



TOWN OF FORT FRANCES
ADMINISTRATION & FINANCE DIVISION
TREASURY REPORT 2012/108

TO: Mayor Avis & Members of Council
FROM: Laurie Witherspoon, Treasurer
DATE: November 7, 2012
SUBJECT: By-Law No 6/98 Pacific & Western Bank of Canada Debenture Assignment to Wells Fargo Equipment Finance Company

BACKGROUND

In 1998 By-Law No. 6/98 authorized the borrowing, by the issuance of a Debenture, to finance a portion of the construction of a community auditorium, ice facility and water pollution control plant. Pacific & Western Trust Corporation was approved to finance the issuance of the debenture amortized over a twenty year period and payable in semi-annual installments of principal and interest. The final scheduled payment of this debenture will be on December 1, 2017.

Attached is a copy of the Pacific Western Notice and Acknowledgement of Assignment transfer to Wells Fargo Equipment Finance Company (the Assignee) all rights, title and interest. The document directs that all payments be paid directly to the Assignee or as the Assignee may otherwise direct. There are 11 scheduled semi-annual payments of \$194,997.48 remaining, with the next scheduled payment due on December 1, 2012 and the final scheduled payment due on December 1, 2017. The Town is required to endorse and return a signed Notice and Acknowledgement of Assignment to Pacific & Western Bank of Canada. It is recommended that By-Law No. 6/98 be amended to reflect the debenture transfer to Wells Fargo Equipment Finance Company.

RECOMMENDATION

The Administration & Finance Executive Committee recommends approval and endorsement of the Pacific Western debenture transfer to Wells Fargo Equipment Finance Company.

Council Approval of this Report Will Agree to the recommendation of the Administration & Finance Executive Committee to approve the Pacific Western debenture transfer, as provided in the Notice of Acknowledge of Assignment, to Wells Fargo Equipment Finance Company.



Pacific & Western

Bank of Canada

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

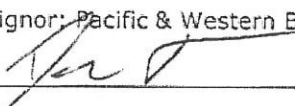
Pacific & Western Bank of Canada (the "Assignor") hereby gives notice, and The Corporation of the Town of Fort Frances (the "Corporation"), hereby acknowledges receipt of notice, that the Assignor has assigned and transferred to Wells Fargo Equipment Finance Company (the "Assignee"), whose offices are at Lansing Square, 2550 Victoria Park Avenue, Suite 700, Toronto, Ontario M2J 5A9, all right, title and interest in and to that Fully Registered Debenture issued by the Corporation to the Assignor under authority of By-Law Number 6/98 dated as of January 27, 1998 (the "Debenture") together with all instruments, certificates and other agreements executed in connection therewith along with all rights to receive payments thereunder from the Corporation. From and after the date of this Notice, all payments now or hereafter becoming due pursuant to the Debenture shall be paid directly to Assignee or as Assignee may otherwise direct.

In order to induce Assignee to accept such assignment, and in recognition of Assignor's and Assignee's reliance upon this Notice and Acknowledgement of Assignment, the Corporation hereby certifies, acknowledges and agrees to and with such parties as follows:

1. the Corporation acknowledges and agrees that Assignor has assigned to Assignee all of Assignor's right, title and interest in and to the Debenture as of the date hereof;
2. the Corporation shall make all remaining payments due and to become due under the Debenture directly to Assignee without offset or reduction as follows:
 - a. 11 scheduled semi-annual payments of \$194,997.48 (plus applicable taxes, if any);
 - b. next scheduled payment due on December 1, 2012;
 - c. final scheduled payment due on December 1, 2017.
3. the Corporation has not received notice and is not aware of any other sale, transfer, assignment, hypothecation, pledge, claim, security interest or encumbrance with respect to the Debenture, or the payments due thereunder, other than to or in favour of Assignee;
4. the Assignee has not made any express or implied warranties or representations as to any matter whatsoever, with regard to the Debenture and Assignee does not assume any obligations of Assignor;
5. the Corporation represents and warrants that the Debenture:
 - a. has been duly and validly authorized, executed and delivered by the Corporation;
 - b. is in full force and effect with respect to the Corporation;
 - c. constitutes the valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms;
 - d. is non-cancellable by the Corporation during its scheduled term except as provided in the Debenture;
 - e. is not and has never been in default and no scheduled payment or other amount due under the Debenture is, or has ever been, more than thirty (30) days past due;
 - f. complies with all applicable laws and regulations;
 - g. is not subject to any defense, setoff or counterclaim;
 - h. has not been prepaid.
6. the Corporation has executed one (1) original of the Debenture which it previously delivered to Assignor and the Corporation currently has no original in its possession;

7. the Corporation shall forthwith record the assignment and transfer of the Debenture, contemplated hereby, in its registry kept at its office in the Town of Fort Frances and shall provide to the Assignor and/or Assignee such further assurances and verification of such assignment, transfer and recordation as such parties may request from time to time.

Assignor: Pacific & Western Bank of Canada

By: 

Name: David Thoms

Title: Assistant Vice President

By: 

Name: Ross P. Duggan

Title: Senior Vice President, Lending

Certified, acknowledged and agreed to this _____ day of _____, 2012.

THE CORPORATION OF THE TOWN OF FORT FRANCES

By: _____

Name: _____

Title: _____

I/we have authority to bind the Corporation.



David Thoms
<DThoms@pwbank.com>
10/25/2012 01:13 PM

To "lwitherspoon@fort-frances.com"
<lwitherspoon@fort-frances.com>
cc
bcc
Subject Fort Frances Debenture

Hi Laurie, attached is a Notice & Acknowledgement Letter that we would like the Town to approve as part of its council meetings. I understanding you would need to change the By-Law at your monthly meeting in November. The Notice is not asking the Town to make any changes from the existing debenture, but merely confirm it make the change so the payments are being sent to Wells Fargo starting December 1, 2012. I can send you a word version if you like. Also, as I requested yesterday, can you also provide us a copy of the Town's general insurance policy just to confirm insurance as well as your HST number as Wells Fargo is requesting this. Thank-you in advance as I know this added time to your schedule. Please let me know if you have any questions

David Thoms
Assistant Vice President
Pacific & Western Bank of Canada
2002 - 140 Fullarton Street
London, Ontario, N6A 5P2
T: 519.675.4229 F: 519.488.1263 M:519.619.4048
www.pwbank.com

From: no_reply@pwbank.com [mailto:no_reply@pwbank.com]
Sent: Thursday, October 25, 2012 1:56 PM
To: David Thoms
Subject: scanned document



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David Thoms
<DThoms@pwbank.com>
10/12/2012 03:07 PM

To "lwitherspoon@fort-frances.com"
<lwitherspoon@fort-frances.com>
cc
bcc
Subject Fort Frances / Pacific & Western Bank of Canada Debenture
Jan 27, 1998

Hi Laurie,

I am writing on behalf of Pacific & Western Bank of Canada to let you know that we will be assigning the debenture purchased from the Town of Fort Frances to Wells Fargo on or before October 31, 2012. This will not change any payment amounts or dates but starting with the December payment, payment should be sent directly to Wells Fargo. They will be requesting that this assignment be acknowledged by the Town. I will provide more details as it comes available, but wanted to let you know in advance. Please let me know if you have any questions/concerns.

David Thoms
Assistant Vice President
Pacific & Western Bank of Canada
2002 - 140 Fullarton Street
London, Ontario, N6A 5P2
T: 519.675.4229 F: 519.488.1263 M: 519.619.4048
www.pwbank.com

TOWN OF FORT FRANCES

BY-LAW NO. 6/98

(Being a by-law to authorize the borrowing, by the issuance of a Debenture of Four Million, Four Hundred Thousand Dollars (\$4,400,000) to finance a portion of the construction of a Community Auditorium, Ice Facility and Water Pollution Control Plant in the Town of Fort Frances)

WHEREAS the Municipal Act, R.S.O. 1990, c.M-45, as amended, provides that, subject to the limitations and restrictions in such Act and the Ontario Municipal Board Act, R.S.O., 1990 c.O-28, the Council of the Corporation for the Town of Fort Frances (hereinafter called the "Corporation") may borrow money for the purposes of the Corporation and may issue debentures therefor;

AND WHEREAS by Resolution No. 51 passed in open Council of the Corporation on December 15, 1997, the Corporation authorized, accepted and approved the proposal of Pacific & Western Trust Corporation to finance the Corporation's issuance of a Four Million, Four Hundred Thousand Dollar (\$4,400,000) debenture (the "Debenture");

AND WHEREAS the Corporation, prior to issuing the Debenture, confirmed its most recent annual debt and financial obligation limit determined by the Ministry of Municipal Affairs and Housing in accordance with the applicable regulation and determined that the estimated annual amount payable in each year in respect of such purpose, did not cause the Corporation to reach or exceed the annual debt and financial obligation limit with the result that the Council of the Corporation, in accordance with the applicable legislation, authorized the issuance of the Debenture without the approval of the Ontario Municipal Board;

AND WHEREAS the Corporation wishes to issue the Debenture to finance a portion of the construction costs of a Community Auditorium, Ice Facility and Water Pollution Control Plant in the Town of Fort Frances;

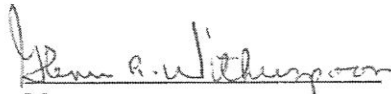
AND WHEREAS it is now expedient for the Corporation to issue the Debenture in the total amount of Four Million, Four Hundred Thousand dollars (\$4,400,000.00) payable in lawful money of Canada as hereinafter set forth for a term of years which does not exceed the lifetime of the work;

NOW THEREFORE be it enacted as a By-Law of The Corporation of the Town of Fort Frances as follows:

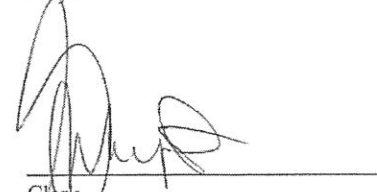
1. For the purpose aforesaid, there shall be borrowed upon the credit of the Corporation, the sum of Four Million, Four Hundred Thousand Dollars (\$4,400,000.00) and the Council shall issue a Debenture therefor in the amount of Four Million, Four Hundred Thousand Dollars (\$4,400,000.00).
2. The Debenture shall be dated the 27th day of January, 1998 and shall be amortized over a twenty year period and payable in forty blended semi-annual instalments of principal and interest of One Hundred and Ninety-Four Thousand, Nine Hundred and Ninety-Seven Dollars and Forty-Eight Cents (\$194,997.48) each beginning on the 1st day of June, 1998 and ending on the 1st day of December, 2017; Interest computed from January 15, 1998 to June 1, 1998 shall be adjusted in the first payment due, and subject to such adjustment, the respective amounts of interest and principal payable in each of such years shall be as set forth in Schedule "A" attached and forming part of this By-law.

3. The Debenture shall be payable as to the principal and interest in lawful money of Canada at the principal office of the Canadian Imperial Bank of Commerce, Fort Frances, Ontario. The Debenture shall be in full registered form with provision for the payment of blended instalments of principal and interest by direct debit to the Corporation's bank account at the Canadian Imperial Bank of Commerce, Fort Frances, Ontario.
4. The Debenture shall be sealed with the seal of the Corporation and signed by the Head of Council or by some other person authorized by by-law to sign it and by the Treasurer. The signature of the Head of Council, such other person authorized by by-law and the Treasurer may be written or engraved, lithographed, printed or otherwise mechanically reproduced.
5. In each year during the currency of the Debenture, there shall be levied and raised by a special rate, sufficient therefor, over and above all other rates, on the rateable property in the Town of Fort Frances, an amount sufficient to pay the monthly principle and interest in that year, as set forth in Schedule "A"; but no greater rate shall be levied in any year for such purpose than is required to pay the said amounts of principle and interest after taking into account receipts from any other source in respect of the works.
6. Any amounts payable by the Corporation with respect to interest on overdue principal or interest shall be paid out of current expenditures.
7. The Debenture may contain any provision for its registration authorized by law.
8. This By-Law shall take effect on the date of final passing hereof.

By-Law read a first, second and third time and finally passed this 26th day of January, 1998.



Mayor



Clerk