

**LISTUGUJ MI'GMAQ GOVERNMENT**

**FINANCIAL ADMINISTRATION BY-LAW**

**BY-LAW NO. 2013-001**

A by-law to regulate the management and control of funds and establish the financial administrative structure of the Listuguj Mi'gmaq Government

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**LISTUGUJ MI'GMAQ GOVERNMENT**

**FINANCIAL ADMINISTRATION BY-LAW**

**BY-LAW NO. 2013-001**

**WHEREAS** the *Indian Act* provides that a Council may, subject to the approval of the Minister of Aboriginal Affairs and Northern Development, make by-laws for the following purposes:

- (a) the appropriation and expenditure of moneys of the Community to defray its expenses;
- (b) the appointment, duties, and remuneration of officials to conduct the business of Council; and
- (c) any matter arising out of or ancillary to the exercise of the powers described in subsection 83(1) of the Act; and
- (d) any matter arising out of or ancillary to the exercise of the powers described in subsection 64 (1).

**AND WHEREAS** the Council of Listuguj has determined that it is desirable and necessary that a financial administration by-law be established;

**NOW THEREFORE** the Council of the Listuguj Mi'gmaq Government, at a duly convened meeting, enacts the following by-law:

**PART 1**

**TITLE**

1. This By-law may be called the "Listuguj Mi'gmaq Government Financial Administration By-law".

**PART 2**

**DEFINITIONS**

2. In this By-law,

**“Act”** means the *Indian Act*;

**“annual audit”** means an audit by an auditor of the Listuguj Mi’gmaq Government consolidated financial statements for the preceding fiscal year according to generally accepted auditing standards;

**“annual budget”** means the revenues and expenditures projected and approved by Council under sections 29 and 30 for the next fiscal year and includes any supplementary amendments to the annual budget made under section 31;

**“annual audited financial statements”** means the consolidated financial statements audited by an auditor as part of conducting the annual audit;

**“auditor”** means a person or company that is designated as a chartered accountant, certified general accountant or a certified Aboriginal finance manager and is a member in good standing with the registered accounting association that regulates that designation or, in the opinion of the Finance Committee, possess sufficient knowledge and experience to justify the duties of the position;

**“capital works”** means major physical assets owned or controlled by the Community, including roads, bridges, utilities, water supply and septic systems, ditches and water spillways, buildings, waste control facilities, land, landscaping and fencing;

**“Community”** means, the members of Listuguj, and where the context requires its assets, all as defined by the Indian Act;

**“community funds”** means all moneys received and managed by Council, or its designate, for the use and benefit of Listuguj, including all revenues, grants, contributions, loans, earnings from business enterprises and, unless otherwise indicated in this By-law, but does not include

- (a) money received by Listuguj on behalf of an individual, corporate entity or partnership, and
- (b) any money received and managed by Council for which Council has approved an alternative arrangement under to section 8 of this By-law;

**“Council”** means the elected members of the Listuguj Mi’gmaq Government (LMG) which includes the Chief of the Government;

**“Directorate”** or **“Department”** means an administrative division or agency of the LMG established from time to time and includes

- (a) internal organizational units thereof,
- (b) any board, tribunal, commission or committee, and

(c) any corporate entity controlled by the Community, including a partnership;

**“Director of Finance”** means the person appointed under section 24;

**“Employee”** includes, for the purposes of this By-law, any contractors who administer, manage or control community funds;

**“Executive Director”** means the employee or contractor appointed by OIC as the administrator of the Listuguj Mi’gmaq Government under section 22;

**“Expenditure By-law”** means a by-law enacted pursuant to section 83(2) of the Act;

**“Finance Committee”** means the committee of the Listuguj Mi’gmaq Government established pursuant to sections 10 and 11 of this By-law;

**“Fiscal year-end”** means the date specified in section 26;

**“Funding agreement”** means any written contract between Listuguj and another party or parties, pursuant to which money is to be paid to Listuguj;

**“General Account”** means any bank account in the name of Listuguj and created pursuant to section 46;

**“Listuguj”** means the Community, being a band represented by the Listuguj Mi’gmaq Government, as defined under the *Indian Act*;

**“LMG”** means, the Listuguj Mi’gmaq Government

**“Order-In-Council (OIC)”** means a decision of Council at a duly held Council meeting and recorded in writing;

### **PART 3**

#### **APPLICATION**

3. This By-law governs the management and control of Listuguj community funds and the administrative organization of the LMG to manage and control said funds.

4. This By-law applies to the Council of the LMG and to all departments, directorates, officers, contractors, and employees in receipt of or with responsibility for Listuguj community funds.

## **PART 4**

### **COUNCIL**

#### **Role of Council**

5. Council must conduct the business of Listuguj in a manner that ensures sound financial management by, among other things, carrying out the following duties and responsibilities:
- (a) ensuring that the annual budget of the LMG does not have expenditures exceeding revenues;
  - (b) planning and budgeting financial and other resources for local services and capital works projects;
  - (c) setting policies and procedures to safeguard the resources of Listuguj and maximize the well-being of its members;
  - (d) ensuring Council and all employees of the LMG have full financial accountability at all times to all members of Listuguj;
  - (e) ensuring the LMG meets all financial obligations with third parties;
  - (f) ensuring all investments in financial instruments are made in accordance with prudent investor standards;
  - (g) overseeing the work of all employees of the LMG, through the Executive Director, and ensuring that all employees of the LMG who manage and control community funds are
    - (i) responsible for maintaining accurate financial records, and
    - (ii) qualified for the position to which they are appointed by LMG's administrative services;
  - (h) permitting access by all Listuguj members, under the supervision of Council or its designate, to Listuguj by-laws, annual budgets, annual audited financial statements and annual audit reports of the LMG;
  - (i) ensuring that all financial records of the LMG, including computer files, are kept in the administration office in a secure and safe condition, and are not removed from the office without the authority of Council, such authority to be evidenced by OIC; and

- (j) ensuring the sale of any assets owned by Listuguj is for no less than fair market value;
- (k) ensuring, with respect to any OIC presented to Council that has financial implications on the LMG, that the Council shall first obtain the recommendations of the Finance Committee before any decisions are made.

### **Duties**

- 6. Each member of Council must, in exercising his powers and performing his functions under this By-law,
  - (a) act honestly and in good faith and in the best interests of Listuguj; and
  - (b) exercise the care, diligence and skill of a reasonably prudent person.

### **Alternative Arrangements for Funding Agreements**

- 7. Council may, by OIC, approve any funding agreement.
- 8. Notwithstanding the provisions of this By-law, Council may by OIC approve an alternative arrangement other than the provisions of this By-law for the management of money received pursuant to the terms of a funding agreement, if the terms of the funding agreement require alternative arrangement.

## **PART 5**

### **FINANCE COMMITTEE**

#### **Role of the Committee**

- 9. The Committee must ensure the control and management of community funds in a manner that is consistent with prudent financial management practices by, among other things, carrying out the following duties and responsibilities:
  - (a) manage and control all transactions of funds, including the receipt, collection, expenditure and disbursement of Listuguj community funds;
  - (b) administer and supervise the compilation and preparation of information for the annual budget;
  - (c) prepare and present the annual budget to Council for its review and approval by OIC;
  - (d) ensure the completion and of an annual audit and presentation of the audit to Council for its review and approval by OIC;

- (e) administer and supervise the financial records and reporting systems of the LMG;
  - (f) ensure financial compliance with all contracts and funding agreements entered into by Council or any department or directorate, and report immediately any non-compliance to Council;
  - (g) report to Council on financial matters;
  - (h) provide advice to Council on financial matters;
  - (i) develop and present a list of candidates to Council for the position of Director of Finance;
  - (j) supervise and oversee the role and responsibilities of the Director of Finance; and
  - (k) oversee all other matters relating to the financial affairs of the LMG.
10. The Committee may prescribe any requirements for the form and content of the financial records and the accounting systems of the LMG that it deems necessary.

#### **Appointment of Committee**

11. Council hereby establishes a Finance Committee.
12. Council shall, by OIC, appoint five (5) members to the Committee and those members must include
- (a) the Executive Director;
  - (b) the Director of Finance
  - (c) two (2) members of Council; and
  - (d) the Chief of the Listuguj Mi'gmaq Government.

#### **Terms of Office**

13. Council must, by OIC, appoint the Executive Director to be a member of the Committee for as long as he/she is designated the Executive Director.
14. Council must, by OIC, appoint the members of the Committee prescribed under section 12 for a term of office not exceeding the term of office for a member of Council.



15. A member of the Committee may be removed from office
  - (a) by the Chair if the member without valid reasons has missed three (3) consecutive scheduled meetings of the Committee;
  - (b) by a majority of Council and with the recommendation of the Chair; or
  - (c) by a unanimous vote of Council supported with a Council OIC.
16. If any position on the Committee is vacant for any reason, including under section 15, then Council must appoint, by OIC the members needed to fill any vacancies in the Committee that result from that change.

### **Election and Role of the Chair**

17. The Director of Finance shall serve as Chair of the Committee.
18. The term of office for the position of chair shall be two (2) years and a person may serve as a chair for one (1) or more consecutive terms.
19. If the Chair resigns, the Committee must elect from its members one (1) other person to serve as chair for the balance of the term remaining.
20. The Chair shall
  - (a) supervise and direct the work of the Committee;
  - (b) undertake administrative duties as necessary to oversee and implement the work of the Committee; and
  - (c) preside at meetings of the Committee.

### **EXECUTIVE DIRECTOR**

#### **Role of Executive Director**

21. (1) The Executive Director shall act as the senior administrative officer of the Committee and must assist the Committee in carrying out its duties.
- (2) The duties of the Executive Director include
  - (a) ensuring the creation and maintenance of adequate records of Committee minutes, resolutions, decisions and other proceedings;
  - (b) maintaining security of finances and financial documents by

- (i) establishing safe storage in security boxes or safes,
  - (ii) establishing secure storage with security codes and locks on files, cash and valuable documents, and
  - (iii) ensuring no more than two (2) people, in addition to himself, have knowledge of the security codes, combinations or possession of keys to locked files;
- (c) monitoring all contracts and funding agreements entered into by Council or any department or directorate for financial compliance and reporting immediately any non-compliance to the Committee; and
- (d) completing any other task assigned by the Committee.

**22. The Executive Director**

- (a) shall be appointed by Council by OIC for such term of office as it shall provide; and
- (b) must be a member of Listuguj, but not an elected member of Council.

**DIRECTOR OF FINANCE**

**Role of Director of Finance**

**23. The Director reports directly to the Committee and must**

- (a) conduct the administration necessary to discharge the financial administration responsibilities of the Committee, including staff supervision;
- (b) maintain records of all information required to facilitate the annual audit;
- (c) compile and prepare information for the annual budget and any amended annual budget;
- (d) administer and maintain adequate and timely financial records and reporting systems that record all financial transactions of the LMG, including but not limited to copies of all vouchers, financial statements, cancelled cheques and correspondence relating to the financial business and reporting systems;
- (e) prepare and present to the Committee by the 20th day following each quarter, a financial statement for the previous quarter that includes a balance sheet and a statement of operations showing revenues and expenditures;

- (f) receive, record and deposit, or administer the receipt, recording and deposit of all money received in a timely manner;
- (g) ensure all accounts payable are paid in accordance with the procedures set out in this By-law;
- (h) complete any other task assigned by the Committee; and
- (i) ensure a detailed inventory of all Community assets having a reasonable estimate of fair market value over one thousand dollars (\$1000.00).

#### **Appointment of Director of Finance**

- 24. The Committee must develop a list of at least three (3) potential candidates for the position of Director of Finance and Council must, by OIC, appoint a person from the list.
- 25. Subject to the provisions of this By-law, the engagement and removal of the Director of Finance must be consistent with any personnel policies of the LMG.

### **PART 6**

#### **FISCAL YEAR**

- 26. The Fiscal year-end is March 31.

#### **ANNUAL BUDGET AND SUPPLEMENTARY BUDGET AMENDMENTS**

- 27. The Committee must prepare estimates of the projected revenues and expenditures of the LMG for the purpose of preparing the annual budget and as required for the preparation of supplementary budget amendments in the course of the fiscal year.
- 28. Each department director must prepare the department's annual budget and any supplementary amendments thereto for the operation of the department and must submit the budget and any amendments prepared to the Committee.
- 29. The Committee must prepare an annual budget, and any supplementary budget amendments, and submit them to Council for consideration and approval by OIC.
- 30. Council is solely responsible for the approval of the annual budget for each fiscal year.
- 31. Council may, by OIC, approve supplementary budget amendments to the annual budget.
- 32. The annual budget and supplementary amendments thereto become effective upon approval by Council, by OIC.

33. The annual budget and supplementary amendments thereto must be made available during regular working hours for inspection by any member of Listuguj, and copies are to be provided to its members upon written request to the Director of Finance. The annual budget and supplementary amendments thereto may be viewed on-line at LMG's website.

#### **ANNUAL AUDIT**

34. Council must appoint annually, by OIC, an auditor to conduct the annual audit, and prepare an annual audit report.
35. The auditor reports to Council.
36. The auditor must be entitled to access any information or records that are held by or in the control of the LMG and are necessary to complete the annual audit, including but not limited to
- (a) all books, records, accounts and vouchers;
  - (b) any information held by or under the control of a department director or any agent of the LMG that is necessary for the completion of the audit;
  - (c) all Council OIC's and by-laws; and
  - (d) any agreements, contracts, or related documents entered into or in control of the LMG, Council or any employee.
37. The annual audit must be conducted in accordance with generally accepted auditing standards, must include a general review of the adequacy of the accounting procedures and systems of control employed to preserve and protect the assets of the Community, and must be completed in no more than four (4) months after the fiscal year-end.
38. The Director of Finance must provide any assistance to the auditor required for the completion of the annual audit.
39. After the review of the annual audited financial statements and annual audit reports by the Committee, the auditor must present the statements and reports to Council.
40. Council must consider and vote on the annual audited financial statements and annual audit reports at a duly held meeting of Council and, if approved, the statements must be signed by the Chief and one (1) other person as designated by OIC.

## **Public Access**

41. Once Council signs the annual audited financial statements and annual audit reports, the Director of Finance must post copies of the statements and reports in such public places or on-line as determined by Council, by OIC.
42. The Director of Finance must retain the signed annual audited financial statements and annual audit reports, and any member of Listuguj may
  - (a) inspect the statements and reports during regular office hours; and
  - (b) directly or through an agent, make a copy of the statements, the reports or any part thereof.

## **PART 7**

### **FINANCIAL MANAGEMENT: DEPOSITS**

#### **General Requirements**

43. The Committee must ensure that all operating and savings accounts in the name of Listuguj are established at a chartered bank, trust company or credit union.
44. The Director of Finance must ensure the safekeeping of all LMG funds received and maintain a numbered receipt book for the funds.
45. Upon receipt of any community funds, the Director of Finance must ensure the following procedures are followed
  - (a) stamp all cheques immediately upon receipt with a stamp that designates the moneys for deposit into a General Account;
  - (b) cause such funds to be deposited into a General Account within three (3) days of receipt; and
  - (c) promptly issue a receipt in the correct amount to the payor.

#### **Bank Accounts**

46. The Director of Finance must, under the supervision of the Committee, ensure that all bank accounts held in the name of Listuguj, into which all LMG funds must be deposited, are maintained.
47. The Committee may authorize the Director of Finance to reallocate funds from one General Account to another Account for investment purposes or program and services delivery.

48. Funds in any Account must be administered by the Director of Finance.
49. The interest earned on LMG funds, must be paid to a General Account.

#### **FINANCIAL MANAGEMENT: RESERVE FUNDS**

##### **Reserve Funds**

50. (1) Subject to the provisions of any funding arrangement, Council may, by OIC, authorize the establishment of one or more reserve funds using LMG funds, designated by a name that includes "Reserve Fund".
  - (2) Reserve funds may be created only for any of the following purposes:
    - (a) the establishment and continuation of special LMG undertakings and projects;
    - (b) the construction or upgrade of LMG capital works;
    - (c) the satisfaction of the requirements of third party agreements.

#### **FINANCIAL MANAGEMENT: EXPENDITURES**

##### **Conditions of Expenditures**

51. Prior to any expenditure from a General Account, other than loans under section 60 of this By-law, the following conditions must be met:
  - (a) funds for the expenditure must be allocated and approved as part of the annual budget or supplementary amendments thereto; and
  - (b) the expenditure must be consistent with prudent cash management practices.

##### **Authorized Signatories**

52. (1) Any LMG purchase order, work order, agreement, contract or other obligation to make an expenditure from LMG funds must be signed by any two (2) of the following three (3) officials:
  - (a) the relevant department director;
  - (b) the Executive Director; and
  - (c) the Director of Finance.
- (2) For the signing of LMG cheques,

(a) Council may by OIC, designate up to five (5) individuals authorized to sign and the authorized signatories shall include the Executive Director; and

(b) all cheques must be signed by at least two of the persons so designated.

53. Notwithstanding paragraph 52(1), the officials or the Committee named below may, without counter signature, sign purchase orders and work orders for amounts up to and including the following limits:

<u>Title</u>	<u>Limit</u>
(a) department director	\$10,000
(b) Executive Director	\$50,000
(c) Director of Finance	\$50,000
(d) Finance Committee	\$250,000

#### **Expenditure Procedures**

54. The Director of Finance may distribute LMG funds among more than one General Account, if he determines that it is financially prudent to do so.

55. An individual designated under paragraph 52(1) may sign a purchase order or work order up to and including the amount specified in section 53 provided that the expenditure is part of the annual budget or a supplementary amendment thereto approved by Council.

56. The Committee must report to the Council no later than the last day of the month with the following information for the previous month:

(a) a summary of revenues and expenditures for the previous month;

(b) a cumulative summary of year-to-date revenues and expenditures;

(c) bank balances for all General Accounts; and

(d) a quarterly cash flow report showing annual projections for each department and year-to-date revenues and expenditures of each department.

57. Council must ensure that all expenditures for the LMG meet the conditions set out in section 51.

## **Petty Cash**

58. Council may, by OIC, for all its departments, establish and maintain petty cash funds to a maximum of one thousand dollars (\$1000), provided that
- (a) the OIC designates an employee of the LMG who is not an authorized signatory of the LMG to be responsible for the petty cash funds;
  - (b) the designated employee must
    - i. complete a voucher for each disbursement made,
    - ii. ensure that the total of disbursement vouchers plus the cash on hand equals the total amount of the fund,
    - iii. ensure reimbursement of the fund, in accordance with the vouchers, and
    - iv. charge each expense to the appropriate department account.

## **Travel Expenses**

59. All employees of the LMG must submit travel expenses to their Director for advance approval and the Director may approve such expenses, provided that the expenses are within the annual budget or supplementary amendments thereto.
- (a) On an annual basis, the Committee must recommend allowable rates of travel expenses and conditions of reimbursement to Council for its consideration and approval, by OIC.
  - (b) Where there have been no recommended changes the previous existing rates and conditions shall apply until amended by OIC.

## **FINANCIAL MANAGEMENT: LOANS, BORROWING AND DEBTS**

### **Loans**

60. Council may make, or allow to be made, a loan from LMG funds held in a General Account, provided that the following conditions have been met:
- (a) the loan must be for lease to own home programs;
  - (b) Council must have pre-authorized the loan by OIC;



- (c) funds for the loan must be allocated and approved as part of the annual budget or supplementary amendments thereto;
- (d) the loan must be consistent with prudent cash management practices and
- (e) terms and conditions of loans are set by Council, by OIC.

### **Borrowing and Credit Powers of Council**

61. Council may, by OIC, from time to time on behalf of Listuguj
- (a) borrow money in such manner and amounts, on such security, from such sources and upon such terms and conditions as they think fit,
  - (b) obtain credit for operational purposes,
  - (c) issue bonds, debentures, and other debt obligations either outright or as security for any liability or obligation of the LMG or any other person, and
  - (d) mortgage, hypothec, charge, whether by way of specific or floating charge, or give other security on the undertaking, or on the whole or any part of the property and assets of the LMG, provided that the conditions of borrowing have been met, and subject always to Aboriginal, Treaty, constitutional and legal restrictions on charge, pledge, mortgage, attachment, levy, seizure, distress or execution, including under the Indian Act.

### **Conditions of Borrowing**

62. Council must ensure that the following procedures have been met prior to passing an authorizing OIC under section 61:
- (a) if the amount to be borrowed is five hundred thousand dollars (\$500,000) or less, and if Council approves of the terms of the loan, then Council may pass an OIC authorizing the loan;
  - (b) if the amount to be borrowed is over five hundred thousand dollars (\$500,000), then Council shall give reasonable notice to the members of Listuguj before authorizing the loan by OIC and such notice shall be published in the local print, radio and electronic media commonly followed by the Community.

### **Collection of Debts**

63. In addition to requiring respect for the conditions of and repayment terms set at the time of the making of any loan, the Committee must seek, or cause to be sought, agreement for a repayment plan from each person or entity that is in default or arrears on monies owed to Listuguj.

64. The Committee must ensure that the repayment plan for any debt to Listuguj of one thousand dollars (\$1,000) or less is for a term not longer than twelve (12) months, unless otherwise approved by OIC.
65. The Committee must ensure that the repayment plan for any debt to Listuguj of more than one thousand dollars (\$1,000), other than under the lease-to-own housing program, is for a term no longer than twenty-four (24) months, unless otherwise approved by OIC.
66. Council must, by OIC, determine the amount of interest to be charged.
67. Council may, by OIC, set off or designate the Committee to set off, any amount owing to the LMG against any money owed to the debtor from the LMG.
68. For the purpose of section 67, the LMG may offset debts, at each offset, up to the following maximum of the amount owed:
  - (a) from wages, contractors fees or other remuneration, up to a maximum of thirty percent (30%) of the per week;
  - (b) from other sources, on the first five hundred dollars (\$500) or less owed, up to a maximum of one hundred percent (100%); and
  - (c) from other sources, for any amounts in excess of five hundred dollars (\$500) under paragraph 68(b) above, up to a maximum of fifty percent (50%).
69. The Director of Finance or his designate must render on a quarterly basis a statement of account to all debtors of the LMG.

#### **FINANCIAL REPORTING: INVOICING**

70. No person may make a payment on behalf of the LMG for the performance of work, supply of goods or rendering of services unless the charge in respect of such work, goods or services has been authorized
  - (a) pursuant to an OIC; or
  - (b) by a person delegated to authorize such payment under this By-law.
71. The Executive Director or his designate must ensure that an invoice is rendered, in a timely manner, for all work, goods or services that are provided and that require payment to or by the LMG.

#### **AWARDING OF CONTRACTS AND MAKING OF AGREEMENTS**

##### **Contracts and Agreements**

72. Council may, by OIC, approve any contract or agreement on behalf of the LMG, provided the following conditions must be met:
- (a) any expenditure required in the contract or agreement must meet the requirements under section 51;
  - (b) the department director responsible for managing the contract or agreement must recommend the contract to Council; and
  - (c) the Director of Finance must state to Council that the funds are available to pay the expenditure.
73. Council may, by OIC, designate the employees and the committee described below to approve any contract or agreement for up to the following limits without further OIC, provided the requirements under paragraphs 72(a) and (c) are met in advance, and provided that for this purpose, the statement of the Director of Finance as to the availability of the funds is made directly to the relevant employee or committee:

	<u>Title</u>	<u>Limit</u>
(a)	department director	\$10,000
(b)	Executive Director	\$50,000.
(c)	Director of Finance	\$50,000
(d)	Finance Committee	\$250,000

#### **Tendering Requirements**

74. (1) The Executive Director or Director of Finance may approve a contract, agreement or other obligation requiring an expenditure of fifty thousand dollars (\$50,000) or less without going to tender, if the purchase was approved in the annual budget or supplementary amendments thereto. In all cases, the said transaction shall be notified to the Finance Committee.
- (2) The Finance Committee may approve a contract, agreement or other obligation requiring an expenditure of two hundred and fifty thousand dollars (\$250,000) or less without going to tender, if the purchase was approved in the annual budget or supplementary amendments thereto. In all cases, the said transaction shall be notified to Council.
75. The Committee must put all contracts, agreements or other obligations requiring an expenditure of more than two hundred and fifty thousand dollars (\$250,000) to public tender, unless the LMG itself does the work.

76. For public tender, bids shall be sought from at least three (3) independent contractors. However, Council may, by OIC, authorize the Committee to consider less than three (3) bids, if less than three (3) bids are received by the tender closing date.
77. In emergency situations, telephone offers for goods and services up to ten thousand dollars (\$10,000) may be accepted by departmental personnel, providing a written confirmation from the supplier or contractor follows and is filed with the department director.
78. Invitations to tender must include;
  - (a) the time and date of closing;
  - (b) sufficient details from which comparable bids can be made;
  - (c) the time, date, and place tenders are to be opened; and
  - (d) the amount of any security deposit.
79. The tendering period is not to be less than five (5) working days, unless in an emergency situation.
80. All tenders are to be returned sealed and addressed to the LMG, clearly marked "Tendered for [*description of project*]" and the Director of Finance must record, or cause to be recorded, the time and date of receipt on the unopened envelope of tender.
81. All tenders received must be opened in public in the presence of the Executive Director and any department director responsible for the tendering process.
82. The name of the bidder and the project, and the date and amount of the bid must be recorded.
83. The lowest tender received must be accepted, unless Council has passed an OIC that
  - (a) approves another tender; and
  - (b) records the reasons why it is in the best interests of the Community to accept a higher tender.
84. Upon acceptance of a tender, it shall be ensured that
  - (a) a written contract is signed by the party accepting the contract and the LMG; and
  - (b) a copy of the written contract is kept as a record.

85. No disbursements or payment on any contract may be made without supporting documentation as required by any policies of the Committee.
86. The Director of Finance may retain a ten percent (10%) hold-back of final payment, or such greater amount as may be determined by the Committee, from all contractors until Council or its designate, approves all work as complete and satisfactory.
87. The Committee may establish any further policies and procedures for the tender process as it considers necessary.

## **PART 8**

### **CONFLICTS OF INTEREST**

#### **Definitions**

88. The following definitions apply to this Part:
  - (a) “personal gain” means any financial benefit; and
  - (b) “family member” means a spouse, including a common law spouse, children, parent, brother, sister, father-in-law, mother-in-law, uncle, aunt, grandparent, son-in-law, daughter-in-law, and also includes any relative permanently residing in the person’s household.

#### **General Conflict of Interest Rule**

89. A person who is a member of Council or the Committee, or is otherwise employed by the LMG or one of its departments must not use that office or employment for his own personal gain, the personal gain of his family member or to the detriment of the interests of the LMG.

#### **Disclosure by Members of Council and the Committee**

90. If a decision by Council or the Committee may result in a member of Council or the Committee, or his family member, receiving any personal gain, such member must make full and complete disclosure to Council or the Committee, as the case may be, of the details of the potential personal gain.
91. It shall be the duty of each member of Council and the Committee to disclose to Council or the Committee, as the case may be, any real or perceived personal gain of any other member or any other member’s family member.
92. A member of Council or the Committee must disclose his potential personal gain and the potential personal gain of his family member in one of the following ways, whichever occurs first:

- (a) at the meeting at which the Council or the Committee, as the case may be, first considers the decision that may result in the potential personal gain;
  - (b) at the first meeting after the member becomes aware of the potential for the personal gain; or
  - (c) in writing to the Council or the Committee, as the case may be, as soon as the member becomes aware of the potential for the personal gain.
93. Immediately after the disclosure set out in paragraphs 92(a) and (b), the member in potential conflict must not participate in any discussions or vote concerning the matter, and the minutes of the meeting must record the time that the member ceases participation in said discussion and vote; and
94. Council's specific procedures for conflict of interest guidelines shall be followed for Councillors.

#### **Disclosure by Employees**

95. If an employee of the LMG or his family member may receive a personal gain from a contract with the LMG, he must disclose his interest to the Committee in writing and thereafter refrain from taking part in any discussion or decision about the awarding of the contract.

#### **Liability to Account**

96. Council may hold any person who fails to follow the proper procedure for disclosure and abstaining from involvement under this Part responsible to reimburse the Community for any personal gain that he or his family member received.

#### **Suspension or Dismissal**

97. If any person, other than a member of Council or the Executive Director, violates the conflict of interest provisions, then the disciplinary procedures contained in the personnel policy of the LMG shall apply, and in the meantime the Executive Director may
- (a) suspend the person; and/or
  - (b) cancel all privileges and benefits of office or employment.
98. Subject to any personnel policy of the LMG, any person who is suspended or dismissed under section 97, must have a right to appeal the dismissal or suspension to Council.

99. If the Executive Director violates the conflict of interest provision, then the disciplinary procedures in the personnel policy of the LMG shall apply, and Council may

(a) suspend the person; and/or

(b) cancel all privileges and benefits of office or employment.

100. Subject to any personnel policy of the LMG that applies to the Executive Director, Council must, in a timely manner, give an Executive Director who is suspended or dismissed under section 99, an opportunity to speak to Council and explain any relevant circumstances.

## **PART 9**

### **NON-COMPLIANCE**

101. A decision made in contravention of this By-law is voidable by vote of a majority of Council.

## **PART 10**

### **AMENDMENTS AND REPEAL**

102. Amendment or repeal of this By-law must be made by a by-law enacted by Council.

## **PART 11**

### **GENERAL**

103. In this By-law, any words in the singular include the plural and words in the plural includes the singular and the masculine includes the feminine and neuter where the context requires.

104. If any provision of this By-law is held to be invalid, void, voidable or unenforceable for any reason, then the particular provision will be deemed severed from the remainder of this By-law and all remaining provisions of this By-law must remain in full force and effect.

**THIS BY-LAW, Numbered 2013-001 IS HEREBY DULY ENACTED** by the Council of the Listuguj Mi'gmaq Government, on the 15 day of January 2013, at Listuguj, in the Province of Quebec, Mi'gmaq Territory of Gespe'gewa'gi. A quorum of Council consists of (7) seven members of Council.

  
Chief Dean Vicaire

  
Chief Councillor Darcy Gray

  
Councillor Calvin Barnaby

  
Councillor Derek Barnaby

  
Councillor Brian Caplin Jr

  
Councillor Serge Gray

  
Councillor Delphine Metallic

  
Councillor Tracey Metallic

  
Councillor Wanda Metallic

  
Councillor Wendell Metallic

  
Councillor Kevin Methot

  
Councillor Sheila Swasson

  
Councillor Chris Wyzote