to communicate the First Nations interests in the negotiation to all parties and also need to communicate the project developers' interests to the First Nations. Interests are the reason why a matter is of importance to each of the parties. Interests are not the positions of the parties.
    - That person will co-ordinate the work of the negotiation team and should have the further skill to walk away from the negotiation while leaving the negotiations intact.
    - Money may be saved if a person with one of the other skill sets can also fill this role.
    - Depending on their total skill set the lead communicator may, or may not, participate in discussions with the guarantor and the investment bankers as well. That communication is largely a job for the people that interface with the government and for the finance and legal members of the team.
3) Government interface people. These people will communicate the need for the loan guarantee to all appropriate levels of government.
4) A financial person experienced in large project financings to direct the preparation of the information packages and communicate with the project

proponents, the guarantor, the investment bankers and the First Nations as required.

5) A financial analyst. Analysis needs to be sophisticated and professional to understand the nuances of the negotiations and facilitate the requirements of the guarantor and the lenders.

    - The entire project needs to be analyzed both for total project profitability and for the First Nations' financial position as a borrower outside of the project. The level of analysis will be at a level in excess of that included in the Strawman Project.
    - If the project is a pipeline to an LNG plant then the entire value chain should be analyzed for profitability and revenue flows to all parties including governments. A solution to some of the financing and project risk matters may come from a party that is not at the equity negotiations table.

6) An investment banker advisor should be available to communicate the interests of the capital markets. This person is probably not part of the negotiation team; due to availability of their time, and the possibly of conflict of interest if the project proponents, or companies with an interest in the outcome of any of the dialogues, are also their clients.

7) Engineering or construction cost analysis. Among other things, at a minimum it is important to be able to somewhat verify the project proponents construction cost estimates and ensure all costs are included. An understatement of the construction costs could leave the First Nations in a position that: the number of dollars of financing that is to be guaranteed is not large enough to finance the total project interest that First Nations may negotiate; or going back to the guarantor to seek approval for additional money to finance what is not, but appears to be, a project cost overrun.

    The person or people fulfilling this role do not need to sit at the equity negotiation table but will need to interface with the proponents engineering group and possibly provide support in discussions with the guarantor.

8) Legal should be handled by a commercial lawyer experienced in capital markets financing.

9) A person very familiar with the First Nations environmental standards work should be part of the team to communicate those requirements.

2. Structuring Memos

A. Overview of Structuring Memos

This section of the handbook is developed to provide a guide to First Nations in structuring their business affairs. It contains memos on:

- What it means to be a project developer compared to purchasing equity in projects developed by others.
- A business plan and what is in it.
- Corporate structures and business structures for First Nations businesses.
- Benefit sharing models that have been used on other projects where First Nations have shared project profits.

B. First Nations Project Developer or First Nations Equity Owner in Project Developed by Others.

A project developer is the sponsor of a project. The party that will do all of the things that will be necessary to advance the project through the pre-construction study phase, the construction phase and the operations phase of a project. The project developer usually has a majority equity ownership stake in the project.

Significant costs are incurred during the study phase of a project and the money for this phase cannot typically be borrowed. The project developer usually pays these costs and takes the risk that the money will be lost if the project does not prove viable.

As an equity purchaser in a project developed by others, First Nations may or may not be required to pay a share of the costs of the study phase. It is quite often a requirement of the project developer that all equity participants take their proportionate share of the project risk.

The price to purchase equity will likely be higher if the equity purchaser does not pay a share of the study phase costs.

An advantage of not paying costs during the study phase and paying a higher price for equity is; if the result of the study is the project should not be constructed, no money has been lost.

These matters will be determined during negotiation of terms of the right to purchase equity.

C. Business Plan

A business plan is a written document outlining: goals and objectives, the things that need to be evaluated and the steps taken to assess a business opportunity and move it to a successful venture. A First Nations' business plan for a project on their lands will vary depending on whether they have the role of the project developer or are considering an equity investment in a project developed by some other party. The role, responsibilities, requirements, experience and at risk capital are likely significantly more complex for a project developer than they are for an equity purchaser in a project developed by others. Business plans can vary significantly depending on the type of business or investment being considered.

Following is a listing of requirements and the components of a sample business plan for both:

- a Project Developer, and
- a First Nations equity purchaser in a project developed by others.

i. *Part 1 –Sample Business Plan for an Infrastructure Project Developer*

- Requirement experienced: in project developer/operator/directors/staff.
- Initial business proposal assessment. Proceed or not decision.
- Market studies – Socio economic analysis – jobs created – taxes to Governments.
- Sales contracts with credit worthy parties and the terms.
- Engineering & permitting studies – capital and operating costs.
- Evaluation of the business risks.
- Assessment project economics/financial forecasts.
- Interim investment decision to continue or not.
- Project engineering.
- Bids from qualified contractors.
- Environmental permits.
- Government approvals.
- First Nations consultation.
- Land owner agreements as applicable.
- Social license.
- Financing plan – project debt and equity.
- Assessment - financing achievable/acceptable.
- Force Majeure (Under what conditions will revenues not get paid).
- Financial forecasts demonstrate risk assessed economics.
- Final investment decision ("FID") - build or do not build project.
- If FID yes – project financing and project construction proceed.

ii. *Part 2 – Sample Business Plan for FNs' Equity Ownership in Infrastructure Project*

- Written statement of objectives and First Nations goals: consultation, environment, cultural, jobs, contracts, equity ownership.
- Capacity money as required from Project Developer and/or Governments.
- Request assistance from First Nations Major Projects Coalition.
- Project assessment :
- Experienced Project Developer in place.
- Examination of Project Developers business plan , studies and economics.
- Business risks - any reasons project cannot be constructed, operated or financed as planned.
- Review the Coalitions Toolbox Memos for assistance with proceeding.
- Achieve benefit sharing agreement amongst First Nations.
- Put Corporate and business structures in place.
- Appoint directors and hire staff.
- Hire experts for effective negotiations and financing expertise.
- Engage capital market & investment bankers.
- Negotiate equity ownership and terms.
- Prepare information packages for use with government guarantors , banker advisors, rating agencies and potential debt financers of FN’s equity.
- Request and negotiate loan guarantee or other financing alternatives.
- Achieve required investment grade rating from rating agencies.
- Achieve financing offer at low interest rate that will yield expected profit.
- Final investment decision – make investment - yes or no.

iii. Roadmap from Summarized Sample First Nations Business Plan to Applicable Toolbox Memos.

Decision to examine purchasing equity in a project.

- Section V.1.B. What is equity, advantages of equity over payments, and how do FN’s get it?
- Section V.1.C. Estimated cash flow to First Nations from equity ownership versus payments from Project Developer.

Prepare written goals & business plan.

- Section V.2.C. Business Plan.

Request coalition support.

- Section VI Coalition Project Identification and Capacity Support.

Request capacity money from Project Developer and Governments.

- Section V.3.E. A Project Needs Financing in Three Different Phases.

Hire experts to assist.

- Section V.1. F. Suggested Negotiation Framework and Skillsets Required to Support Effective Negotiations.

Prepare preliminary financial forecasts of First Nations profits and assessment of developer's project information for risks and FNs financing requirements.
- Section VI. Coalition Project Identification and Capacity Support.
- Section V.3.D. Lenders Basic Requirements to Consider a Request for a Loan.
- Section V.3.E. A Project Needs Financing in Three Different Phases.
- Section VII.1. The Strawman Case Study.

Negotiate equity purchase & terms.
- Section VI. Coalition Project Identification and Capacity Support.
- Section V.1.E. First Nations Equity Purchase Negotiations.
- Section V.1.F. Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations.
- Section V.3.E. A Project Needs Financing in Three Different Phases.

Agreement for benefit sharing amongst First Nations.
- Section VI. Coalition Project Identification and Capacity Support.
- Section V.2.G. Benefit Sharing Models: Principles and Assessment.

Set-up business structure.
- Section V.2.D. Corporate & Business Structures for First Nations Ownership.

Implement corporate structure
- Section V.2.D. Corporate & Business Structures for First Nations Ownership.

Appoint directors and hire people.
- Section V.2.D. Corporate & Business Structures for First Nations Ownership.

Financing plan – investigate options.
- Section V.3.A. Financing of First Nations' Equity in Major Projects Occurring on their Lands.
- Section V.3.B. Why Money for Equity cannot be Borrowed Without Other Security or a Guarantee.
- Section V.3.C. How Major Infrastructure Projects are Financed.
- Section V.3.D. Lenders' Basic Requirements to Consider a Request for a Loan.
- Section V.3.E. A Project Needs Financing in Three Different Phases and Where Will First Nations get the Money to Pay for Equity.
- Section VI. Coalition Project Identification and Capacity Support.
- Section VII.1. The Strawman Case Study.
- Section V.1.F. Suggested Negotiation Framework and Skill Sets Required to Support Effective Negotiations.

Request/negotiate government guarantee of First Nations' debt for purchase of equity.

- Section V.1.F. Suggested Negotiation Framework and Skill sets Required to Support Effective Negotiations.
- Section VI. Coalition Project Identification and Capacity Support.
- Section V.3.F. Form of Term Sheet for a Guarantee of Debt.

Request to bankers/capital markets for financing terms.

- Section VII.1. The Strawman Case Study.

Rating agencies - achieve investment grade rating.

- See 12 above. Financing Plan.
- Final Investment Decision.

D. Corporate Structures and Business Structures for First Nations' Ownership of an Interest in the Strawman Project

i. Introduction:

The purpose of this memo is to examine corporate structures and business structures for First Nations that wish to borrow money for the purpose of purchasing an equity ownership position in projects occurring on their lands.

Corporate structure refers to how a business is organized to accomplish its objectives and business structure refers to the type of legal entity chosen to hold for the investment.

*ii. Corporate **Structure:***

The corporate structure is important because it determines the ownership, control and authority of the organization. In a corporation, these characteristics are represented by three groups: shareholders, directors and officers. Ownership belongs to shareholders, control is exercised by the board of directors and authority over da-to-day operations is vested in officers.

Corporate governance is the basic of corporate structure and is a separation between business ownership and management and accomplished by a two tiered hierarchy. On the first tier is the board of directors. These individuals are elected by the shareholders of the corporation. On the second tier is the upper management. These individuals are hired by the board of directors.

The board of directors is elected by the shareholders and is made up of two types of representatives. Individuals who chosen from within the company such as the CEO, CFO or other and individuals chosen externally and considered to be independent from the company. The role of the Board is to try to make sure that shareholders' interests are will served.

Board members are divided into three categories:

1) The chairman is elected from the board of directors and his responsibilities include running of the board, communications with the officers of the company, formulating the business strategy, representing management and the board to the shareholders.
2) Inside directors are responsible for implementing and monitoring business strategy and are either shareholders or high-level managers from within the company. They help provide internal perspectives for other board members.
3) Outside directors have the same responsibilities as inside directors in determining strategic direction and corporate policy but are different in that they are not part of the company's management team.

The management team of the company is directly responsible for the company's day-to-day operations and profitability.

The CEO as the top manager is responsible for the corporation's entire operations and reports directly to the chairman and board of directors. It is the CEO's responsibility to implement board decisions and initiatives and to maintain smooth operation of the firm. Often the CEO is one of the board of directors and sometimes its chairman.

The chief operation officer ("COO") is more hands on than the CEO and looks after the operations of the business. Sometimes in small organizations the CEO will also fill the role of the COO.

The chief financial officer ("CFO") reports to the CEO and is responsible for the financial affairs of the corporation. Sometimes in small corporations the CFO and the CEO or the CFO and the COO can be the same person. The financial affairs of the corporation include all matters related to financing the business, insurance, taxes, analyzing and reviewing financial data, reporting financial performance, preparing budgets and monitoring expenditures and costs. The CFO is required to present this information to the board of directors at regular intervals and provide it to shareholders, regulatory bodies, banks and lenders as required.

Each of these management people will require support staff to assist them.

The First Nations Corporation is going to need to appoint a board of directors. The board of directors will need to hire or contract with a management team and support staff to manage the investment with the project, to manage the debt, flow funds to First Nations, file tax returns, prepare budgets, analysis and forecasts of the project and its cash flows, analyze other investments, invest funds as requested, communicate with the Board of Directors.

For liability reasons it is important that First Nations bands to do not take part in the management of the business. A management fee should be paid by the First Nations to the Corporation.

Following is a typical corporate structure as outline above:

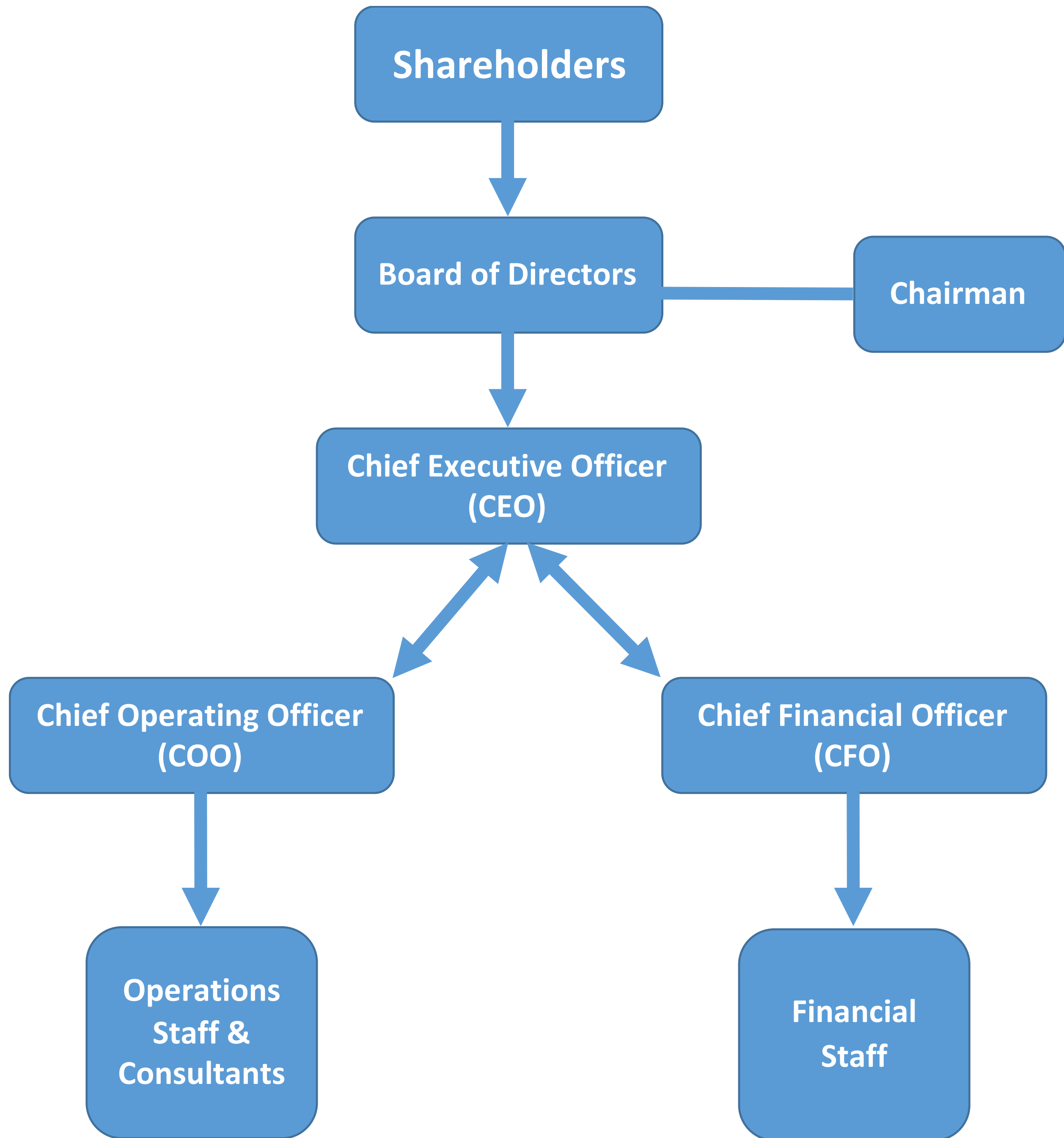


Figure 1 -Typical Corporate Structure Organizational Chart

iii. Business Structure

Business structure is a category of organization that is legally recognized. The business structure to be chosen should accomplish five objectives:

1) Facilitate raising of capital, operations and governance of the business,
2) Provide for use of the tax exempt provisions of the Income Tax Act that may be applicable.
3) To limit the liability of the participating First Nations.
4) Reflect the intents of the First Nations as to who will share in the project ownership and on what business on ventures will they work together.
5) Provide for potential do add other businesses.

The business structure that would appear to accomplish all of objectives above is a layered structure wherein a corporation owning 100% of the First Nations equity interest in the Strawman project is owned by the First Nations bands using one or more Limited Partnership structures wherein one Limited Partnership ("LP") is the Limited Partner in another LP. LPs are not taxable entities and are the vehicle that would allow the income from an investment in a project to be flowed through to a band where it may be exempt from tax, limit the liability of First Nations with the ownership and provide a vehicle for sharing amongst First Nations.

iv. Raising Capital, Operations and Governance

The Guarantor and the Lenders of the capital will no doubt require that a corporation have the liability for the money borrowed. That corporation will also be the owner of the First Nations shares in the Strawman Project and accordingly be the party entitled to receive dividends and return of capital that will be required by the First Nations to make the payments of interest and repayments of debt.

A corporation is a form of organization that has an existence independent of its owners. This form of organization has an ideal corporate structure for operations and governance.

v. Tax

For a band to be exempt from income tax it must be considered a "public body performing a function of government in Canada" as included in paragraph 149 (1) of the income tax act. This exemption includes income allocated to bands as limited partners in a partnership regardless of where the income of the partnership is earned. Without the status of a public body performing a function of government in Canada the income earned off reserve would be subject to income tax in the hands of the bands.

A further exemption is available for income from business carried out on reserve land but only if 90% of the income is earned in the reserve lands and the business is 90% owned by the band.

It should be noted that the Canada Revenue Agency has the authority pursuant to subsection 103.1 and 103.1.1 to adjust income shared by partners in a business amongst the partners.

Corporations are taxable legal entities. The First Nations Corporation owning the shares in the Strawman will include the dividends or income from the Strawman Company in its calculation of taxable income.

The Strawman Project Company itself could be either a corporation or a partnership organization. The amount of income to be paid to, and the tax deductions available to, the First Nations Corporation are different in the two different business structures. If the Strawman project company is a corporation it will have included the income to be paid to the First Nations Corporation in its own Strawman income tax return before it is paid to the First Nations Corporation. In effect the income that is paid to the First Nations Corporation will be tax paid dividend income. While the First Nations' corporation will still have to include the tax paid dividends from the project company in its own tax return it would also be eligible for an income tax deduction approximately equal to the amount of dividend income it included in its income. The purpose of this deduction is to avoid double taxation and as a result no additional income tax should be payable in the First Nations Corporation on the dividends received from the Strawman Project Company.

If the Strawman is a partnership it will not have filed a tax return or paid income tax on the income to be distributed to the First Nations Corporation. Partnerships are not legal entities. No tax paid dividend deduction is available and the First Nations Corporation will need to pay income tax on that income.

However the income paid to the First Nations Corporation from a Strawman Partnership should be greater than the tax paid dividend income paid to the First Nations Corporation from a Strawman Corporation by an amount equal to or greater than the income tax the First Nations Corporation would be required to pay. Accordingly the net payments to First Nations limited partnerships by the First Nations Corporation owning the equity in the Strawman Project should not be reduced whether or not the First Nations Corporation has to pay income tax on amounts received from the project.

vi. Limited Liability Protection

A LP may provide its limited partners with limited liability protection provided the limited partners do not engage in the management of the LP's businesses. Having the general partner of a partnership own the general partner in a second partnership that owns the operating partnership creates additional separation of the bands from the management of the business.

vii. Who Will Share and What Will Be Shared

Information on sharing models is included in a separate paper. It is mentioned here only in that it may impact the corporate structure(s) ultimately chosen. Other things that may impact the corporate structure chosen are financing and liability considerations. Notwithstanding this the structures are quite similar.

In choosing a business structure that considers who will share and what will be shared there are two choices within the structuring of the First Nations partnerships that will own the First Nations Corporation. Should the partnership structure be?

- A separate partnership for each project invested in, or
- One partnership owning more than one project?

The shares of income to each nation for either structure above can be determined separately for each project or on a combined basis for all projects.

Possible advantages of the second structure above could be:

- Sharing the costs of the management corporation rather than each project hiring its' own people. They may be hard to find.
- Sharing the management could be common ground for investing some of the income from projects in other businesses and having a management corporation set up that could handle that activity on First Nations behalf.

Following is a flow chart of the business structure described. It is for illustrative purposes only and First Nations should employ their own legal and tax advice when structuring their ownership positions.

First Nations Strawman Business Structure

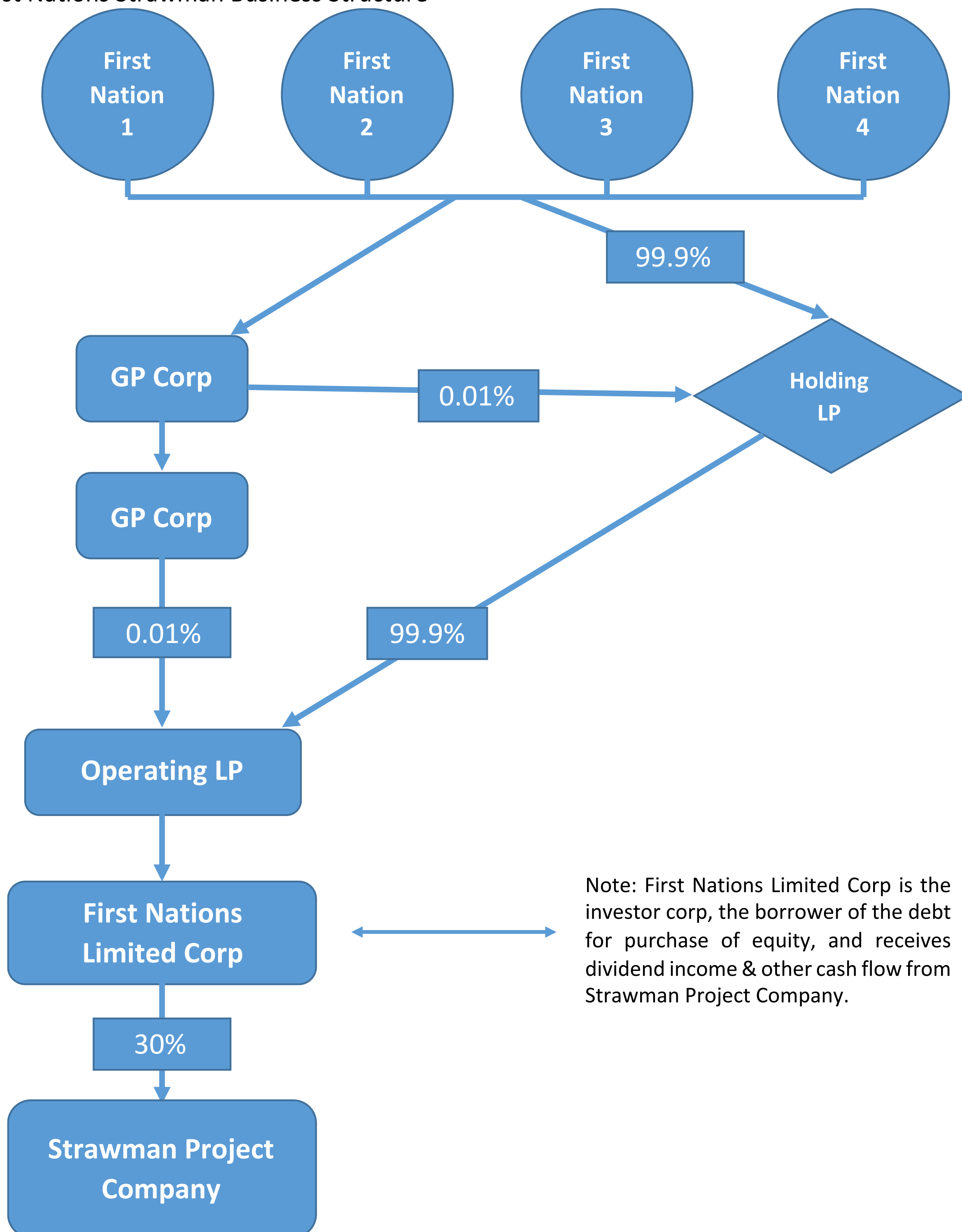


Figure 2 - First Nations Strawman Business Structure

G. Benefit Sharing Models: Principles and Assessment.

Introduction

Projects developed on First Nations lands often impact more than one First Nations' people. In part this is because the traditional lands of the First Nations often overlap with the traditional lands of other First Nations, and in part because there are often residual impacts on the people in the area, even if the projects are not directly constructed on their own traditional lands.

When projects occur on more than one First Nations' land, the project proponents appear to favor the approach of negotiating with each First Nation separately. The practice of the proponents is to determine a total dollar value of compensation for all First Nations impacted and then choose a formula for the allocation of the total compensation amongst the First Nation impacted. One purpose of their allocation formula is to show they have treated all First Nations the same. The formulas they use are based on some combination of land impacted, land maps, population and equal sharing. Typically the proponents identify certain amounts that they will negotiate and other amounts that they claim are not negotiable.

First Nations have expressed an interest in owning part of the projects that occur on their lands as an alternative to the proponents' practice of payments. To achieve this First Nations will have to work together and find solutions to a number of things: access to capital, environmental stewardship and benefit sharing; to name a few. The First Nations Coalition is a place where First Nations have come together to achieve these objectives.

The purpose of this paper is to examine methods of sharing the benefits and pose the question; "should only those nations directly impacted by projects on their lands share the benefits of the projects; or should those nations that do not have the project on their lands and are members of the coalition also have a share?

There is precedence for both.

i. Some Allocation Models in Use:

1) PTP formula
    - The formula was developed by, and on behalf of, the First Nations with land located on the Pacific Trails Pipeline. Direct cash flows from the project and the majority of contracting benefits are to be shared only by those nations with the pipeline on their lands.
    - The allocation of the revenue to each nation is based on the pipeline kilometers on each nations land.
    - The total revenues from the pipeline are divided by actual physical linear length of pipeline.

- The result is each kilometer of pipeline has the same equal economic value attached to it.
- If a pipeline kilometer on a nations land map is not on the land map of any other nation, then that nation gets the revenue attributed to that kilometer of pipeline.
- If a kilometer of pipeline is on the land maps of more than one nation then those nations with that kilometer of pipeline share the revenue attributed to that kilometer. For example two nations with the same kilometer of pipeline on their respective land maps would receive a revenue credit equal to 0.5 kilometers of pipeline.
- The total kilometers of pipeline and the attributable revenue allocated is equal to the physical linear length of the pipeline and the total revenue.

2) Sum of the Land Maps.
   - This method of allocation was used by the Prince Rupert Gas Transmission Pipeline ("PRGT") and partly by the government of BC; likely because they did not know how to deal with the overlapping land maps.
   - The allocation formula is not related to the actual linear length of the pipeline.
   - The formula is each nations land map kilometers divided by the sum of land maps pipeline kilometers of all nations yields a percentage for each nations share.
   - The result is each kilometer of the linear length of the pipeline does not have the same equal revenue value attached to it.
   - For example a single kilometer of pipeline that exists on the land map of two First Nations has an economic value of twice the economic value of a single kilometer of pipeline than exists on the land map of only one First Nation.
   - The differences in the valuations are shown below using different formulas.
   - CGL sum of land maps 2,236 km – actual pipeline linear length 656 kilometers.
   - PRGT sum of land maps 2,055 km – actual pipeline length approximately 900 kilometers.
   - WCGT sum of land maps 2316 km – actual pipeline length approximately 800 kilometers.

3) Population.
   - This formula was used in part by the BC government and the West Coast Gas Connector ("WCGT") or Spectra pipeline to the BG LNG plant.
   - The formula is the population of each nation divided by sum of the population of all impacted first nations' populations yields a percentage for each nations share.

4) Equal Split.

- It is unknown if any project proponents have proposed this formula.
- Each nation receives an equal share. For example twenty nations would receive 5% each.

5) Combinations of Above Options.
    - Combinations of the above four base options above.
    - For example: 30% PTP, 30% Land Maps, 30% Population, 10% Equal Sharing.
    - Coastal Gas Link has two formulas. Each nation can have the better result of the PTP formula or the Sum of the Land Maps formula.
    - The government of BC has a pipeline payment formula with two calculations made for each nation. 50% of the total revenue to First Nations is allocated by the Sum of the Land Maps formula and 50% is allocated by the Population formula.
    - WCGT also had a two part formula based 50% on the PTP formula and 50% on the population formula.
    - The Nlaka'pamux first nations used a two part formula based 50% on proximity to a mine on their lands and 50% on population.
    - The Aboriginal Group of the Mackenzie Valley allocated 88% of their expected revenue amongst First Nations on the basis of Land Maps, but there were no significant overlaps because the majority of land claims were already settled. They further allocated 12% to nations that did not have land crossed by the pipeline.

6) Regional Splits.
    - Some nations have existing sharing arrangements. For example three nations of the same people share one-third to each nation irrespective of on whose land the project is located. Other nations have other splits with the nation on whose land the project is located receiving a bigger share and others receiving a diminishing share depending on how far away their land is from the project.

7) Sharing of Revenues with First Nations not Directly Impacted by a Project.
    - The Nlaka'pamux allocate the proceeds from sharing of mining tax to First Nations not directly impacted on the basis of proximity to the mine and population of each nation.
    - The Aboriginal Pipeline Group of the Mackenzie Valley shared the benefits of the pipeline on their lands nations that did not have the pipeline on their lands.
    - They negotiated a sharing model which attributed 88% of the benefit to the three nations that pipeline on their lands :Gwich'in 20%, Sahtu 34%, Dehcho 34%. 4% was attributed to the Inuvialuit who had no pipeline on their lands but had gathering lines from the gas fields. The Inuvialuit initiated the

negotiation process for equity. 8% was attributed to First Nations that did not have the project on their lands.

ii. *Rationale for Allocation Models – Principles*

1) PTP – FNLP
   First Nations established three principles.
   - The revenue was attributable to each kilometer of the linear length of pipeline.
   - The revenue attributable to each kilometer of pipeline belonged to the nation with that kilometer of pipeline on their land.
   - Revenue where land maps overlapped was a matter for sharing amongst only those nations with the specific pipeline kilometer overlaps – not all nations on the pipeline route.
   - Appeared fairest of allocation methods analyzed.

2) Sum of the Land Maps.
   The principle is: "Do not deal with the overlaps or whose land it is."
   Companies and governments decided on this formula because they did not know how to deal with the overlapping land maps. In the absence of some resolution of this matter project proponents and governments view this allocation method as that of possible least resistance.

3) Population.
   The principle could be:
   - First Nations are a government and recognize the need to provide services to people. Accordingly a percentage of the revenue should be allocated amongst nations on the basis of population of each nation.
   - One of governments' roles in society is the collection, and then reallocation of revenue, to provide needed services to citizens. One basis to achieve this is an allocation by population.

4) Equal Sharing.
   The principle could be: each community has a job to do for its citizens equally irrespective of the: population, kilometers of land map, or kilometers of pipeline; and deserves a portion of the revenues to be shared equally.

5) Other Allocation Methods.
   The principle is Compromise
   - First Nations can decide on how to share revenues,
   - recognize that no one allocation method will suit all, and
   - Compromise will be necessary.

iii. *Assessment of Various Models.*

Starting with the Linear Length of the Pipeline:

- PTP model –every kilometer of pipeline has the same value.
- Sum of Land Maps model
  - A kilometer of pipeline with 2 nations with overlapping maps has a value 2 times a kilometer pipeline that is on only one land map.
  - A kilometer of pipeline with 7 nations with overlapping maps has a value 7 times a kilometer of pipeline on only one map.
- Sum of the Land Maps kilometers far exceed the linear length of the pipeline. Land maps total:
  - 4 times the CGL pipeline length,
  - 2.5 times the PRGT pipeline length, and
  - 3.4 times the WCGT pipeline length.
- The Population model decreases the revenue per kilometer of pipe on nations with small populations and increases revenue per kilometer of pipe on nations with larger populations.
- The Equal Sharing model increases revenue kilometer of pipe for first nations with less than about 5% of the total revenue and reduces revenue per kilometer of pipeline for nations with more than 5% of the total revenue.
- To a certain extent Sum of Land Maps does similar thing as Equal Share formula.

Assessment.

- Compromise is necessary.
- No one formula is likely to work for all nations.
- A model that works for one project may not work for another because of significant differences between the land impacted, populations and regional differences in the extent of overlap of land maps.

H. What Sharing Models Have Worked for First Nations and Why

In an exercise conducted by the First Nations LNG Alliance in 2016, BC First Nations were unable to come to agreement on a sharing model related to pipeline payments offered by the Province of BC. It was obvious from the material presented that there was no one formula that would work best for all of the nations. Some benefited most from the PTP formula, some from the Sum of the Land Maps formula, while others benefited most from the population formula or the equal sharing formula.

While there was general agreement that compromise would be necessary the representatives of the First Nations involved were not able to make a decision for their nations other than selecting the formula that was best for their nation.

What appears to have worked somewhat is when a company, government or a small group of nations has made the decision on behalf of the bigger group and the decision of what sharing formula to use has been taken out of the hands of the bigger group of nations. The company, government or smaller organizing group of First Nations makes a decision on the method, prepares the calculations and communicates to each nation their share. Evidence of this is:

- The PTP formula developed by a few First Nations on behalf of the nations on that pipeline. It is believed all of the bands have agreed.
- The companies and the province on the Coastal Gas Link, Prince Rupert Gas Transmission and West Coast Gas Connector pipelines did not offer the First Nations on those pipelines an allocation formula. They determined the formula to use and offered each nation an amount of money determined by using the allocation formula they selected. They have had reasonable success with this approach. 16 of 19 nations have accepted the offers from Coastal Gas Link. It is unknown how many of the nations have accepted offers on the other pipelines.

i. Questions to Answer

- What are the principles First Nations want to guide the allocation?
- Is compromise a principle?
- Who will decide the allocation formula?
- Is it important that First Nations make revenue sharing decisions or should others make them?
- Is consensus on the allocation formula a necessity or is a quorum of some percentage of the total number of nations acceptable?
- Should an independent arbitrator be engaged to make a recommendation?
- As a starting point for the allocation formula, is it valuable to examine the principles and the allocations formulas that First Nations have already determined for themselves versus those formulas decided on by the province and project companies. Examples of this are the PTP formula, the Nlaka'pamux formula and the APG of the Mackenzie Valley formula.

- With respect to revenue sharing should overlapping maps be a matter between only those neighbors with the overlapping maps? Or should overlapping maps of neighbors affect the revenue of nations that are not neighbors and do not share any overlapping lands?
- Should First Nations that are members of the First Nations Major Projects Coalition that do not have a project on their lands receive a share of the benefits from projects on other First Nations lands?

3. Financing Memos

A. Financing of First Nations' Equity in Major Projects Occurring on Their Lands

i. What is in the financing section of the toolbox memos?

The financing section of the toolbox memos is designed to provide Coalition members with information to understand:

- Why money for equity cannot be borrowed without other security or a guarantee.
- How major infrastructure projects are financed.
- A lender's basic requirements to consider making a loan, and
  - Risks to Project Economics and Financing
- A project needs financing in three different phases and where will First Nations get the money to pay for equity.
- Three project business models with different ability to raise capital.
- Guarantee what needs to be done and Form of Term Sheet.

B. Why Money for Equity cannot be Borrowed Without Other Security or a Guarantee.

First Nations have had difficulty accessing the capital necessary to pay for an equity position in major infrastructure projects occurring on their lands. Major infrastructure projects are financed with two types of capital: Debt and equity. The debt component ranges from 50 to 80% of the capital to build a project and the equity component is the balance of the capital required.

The debt component for economic major infrastructure projects can most often be borrowed in capital markets. Under most conditions the equity component cannot be borrowed, at least at an attractive interest rate, unless the prospective borrower can provide other security, or a guarantee of governments or other credit worthy parties. This was confirmed by the work the Coalition did on the Strawman Project which was sent to the major Canadian banks with a request for indicative financing terms for a First Nations purchase of equity in that project.

Money cannot be borrowed without security. Lenders of the debt component take a first mortgage on everything a project has as security. The mortgage includes: the physical assets, the sales contracts, cash flows, bank accounts etc. The result is there is no project security left for other lenders other than possibly a second mortgage. If the lender with the first mortgage will permit it and a money lender is willing to take a second mortgage on the project assets, the interest rates can be so high it may be difficult for an infrastructure equity owner to make a profit.

Borrowed money for the equity component without other security or a guarantee of another party would be second mortgage debt at best.

Whether or not a lender will make a loan for any purpose relates to the assessment of risk of probability that they will receive their required interest payments and get their loaned money repaid to them. Greater risk means fewer lenders, higher interest rates, and greater difficulty borrowing money. A lender that will make a loan for equity has much higher risk than the lender for the debt component that takes the project as security. As well as having all of the security from the project the lender for the debt component of financing gets their required interest and debt repayments in full before the lender for the equity component gets any interest or debt repayment. That puts the lender for the equity at greater risk than the lender for the debt component. Furthermore the limited partnership structure does not provide for a lender to pursue First Nation band limited partners for any repayment shortfalls or liabilities if they exist.

C. How Major Infrastructure Projects are Financed.

Major infrastructure projects require both debt and equity financing.

Most often First Nations will not have to borrow the debt component of a major infrastructure project's financing as most of the project companies will borrow the debt money directly from lenders in capital markets. So equity shareholders do not need to borrow that money but will have to come up with any equity money a project requires. The loan directly by the lenders to the project company is known as project debt financing.

There is a business structure known as a joint venture when a First Nation may be required to finance their proportionate share of both the debt and equity components of financing of a project. While it adds complexity to what First Nations are trying to accomplish it should not present any significant new challenges. The lender of the debt component to the First Nation would take the First Nations share of the projects assets as security just as if they were making the loan directly to the project company. The challenge of borrowing the equity money without security remains the same.

ii. Debt versus equity compared:

Debt is borrowed money:

- Has a maturity date or loan repayment schedule.
- Requires the borrower to make periodic interest payments to the lender.
- Interest payments are tax deductible.
- Does not have management influence unless especially agreed conditions.

Equity is money that comes from savings, or money that can be raised from the sale, or securitization, of other owned assets that have a sales value in excess of any debt directly attributable to those assets.

- Equity has no maturity date or repayment schedule other than on the wind-up of a business.
- Equity owns a share of the profits or losses of the business.
- Equity receives dividends from profits.
- No legal obligation on the company to pay dividends unless specifically stated in the shareholder agreements.
- Dividends are not tax deductible.
- Equity holders have management influence through voting rights.

iii. *Debt Capital*

There are many forms of debt depending on project requirements, the certainty of generating cash flow, the creditworthiness and experience of the project developers, why the project is being constructed and what can be negotiated between a lender and a borrower.

- Project debt is a loan from a lender directly to a project company. It is senior debt and will have the project as security for the loan. An example of this is Coastal Gas Link pipeline is owned by Trancanada corporation. If Coastal Gas Link borrows the debt component of financing directly in the markets it is Project debt.
- Corporate debt is a loan to a corporation that owns the project company. The money from the loan is advanced or loaned to the project company by the corporation that owns it. The security for the loan is the assets of the corporation which would include the project company for which the corporation borrowed the money. The corporation may have many loans that share its assets as security. An example of this is if Transcanada corporation borrows the debt component of the financing for Coastal Gas Link pipeline and then loans the money to Coastal Gas Link.

The source of the debt can be from public markets or private capital markets, banks, insurance companies, pension funds, governments, government institutions and others. The lenders in these markets can be from Canada, the USA, or anywhere around the world. The debt can be in the form of bonds issued by the borrower to the lenders or a note payable depending on the source of the debt.

Debt is most often categorized by the quality of the credit provided by the assets of the borrower. A debt credit rating agency assigns that category of credit. The better the debt credit rating the lower the interest rate and the better the terms of borrowing that can be negotiated.

The debt credit rating achieved will determine if a debt is investment grade debt, or less than investment grade debt. Less than investment grade debt is also known as junk debt or junk bonds. This is relevant in that many lenders are prohibited by the rules of their organizations from making loans that have a credit rating lower than investment grade. Some lenders are even prohibited from investing in anything but the highest levels of investment grade debt. There are many categories within the investment grade rating section with the very best of credits getting the highest ratings. Some of the highest ratings would be: governments, banks, pension funds and very large wealthy companies such as Apple or Microsoft.

The result of this is the lower the debt credit rating that is achieved: the fewer the number of lenders that are available to make loans; the interest rate is higher and the debt terms more restrictive.

iv. Equity Capital

Equity capital refers to that portion of an organization's capital which is paid into it by owners in exchange for the share of ownership in the company. These shares are called the equity shares. The equity shareholders are the owners of the company and have input into how the company is run.

The money to buy equity shares can come from: savings on hand, the sale of some other assets owned, or it can be borrowed if the borrower has other security for the loan or a guarantee of a credit worthy party.

D. Lenders' Basic Requirements to Consider a Request for a Loan

i. Risks to a Projects Economics and Financing.

Lender Requirements

A lender examines many things before determining if they will make a loan or not make a loan. Basically they are trying to make an assessment of the degree of certainty that might exist that they will get their money back plus interest if they make a loan. All projects are different but some of the things they look at are:

- The credit quality of the borrower.
- Previous loan experience.
- Other loans outstanding.
- Total debt if a loan is made.
- Is the borrower investing their own equity money in the project.
- What is the source of the equity money.
- When will the equity money be invested. Before the loan or at the same time.
- Term of the loan requested.
- Does the project have contracts for the required period of the loan.
- Is re-contracting required to provide the revenue to repay the loan.
- Is the revenue from the contracts sufficient to fully repay the loan during the contemplated term.
- Does the dividend and return of capital policy provide for full distribution of the cash flow on a regular basis. Are there any times and reasons why the cash flow will not be fully distributed to the equity holders.
- Will loan refinancing be required at the expiry of the loan term.
- Does the borrower have adequate insurance.
- What is the borrowers' knowledge of the business.
- Is the borrower an experienced builder and operator.
- Is the Board of Directors experienced in the business. What other boards have they sat on.
- Does or will the project company have an experienced management staff.
- Has a rating of the debt be issued by and independent debt credit rating agency.
- What is the Business Plan.
- Is the economic need for the project supported by:

- Market studies.
- Contracts with creditworthy parties.
- Financial forecasts.
- Engineering studies – capital and operating costs.
- Bids from qualified contractors.
- Environmental permits.
- Government approvals.
- Social license and First Nations consultation.
- Land owner agreements or settlements.

- What are the business risks.
- How will cost overrun management and financing plan.
- Will cost overruns affect the quality of the loan requested.
- Does the project have Final Investment Decision.

ii. Risks to a Project Economics and Financing.

Examining a major infrastructure project from the prospective of a lender, a debt rating agency or an equity investor includes the review of whether certain key risks are present. Some of these are: Completion risk, re-contracting risk, re-financing risk, cost overrun risk, force majeure, government risk, and others. These risks warrant mention and definition:

- Completion risk is that money is invested in a project but the project for any of many reasons is never completed and the money invested to that point in time is lost. This risk can present itself at any time until a project is constructed and operating. The risk can be any number of things such as strikes, a natural disaster, terrorism, a significant change in economic circumstances, regulatory and government risks.
- Re-contracting risk is contracts for use of a project expire before enough money has been collected from them to repay debt lenders and equity holders for their investments. The risk is the projects customers do not enter into new contracts at that time and the project will not have enough money to repay its debt and equity obligations.
  - The assumption on building many infrastructure projects is that the project has a long term economic need even if the initial contracts are for a shorter period than that required to collect enough money from the customers to repay all parties. It is usually further assumed that the projects contracts with its customers can be renewed when they expire. Ideally the initial contracts would be of sufficient term that all parties investing in the project

are repaid during the term of the initial contracts. That is not always possible so it can affect the decision to build or not build a project, or for lenders to provide financing or not.

- Re-financing risk is when a replacement financing or financing extension is required but cannot be achieved. This can result in a loan default and problems for both the lender and borrower.
  - An example could be a rate regulated project has an expected useful of life of at least forty years. The project is able to obtain initial loan financing for only twenty years because the initial project contracts with the customers are for twenty years. The amount to be charged to the project's customers, approved by the regulator, will result in it taking forty years for the projects owners to fully recover the project investment and expected profit. The project equity investors' plan is to renew and extend the project contracts at the end of twenty years and refinance a portion of the original loan at that time. At the end of twenty years money lending has dried up or the economic need for the project is not as great as anticipated twenty years earlier. No refinancing loan can be found and the loan cannot be repaid.
- Cost overrun risk is the risk that the cost to construct a project is greater than its estimated cost to build. A lender to a project is going to want to know: who is going to pay for those excess costs, how they are going to pay for them, and if the project economics are negatively affected as a result. A cost overrun plan acceptable to a lender is a necessary condition of achieving a debt financing.
- Force majeure is a provision found in contracts and generally provides relief to a debtor in a contract from having to pay their contract obligations under certain circumstances. The circumstances of a force majeure are generally beyond human control. An earthquake for example could cause enough damage to a project that it has to shut down for a period and accordingly the project will have reduced cash flow during that time. Such an event would cause the triggering of force majeure contract provisions. The financing contracts and the contracts for use of the project will contain terms spelling out what happens during and after that time. The terms will have to be acceptable to a lender for them to proceed with a loan.
- Government risk can mean many things including increased charges or changes to regulations that have a negative impact on the projects operation or its cost. For example a tax increase on a project, or on the projects' customers, can have the impact of reducing the expected income on the project and the cost of the projects' financings.

E. A Project Needs Financing in Three Different Phases, Three Different Business Models Compared and Where Will First Nations get the Money to Pay for Equity

i. Three Basic Phases of a Project and Financing Requirements

Infrastructure projects have at least three basic project phases. The financing requirements are different in all three phases. They are project identification and feasibility, construction, and in-service or operating.

The characteristic of each of these phases is:

1) The project identification and feasibility phase.
    - A study is made to determine economic need, social acceptance, and profitability.
    - The end result of this phase is a decision to build or not build; Final Investment Decision.
    - There is no project debt at this stage. All costs are financed with equity.
    - Money cannot be borrowed for these costs.
    - There is high risk of losing money invested if the project does not proceed to construction and operations.
    - No guarantee of First Nations debt would be available during this phase.
    - If First Nations have to invest in this phase and do not have the equity money they may need:
        - A gift of money.
        - A forgivable loan.
        - A carried interest.
        - To sell part of First Nations interest in the project to someone else for enough money to pay for their share of these costs.
2) The construction phase.
    - Final investment decision has occurred and project construction occurs.
    - Financing for the debt component can be arranged assuming the risk characteristics have been dealt with to the satisfaction of the lender.
    - Equity money is required.
    - First Nations are going to need a guarantee of their debt to borrow equity or look for other means of finance which may or may not be attractive: selling part of First Nations interest in the project for a profit to be used to pay for all or part of First Nations share. See below.

3) The in-service or operating period.
    - The project is operating and charging its customers for service.
    - Loans are repaid during this phase.
    - First Nations get money invested back and dividends from the profits of the project.

ii. Three Different Business Models Compared.

Following is a comparison of the characteristics of three different business models that are used for infrastructure projects. Each has different customer contracting and cost pass through characteristics that impact the level of risk and the availability and cost of financing. The three business models are: cost of service projects, projects with long term contracts but not cost of service, and projects with few or no long term contracts.

Cost of service business model:

- Uses a formula to determine the amount a project will charge its customers for use of the project. The basis of the formula is the customer is charged all of the businesses costs including: operating costs, property and other taxes, income taxes, interest expense on project debt, a return of the money invested in the project, and a return on equity or profit on the amount of equity invested.
- Are most often take-or-pay models meaning the customer is charged the cost of service whether they use the project or not.
- Suits businesses' like pipelines that will have the same base load customers every day.
- Charges to customers include cost overruns.
- Little or no competition.
- Low re-contracting and re-financing risk.
- Easiest to finance.
- Lowest cost of capital.
- Low probability of high profits or losses.

Long Term Contracts but not Cost of Service.

- Charges to customers are negotiated between the infrastructure project and its customers in advance of building project.
- Have risks that project costs will be higher than forecast and profits lower as a result. Also has some opportunity to exceed forecast profit if costs are lower than forecast.
- Contracts are probably take-or-pay meaning the customer is charged whether they use the project or not.
- Suits businesses’ like pipelines or hydro projects that have the same base load customers every day.

- Project is at risk for recovering cost overruns.
- Little or no competition.
- Easy to finance but possibly slightly higher interest rate and refinance risk than cost of service business.

Infrastructure Projects that has few or none long term contracts.

- Charges to customers are set at amount project developer thinks market will pay.
- Project at risk its costs will exceed revenues and losses incurred.
- Higher than expected profits also achievable depending on how much project is used.
- No cost of service or take or pay. Project only gets paid if customers use it.
- Suits businesses like toll roads, bridges, public transportation.
- No cost overrun protection.
- Possible competition from other projects if customers have other choices.
- Most difficult infrastructure project to finance.
- Highest cost of capital.

iii. Where will First Nations get the Money to Pay for Equity in a Project?

To achieve financing to pay for equity in a project, First Nations should contact the Coalition to see what help they can provide. The Coalition has been studying various sources of finance. An investment banker should also be engaged at some point, to help search out all possible sources. The sources of finance and its costs change from time to time.

Ideally First Nations will be able to achieve a low interest rate loan to pay for their equity in a project. To get that low interest rate loan they are likely going to need a government or project sponsor loan guarantee, or a loan from a government institution like the Canadian Infrastructure Bank. However, other than the Province of Ontario no other known government body has a guarantee program in place to help First Nations achieve financing for projects on their lands. It is unknown if the First Nations Financing Authority has the kind of lending capacity to finance a low interest loan for an equity interest in a major infrastructure project.

Other sources of financing might include:

- A carried interest provided by the project sponsor or some other party. A carried interest is most likely applicable during the pre-construction feasibility stage of a project. Pre-construction costs cannot be debt financed because no decision has yet been made to proceed to construct and operate the project and there is a high risk the money will be lost if the project does proceed to construction and operations.

a. A carried interest is negotiated at the time an equity purchase is negotiated with a project developer. The project developer gets to keep any equity return that may accrue during this period. If the project proceeds to the construction phase the project developer is paid for their share of the carried interest costs by First Nations at that time. If the project does not proceed, the project developer is not repaid. Carried interest could also apply to costs spent during the construction period but it may be difficult to negotiated depending on a number of things.

b. If First Nations negotiate a carried interest they want to be pretty sure they will be able to arrange equity financing either during construction or in-service period to repay the costs paid on their behalf.

- A forgivable loan works much the same way as a carried interest other than some party other than the project developer may enter into such an arrangement. Someone loans the First Nation money to pay for their share of the pre-construction feasibility phase of a project. If the project proceeds the First Nations arrange financing and repay the party that gave them the loan with interest. If the project does not proceed the loan is forgiven and does not need to be repaid.
- A grant of government for enough money to pay pre-construction period costs.
- First Nations sell part of their project interest to another party for profit and use the money to pay their equity costs or repay the carried interest or forgivable loan.

An infrastructure project that has reached the construction phase has been largely de-risked and a project that has reached the in-service phase has been de-risked even further. At those times equity in an infrastructure project can be sold for more than it will cost First Nations. It may be possible to combine a partial sale of right to equity to a third party for some combination of profit and a low interest rate loan.

The key to getting to this stage is getting past the pre-construction phase of the project either through the carried interest or forgivable loan or a grant from government.

F. Form of Term Sheet for a Guarantee of Debt, by the Government of Canada, for the Purpose of First Nations Purchasing an Equity Ownership Position in Major Infrastructure Projects Occurring on First Nations Lands

i. *Introduction:*

First Nations have many projects occurring on their lands and need to be included in those projects in a meaningful way if those projects are to proceed in a timely way.

The projects must have national and regional significance and be of economic and financial benefit to Canada and the First Nations. The projects that may be eligible for a Guarantee must demonstrably be economically and financially feasible in their own right able to stand on their own. The Guarantee is not for the benefit of the project or the project economics. The purpose of the Guarantee is to provide First Nations with an access to capital to make equity ownership investments in major infrastructure projects occurring on their lands. It has been demonstrated that the First Nations do not have access to capital to make these investments and it is viewed as being in the best interests of Canada and the First Nations to make such a Guarantee.

ii. *Terms and Conditions:*

The Projects:

The projects are major infrastructure projects occurring on First Nations Lands. They can include but are not limited to pipelines, LNG plants, gas processing plants, roads, wind farms, hydro and water control projects and others.

The projects have and benefit from cost of service or other long term contracting arrangements that provide a high probability of financial success and quantifiable risk.

iii. *Guarantor:*

The Guarantor is Her Majesty the Queen in Right of Canada (“Canada or Guarantor”).

iv. *Project Proponents:*

Depending on the project, the Project Proponents may be or include: major infrastructure companies having high creditworthiness and significant assets, corporations owned by sovereign nations or First Nations corporations with significant long term take or pay contracts with corporations having significant assets and creditworthiness.

v. *Borrowers:*

The borrowers are corporations formed and owned 100% by First Nations for the specific purpose of equity ownership in major infrastructure projects (“Borrower”).

vi. *Lenders:*

The lenders are financial institutions or financiers that will purchase debt securities to be issued by the Borrower or make credit facilities available to such Borrower ("Lenders").

vii. *Federal Loan Guarantee:*

The Guarantee shall be an absolute, continuing, unconditional and irrevocable guarantee of payment of the guaranteed debt. The lenders shall not be bound to pursue or exhaust their recourses against the Borrower before demanding payment from the Guarantor. The Lenders will not accelerate the debt.

viii. *Financing Structure Construction Period:*

In all likelihood the Borrowers will be required to make their proportionate share of equity contributions to fund project construction costs during the construction period. It is anticipated the project will have project debt financing in the 65 to 75% range for the construction costs and that the required equity contributions will be for the remaining 25 to 35% of the costs.

The financing structure will be flexible enough to allow each borrower to raise debt, by way of: bank credit facilities, commercial paper, a bond or series of short term bonds maturing at the end of the construction period and start of the operations, the end of the in-service period, or some other date to be determined that will facilitate the financing.

Not all debt draws will be completed by the end of the construction period in that the project may continue to incur construction period costs after the date of start of operations or the in-service period and as a result there may be continued draws of the Guaranteed Debt beyond the date of the start of operation or in-service.

The financing terms with the Lenders will have to be drafted to provide for such an occurrence.

ix. *Financing Structure - the In-Service Period:*

The Guaranteed Debt during the construction period will be refinanced by loans or bonds at the start of the in-service date. The principal amount of the refinancing will not exceed the then outstanding principal amount of the Guaranteed Debt, provided however that the amount of debt to be refinanced may be increased beyond the in-service date or date of the initial refinancing.

x. *Guaranteed Debt:*

The total maximum amount of guaranteed debt will be the subject of negotiation between the First Nations and Canada. Determining factors include but are not limited

to: the percentage of project equity the First Nations are able to negotiate to purchase, the debt to equity capital structure of the project, the capital costs of the initial capacity of the project, and the capital costs of certain qualifying project expansions that will add capacity and revenue generating contracts to the project.

It is anticipated: the project equity component will be in the range of 25 to 35% of the project costs and First Nations will negotiate a 30% equity ownership position.

xi. *Term of the Guaranteed Debt*

The Guaranteed Debt repayment will be the subject of negotiation between the First Nations, Canada, and the Lenders. It is anticipated the projects will have a useful life of between 25 and 40 years and that there will be an initial project contract period for each of the projects of 15 to 25 years and one or more contract extension negotiations beyond the initial project contract expiry date. An objective will be to have the Guaranteed Debt repayment schedule correlate to the capital recovery of the project costs through the amortization of the project costs and with the DSCR.

Taking into account the charges to revenue generating contracts of the project may require a project amortization rate that starts at a low level and increases through the years to achieve somewhat level tolls it is anticipated the Guaranteed Debt repayment period will have either a simple mortgage style amortization, a level amortization ending at specific date or be tied to the project amortization schedule and include a balloon repayment and finance renegotiation at some future date near the end of the initial project service contract expiry date.

It is anticipated the projects will be financed with either a series of bullet style bonds of varying maturities or amortizing loans or bond issues. At any rate there will be at least one repayment of the Guaranteed Debt in each year.

xii. *Conditions Precedent:*

Conditions precedent to be negotiated but include at least provision to the Guarantor for review and satisfaction with:

The Project:

- A description of the project including:
    - Location and purpose,
    - Details of project guarantees and/or revenue producing contracts for service that are the financial underpinning for the project, including term and re contracting plans, risks etc.,
    - Debt equity ratio of the project,
    - The project amortization plan,
    - Details of debt component of project financing,

- Confirmation by Credit Rating Agencies of indicative ratings for the projects debt equal to or higher than investment grade.
- Proof of sufficient insurance coverage,
- Proof all necessary permits, approvals, land-use agreements and other authorizations,
- Proof all necessary environmental legal and policy authorities have been complied with including First Nations agreement and satisfaction with same,
- Proof all necessary aboriginal consultation obligations have been complied with,
- Review of the technical aspects of the project by an Independent Engineer confirming project plans are reasonable and in keeping with good practice.

The First Nations Borrowers:

- The agreement from Project Sponsors of First Nations right to purchase equity in the project and the amount of such equity.
- If the equity agreed is to be a number of dollars the forecast percentage of equity of the total project equity and of the total project cost that number of dollars represents.
- If the equity agreed to is a percentage of the total equity of the project, the forecast number of dollars that percentage of equity represents.
- Other terms of the agreement with the Project Sponsors (prospective Term Sheet attached).
- Confirmation by Credit Rating Agencies of indicative ratings for the First Nations Corporation of ratings not less than the debt rating of Canada.
- Report of the Lenders of prospective financing.
- Anticipated debt repayment schedule and terms and the maximum exposure of Canada to the Guaranteed Debt at any point in time.

xiii. Events of Default:

Events of default to include but not necessarily limited to:

- The DSCR falls below an agreed to level.
- Failure to satisfy covenants in the Financing Documents between the Borrowers and the Lenders and to cure the same within 30 days,
- Misrepresentation, fraud, or breach of material representation,
- Bankruptcy, restructuring and insolvency of a Project or a Borrower,
- Termination or unenforceability of a key project revenue contract that is not replaced by another agreement or other revenue with 30 days,

- Sale or Change of Control of the Borrower,
- Abandonment of the project,
- Breach or termination of any contract of the borrowers,
- Unauthorized sale of any material project assets,
- Failure to comply with the covenants and representations of the Financing Agreements and such failure is not cured within 30 days,
- Failure to fund or maintain the Debt Service Reserves and cure same within 30 days,
- Failure to pay principal or interest within 5 business days of due date.

xiv. Security:

The security for the Guaranteed Debt shall include:

- The assets of the Borrower including Debt Service Reserves,
- All contracts of the Borrower,
- The shares of the Borrower,

The security for the Lenders will be the Guarantee of Canada.

xv. Permitted Debt and Additional Debt

The Borrower will not incur any other debt during the construction period other than the Guaranteed Debt and trade payables incurred in the ordinary course of business other than debt or liens to be negotiated.

During the course of a project it is often advantageous to Equity Owners to consider an expansion of the project. The First Nations equity holders may wish to participate in the project expansion and wish to take on additional debt to finance their participation in the project expansion. The terms and conditions of such additional debt will need to be negotiated with Canada.

xvi. Right to Audit

The Guarantor and the Lenders shall have the right to appoint Independent Engineers or ensure Auditors to ensure the project is being developed, maintained and operated in manner consistent with good practice. The cost of such audit will be borne by the Borrowers.

xvii. Cost Overruns

The financing of cost over runs and the Borrowers obligation to fund such overruns will need to be negotiated with the Project Developers**.** While project cost overruns need to

be financed it is expected that additional revenue will be paid through the revenue generating contracts in the same manner as the forecast cost without the cost overruns.

xviii. *Change of Control*

A change of control of the Project or the Borrower is subject to review of Canada.

xix. *Distributions*

There shall be no distributions to the shareholders of the Borrower: when the DSCR is lower than the specified level yet to be determined, during the construction period, or when an Event of Default has occurred which has not been cured during the cure period.

xx. *Debt Service Reserve*

The Borrower at all times will maintain Debt Service Reserves in a dedicated reserve account in an amount equal to debt service (principal and interest) obligations of the Borrower for the forward looking 6 month period. The Debt Service Reserve is for the benefit of the Guarantor in the event that the Guarantor is required to make payment to Lenders under the Guarantee then it shall be entitled to immediate reimbursement of such amount from the Debt Service Reserve.

xxi. *Reporting*

The Borrower will provide regular financial and operational reports for the projects and statements of compliance with the Covenants and Representation and Warranties at the expense of the Borrower.

SECTION VI: Coalition Project Identification and Capacity Support

1. What the Coalition Can Do

The Coalition will act as a "toolbox" to provide coordination and capacity support to the communities involved in the project including:

- Coordination and assistance in resourcing of a feasibility and engineering study to determine commercial viability of the project.
- Assistance with sourcing creditable project partners (industry experts)
- Assistance with bringing different levels of Government to the table
- Guidance with the application of project ownership tools including: corporate structures, wealth management and benefit sharing models, taxation implications, innovative financing models (loan guarantees)
- Application of First Nation led environmental standards and processes
- Community capacity readiness, gap analysis, and support
- Facilitate effective and timely communication between all project partners / communities

2. What the Coalition *Won't* Do

The Coalition will not undertake, use resources, or participate in any activity outside of its mandate established by its members including:

- Negotiate or make decisions on behalf of an individual or group of First Nations
- Act as project managers
- Take an interest in profits generated by a project
- Speak on behalf of an individual or group of First Nations
- Decide who participates in a project
- Get involved in matters that are deemed or known to be political in nature

Ultimately, the Coalition is a technical support tool that responds to the requests made by member First Nations. The Coalition does not lead an interest in the project, the communities are the leaders.

3. Adopted Scoring Criteria - Based on Member Input

Criteria	Rank	Weight	Scoring system
Environmental Stewardship	1	25%	· Strong potential to meet environmental stewardship criteria = 100% · Some potential to meet criteria = 50% · No potential to meet criteria = Do Not Pass
Number of First Nations impacted and interested in participation	2	20%	· All impacted FN's or more than 10 FN's = 100% · At least 75% of impacted FN's or between 5 and 10 FN's = 75% · Majority of impacted FN's or between 2 and 4 FN's = 50% · Minority of impacted FN's or one FN = Do Not Pass
Magnitude of First Nations economic benefits	3	18%	· Majority equity ownership available = 100% · Between 10% and 50% equity available = 75% · Other meaningful economic benefits available = 50% · No meaningful economic benefits available = Do Not Pass
Commercial viability	4	15%	· Commercially viable & financeable = 100% · Commercially viable but not financeable = 50% · Not commercially viable nor financeable = Do Not Pass
Capital cost of the project	5	12%	· >= $1 billion = 100% · >= $500 million = 75% · >= $100 million = 50% · <= $100 million = Do Not Pass
Meets Canada's or BC's definition of a major project	6	10%	· Meets definition = 100% · Does not meet = 0%
Total		**100%**	

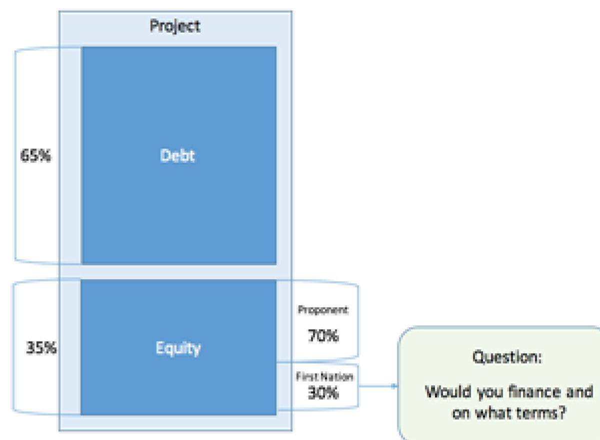
SECTION VII: Coalition Case Studies

1. The Strawman

The Strawman Project case study is a financial and operational description of a cost of service major infrastructure project. Its purpose was to get opinion from the major Canadian banks as to whether First Nations would be able to borrow money to purchase an equity ownership position in such a project.
The Strawman package contains ninety pages of project description and financial information forecasted for 40 years. The title of the package is "The Strawman Major Infrastructure Project, Request for Indicative Financing Terms". The package was sent to the heads of global energy and/or infrastructure and eventually to the Capital Markets groups of the banks in Calgary.

Each of the banks responded similarly. Typically money for equity purchase could not be borrowed without the provision of other security or a guarantee of governments or other credit worthy parties. One of the banks went on to add, sometimes financing could be arranged if the project is rich enough and the interests of the parties are aligned.

Strawman Equity Financing
Question asked of Banks by Coalition



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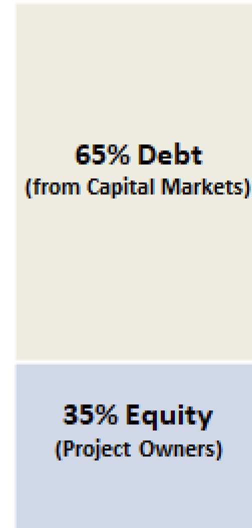
Bankers' Response - Typically cannot borrow $ for equity in project without other security or guarantee

Project company borrows first 65% of money from capital market lenders.

(Lenders condition: No other debt)

Money for equity comes from outside of project:

1. Savings,
2. Other security, or
3. Guarantee from government or industry.



Following is a reduced size version of the Strawman Project that was sent to the banks. As stated above the 90 page Strawman includes over 70 pages of financial statements and analysis and was deemed to large to include in the handbook in its entirety. The full package is available to Coalition members if they require it.

The Strawman Major Infrastructure Project

Request for Indicative Financing Terms

3/25/2016

First Nations Major Projects Coalition
Strawman Major Resource Infrastructure Project
Request for Indicative Financing Terms

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First Nations Major Projects Coalition
Strawman Major Resource Infrastructure Project
Request for Indicative Financing Terms

Executive Summary:

First Nations in BC are saying they need to be a part of Major Resource Infrastructure Projects that are occurring on their lands. However in past experiences, when First Nations have negotiated an ownership position in profitable major infrastructure projects on their lands, they have not been able to arrange financing to effect the ownership position, or at least at terms that would give them a profit.

Of the list of infrastructure projects that are planned to occur on First Nations lands, no specific project has been identified for ownership by First Nations at this time. However, a growing number of First Nations have formed the First Nations Major Projects Coalition ("the Coalition") for the purposes of examining how being a part of major resource projects on their lands could be facilitated and how the environmental practices can be improved to meet their needs.

Amongst the objectives of the Coalition is to determine if they can obtain financing to make a purchase of equity in the infrastructure projects and under what terms and conditions. In that regard the group has had discussions with the Government of Canada about Federal Loan Guarantees.

The Government of Canada has requested a report from the Coalition of, amongst other things, financing and revenue sharing options.

Accordingly the Coalition has directed the preparation of a Straw Man Projects Request for Financing Terms ("the Request"). It is the wish of the Coalition to obtain indicative financing terms for the purchase of equity to inform the report to the Government of Canada.

The Strawman Project is a ten billion dollar pipeline having an equity component of financing of 35%. The First Nations would need loans of about one billion dollars to make an equity investment of 30% of the total equity.

Financial projections included in this package to assist in the evaluation of the Request have assumptions of: no Federal Loan Guarantee, interest rate on the financing is 9%, and a 25 year annually amortizing repayment schedule. Additional forecasts with other assumptions can be made available.

First Nations Major Projects Coalition
Strawman Major Resource Infrastructure Project
Request for Indicative Financing Terms

1. Introduction:

First Nations in BC are saying they need to be a part of Major Resource Infrastructure Projects that are occurring on their lands. However in past experiences, when First Nations have negotiated an ownership position in profitable major infrastructure projects on their lands, they have not been able to arrange financing to effect the ownership position, or at least at terms that would give them a profit.

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Accordingly the Coalition has directed the preparation of a Straw Man Projects Request for Financing Terms ("the Request"). It is the wish of the Coalition to obtain indicative financing terms for the project described herein.

2. The Financing Proposal – Straw Man Project

2.1. Purpose

The financing is required to purchase, an equity interest in a major infrastructure project occurring on First Nations lands ("the Project").

2.2. The Borrower

The borrower will be a First Nations owned enterprise; a corporation or a general partner corporation of a First Nations limited partnership. The borrower will not be the First Nations bands that are owners of the enterprise. First Nations will own shares or a limited partnership interest in the First Nations enterprise.

2.3. Security

The security for the financing will be a First Secured position in the First Nations' enterprise's share of the cash flow from the equity investment in the project. The source of the Strawman project's cash flow is from fee for service contracts with highly creditworthy parties who own an LNG plant or a hydrocarbon resource or both. No financing support will be available from other First Nations' band revenues.

The equity purchase agreement will provide for certainty that the equity cash flow is paid out to the enterprise on a regular periodic basis thus ensuring cash flow to the First Nations Enterprise to service the financing.

2.4. The Amount

The amounts assumed for the First Nations Straw Man Project financing is one billion dollars ($ 1,000,000,000) being 30% of the equity in a project with a capital cost of ten billion dollars and a debt to equity ratio of 65/35. The amount is determined by multiplying the percentage of equity interest to be purchased by the total capital cost of the project and by the percentage of that project that is financed by equity versus debt. While the actual equity ownership the First Nations may be able to achieve may be less than a 30% interest the precedence for a 30% equity ownership position is the First Nations of the Mackenzie Valley had a one-third interest in that project and the First Nations on the Pacific Trails Pipeline negotiated a 30% equity interest in that project. The precedence is discussed further later in this document.

Typically the total equity shareholdings of all equity shareholders in a project will be 30% to 50% of the total capital of a project. All equity shareholders are entitled to their share of the equity cash flow from the project equally and proportionately to the equity interests of all other equity shareholders. The equity interest of all equity shareholders in the project would rank behind all levels of secured or unsecured financing of a project; except that the total of all such secured or unsecured financings of a project would not exceed the total project debt component – being 50% to 70% of the total project cost.

There are three points in time in a project development when equity holders – including the First Nations Enterprise - could be required to purchase the equity and require financing to complete the purchase. The three points in time to make the investment are ranked below in the order of the time of greatest preference and of least risk to the time of least preference and greatest risk. This is not the order in which project costs will be incurred or that project developers will invest equity dollars.

2.4.1. **Investment required at the start of the project in-service period**.

The project in-service period is the date that the construction of the project is complete and billing of the fee for service is to begin. If the investment is required at the start of the in-service period the First Nations' enterprise will need:

- A termed out financing amortizing over the length of the initial project fee for service contracts. The amount will be equal to 100% of the equity purchase price and the repayment term is expected to be twenty to twenty-five years, and
- A working capital loan equal to one year's debt-service requirement.

2.4.2. **Investment required at the start of the project construction period**.

If the investment is required at the start of the construction period the First Nations' enterprise will need to borrow:

- A construction period loan equal to 100% of the equity component of the construction cost,
- Amounts required to service the construction period loan including interest payments and any debt repayments if required,
- A termed out financing amortizing over the length of the initial project fee for service contracts in an amount sufficient to repay 100% of the construction period loans that exist at the beginning of the in-service period, and
- A working capital loan equal to one year's debt-service requirement for the term of the in-service period.

2.4.3. **Investment required at the preconstruction permitting and development stage.**

If the investment is required in the pre-construction, permitting and development periods, the First Nations enterprise will need to borrow:

- 100% of the cost of the pre-construction period including the amount of any interest payments required during this period,
- A construction period loan equal to 100% of the equity component of the construction cost,
- Amounts required to service the construction period loan including interest payments and any debt repayments if required,
- A termed out financing amortizing over the length of the initial project fee for service contracts in an amount sufficient to repay 100% of the construction period loans that exist at the beginning of the in-service period, and

- A working capital loan equal to one year's debt-service requirement for the term of the in-service period.

2.5 The Term

It is expected that each of the pre-construction periods and the construction period will be three to five years in length. The total project in-service period is forecast to be forty years – being the expected length of the Hydrocarbon Export Permits that the project developers will receive from the Government of Canada. The typical initial contract period for the majority of fee for service contracts will be twenty to twenty-five years. For the purposes of this Request we have assumed a 25 year period.

The term of the financing will ideally be equal to the forty year length of the in-service period but in any event not less than the twenty to twenty-five year length of the initial contract period.

2.6 Debt Repayments

It is expected that periodic debt repayments will be made such that either the total amount of the financing for the equity is kept in lock step with the unrecovered capital of the project over the forty year length of the in-service period or in equal annual amounts over the twenty to twenty-five year length of the initial contract period (but in an accumulated amount not less than the accumulated annual recovery of capital).

2.7 The Interest Rate and Payments

Interest payments will be made at the dates required in the financing. Input is requested on interest rates that will be applicable to an equity purchase financing. Assumptions have been made in the financial forecasts included in the package for the purpose of evaluating that request.

2.8. Covenants

Typical covenants as required – to be negotiated.

2.9. Management Team

The First Nations Enterprise will recruit and hire a strong, experienced, credible management team to manage their interest and the financing.

3. Straw Man Project(s) Description:

Many new pipelines, expansions of existing pipelines, gas plants, LNG plants, and coastal shipping and handling facilities have been proposed to be constructed on First Nations lands in British Columbia. These projects are in the national interest in that they are necessary for Canada to find new markets for its abundant hydrocarbon resources; given traditional markets in the US have either a declining requirement for Canadian hydrocarbons and/or at best, are oversupplied and offer pricing at a steep discount to world prices.

The Projects are infrastructure projects in the national interest. These include, but are not necessarily limited to:

- Pipelines and all related equipment for the transportation and handling of any kind of hydrocarbons ("Pipelines"),
- Natural gas gathering systems and processing plants ("Gas Plants"), and
- LNG Plant - Natural gas liquefaction, jetty, holding tank, and power generation facilities

Other types of projects are occurring on First Nations lands that are not included in this Request. The primary purpose of those projects is the extraction of resources from the earth for sale in commodity markets (base metals, oil and gas, forestry).

3.1. The Pipelines

The Pipeline projects could be any pipeline project in BC. The pipelines typically have a diameter of 30 to 48 inches and vary in length, purpose and construction cost. They may be constructed on flat lands, along river valleys, in mountains, or in the ocean. One thing they have in common is they cross First Nations' lands.

The larger pipelines are typically constructed by, and 50% to 100% owned by, large North American infrastructure companies. These companies transport the hydrocarbons for others for a fee. They do not own the hydrocarbons, nor do they take any risk on the sale of, the sales price or the cost of, the hydrocarbons.

In some cases the pipelines are owned by the hydrocarbon resource owner. Those companies may retain ownership throughout the pipeline life but often dispose of the pipeline to pipeline companies either before or after construction.

The pipeline companies do not own or take risk on the cost of, or the sale price obtained for, the hydrocarbons transported. They transport the hydrocarbons for a fee (cost of service) that must be paid whether the pipeline is used for its intended purpose or not.

The fee for service charged includes:

1. Recovery of capital invested,
2. An agreed return on the capital invested. The return includes interest expense on debt financing and an after tax return on equity invested,
3. Operating expenses,

4. Property and other taxes, and
5. Annual inflator for all or part of the fee for service.

The individual components of the fee for service will be discussed in more detail later in this document.

The fee for service can be either government regulated or it can be negotiated between the pipeline shippers (resource owners or buyers) and the pipeline company and not subjected to regulation.

The regulated returns and risks to the pipeline company are typically lower than the returns and risks of a negotiated contract.

More recent practice when the hydrocarbon is for export has been for the hydrocarbon owner and the pipeline company to negotiate a fee for service. The regulators role in this scenario is largely to confirm agreement between the parties and the arrangement is not adverse the public interest.

3.2. The Gas Plants.

The Gas Plants and collection systems are located near the gas fields. Their purpose is to remove unwanted things (water, CO_2, SO_2 etc.) from the gas and to separate other valuable liquids (ethane, propane, butane, condensate) from Methane as desired and prepare the gas to be pipeline ready.

The Gas Plant may be owned by the owner of the hydrocarbon resource or by an independent mid-stream service company.

The Gas Plant will set its fees for service in much the same manner as a pipeline negotiated contract. It may have one customer or many customers with differing contracts, depending on the service they require.

The operating cost and other taxes of the Gas Plant will be a higher proportion of the total fee for service than the pipeline because of higher labor requirements, higher energy costs, and higher carbon tax payments.

Completion risk of a gas plant may be lower than those of a Pipeline in that the risk of writing off pre permit and pre construction costs should be lower because of the smaller land footprint of a Gas Plant. Other risks should be about the same as those of the Pipeline.

3.3. The LNG Plants.

LNG plants can be owned by the owner of the hydrocarbon resource or by a separate owner that charges a fee for service for liquefaction to the owner of the hydrocarbon resource. Furthermore the owner of the hydrocarbon resource may also own the LNG Plant but still operate it as a fee for service business.

When the LNG Plant owner is also the owner of the hydrocarbon resource the owner of the plant will take risk on the cost of the hydrocarbon and on the sales price of LNG. When the owner of the LNG Plant does not own the hydrocarbon resource or any scenario when the LNG Plant owner charges a fee for liquefaction to the owner of the resource, the LNG Plant will take not take risk on the cost of the hydrocarbon or the sales price of LNG.

If the owner of the LNG Plant charges a fee for service it is assumed the charges will be determined similar to the method described here-in for the negotiated fee for a Pipeline. In other words the rate of capital recovery and the return on equity components should be in a similar range to those of a Pipeline.

Because of the nature and location of the LNG Plants the pre permit and pre construction costs are likely much greater than those of a Pipeline or a Gas Plant. Also when the LNG Plant owner is also owner of the hydrocarbon resource, they are the project developer and often incur some pre construction costs related to the Pipeline and the Gas Plant development. Accordingly the completion risk for an LNG Plant is often much greater than the completion risk for a pipeline or gas plant.

4. Discussion of Fees for Service (Also known as tolls)

As stated earlier the fees for service typically include:

- Recovery of capital (depreciation),
- An agreed return on the capital invested. The return includes interest expense on debt financing and an after tax return on equity financing,
- Operating expenses,
- Property and other taxes, and
- An annual inflator of some or all of the components of the fee for service.

Following is discussion of these components.

4.1. Recovery of Capital.

While there can be more than two components to the capital invested in a project: senior debt, subordinated debt, equity and other, the major infrastructure projects being examined typically have two. A debt component which is commonly 50% to 75% of the total capital and an equity component which is commonly S25% to 50% of the capital invested. Likelihood is the equity component will be in the 30% to 35% range for a project that is toll regulated and likely in the 35% to 45% range for a negotiated contract for an export project.

The rate of capital recovery for a pipeline is usually linked to some permit(s), financing or contractual arrangement as opposed to the useful life of the asset. In the straw man

scenario it is assumed that the total capital recovery period will be equal to the length of the Government of Canada Resource Export Permit(s) – which is assumed to be forty-years. While the actual rate of capital recovery in the negotiated fee for service contracts will be the subject of negotiation it is also reasonable to assume the same fee for service will be charged in each year of the term of the contract period. The factor most often adjusted to achieve this level toll or fee is the capital recovery rate. The result is the capital recovery rate will be different in almost every period while the fee charged for service remains the same. However the total capital recovery for the initial contract period, assuming 25 years, would likely be at least 60% if the hydrocarbon resource export permit has a term of 40 years. The actual rate of capital recovery for any specific project will only be known once the negotiations have been concluded by the hydrocarbon resource owners and the major project infrastructure owners.

The capital recovery rate for an LNG Plant or Gas Plant may be more tax driven than related to the other factors particularly if the plant owners are foreign corporations. However for the purposes of this analysis it is assumed the capital recovery rate would be similar for each of an LNG Plant, a Gas Plant and a Pipeline.

4.2. Return on Capital Invested.

The return on capital invested includes both the actual interest expense paid on the debt component project financing and an after tax return on the equity invested in the project. The return-on-equity is determined by the regulator in the regulated scenario and is the subject of negotiation between the infrastructure owner and the resource owner in the negotiated scenario. The return-on-equity for a regulated pipeline is probably lower than the negotiated scenario; probably in the 9% to 11% range for a regulated pipeline versus an 11% to 14% range for a negotiated contract.

4.3. Operating Expenses, Property and Other Taxes

Full recovery of operating expenses, property and other taxes is usually allowed when project charges are regulated. In a negotiated fee structure an allowance for these items is negotiated and included in the fee for service. If these costs are higher than negotiated, the project owner takes the loss on the difference, or gains if the actual costs are lower than negotiated.

4.4. Annual Inflator

It is typical to include a cost inflator in the negotiated contract. While most contracts are not available for public inspection, one pipeline reviewed before the National Energy Board with a negotiated contract had a provision for an annual 2.5% inflator of the entire fee for service including capital recovery and return on capital invested. This potentially offsets any risks of cost inflation and construction cost overruns and potentially provides for much higher returns on equity for the negotiated fee pipeline

over those of the toll regulated pipeline; particularly if cost increases or overruns do not materialize.

5. **Discussion of Risks:**

When the fee for service is negotiated versus regulated, the infrastructure owner company will often take greater risk, but will likely earn greater returns on equity invested. The greater risks for the infrastructure owner company could include:

- Project completion risk - loss of investment in certain pre permit costs and preconstruction costs if the project does not get constructed,
- Cost overrun risk - capital costs in excess of the agreed or estimated project costs,
- Re contracting risk – 100% of capital invested is not recovered in the initial contract service period. The infrastructure owner could be at risk of recovery after the initial contract period expires,
- Re financing risk – capital is not available at key refinancing points because of recessionary or direct project related factors,
- Project delay risk – project is not able to start operations at the expected date for any number of reasons,
- Inadequate project hydrocarbon resource supply risk,
- Hydrocarbon price risk – lower sales prices than necessary to recover capital or earn a return,
- Natural disasters force majeure risk,
- Geopolitical risk.

The risks apply to all components of a value chain. For example if an LNG Plant construction is delayed it can affect the Pipeline, the Gas Plant and the resource extraction operations.

5.1. Completion Risk

Probably the greatest risk is the loss of the investment in preconstruction period costs if a decision is taken to not build the project. If the project is regulated and is in the public interest, the regulator may allow the project company to recover preconstruction period costs of a project that does not proceed, in the fees for service of other regulated projects that company operates. However in all likelihood the project company will absorb that loss if the fees for service are not subject to regulation.

Once project construction has started the completion risk is low. The project developers - large energy companies, sovereigns and other market players - are well capitalized firms. Financing will be in place before the projects are started. Although project size and scope changes may occur if unexpected changes in international politics and expected trading relationships should

materialize, they should not affect project completion once significant construction expenditures have been made. The hydrocarbons are marketable in many parts of the world once they are on board a ship and may cause project developers to market volumes in the spot markets while they seek replacement firm contracts.

5.2. Cost Overrun Risk

Some recent examples have the project infrastructure company taking risk on 50% of capital cost overruns and the other 50% being allowed for recovery in the fees for service in the initial contract period. In all likelihood the share of the overrun risk taken by the infrastructure fee-for-service company will be a deferral of the capital cost overrun recovery, plus carrying costs thereon, until after the initial contract period ends. The export permits issued by the Government of Canada may be for period of forty-years and the initial contracted agreement for service may be for only a period of twenty-five years. In that instance the recovery of the cost overrun and accumulated capitalized return could start in year twenty-six.

5.3. Re Contracting Risk.

Capital recovery may be more certain for a project that has its fees for service regulated than one that does not. While initial capital recovery rates may be approximately the same in both a fee for service regulated project and a negotiated fee for service project, the regulated company may apply for, and often be allowed, a higher capital recovery at some point in time if it becomes obvious the useful life of the project may be shorter than initially envisioned. Higher capital recovery during the initial period may not be available for the contracted fee-for-service company; possibly giving it a higher re contracting risk than the regulated company.

Having stated the above, the need for faster recovery of capital for a Pipeline or Gas Plant is not considered probable and re-contracting risk should be considered low. The typical reasons for requiring accelerated return of capital are the anticipated supply or demand are not what was planned. This should not be a problem for these projects even if current supply demand fundamentals are out of balance.

- World demand – although oversupplied at this time – is expected to continue to grow,
- The resource supply in western Canada is estimated to far outlast the initial pipeline contract period.
- Even if the fees for service are not regulated, the projects still need to meet “used and useful tests” of Canadian regulatory bodies. Stated simply there will not be two competing pipelines constructed to service one LNG plant. To the extent a resource owner wants to continue to monetize a hydrocarbon asset offshore of the west coast, there will not likely be any better alternative than to continue the contracts for use of the infrastructure constructed for that purpose.

5.4. Refinancing Risk

Refinancing risk can be managed in a number of ways if there is no event of default in key covenants including no changes in existence of underlying project support contracts.

5.5. Project Delay Risk

Project delays cost money and cause risk. Care will be taken by project developers to make sure all infrastructure components necessary to get a hydrocarbon to market – including on shore and offshore - are coming together at the same time. What happens if the project is delayed beyond the expected in-service date will be covered in the supporting contracts. We cannot comment on that as we have not seen how this is being handled by project developers. It could be the pipeline company for example starts collecting its fee for service on a date certain whether the other components are in place or not, or it could be its charges are deferred until all components are complete. A risk none-the-less exists that expected cash flow may not start on the planned date and financings will need to anticipate this.

5.6. Inadequate Natural Resource Supply Risk.

Studies show abundant natural resources are available to support the projects throughout their useful life and for the purposes of this Request it is assumed that project sponsors either already have, or will be able to obtain, the necessary volumes of those resources necessary to support their projects.

5.7. Market Oversupply and Commodity Price Risk.

A condition of hydrocarbon market oversupply, and pricing below the cost of the resource, exists at this time. It has in the past and in all likelihood, if history tells us anything, the condition will exist again the future.

The Strawman fee-for-service infrastructure businesses do not take any direct commodity supply or price risk. They may none the less be impacted whenever significant supply in excess of demand imbalances exist.

The market will self-correct for the imbalances as long as world demand does not contract on a prolonged basis. Market forces will force the price down until the highest cost suppliers are no longer financially viable and new supply stops becoming a competing force. At the same time natural decline rates in hydrocarbon wells will ultimately decrease even that supply that is economic.

The risk, to these Strawman projects during these times, is limited if the project developers are well capitalized businesses, that are not overly reliant on debt for project expenditures. The project developers of these Strawman projects are amongst the largest energy companies in the world and have very sustainable balance sheets.

5.8. Natural Disasters Risk (Force Majeure).

There is no way to predict a natural disaster – such as a tsunami, hurricane, tornedo or earthquake. While they potentially affect project cash flow most matters of force majeure in North America are resolved in a matter of days and full fees under contracts are paid.

5.9. Geopolitical Risks.

Whatever the geopolitical risks might be, LNG is ship delivered and it can be rerouted to any consumer of LNG in the world. It does not have to go to its contracted destination if that destination provides unacceptable risk. A growing percentage of world LNG supply and demand is managed by parties that purchase, ship and resell into the market. Even when LNG from a specific plant is contracted to one buyer, the molecules of LNG the buyer receives, may not have come from the LNG plant that supply is contracted from. With global players marketing LNG around the world – molecules will be exchanged to provide the greatest flexibility for the supply and the market.

6. **Precedent First Nations Equity Ownership Negotiations and Financing.**

The First Nations Limited Partnership ("FNLP"), a partnership of sixteen First Nations with lands from Kitimat BC to Summit Lake BC, negotiated to purchase 30% of the equity in the Pacific Trails Pipeline project. The purpose of that prospective pipeline was to deliver natural gas to an LNG project on the west coast of British Columbia. The FNLP were not required to fund pre-construction period costs pursuant to the terms of their equity purchase agreement but were required to fund the equity component of costs during the construction and in-service periods. There was no requirement for FNLP to fund any part of the project senior debt component.

The First Nations of the FNLP did not have the money to purchase the equity in the project and needed to borrow the money. When they investigated achieving the financing they discovered they were unable to borrow the money – at least at an interest rate that would leave them with a positive net cash flow.

The Aboriginal Pipeline Group of the Mackenzie Valley ("APG") negotiated a one-third ownership stake in the Mackenzie Valley Pipeline project. The APG were required to fund both the senior debt and equity components of financing through all stages of the project development including the preconstruction, permitting and project development stage. They did not have the money and would have been required to borrow it to achieve their ownership position.

Only equity money is invested during the preconstruction period. Fortunate for the APG they did not need to borrow the money for the preconstruction period as a financing for those costs without significant guarantee would not likely have been possible. Rather a major North American pipeline company funded the APG costs during this period, without recourse to the APG if the project did not proceed, in exchange for a right to purchase a 5% equity stake in the project.

It is assumed the debt component of the project financing – required by the APG during the construction and in-service periods -would have been senior debt and ranked pari passu with project debt of other shareholders (Shell, Imperial Oil, Exxon Mobil). The project shippers – Shell, Imperial, Exxon Mobil – had shipping contracts with the pipeline sufficient to pay the full cost of service including return of investors capital and return on equity. The APG hired a strong experienced management team. Accordingly it is assumed the APG could have borrowed their share of the project senior debt.

The project never proceeded to the construction stage so it is unknown whether or not the APG could have achieved the subordinated financing required for the equity component for the construction and in-service periods.

There is no doubt the APG was better organized than the FNLP in that they had a management team and structure in place made up of retired officers and senior people from the pipeline industry. The FNLP had no similar business structure. Whether this would have made a difference in the APG's ability to finance is unknown.

7. Financial Statements and Assumptions.

Following are Financial and Statistical statements and Assumptions for a Strawman infrastructure project. The purpose is to determine if First Nations could achieve financing to purchase equity in a project and on what terms.

7.1 The Financial Statements

There are two sets of financial statements. (1) For 100% of the project, and (2) For the First Nations share of the equity ownership in the project which is assumed to be 30%.

The financial statements for 100% of the project include statistical schedules of the calculation of the revenues for the project (the fee for service) and all items of expense. The subordinated debt and interest expense of the First Nations used to purchase the equity interest is not included in these financial statements. AFUDC (Allowance for Funds Used During Construction) a non-cash item is calculated at this level and capitalized along with interest on debt during construction in the financial statements.

The First Nations financial statements include: their investment, the First Nations debt financing, related interest expense on the debt for the purchase of the equity and cash flows from the project. As a corporation structure is assumed for the project the First Nations' revenues are made up of dividends from the project. In addition to the dividend revenue the First Nations will receive a return of the capital invested as shown in the statement of cash flows. AFUDC is not included in the First Nations financial statements except that it is used to determine the amount of debt financing the First Nations require to purchase 30% of the equity. This calculation is shown on the First Nations Financing schedule 8. Interest expense on debt during the construction period has been expensed.

7.2 The Strawman Project Assumptions:

The project chosen for the Strawman case study is a pipeline that will prospectively have negotiated fee for service contracts with highly creditworthy energy companies.

The parties contracting for use of the pipeline already own, or will be able to acquire the lands necessary, to supply the hydrocarbons throughout the term of the Government of Canada export permits which is assumed to be 40 years.

The fee for service contracts with the hydrocarbon owners will be for an initial period of 25 years.

The capital recovery included in the annual fees for service over the initial contract period will be 60% of the amount invested. It is assumed the remaining capital will be recovered over the following 15 year period.

The capital recovery includes proportionately both the senior debt and the equity investment. That component of capital recovery related to the senior debt is used to retire the debt and that component related to the equity is paid to equity shareholders through redemption of shares as the capital is received. The result is the relationship of senior debt to equity is maintained throughout the life of the project.

The pipeline will be financed 65% with senior debt and 35% with equity. The senior debt will have a first priority charge on the pipeline revenues after payment of operating expenses and taxes. All senior debt of the project will rank equally with all other senior debt of the project if provided by more than one party.

The interest rate on the senior debt will be included in the fee for service of the pipeline company at actual cost. It will flow through to the hydrocarbon owning contracting parties. The rate used in this case study is 5%. While the interest rate on the senior debt impacts the total fee for service it does not change the net income or dividends of the project.

For this case study it is assumed that the pipeline infrastructure company will secure 100% of the senior debt on a project finance basis and accordingly the First Nations will not need to provide a share of the senior debt as was the case for the Mackenzie Valley First Nations.

While it is possible that First Nations would be required to provide the project with a proportionate share of the senior debt it has not been included in the First Nations financial statements in this package as we assume a Corporation Structure. Provision of senior debt financing by equity shareholders would be more common in a joint venture partnership project structure; as was the case in the Mackenzie Valley.

The return on equity on the 35% equity component is assumed to be 11% after tax.

The pipeline owners will recover actual operating expenses and other taxes in the annual fee for service.

The pipeline company will have pre-permit development costs before it is known if regulatory and other government approvals will be granted and prior to a Final Investment Decision ("FID") by the hydrocarbon owners to proceed, defer, or abandon the project.

7.3 First Nations Assumptions:

The amount of the financing the First Nations will require to purchase the equity interest is $ 1 billion including interest on the loan until cash begins to flow from the project during the in-service period.

The financing is assumed without a Federal Loan Guarantee.

An interest rate of 9% on the financing has been used in the First Nations Financial Statements. A Canadian bank and a Financing Authority advised that if financing for the equity purchase could be achieved that 9% would likely be the low end of a range of interest rates that would be required. This guestimate was given by those parties without the benefit of this package.

The amortizing loan will be required for a period of 25 years being the initial assumed contract period.

The loan repayments are annual at 4% of the amount over the 25 year period.

The First Nations will recruit a team to manage the business affairs of their enterprise including an experienced financial officer.

Note:
On the following pages are abbreviated financial statements for both 100% of the Strawman Project and for the First Nations 30% share. They are abbreviated in both content and in the number of years of information and are included to provide a sense of some of the financial analysis that was provided to the banks. The Strawman case study is over 90 pages of information including approximately 70 pages of financial forecasted information. It is just too large to include in the handbook.

Strawman Pipeline
First Nations Financing Requirements and Interest Expense

($ Millions)

	2017	2018	2019	2020	2021
Equity Purchase Debt Financing					
Repayment Schedule for Initial Equity Sub Debt	0	0	0	0	0
Opening Balance	0.0	57.7	144.6	384.8	711.3
Capital Additions (incl. Working Cap)	56.2	81.9	227.2	299.5	246.2
Sub Total	56.2	139.5	371.8	684.3	957.4
AFUDC Debt Funded by Equity	0.91	3.2	8.5	17.6	27.8
Project AFUDC	(2.0)	(7.1)	(18.6)	(38.8)	(61.1)
Interest on Equity Debt During Construction	2.5	8.9	23.2	48.1	75.1
Debt Repayment Required	0.0	0.0	0.0	0.0	0.0
Debt Shortfall - Refinancing	0.0	0.0	0.0	0.0	0.0
Debt Shortfall Repayment					
Closing Balance Equity Sub Debt	**57.7**	**144.6**	**384.8**	**711.3**	**999.2**
Cumulative Equity Sub Debt for Repayment Calculation	57.7	144.6	384.8	711.3	999.2
Cumulative Shortfall for Repayment Calculation	0.0	0.0	0.0	0.0	0.0
Equity/Rate Base funded by Sub Debt (Balance is AFUDC)	93.11%	88.18%	86.66%	83.32%	78.50%

	2022	2028	2034	2040	2046
Cash Flow Summary- First Nations					
Toll Revenue	124.7	123.0	110.1	102.0	92.4
Less: Operating Costs	0.0	0.0	0.0	0.0	0.0
Pipeline Margin	124.7	123.0	110.1	102.0	92.4
Changes to Working Capital	0.0	0.0	0.0	0.0	0.1
Dividends from Project					
Share Redemptions - Return of Capital	10.9	18.7	21.3	29.6	44.1
Sub Total	124.7	123.0	110.1	102.0	92.5
Interest on Senior Debt	0.0	0.0	0.0	0.0	0.0
Repayment of Senior Debt	0.0	0.0	0.0	0.0	0.0
Cash Flow After Senior Debt Service	124.7	123.0	110.1	102.0	92.5
Interest on Equity Sub Debt	(89.0)	(67.2)	(45.6)	(24.0)	(2.4)
Repayment of Equity Sub Debt	(40.0)	(40.0)	(40.0)	(40.0)	(40.0)
Remaining Cash Flow Available to First Nation	(4.3)	15.9	24.6	38.0	50.1
Less: First Nation G&A	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)
Cash Flow to FN's	**(5.3)**	**14.9**	**23.6**	**37.0**	**49.1**
Cumulative Cash Flow to FN Enterprise	**(5.3)**	**31.7**	**174.4**	**362.3**	**629.4**

Strawman Pipeline Corporation
Statement of Income - 100% of Project

	2022	2028	2034	2040	2046
Revenue					
Transportation Revenue	969	985	1,002	1,022	1,041
AFUDC	0				
Total	969	985	1,002	1,022	1,041
Operating Expenses					
Operations and Maintenance	68	77	87	97	110
Property Tax	98	89	76	61	40
Depreciation Expense	104	178	203	282	420
Total Expenses	270	344	365	440	569
Earnings Before Interest and Tax	699	641	637	582	472
Interest Expense	320	294	250	204	136
Income Before Tax	379	348	387	378	336
Income Tax	0	0	91	137	175
Net Income	379	348	296	241	161

Statement of Income - First Nations' 30% Interest

	2022	2028	2034	2040	2046
Revenue					
Transportation Revenue	0	0	0	0	0
AFUDC	0	0	0	0	0
Dividend Income	116	108	93	78	57
Total	116	108	93	78	57
Operating Expenses					
Operations and Maintenance	0	0	0	0	0
Property Tax	0	0	0	0	0
Depreciation Expense	0	0	0	0	0
First Nations G&A Expenses	1	1	1	1	1
Total Expenses	1	1	1	1	1
Earnings Before Interest Expense	115	107	92	77	56
Interest Expense on Project Senior Debt	0	0	0	0	0
Interest on Sub Debt Financing for Equity	89	67	46	24	2
First Nations Share of Project Net Income	26	40	46	53	53

First Nations Financial Ratios

	2022	2028	2034	2040	2046
Interest Coverage	1.29	1.59	2.01	3.21	23.32
Debt Service	0.89	1.00	1.07	1.20	1.31
Debt to Cash Flow	0.12	0.15	0.19	0.32	
Cash Flow to Debt	8.40	6.73	5.22	3.11	0.00
Leverage	0.979	0.930	0.873	0.727	0.000

Strawman Corporation
Balance Sheet (100% of Project)

($ Millions)

	2022	2028	2034	2040	2046
Assets					
Current Assets					
Cash & Amounts on Deposit	162	164	167	170	174
Accounts Receivable	81	82	83	85	87
Total Current Assets	242	246	250	255	260
Line Pack	0	0	0	0	0
Property Plant and Equipment:					
Pre Construction & Permitting Costs					
Plant Under Construction	0	0	0	0	0
Plant In Service	9,883	9,883	9,883	9,883	9,883
Accumulated Depreciation	-104	-959	-2,313	-3,775	-5,930
Net Property Plant and Equipment	9,779	8,924	7,570	6,108	3,953
Total Assets	**10,021**	**9,171**	**7,821**	**6,363**	**4,213**
Liabilities and Shareholders' Equity					
Current Liabilities					
Accounts Payable & Short Term Debt	242	246	250	255	260
Current Portion of Long-Term Debt	74	132	138	199	153
Total Current Liablilities	316	378	389	455	414
Long-Term Debt	6,283	5,669	4,783	3,771	2,416
Shareholders' Equity:					
Shares	2,775	2,533	2,148	1,733	1,122
Retained Earnings	647	591	501	404	262
Total Shareholders' Equity	3,423	3,123	2,650	2,138	1,384
Total Liabilities and Shareholders' Equity	**10,021**	**9,171**	**7,821**	**6,363**	**4,213**

Balance Sheet - First Nations 30% Interest

($ Millions)

	2022	2028	2034	2040	2046
Total Current Assets	0	0	0	0	0
Investment in Project Company	985	774	549	330	102
Total Assets	**985**	**774**	**549**	**330**	**102**
Current Portion of Long-Term Debt	45	40	40	40	0
Subordinated Debt for Equity Investment	919	679	440	200	0
Retained Earnings	21	55	70	90	102
Total Liabilities and Shareholders' Equity	**985**	**774**	**549**	**330**	**102**

Strawman Corporation
Statement of Cash Flows - 100% of Project

($ Millions)	2022	2028	2034	2040	2046
Operating Activities					
Net Earnings	379	348	296	241	161
Depreciation (Capital Recovery)	104	178	203	282	420
Cash Flow from Operations	483	526	499	523	581
Investing Activities					
Capital Expenditure	-	-	-	-	-
Changes in Working Capital	(74)	(16)	(6)	(16)	120
Total Investing Activities	(74)	(16)	(6)	(16)	120
Financing Activities and Dividends					
Equity (Shares) Issued	-	-	-	-	-
Repayment of Long-Term Debt	(67)	(116)	(132)	(183)	(273)
Equity (Shares) Redeemed	(29)	(50)	(57)	(80)	(119)
Dividends Paid	(386)	(360)	(310)	(260)	(189)
Total Financing Activities	(483)	(526)	(499)	(523)	(581)
Increase (Decrease) in Cash or Equivalents	(74)	(16)	(6)	(16)	120

Statement of Cash Flows - First Nations 30% Interest

($ Millions)	2022	2028	2034	2040	2046
Operating Activities					
Net Earnings of Strawman Project	26	40	46	53	53
Add back Depreciation	-	-	-	-	-
Capital Recovery - Share Redemptions	9	15	17	24	36
Cash Flow	35	55	64	77	89
Financing Activities and Dividends					
Subordinated Equity Debt Additions	-	-	-	-	-
Repayment of Subordinated Equity Debt	(40)	(40)	(40)	(40)	(40)
Net Cash Flow to First Nations	5	(15)	(24)	(37)	(49)
Total Financing Activities	(35)	(55)	(64)	(77)	(89)
Increase (Decrease) in Cash or Equivalents	-	(0)	(0)	(0)	(0)

2. **Kenney Damn Water Release Facility - (To follow – in preparation)**

3. **Strawman 2 – (To follow – in preparation)**
    - Investigating a Range of Financing Options

4. **Run of the River Hydro Project –(To follow - in preparation)**
    - Description, finance and assessment of key economic drivers.

5. **Transmountain Pipeline – (To follow – in process – awaiting key information)**

6. **Coastal Gas Link – (To follow - in process – awaiting key information).**
    - Assessment of First Nations purchase of equity offered for sale by Transcanada

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