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> [Increasing First Nations access to and control of their capital moneys within the Indian Ac...](#)

Policy on the Transfer of Capital Moneys Through Paragraph 64(1)(k) of the Indian Act

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1. Effective Date

This policy comes into effect on October 16, 2018 and replaces the previous version of April 19, 2016.

2. Policy Statement

2.1. This policy aims to provide a mechanism, within the current legislative framework of the *Indian Act*, for providing First Nations with greater involvement in and control over the administration of all their current and future Capital Moneys once transferred through paragraph 64(1)(k) of the *Indian Act*.

2.2. Under paragraph 64(1)(k) of the *Indian Act*, the Minister may authorize and direct the expenditure of Capital Moneys of a band "...for any other purpose that in the opinion of the Minister is for the benefit of the band." This policy outlines some of the criteria that will be considered in the exercise of the Minister's discretion in regard to the transfer of all current and future Capital Moneys of a First Nation from the Consolidated Revenue Fund to a trust for the use and benefit of a First Nation. This policy is not intended to fetter the Minister's discretion.

2.3. This policy applies only to transfers of Capital Moneys pursuant to paragraph 64(1)(k) of the *Indian Act*. It does not apply to revenue moneys, individual moneys, or moneys held in other accounts within the Consolidated Revenue Fund.

3. Definitions

"Band Council Resolution (BCR)"

means a written resolution signed by the Band Council at a duly convened meeting of the Council.

"Capital Account"

means the separate account within the Consolidated Revenue Fund in which a First Nation's Capital Moneys are held.

"Capital Moneys"

means "All Indian moneys derived from the sale of surrendered lands or the sale of capital assets of a band" as defined in section 62 of the *Indian Act*.

"Consolidated Revenue Fund"

means the aggregate of all public moneys that are on deposit at the credit of the Receiver General.

"Council"

in relation to a First Nation, has the same meaning as the expression "council of the band" in subsection 2(1) of the *Indian Act*.

"Department"

means Crown-Indigenous Relations and Northern Affairs Canada.

"Electoral Officer"

means the person so designated by the Council of a First Nation for the purpose of a vote and/or the person in charge of the local office of the Crown-Indigenous Relations and Northern Affairs Canada or any officer of the Crown-Indigenous Relations and Northern Affairs Canada acting under the direction of the Minister or Assistant Deputy Minister for the purpose of a vote.

"Eligible voters"

means every member of the applicant First Nation who is eighteen years of age or over.

"First Nation"

means a band as defined in subsection 2(1) of the *Indian Act*.

"Indian Moneys"

means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands" as defined in section 2 of the *Indian Act*.

"Minister"

means the Minister of Crown-Indigenous Relations and Northern Affairs.

"Statement of Investment Policies and Procedures (SIPP)"

means a document which defines how investments of trust property are to be made by the Trustees of a trust and their investment managers, and which addresses such matters as the performance objectives of the investment managers, risk tolerance, asset allocation limits, permitted categories of investments, and restrictions on the quantity and quality of investments.

"Transfer"

means an expenditure from the Consolidated Revenue Fund of the Capital Moneys of a First Nation, in accordance with paragraph 64(1)(k) of the *Indian Act*, to a trust established by a First Nation.

"Trust Deed"

means an agreement between a Trustee or Trustees and a First Nation as settlor, which contains the terms and conditions upon which the funds transferred from the First Nation's capital account will be managed as trust property.

"Trustee"

means the initial trustees and any other person or persons appointed and serving as a Trustee pursuant to an appointment as Trustee under a Trust Deed.

4. Policy Considerations

The Minister is responsible for determining whether a Transfer is in the best interests of a First Nation. In making a determination as to whether a transfer is in the best interests of a First Nation, the Minister may consider the following matters:

4.1 Financial Considerations

In making a decision regarding a Transfer, the Minister will consider a First Nation's past and current performance in managing Indian Moneys and Departmental funding (please refer to Annex A, Part C).

4.2 Trust Management Principles

A First Nation seeking a Transfer must demonstrate it has put in place a structure which will ensure the sound financial management of Capital Moneys that are requested to be transferred out of the Consolidated Revenue Fund. In determining whether an adequate structure exists, the Minister will consider the following:

4.2.1. Expected Benefits Letter

An applicant First Nation must submit a letter to the Minister which

- Outlines the expected benefits resulting from the proposed transfer of its Capital Moneys pursuant to paragraph 64(1)(k) of the *Indian Act*; and
- Indicates how the transfer is in the best interests of the First Nation and its members.

4.2.2. Trust Deed

A trust must be established via a Trust Deed that includes the following:

- A description of long term financial goals and reasonable investment guidance principles;
- Provisions for the process of expending moneys held in the trust and guidelines regarding capital encroachment;
- Provisions regarding accountability and reporting to the membership of the First Nation for moneys expended from the trust;
- Safeguards against fraud; and
- An amending formula which provides the same protections as the original trust deed regarding sound trust management principles,

informed decisions and community consent.

4.2.3. Statement of Investment Policies and Procedures (SIPP)

A SIPP must be developed that includes the following:

- Identification of the custodian and investment managers;
- Investment objectives;
- Permitted types of investments;
- Risk tolerance;
- Asset allocation limits;
- Restrictions on the quantity and quality of investments;
- Provision for review of investment results periodically;
- Provision for a review of the document on a periodic basis by the Trustees; and
- An amending formula that indicates how the SIPP may be amended to account for changing circumstances.

4.2.4. Trustee Selection

The selection of the initial and future Trustees must meet the standards established by the applicable laws regarding the establishment of trusts in the province where the First Nation is located. In addition, the selection process must:

- Be conducted in a manner that is open and transparent to members of the First Nation;
- Guarantee the independence of the Trustees from the current and future First Nation Councils;
- Provide safeguards regarding potential conflicts of interests; and,
- Ensure sufficient competency in trust management.

4.3. Informing the First Nation Membership

The applicant First Nation Council must take measures to ensure that it and the First Nation membership are informed on the implications of the transfer. These measures include, but are not limited to:

4.3.1. Certificates of independent legal advice and independent financial advice

The applicant First Nation Council must provide evidence to the Minister, in the form of certificates, that independent legal advice and independent financial advice regarding the risks of the proposed transfer of Capital Moneys and the trust arrangement were communicated to and received by the First Nation Council.

4.3.2. Information package

A comprehensive information package must be provided to the First Nation's Eligible voters where a vote will be conducted, or made available to its members if a vote will not be conducted, and must include:

- information on the transfer, including regarding the release of the Crown's liability;
- the proposed Trust Deed;
- the proposed Statement of Investment Policies and Procedures;
- certificates of independent legal advice and independent financial advice, and
- information on the community approval process and/or engagement session.

4.3.3. Distribution of the information package

The First Nation Council shall take all reasonable steps to ensure that the information package is provided to the membership of the First Nation. These measures can include mail-outs and information provided via the internet, email and other media.

4.4. Demonstration of Membership Support

Before exercising his or her discretion, the Minister may require evidence that the membership of the First Nation is supportive of the proposed Transfer. The following describes how evidence of support from the membership of the First Nation is to be provided to the Minister.

4.4.1. Band Council Resolution

The Transfer process must be initiated through a Band Council Resolution adopted at a duly convened meeting of the applicant First Nation Council.

The Band Council Resolution requesting the transfer of Capital Moneys to an independent trust should be approved:

- in quorum by the First Nation Council in instances where the First Nation Council determines that a membership ratification vote will be conducted under this Policy; or
- unanimously by the Chief and all councillors (more than a quorum is required) in instances where the First Nation Council determines that a membership ratification vote will not be conducted under this Policy. If the Band Council Resolution requesting the transfer is not or will not be unanimous, the First Nation Council will need to advise the Minister in writing the reason why.

4.4.2. Options to demonstrate membership support in the community

There are two options available to demonstrate to the Minister the support of First Nation members to the transfer of the Capital Moneys. A First Nation must use one of the two options below.

4.4.2.1 Option 1: Support demonstrated through a membership ratification vote

In instances where the First Nation Council has indicated to the Department that it wishes to hold a membership ratification vote, then a vote may be conducted seeking the approval of the First Nation's Eligible voters.

The question as to whether the members of a First Nation approve a Transfer, along with a copy of the trust deed and a copy of the release of the Crown's liability related to the Transfer, must be submitted to the First Nation's Eligible voters for their approval.

The applicable provisions of *Indian Referendum Regulations* or the *First Nations Oil and Gas and Moneys Management Voting Regulations* should guide the conduct of the vote. A First Nation's alternative voting regulations and arrangements may be used, however they must be approved by the Department prior to the conduct of the vote and must include the provision for an information meeting to be held prior to the vote to provide the Eligible voters of the First Nation with information regarding the transfer of capital moneys which is subject of the vote.

The process to obtain support through a membership ratification vote must be overseen by an Electoral Officer, either a person designated by the First Nation Council or an officer of the Department. The Electoral Officer shall provide a report of the ratification vote and results to the First Nation and the Department.

In relation to a Transfer where a vote is conducted, the following level of support is considered evidence of an acceptable level of membership support:

- A majority of those voting vote to approve the transfer (simple majority).

A First Nation may set a higher level of membership support if so desired.

4.4.2.2 Option 2: Support demonstrated through community consultation of the membership

In instances where the First Nation Council has indicated to the Department that it will not hold a membership ratification vote, then the First Nation must promote and conduct an engagement session open to all community members. The First Nation must either request a Departmental representative to attend the engagement session or provide the Minister with the minutes of the engagement session that record what was accomplished at the engagement session and summarize the discussions, feedback and decisions.

In conjunction with an engagement session, a First Nation may provide an additional form of support demonstrated through community consultation. An additional form of support could include a number of activities undertaken by the First Nation, such as but not limited to:

1. A community survey completed by a representative sample of the First Nation's members,
2. A comprehensive community plan supported by the First Nation's members that includes provisions for management of Capital Moneys.
3. Other forms of community consultation of the members that the First Nation proposes to the Department to use to demonstrate membership support. In order for an alternative level of support to be considered by the Minister, a First Nation must be able to provide supporting evidence that the members support the Transfer and that the Transfer will not subsequently be challenged by an element of the membership.

4.5 Release of the Crown's liability

The Minister will transfer Capital Moneys to a trust created by a First Nation, only if the First Nation agrees to release Her Majesty the Queen in Right of Canada from:

- i. any liability in relation to the First Nation's current Capital Moneys and any Capital Moneys that are transferred in the future, including (without restricting the generality of the foregoing) the safe custody, investment, management, preservation, and capital growth, of any Capital Moneys, once transferred, or for the loss of the Capital Moneys, in whole or in part, once transferred, whether through investment or otherwise.
- ii. any liability for the transfer of the First Nation's Capital Moneys and for any future transfer of the First Nation's Capital Moneys to its Trust, other than losses caused by the negligence or willful misconduct of Canada or its employees or agents in transferring the First Nation's Capital Moneys to the Trust.
- iii. any liability for the conduct of the trustees responsible for administering the Trust, including (without restricting the generality of the foregoing) any misfeasance of the trustees, any withdrawal or distributions from the Trust, and any and all liability arising out of a termination of the Trust.

A draft form of release is included in Annex "B".

5. Process

Step 1 – Band Council Resolution

The Transfer process must be initiated through a Band Council Resolution which requests that the Minister make a Transfer.

Step 2 – Departmental Review

Departmental officials will review the request for a Transfer against the criteria identified in this policy and against the criteria indicated attached Assessment Grid (Annex A). At this stage, discussions between the First Nation and the Department may occur to obtain clarifications and to ensure that the First Nation's application for Transfer is complete.

The application for Transfer must include:

- Identification of the proposed Trustees or the financial institution which will act as a corporate Trustee;
- Proposed Trust Deed;
- Proposed Statement of Investment Policies and Procedures;
- Certificates of independent legal advice and independent financial advice;
- Planned strategy to ensure membership support, including a copy of the information package and how it will be distributed; and,
- Release of the Crown's liability.

Step 3 – Options to Demonstrate Membership Support

Option 1: Membership Ratification vote

If a membership ratification vote will be conducted, the ratification vote must be conducted in accordance with the proposed process stipulated in the application and set out in section 4.4.2.1 of the Policy.

The Electoral Officer must provide a report to the First Nation and the Department on the ratification vote process and results to ensure that an informed decision was provided and community consent was obtained.

Option 2: Alternative form of community consultation of the membership

The First Nation must provide evidence to the Department demonstrating membership support for this option, as set out in section 4.4.2.2 of the Policy.

Step 4 – Ministerial Decision

The complete application for Transfer, including the results of the demonstration of membership support, will be presented to the Minister for his or her decision.

If the Minister approves of the Transfer, he or she will sign a Ministerial Standing Order which is evidence of the Minister's approval of the Transfer and which provides written direction to officials of the Department to carry out the Transfer.

Step 5 – Transfer

Current and future Capital Moneys will be transferred out of the Consolidated Revenue Fund to an account held by the trust in a Canadian bank or trust company.

6. Enquiries

Enquiries related to this Policy should be addressed to the Director, Indian Moneys, Estates and Treaty Annuities Directorate, Individual Affairs Branch, Crown-Indigenous Relations and Northern Affairs Canada.

7. Annexes

- **Annex A: Assessment Grid**
- **Annex B: Templates:**

I. Release

II. Certificate of independent legal advice

III. Certificate of independent financial advice

Annex A: Assessment Grid

This Assessment Grid provides guidance to Departmental officials in reviewing a request for transfer of Capital Moneys. Although a negative response to one question will not necessarily mean that the Minister will not approve the transfer, all criteria and questions must be considered and assessed.

PART A – Departmental Information

Region:

Fiscal Year:

Prepared by:

CIDM #

PART B – First Nation Profile

Overview

Name:

Population:

- On-reserve
- Off-reserve

Governance

Chief:

Councillors:

Term of Office:

Membership Authority: (section 10 or 11)

Method of Election: Custom or *Indian Act*

Voting information

Based on the information to which you have access, include information on votes conducted in the community in the past five years (e.g. participation rates).

PART C – Financial Considerations

First Nations Capital Moneys account balance:

First Nations revenue moneys account balance:

Financial Assessment

General Assessment:

What are the past and current ratings of the First Nation under the Department's General Assessment under the Transfer Payment policy?

Defaults:

Has the Department identified defaults in management funding in accordance to the *Default Prevention and Management Policy*? If so, what is the level of intervention (i.e. Recipient Managed, Co-Managed, or Third-Party Managed)?

Revenue Moneys:

Is the First Nation currently exercising full or partial section 69 authority to control, manage and expend revenue moneys? How long has the First Nation been exercising this authority?

First Nations Land Management Act (FNLMA):

Is the First Nation currently exercising full authority over its revenue moneys through the FNLMA. How long has the First Nation been exercising this authority?

Audits:

Prepare a summary from a review of the First Nation's audited financial statements from the past three fiscal years to determine if a qualified independent auditor has expressed a qualified, unqualified or disclaimer of opinion on the fair presentation of the First Nation's financial statements.

If the auditor has expressed a qualified opinion or disclaimer of opinion on the First Nation's financial statements for any of the past three fiscal years, prepare an analysis to determine the particular circumstances or cause of the qualification or the disclaimer, and the measures (if any) taken by the First Nation to resolve those issues. If the qualified opinion or disclaimer of opinion on the First Nation's audited financial statements was not associated with the First Nation's financial management, provide details.

In addition, regardless of the opinion expressed by the auditor on the First Nation's financial statements, review any Management Letters provided by the qualified independent auditor to the First Nation within the past three fiscal years to determine if there are any underlying financial management issues noted by the auditor.

PART D – Policy Justification

Criteria: Trust Management Principles

Expected Benefits Letter (Section 4.2.1 of the Policy)

Expected benefits to the First Nation and its members

Does the letter from the applicant First Nation outline the expected benefits resulting from the proposed transfer of their Capital Moneys pursuant to paragraph 64(1)(k) of the *Indian Act*; and

Does the letter from the applicant First Nation indicate how the transfer is in the best interests of the First Nation and its members?

Trust Deed (Section 4.2.2 of the Policy)

Long term financial goals and reasonable investment guiding principles

Does the Trust Deed incorporate financial goals, objectives and priorities set out by the Council and the membership of the First Nation?

Does the Trust Deed require the trustees to consider the following:

- the long term duration of the Trust;
- the total value of the Trust property;
- the needs and circumstances of the First Nation;
- the special relationship or value of an asset to the purpose of the Trust or to the First Nation; and
- guidelines regarding capital encroachment?

Does the Trust Deed recognize the need to maintain an appropriate balance between risk, expected total return from income and the appreciation of capital, liquidity, and regularity of income?

Does the Trust Deed recognize the importance of diversifying the investments to an extent that is appropriate in light of the circumstances of the Trust and the continuing requirements of the First Nation?

Does the Trust Deed require the Trustees consider costs, such as commissions and fees, of investment decisions or strategies, as well as the expected tax consequences?

Provisions for the process of expending moneys held in the trust and guidelines regarding capital encroachment

On what principles will the transfers of funds from the trust to the First Nation be based? For instance, what share of the trust property will be distributed to the beneficiary annually?

Will the chosen process for expending moneys guarantee the long term duration of the trust (e.g. are the annual maximum, transfers reasonable in light of the total value of the trust)?

Provisions regarding accountability and reporting to the membership for moneys expended out of the trust;

How will the Trustees report to the First Nation Council and members? How often will reports be provided? (Annual reports are a generally accepted standard).

Safeguards against fraud

Does the Trust Deed include requirements for an auditor to be engaged for the purpose of auditing the Trust?

Do the other components of the Trust Deed provide safeguards against fraud? (Please refer to relevant sections, such as selection of trustees, provisions regarding conflict of interest.)

Amendment formula providing the same protections as the original agreement regarding sound trust management principles, informed decision, and community consent.

Does the proposed Trust Deed include provisions that will include similar protections with respect to informed consent and community support?

How does the required voting threshold to amend the Trust deed compare to what was required for entering into the trust?

Statement of Investment Policies and Procedures (SIPP) (Section 4.2.3 of the Policy)

Does the SIPP:

- identify the custodian and investment managers;

- identify Investment objectives;
- indicate permitted types of investments;
- identify Risk tolerance;
- identify Asset allocation limits;
- indicate Restrictions on the quantity and quality of investments;
- include provision for review of investment results periodically;
- include Provision for a review of the document on a periodic basis by the Trustees; and
- contain an amending formula that indicates how the SIPP may be amended to account for changing circumstances.

Trustee Selection (Section 4.2.4 of the Policy)

Has the First Nation identified the proposed Trustees and financial institution?

What processes are in place for appointment, resignation and removal of trustees?

Transparency

How will the initial trustees be selected? How long will be the term of a trustee? How will subsequent trustees be appointed?

Does the Trust Deed include provisions regarding the removal of trustees, as well as vacancies?

Independence of the trustees from the First Nation Council

Will the trustees be able to act independently from the First Nation Council?

Does the Trust Deed exclude the Chief, councillors and employees of the First Nation to be appointed as a trustee?

Can First Nation members be appointed as a Trustee? If so, has a maximum been established (for instance, more than 20 percent of trustees being from the First Nation could risk limiting the independence of the trustees)?

Safeguards regarding potential conflicts of interests

How will actual or potential conflict of interest be handled?

Criteria: Informed Decision

Certificates of independent legal advice and independent financial advice (Section 4.3.1 of the Policy)

Has the First Nation Council received independent legal advice? Has a certificate been provided?

Has the First Nation Council received independent financial advice? Has a certificate been provided?

Information package (Section 4.3.2 of the Policy)

Information on the process, including regarding the release of the Crown's liability

Does the information package include, in plain language, information about the proposed transfer of Capital Moneys?

Does the information package contain information regarding the justification for seeking this transfer of Capital Moneys (e.g. how is it in the benefit of the First Nation)?

Is it clearly indicated that the Crown will be released from liability once the Capital Moneys are transferred?

Proposed trust deed

Is the proposed Trust Deed included in the information package?

Independent legal advice and independent financial advice

Is the independent legal advice and independent financial advice included in the information package?

Information on the membership approval process (if ratification is conducted under this Policy)

Does the information package contain information regarding the membership ratification vote? The level of support required? Voting regulations

Distribution of the information package (Section 4.3.3 of the Policy)

How will the First Nation Council distribute the information to its membership?

Will an information meeting be held?

Does the approach chosen by the First Nation Council appear reasonable to ensure that the membership of the First Nation will be adequately informed of the transfer of Capital Moneys and its implication?

Criteria: Demonstration of Membership Support

Band Council Resolution (BCR) (Section 4.4.1 of the Policy)

Has the applicant First Nation provided a BCR requesting the transfer of all its current and future Capital Moneys to a trust pursuant to Paragraph 64(1)(k)?

Was the BCR authorized:

- in quorum by the First Nation Council in instances where the First Nation Council determines that a membership ratification vote will be conducted under this Policy at a duly convened meeting of the First Nation Council?; or

- unanimously by the Chief and all councillors (more than a quorum is required) in instances where the First Nation Council determines that a membership ratification vote will not be conducted under this Policy at a duly convened meeting of the First Nation Council? If the Band Council Resolution requesting the transfer is not or will not be unanimous, has the Council provided to the Department in writing the reason why?

Is the BCR duly signed, dated, and numbered?

Options to Demonstrate Membership Support

Option 1: In instances where the First Nation Council determines that a membership ratification vote will be conducted under this Policy

(Section 4.4.2.1 of the Policy)

Fairness

Does the proposed approach guarantee the participation of Eligible voters both on and off reserve?

Is the proposed approach reasonable to demonstrate membership support, given how decisions are made within the community?

Voting Regulations

Has the First Nation submitted its proposed voting regulations for departmental approval?

Electoral Officer

Who has the First Nation identified as the Electoral Officer to oversee the membership ratification process?

Option 2: In instances where the First Nation Council determines that a membership ratification vote will not be conducted under this Policy (Section 4.4.2.2 of the Policy)

Alternative form of membership support

How will the First Nation demonstrate the alternative form of membership support?

Community Engagement

How will the First Nation promote and conduct the engagement session or sessions open to all community members?

Will a Departmental representative attend the engagement session or sessions or will the First Nation provide the Minister with the minutes of the engagement session or sessions as the record of accomplishments at the engagement session or sessions including a summary of the discussions, feedback and decisions at the engagement session or sessions?

Criteria: Release of the Crown's liability (Section 4.5 of the Policy)

Did the First Nation Council release the Crown from liability?

Annex B: Templates

The templates below are provided as examples. They should be adapted to the specific circumstances of the proposed transfer.

- I. Release
- II. Certificate of independent legal advice
- III. Certificate of independent financial advice

I.(Roman numeral 1). Release

This is a release of Her Majesty the Queen in Right of Canada and all of her Ministers, officers, servants, employees and agents (hereinafter referred to collectively as "Canada") given and executed by the [Insert the full name of First Nation], as represented by its Chief and Council (the "First Nation")

WHEREAS the First Nation has requested that the Minister of Crown-Indigenous Relations and Northern Affairs transfer to an independent trust established by the First Nation ([Insert the name of the trust] or the "Trust") the following:

- a. all capital moneys currently held by Canada for the use and benefit of the First Nation;
- b. all capital moneys to be collected or received in the future by Canada for the use and benefit of the First Nation;

AND WHEREAS Canada agrees to make the aforementioned transfer of capital moneys subject to the fulfillment of conditions set by Canada, including a condition that the First Nation release Canada from any liability in respect of the First Nation's capital moneys and the safe custody, management, preservation, and capital growth of those capital moneys, once the capital moneys are transferred to the Trust;

NOW THEREFORE:

1. The First Nation is of the opinion, based on the receipt of independent legal advice and independent financial advice and 1. (***If a membership ratification vote was conducted***) based on the approval of its members in a community ratification vote conducted on [Insert Date] / OR 2. (***If an alternative form of membership support was provided***) based on the demonstration of membership support through [insert form of support] and based on the engagement session(s) held by the First Nation on [Insert Date(s)], that the transfer of the First Nation's

current and future capital moneys from Canada's Consolidated Revenue Fund to the Trust would be for the benefit of the First Nation and has so advised the Minister of Crown-Indigenous Relations and Northern Affairs.

2. Upon the transfer of the First Nation's capital moneys, the First Nation releases Canada from any and all liability whatsoever in relation to its current capital moneys and any capital moneys that are transferred in the future, including (without restricting the generality of the foregoing) the safe custody, investment, management, preservation, and capital growth, of any capital moneys, once transferred, or for the loss of the capital moneys, in whole or in part, once transferred, whether through investment or otherwise.
3. The First Nation hereby releases Canada from any and all liability for the above transfer of the First Nation's capital moneys and for any future transfer of the First Nation's capital moneys to the Trust, other than losses caused by the negligence or wilful misconduct of Canada or its employees or agents in transferring the First Nation's capital moneys to the Trust
4. The First Nation hereby releases Canada from any and all liability for the conduct of the trustees responsible for administering the Trust, including (without restricting the generality of the foregoing) any misfeasance of the trustees, any withdrawal or distributions from the Trust, and any and all liability arising out of a termination of the Trust.
5. This release is applicable and remains valid whether or not any sections of the *Indian Act* are subsequently declared invalid or unconstitutional.
6. The First Nation acknowledges and agrees that the transfers described in this release do not derogate from or negatively affect any Aboriginal

or treaty rights of the First Nation and its citizens.

7. This release does not release Canada from any liability in relation to the First Nation's capital moneys while in the possession or control of Canada prior to any immediate or future transfer occurring.
8. This release is conditional on Canada executing a Ministerial Standing Order authorizing the transfer of the First Nation's capital moneys from the Consolidated Revenue Fund to the trust established by the First Nation.
9. If Canada executes a Ministerial Standing Order authorizing the transfer of the First Nation's capital moneys from the Consolidated Revenue Fund to the Trust, then this release shall be effective as of the date that the Ministerial Standing Order is signed and shall remain in effect.
10. If Canada does not execute a Ministerial Standing Order authorizing the transfer of the First Nation's capital moneys from the Consolidated Revenue Fund to the trust established by the First Nation, then this release shall be of no force or effect.

DATED at **[X]** in the Province **[Insert province]** on the **[X]** day of **[X]** 20__.

**GIVEN AND EXECUTED BY THE [INSERT NAME] FIRST NATION AS
REPRESENTED BY THE CHIEF AND COUNCIL OF THE [INSERT NAME]
FIRST NATION**

Chief [Name]

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

CERTIFICATION

The Chief and Council of the **[Insert name of First Nation]** hereby certify that as part of the process to obtain the **[Insert name of First Nation]** support approving the trust agreement of the **[Insert name of Trust]** and the related transfer of the Nation's capital moneys from the Consolidated Revenue Fund to the **[Insert name of trust]** the members of the First Nation approved the granting of this release in favour of Canada by the Chief and Council on behalf of First Nation.

DATED at **[X]** in the Province of **[Insert province]** on the **[X]** day of **[X]** 20__.

CHIEF AND COUNCIL OF THE [INSERT NAME] FIRST NATION

Chief [Name]

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

II (Roman numeral 2). Certificate of Independent Legal Advice

I, **[name of counsel]**, of the City of **[city]**, in the Province of **[province]**,
[job title],

DO HEREBY CERTIFY THAT:

1. I am a member in good standing in the **[Law Society]** and am entitled to practice as **[title]** in the Province of **[province]** and have so practiced since **[year]**.
2. Since **[month/year]**, I have been retained in my professional capacity by the **[First Nation]** (the "First Nation"), as represented by the Council of the Band ("the Band Council"), to provide legal advice to representatives of the Band Council during the negotiations with Canada (as represented by the Department of Indian Affairs and Northern Development) leading to the transfer of current and future capital moneys, pursuant to *Indian Act* paragraph 64(1)(k), to a trust created by the First Nation.

3. My services in relation to the negotiation of the transfer and drafting of the trust deed included, but were not limited to, advising the Band Council and its representatives on:

(a)

DATED at the City of **[city]**, in the Province of **[province]**, this ____ day of _____, 20__.

[Signature block]

III (Roman numeral 3). Certificate of Independent Financial Advice

I, **[name of financial advisor]**, of the City of **[city]**, in the Province of **[province]**, **[job title]**,

DO HEREBY CERTIFY THAT:

1. I am a member in good standing in the **[Institute and/or Association, etc. e.g. Institute of Chartered Accountants]** and accordingly am qualified to provide independent financial advice to the **[First Nation]** (the "First Nation"), in respect of the proposed capital transfer. I have been retained in my professional capacity by the First Nation as represented by the Council of the Band ("Band Council") to provide independent financial advice to representatives of the First Nation during the development of the capital transfer application evidenced by the Trust Deed and the Statement of Investment Principles and Procedures to which this certificate is attached.
2. My services in relation to the provision of independent financial advice included but were not limited to advising the Band Council and its representatives on the appropriateness of the terms and conditions of

the Trust Deed as they relate to investments and financial matters, and on the appropriateness of the terms of the initial Statement of Investment Policies and Procedures. I also participated in information sessions with Band members.

DATED at the City of **[city]**, in the Province of **[province]**, this ____ day of _____, 20__.

[Signature block]

Date modified: 2019-02-20

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