

**FORT WILLIAM
BOUNDARY CLAIM
SETTLEMENT TRUST**

THIS TRUST AGREEMENT
dated for reference
the 15th day of November, 2010

BETWEEN:

FORT WILLIAM FIRST NATION
represented by its Council
(referred to as "FWFN")

- and -

THE TRUSTEE
a corporate trustee registered in the
Province of Ontario

WHEREAS:

- A. FWFN, Canada and Ontario have entered into the FWFN Boundary Claim Settlement Agreement (referred to as the "Settlement Agreement") dated for reference November 15, 2010 in which the First Nation has, pursuant to Articles 2.4 and 3.1 respectively, irrevocably authorized and directed Canada and Ontario to make payments owing to FWFN to the Trust Account established pursuant to this Trust agreement;
- B. The Settlement Agreement provides that funds to which FWFN has become entitled to shall be paid into the Trust and held in trust upon provisions which establish the obligations of the Trustee and Council regarding the use, management, expenditure and investment of the Trust Property and the reporting requirements for the Trust Property;

- C. FWFN and the Trustee acknowledge and agree that the funds to be paid by Canada and Ontario to the Trust are intended to benefit FWFN as beneficiary of the Trust and to be administered by the Trustee subject to the terms and conditions set out in this Trust agreement;
- D. FWFN and the Trustee acknowledge that FWFN, acting through its Council, is the beneficiary of the Trust, with all of the rights and powers to compel enforcement of the Trustee's duties hereunder normally vested in a beneficiary;
- E. FWFN and the Trustee further acknowledge that the purposes of the Trust are to facilitate the attainment of specific objects and purposes of FWFN as more particularly set forth in this Trust agreement; and
- F. By Ratification Vote held on January 22, 2011, the Electors of FWFN have approved this Trust agreement and have authorized and directed the Council to sign and implement this Trust agreement and all related documentation.

THEREFORE FWFN AND THE TRUSTEE AGREE AS FOLLOWS:

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1. **DEFINITIONS**

- 1.1 Terms not otherwise defined in this Trust agreement, shall have the same meaning as defined in the Settlement Agreement or the *Indian Act*, R.S.C. 1985, c-15;
- 1.2 **“Administrative Amendment”** means an amendment to this Trust agreement as a result of changes in law, defects in this Trust agreement or to improve the administrative efficiency of this Trust agreement, but do not substantially alter the entitlements or obligations of the parties hereto, including the beneficial interest of FWFN, or the purposes of the Trust.
- 1.3 **“Age of Majority”** means the age of majority in Ontario as amended from time to time; at present the age of majority in Ontario is eighteen (18) years of age;
- 1.4 **“Annual Income”** from the Trust Property in the Trust Account means the greater of:
- a) all of the income for Canadian Federal income tax purposes derived from the Trust Property held in or purchased by funds from the Trust Account and held as Trust Property in a Fiscal year determined without reference to the provisions of subsection 104(6) of the *Income Tax Act* (Canada), which amount shall, in accordance with the provisions of this Trust agreement, become payable irrevocably to FWFN as at December 31st in each Fiscal Year; or
 - b) provided further that, notwithstanding the foregoing, the net payment by the Trustee to FWFN in each Fiscal Year shall be, at a minimum, an amount equivalent to 4% of the closing market value of the Authorized Investments as at December 31st in that Fiscal Year (the “Minimum Payment”) to be paid out of the capital of the Trust Property to the extent there is insufficient Annual Income available to pay same.

The actual payment of the Annual Income shall first include all of the Annual Income for Canadian Federal income tax purposes derived from the Trust Property held in the Trust Account in a Fiscal Year determined without reference to the provisions of subsection 104(6) of the Income Tax Act (Canada) and shall be due and payable irrevocably to FWFN as at December 31st of each Fiscal Year;

- 1.5 **“Authorized Expenses”** means the expenses reasonably incurred by the Trustee in each Fiscal Year in carrying out the terms of the Trust agreement, including payment of administrative, accounting, legal, investment and other costs which are to be paid by FWFN and which the Council by Council Resolution, shall direct the Trustee to pay on behalf of FWFN from Trust Property. This shall include payment of any costs of the Council, its members, or FWFN administration which have been incurred in performing any of their obligations in relation to the operation of the Trust;
- 1.6 **"Authorized Investment"** means an investment purchased with funds from the Trust Accounts as selected by the Trustee or the Investment Manager from those investments listed in Schedule "A" and in accordance with this Trust agreement, as amended from time to time;
- 1.7 **“Council”** means the duly elected Chief and Council of FWFN;
- 1.8 **“Council Resolution”** means a resolution of the Council approved by and signed by a quorum of the Council present at a duly convened meeting of the Council;
- 1.9 **“Effective Date”** means the date on which this Trust agreement has been executed by both parties;
- 1.10 **"Elector"** means a Member of FWFN and who is eighteen (18) years of age or older;
- 1.11 **“Financial Advisor”** means a firm or individual who will provide independent advice to Council on the development of the Investment Policy, selection of Trustees and selection of Investment Managers

and evaluation of portfolio performance and whose staff have been awarded the Chartered Financial Analyst designation and the Financial Advisor, and all related companies, shall undertake in writing to not sell investment products to this Trust, nor to provide investment services to either the Trustee or the Investment Manager, such undertaking to be updated annually and upon any material change in corporate relationships of the Financial Advisor;

- 1.12 **“Financial Policies and By-Laws”** means policies and by-laws relating to the finances of FWFN enacted by Council from time to time;
- 1.13 **“Fiscal Year”** means the calendar year;
- 1.14 **“Investment Manager”** means a firm who has obtained registration in the category of advisor with the Ontario Securities Commission as Investment Counsellor & Portfolio Manager, or as the term is amended from time to time, whose revenue is derived solely or primarily from the discretionary management of investment portfolios and is experienced in managing trusts;
- 1.15 **“Investment Management Agreement”** means an agreement between the Trustee and an Investment Manager which has been approved by Council, by which the investment management responsibility for some or all of the funds in the Trust Account is vested with the Investment Manager, not the Trustee, and to be undertaken pursuant to the terms of this Trust agreement and the Investment Management Agreement;
- 1.16 **“Investment Policy”** means the policy approved by the Council from time to time, following the receipt of advice from the Financial Advisor, which sets out the policy, objectives, and framework for investment of funds in the Trust in Authorized Investments by the Investment Manager pursuant to the terms of this Trust agreement;
- 1.17 **“Management Fee Agreement”** means an agreement approved by Council, by Council Resolution, directing the Trustee to pay

Authorized Expenses, including the Trustee's fees, as and when incurred, from accumulated income in the Trust Account;

- 1.18 **"Member"** means a person whose name appears on the First Nation's Band List from time to time;
- 1.19 **"Minimum Payment"** means an amount equivalent to 4% of the closing market value of the Authorized Investments as at December 31st in a Fiscal Year (the "Minimum Payment") to be paid out of the capital of the Trust Property to the extent there is insufficient Annual Income available to pay same.;
- 1.20 **"Fort William First Nation"** means the Fort William Band of Indians and is shortened to FWFN in this agreement from time to time;
- 1.21 **"FWFN Referendum Voting Guidelines"** means the guidelines adopted by Council that detail the procedures to be followed with respect to any vote regarding this Trust agreement whereby at least 25% of Electors vote in favour of any proposal, amendment or termination;
- 1.22 **"Party"** means FWFN or the Trustee;
- 1.23 **"Per Capita Distribution Account"** means an account established by Council for the purposes of receiving funds from the Trust to effect per capita distributions to Members;
- 1.24 **"Quorum of the Council"** means at least five (5) members of the Council or the number of Councillors constituting a quorum as set out in the *Indian Act* or in the future in any custom election code adopted by FWFN, from time to time;
- 1.25 **"Revenue Account"** means an account established by the Council, not by the Trustee, to receive the payments from the Trustee pursuant to Section 9 of this Trust agreement and which is governed by the financial policies or by-laws of FWFN in place from time to time;

- 1.26 **“Settlement Agreement”** means the FWFN Boundary Claim Settlement Agreement, dated for reference November 15, 2010, between FWFN, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of Ontario, ratified by the Vote held on the 22nd day of January, 2011;
- 1.27 **“Substantive Amendment”** means an amendment to this Trust agreement that substantially alters the entitlements or obligations of the parties hereto, including the beneficial interest of FWFN, or the purposes of the Trust including the amounts of per capita distributions to Members.
- 1.28 **“Trust”** means the FWFN First Nation Boundary Claim Trust established by this Trust agreement;
- 1.29 **“Trust Account”** means the Trust Account opened by the Trustee pursuant to Article 4 of this Trust agreement which will be an interest bearing account whose operation is subject to the terms of this Trust agreement;
- 1.30 **“Trustee”** means a trust company duly incorporated, and licenced to carry on business of a Trustee in Ontario and which is a member institution of the Canada Deposit Insurance Corporation which has a duty to insure deposits in the Accounts pursuant to the *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, a. C-3, 5.1 and has experience acting as a trustee where the trust property comprises a portfolio of marketable securities as provided for in Schedule “A”;
- 1.31 **“Trust Property”** means all property which FWFN or any other person or entity may pay, donate, sell or otherwise transfer, cause to be transferred to, vest or cause to be vested in the Trust and includes any substituted or additional property, together with all accretions thereto and all income derived therefrom, but excluding all amounts which have been paid or disbursed therefrom (whether out of capital or income) in the normal course of the administration of or pursuant to the provisions of this Trust agreement. For greater clarity, it does not

include funds once paid out of the Trust, as directed to by FWFN, pursuant to the provisions of this Trust agreement; and

1.32 **“Vote”** means the ratification vote held on the 22nd day of January, 2011, ratifying the Settlement Agreement and this Trust agreement.

2. **SCHEDULE**

2.1 The following schedule is attached and forms part of this Trust agreement:

Schedule "A": Authorized Investments

3. **FWFN BOUNDARY CLAIM TRUST**

3.1 The settlor and beneficiary of this Trust agreement is FWFN, situate on its reserve.

3.2 By Council Resolution, FWFN appoints the Trustee to hold the Trust Property in trust for the benefit of FWFN as beneficiary, upon and subject to the trusts set out in this Trust agreement.

3.3 FWFN acknowledges that Trust Property received by it as beneficiary of the Trust is to be applied by it, or as directed by it, for the specific purposes identified in this Trust agreement.

3.4 FWFN may, from time to time, add other funds to this Trust which will then be governed by the terms of this Trust agreement.

4. **TRUST ACCOUNT**

- 4.1 The Trustee will open one (1) trust account: the Trust Account.
- 4.2 The Trust Account will be an interest bearing account whose operation is subject to the terms of this Trust agreement.

5. **INITIAL PAYMENTS TO AND FROM THE TRUST ACCOUNT**

- 5.1 As directed by FWFN, pursuant to Article 2.4 of the Settlement Agreement, Canada's compensation shall be paid by Canada to the Trust Account as agent for FWFN in its capacity as settlor of this Trust.
- 5.2 As directed by FWFN, pursuant to Article 3.1 of the Settlement Agreement, Ontario's compensation shall be paid by Ontario to the Trust Account as agent for FWFN in its capacity as settlor of this Trust.
- 5.3 After receipt of the initial deposit to the Trust Account an amount of up to one million dollars (\$1,000,000) shall be paid to FWFN by the Trustee from the Trust Account for costs associated negotiating the Settlement Agreement, preparation of this Trust agreement, the Vote to ratify the Settlement Agreement and this Trust agreement, the selection of the Trustee, Financial Advisor and Investment Manager, the costs of the per capita distribution and all legal fees associated with the foregoing. FWFN is to provide direction to the Trustee to make such payment by way of a Council Resolution.

6. **PER CAPITA DISTRIBUTION ACCOUNT**

- 6.1 One of the purposes of the Trust is to enable FWFN, by means of the Per Capita Distribution Account, to effect a per capita distribution in the total amount of twenty thousand (\$25,000) dollars to each Member who was both a Member and alive on the day of the Vote (January 22, 2011). The funds transferred to the Per Capita Distribution Account are to be used by FWFN for per capita distributions in the amount of twenty thousand (\$25,000) dollars to each Member who was both a Member and alive on the day of the Vote.
- 6.2 In the first year of operation of the Trust, upon receipt of a Council Resolution requesting an amount sufficient to make a payment of \$25,000 (twenty thousand dollars) to all Members who were Members and alive on the day of the Vote that have achieved the Age of Majority and to all Members who were Members and alive on the day of the vote who will achieve the Age of Majority in the first Fiscal Year of operation of the Trust, the Trustee shall transfer such amount from the Trust Account, as a distribution of capital from the Trust Account to FWFN as beneficiary, to the Per Capita Distribution Account established by the Council in order for FWFN to make such per capita distributions.
- 6.3 No Member who was a Member and alive on the day of the Vote shall receive a per capita distribution until they have reached the Age of Majority.
- 6.4 All per capita distributions in the first Fiscal Year of operation of the Trust shall be in the amount of \$25,000, regardless of whether the Member was alive on the day of the Vote and had achieved the Age of Majority by the day of the Vote, or if the Member was alive on the day of the Vote and then subsequently achieved the Age of Majority in the first Fiscal Year of operation of the Trust.
- 6.5 By January 15th of the second Fiscal Year of the operation of the Trust, the Trustee shall transfer to the Per Capita Distribution Account

from the capital of the Trust an amount so that FWFN may make per capita distribution payments to all Members who were both Members and alive on the day of the Vote and will achieve the Age of Majority in the second Fiscal Year of operation of the Trust. The per capita distribution payments shall be \$25,000 adjusted at the rate of Bank of Canada prime rate (as of December 1st of the previous Fiscal Year) plus one per cent, calculated from the date of the first payment by Canada to December 31st of the second Fiscal Year of the operation of the Trust.

- 6.6 The same procedure set out in Section 6.5 shall be followed each Fiscal Year of the operation of the Trust, with amounts payable adjusted accordingly, until all Members who were both Members and alive on the day of the Vote have achieved the Age of Majority and received their per capita distribution. For example: By January 15th of the twelfth Fiscal Year of the operation of the Trust, the Trustee shall transfer to the Per Capita Distribution Account from the capital of the Trust an amount so that FWFN may make per capita distribution payments to all Members who were both Members and alive on the day of the Vote and will achieve the Age of Majority in the twelfth Fiscal Year of operation of the Trust. The per capita distribution payments shall be \$25,000 adjusted at the rate of Bank of Canada prime rate (as of December 1st of the previous Fiscal Year) plus one per cent, calculated from the date of the first payment by Canada to December 31st of the twelfth Fiscal Year of the operation of the Trust.
- 6.7 If a Member who was both a Member and alive on the day of the Vote dies prior to receiving the distribution as set out in this Section the Trustee shall transfer to the Per Capita Distribution Account within thirty days of being notified by FWFN an amount equivalent to the amount that is payable to Members who were both Members and alive on the day of the Vote who reach the Age of Majority that Fiscal Year. FWFN will then pay that amount to the estate of the deceased Member.
- 6.8 For greater clarity, the Per Capita Distribution Account is not a trust account and the funds deposited therein are not Trust Property.

- 6.9 The Trustee shall have no responsibility or liability in relation to any payments made by Council from the Per Capita Distribution Account.
- 6.10 For greater clarity, amounts payable to FWFN for distribution to Members that have not yet attained the Age of Majority does not constitute a separate trust and does not have to be accounted for separately.
- 6.11 For greater clarity, all payments by the Trustee to the Per Capita Distribution Account are to be made from capital.
- 6.12 For greater clarity, the amount of the personal cash distribution does not increase after the time that it becomes payable, regardless of when the Member comes forward to receive it. For example, if a Member is not paid their per capita distribution until 10 years following their 18th birthday, the amount payable remains the same as it was on their 18th birthday.

7. **USE OF CAPITAL**

7.1 Following the initial payments to and from the Trust Account pursuant to Article 5 the funds retained in the Trust Account shall only be used by the Trustee for the following purposes of this Trust as directed by FWFN as beneficiary from time to time:

- a) To pay funds to the Per Capita Distribution Account pursuant to Article 6;
- b) To pay funds to FWFN pursuant to Article 8;
- c) To pay funds to the Revenue Account pursuant to Article 9;
- d) To purchase Authorized Investments pursuant to Article 10;
and
- e) To pay the Authorized Expenses as approved by the Council pursuant to Article 11.

7.2 Under no circumstances may the Trust Property be used for the purpose of securing a loan or a loan guarantee.

7.3 For purposes of greater clarity, Section 7.2 specifically includes FWFN, any corporations or businesses controlled by FWFN, Members and any and all businesses owned or operated by Members.

8 **TRANSFERS FROM CAPITAL**

- 8.1 The Trustee shall transfer to FWFN amounts totalling up to twenty million dollars (\$20,000,000) to be used by Council to pay outstanding long term debt, when directed to do so by Council Resolution.

- 8.2 The Trustee shall transfer to FWFN amounts totalling up to one million one hundred thousand dollars (\$1,100,000) to be used by Council to replenish the Ontario First Nations Limited Partnership (OFNLP) fund, when directed to do so by Council Resolution.

- 8.3 The Trustee shall transfer to FWFN amounts totalling up to one million two hundred and thirty thousand dollars (\$1,230,000) to be used by Council to replenish the Bingo Fund, when directed to do so by Council Resolution.

- 8.4 The Trustee shall transfer to FWFN amounts totalling up to four million dollars (\$4,000,000) to be used by Council to pay outstanding accounts payable, when directed to do so by Council Resolution.

- 8.5 The Trustee shall transfer to FWFN an amount totalling up to ten per cent (10%) of the Trust Property, calculated at December 31st of the preceding Fiscal Year, to be used by Council to address emergency situations or special projects that fall within the criteria set out in Section 9.5 herein, when directed to do so by Council Resolution. FWFN shall not request, and the Trustee shall not transfer, an additional amount pursuant to this Section 8.5 unless and until the full amount previously transferred pursuant to this Section 8.5 has been repaid by FWFN to the Trust Property.

9. **REVENUE ACCOUNT**

- 9.1 FWFN shall open the Revenue Account.
- 9.2 Funds once paid by the Trustee into the Revenue Account are not Trust Property and therefore the Trustee has no responsibility for the application of funds in this account.
- 9.3 The Annual Income from the Trust Account as determined by the Trustee shall be due and irrevocably payable in its entirety to, or as directed by, FWFN in accordance with the terms of this Trust agreement as at December 31st of each Fiscal Year.
- 9.4 The Trustee shall transfer the amount of the Annual Income to the Revenue Account within sixty (60) days of the end of the fiscal year having confirmed the location and account number of the Revenue Account.
- 9.5 The expenditure of funds in the Revenue Account shall be governed by the Financial Policies and By-Laws of FWFN in place from time to time whereby the funds will be spent on researching, submitting and negotiating further land claims, education, health, housing, culture, economic and community development, the environment and all reasonable administration costs associated with this Trust.
- 9.6 Council shall conduct at least two meetings with Members in the first four months of every Fiscal Year in order to consult with Members regarding how the funds received from the Trust pursuant to Sections 8 and 9 shall be spent in the upcoming fiscal year of FWFN. These meetings are to be open to all Members, held on reserve and held on reasonable notice.
- 9.7 Council shall conduct at least two meetings with Members each Fiscal Year to provide Members with a full accounting of how the funds received from the Trust pursuant to Sections 8 and 9 were spent in the preceding fiscal year of FWFN and to inform Members of the progress of projects and policies funded pursuant to Section 9.5.

9.8 In any given Fiscal Year, one of the meetings required by Section 9.7 may be conjoined with one of the meetings required by Section 9.6 at the discretion of Council.

10. **AUTHORIZED INVESTMENTS & INVESTMENT MANAGERS**

- 10.1 Upon receipt of a Council Resolution so directing, the Trustee shall hire one or more Investment Managers selected and approved by the Council.
- 10.2 The Trustee is authorized and empowered to delegate the ability to make decisions on the types and timing of the purchase and sale of Authorized Investments to the Investment Manager, provided the Investment Policy has been developed and the Investment Manager(s) enter into a Investment Management Agreement with the Trustee which are consistent with the Investment Policy and this Trust agreement.
- 10.3 With the assistance of a Financial Advisor, and with input from the Trustee, Council shall develop an Investment Policy that is consistent with this Trust agreement. Until the Investment Policy has been developed, the Trustee shall be permitted to purchase only those Authorized Investments listed in Part I of Schedule "A". Council may amend the Investment Policy from time to time with the assistance of a Financial Advisor and with input from the Trustee and with input from the Investment Manager.
- 10.4 The Trustee shall review the terms of the Investment Management Agreement and Investment Policy and advise the Council and the Investment Manager of any conflict between the Investment Management Agreement and the Trust agreement.
- 10.5 The Trustee shall obtain from the Investment Manager a quarterly report documenting the list of investments and the rate of return and confirming that the investments acquired with funds from each of the Trust Accounts comply with Schedule "A" and forward same to the Council.
- 10.6 The Trustee shall satisfy itself that the investment of funds from the Trust Account by the Investment Manager complies with Schedule

“A” and the Investment Policy and notify the Council and Investment Manager of any non-compliance.

- 10.7 The Trustee, or any agent hired by the Trustee upon approval of Council, will hold Authorized Investments in accordance with industry standards.
- 10.8 Upon receipt of the Investment Manager’s instructions with respect to Authorized Investments that have matured or that should be sold in order to optimize the Annual Income from the Trust Accounts, the Trustee shall reinvest all or any portion of the funds obtained from such Authorized Investments. All funds that are not reinvested shall be deposited into the Trust Account.
- 10.9 Upon receipt of a Council Resolution so directing, the Trustee shall cause to have evaluated the performance of the Investment Manager against industry standards for portfolios with similar policies, objectives and investment guidelines and advise the Council of the results. Such evaluation is to be conducted by an independent Financial Advisor. If the Council does not issue a Council Resolution requiring the annual evaluation the Trustee shall ensure that such evaluation is conducted at least once every four years.

11. **AUTHORIZED EXPENSES**

- 11.1 The Trustee shall submit a financial statement and explanation of Authorized Expenses to the Council on a quarterly basis.
- 11.2 By Council Resolution FWFN shall direct the Trustee to pay Authorized Expenses on behalf of FWFN from the Trust Property in the Trust Account on a timely basis.
- 11.3 The Council may, by Council Resolution, also direct the Trustee to pay Authorized Expenses, as and when incurred, from funds in the Trust Account pursuant to a Management Fee Agreement with the Trustee.

12. **POWERS AND DUTIES OF THE TRUSTEE**

- 12.1 Without in any way limiting or derogating from the powers, authorities, discretions and immunities available to the Trustee, whether under any statute or at law or otherwise, the Trustee hereunder shall have and be vested with the powers, authorities, discretions, and immunities set forth in this Trust agreement. The Trustee shall have all of the powers and capacities that a natural person would have in the investment, management, supervision and administration of their own properties except as expressly limited by the terms of this Trust agreement.
- 12.2 The Trustee acknowledges the reliance of FWFN on the Trustee in ensuring that no funds will be withdrawn, invested, transferred, loaned or expended from the Trust without the requirements and obligations set out in this Trust agreement having first been met by the Council and the Trustee.
- 12.3 As per Article 7 the Trustee shall not mortgage, pledge, assign, encumber or grant any security interest of any kind whatsoever against the Trust Property.

- 12.4 As the expenditure or transfer of funds in the Trust Account is subject to the signing and delivery to the Trustee of Council Resolutions, certificates, agreements, or documents required by this Trust agreement or as the Trustee may reasonably request, the Trustee shall take reasonable measures to confirm the validity of any Council Resolution, notice or other document required to be delivered to it under this Trust agreement. It will be sufficient if the Council Resolution, notice or other document is in a correct form and signed by the person or Party required to execute it. Council has the obligation to inform the Trustee when any changes in signing authorities occur and the Trustee is indemnified if acting on the latest certificate of signing authorities on file.
- 12.5 The Trustee shall maintain adequate records of all transactions affecting the Trust Property.
- 12.6 In the event the Trustee must exercise any discretion on administrative or procedural matters not included in this Trust agreement or set out in these directions, it shall advise the Council and obtain directions by Council Resolution.
- 12.7 Within ninety (90) days following the end of each Fiscal Year, the Trustee shall prepare and submit to Council an annual report and audited financial statement for the purposes of informing the Council about the status and expenditures from the Trust Account and that the operation of the Trust was in compliance with the Trust agreement. The Trustee shall annually certify that all expenditures are properly documented and authorized in compliance with the requirements of this Trust agreement.
- 12.8 Any Member shall be entitled to receive from Council a copy of the Trustee's annual report and audited financial statements upon written request.
- 12.9 At the request of Council, the Trustee will participate in Member meetings as may be called by Council to review and explain the Trustee's Annual Report and audited financial statements.

- 12.10 The Trustee shall immediately notify the Council of any breaches to this Trust agreement by the Trustee or by Council.
- 12.11 Upon direction by Council Resolution, the Trustee, at their cost, shall obtain bonding or security for the due and faithful administration of the Trust and for errors and omission insurance and provide proof of same to FWFN.
- 12.12 The Trustee shall prepare for and cause a passing of accounts every four years and upon termination of the Trustee. For greater clarity, a new four year period begins for this purpose whenever there is a passing of accounts as a result of the replacement of a corporate trustee.
- 12.13 In addition to all other powers conferred upon it by the other provisions of this Trust agreement, or by any statute or general rule of law, the Trustee, without the interposition of any person entitled hereunder and without application to or approval by any Court, shall have and is hereby given the power and authority in its absolute discretion at any time and from time to time to administer the Trust Property, in accordance with the provisions of this Trust agreement, including without limiting the generality of the foregoing:
- a) Retain, hire, dismiss and replace lawyers, accountants, bookkeepers, investment counsellors, realtors, appraisers, and other independent advisors or organizations qualified in the field for which their advice and opinions are sought, to assist the Trustee in carrying out its responsibilities and duties under this Trust agreement, but the Trustee shall not be bound to act upon such advice, and shall not be responsible for any loss caused by so acting or not so acting, provided the decision to act or not act was reasonably taken;
 - b) Institute, prosecute, settle and defend any lawsuits or other proceedings affecting them as Trustee, or the Trust Property or any part of it, and make application to any Court of competent jurisdiction in respect of this Trust agreement;

- 12.4 As the expenditure or transfer of funds in the Trust Account is subject to the signing and delivery to the Trustee of Council Resolutions, certificates, agreements, or documents required by this Trust agreement or as the Trustee may reasonably request, the Trustee shall take reasonable measures to confirm the validity of any Council Resolution, notice or other document required to be delivered to it under this Trust agreement. It will be sufficient if the Council Resolution, notice or other document is in a correct form and signed by the person or Party required to execute it. Council has the obligation to inform the Trustee when any changes in signing authorities occur and the Trustee is indemnified if acting on the latest certificate of signing authorities on file.
- 12.5 The Trustee shall maintain adequate records of all transactions affecting the Trust Property.
- 12.6 In the event the Trustee must exercise any discretion on administrative or procedural matters not included in this Trust agreement or set out in these directions, it shall advise the Council and obtain directions by Council Resolution.
- 12.7 Within ninety (90) days following the end of each Fiscal Year, the Trustee shall prepare and submit to Council an annual report and audited financial statement for the purposes of informing the Council about the status and expenditures from the Trust Account and that the operation of the Trust was in compliance with the Trust agreement. The Trustee shall annually certify that all expenditures are properly documented and authorized in compliance with the requirements of this Trust agreement.
- 12.8 Any Member shall be entitled to receive from Council a copy of the Trustee's annual report and audited financial statements upon written request.
- 12.9 At the request of Council, the Trustee will participate in Member meetings as may be called by Council to review and explain the Trustee's Annual Report and audited financial statements.

- 12.10 The Trustee shall immediately notify the Council of any breaches to this Trust agreement by the Trustee or by Council.
- 12.11 Upon direction by Council Resolution, the Trustee, at their cost, shall obtain bonding or security for the due and faithful administration of the Trust and for errors and omission insurance and provide proof of same to FWFN.
- 12.12 The Trustee shall prepare for and cause a passing of accounts every four years and upon termination of the Trustee. For greater clarity, a new four year period begins for this purpose whenever there is a passing of accounts as a result of the replacement of a corporate trustee.
- 12.13 In addition to all other powers conferred upon it by the other provisions of this Trust agreement, or by any statute or general rule of law, the Trustee, without the interposition of any person entitled hereunder and without application to or approval by any Court, shall have and is hereby given the power and authority in its absolute discretion at any time and from time to time to administer the Trust Property, in accordance with the provisions of this Trust agreement, including without limiting the generality of the foregoing:
- a) Retain, hire, dismiss and replace lawyers, accountants, bookkeepers, investment counsellors, realtors, appraisers, and other independent advisors or organizations qualified in the field for which their advice and opinions are sought, to assist the Trustee in carrying out its responsibilities and duties under this Trust agreement, but the Trustee shall not be bound to act upon such advice, and shall not be responsible for any loss caused by so acting or not so acting, provided the decision to act or not act was reasonably taken;
 - b) Institute, prosecute, settle and defend any lawsuits or other proceedings affecting them as Trustee, or the Trust Property or any part of it, and make application to any Court of competent jurisdiction in respect of this Trust agreement;

14.7 If technology advances to the point that a referendum could be cost effectively performed over the internet, or in some other fashion, then the amendment of the FWFN Referendum Regulations to that effect would constitute an Administrative Amendment.

14.8 For greater certainty, under no circumstances is the termination of the Trust to be considered an amendment of the Trust; termination of the Trust is governed by Section 16.

15. **REMOVAL OF THE TRUSTEE**

15.1 The Trustee may cease to act under this Trust agreement by serving ninety (90) days written notice to the Council or upon such earlier date as may be agreed between the Council and Trustee. No such resignation shall be effective until a new Trustee has been appointed by the Council. If no new Trustee has been appointed following the notice period then the Trustee may approach the courts for direction to approve the resignation.

15.2 Within sixty (60) days of receiving the Trustee's notice of resignation the Council shall appoint a new Trustee and will provide written directions to the resigning Trustee instructing them to transfer the Trust Property to the newly appointed qualified trustee.

15.3 The Council may remove the Trustee by providing fourteen (14) days notice to the Trustee.

15.4 Prior to serving notice of termination on the Trustee, the Council shall have selected a replacement Trustee.

15.5 The resignation or removal of the Trustee does not affect the rights, obligations, liabilities, and responsibilities of the Trustee, or FWFN, which accrued prior to the effective date of the termination of the Trustee's appointment.

- 15.6 The Trustee shall provide FWFN with a complete account of its administration of the Trust, in a form satisfactory to FWFN, within forty-five (45) days of the date upon which the Trustee ceases to act hereunder.
- 15.7 The Trustee shall prepare the necessary documentation for a court passing of the accounts and deliver same to FWFN within one hundred and twenty (120) days of the date that they cease to act as Trustee.

16. **DURATION AND TERMINATION OF THE TRUST**

16.1 This Trust shall not be terminated for a period of forty (40) years from the effective date.

16.2 Subject to Sections 16.1 and 16.3, the Trust may be terminated upon the following conditions met:

- a) The Council shall prepare a plan indicating how the Trust Property shall be resettled or transferred for the use and benefit of FWFN;
- b) The plan shall be approved by Members in a referendum held pursuant to the FWFN Referendum Voting Guidelines; and
- c) Upon receipt of a Council Resolution advising the Trustees of the approval of the plan for use of the Trust Property in accordance with Section 16.2(b), the Trust property shall be transferred by the Trustee pursuant to the provisions of the plan.

16.3 Unless terminated sooner in accordance with Section 16.2, the trust created by this Trust agreement shall terminate twenty (20) years after the death of the last surviving Member who was alive on the day of the Vote.

17. **NOTICES**

17.1 Notices under this Trust agreement are effective if delivered by facsimile and registered mail as follows:

To the Trustee:

To Chief and Council:

**Fort William First Nation
90 Anemki Drive, Suite 200
Thunder Bay, Ontario
P7C 1L3**

**Telephone: (807) 623-9543
Facsimile: (905) 623-5190**

cc to legal counsel:

**Kim Alexander Fullerton
Barrister & Solicitor Professional Corporation
256 Riverside Drive
Oakville, ON
L6K 3M9**

**Telephone: (905) 849-1700
Facsimile: (905) 849-0411**

or such other agent or law firm as designated by FWFN from time to time.

18. GENERAL

- 18.1 The Trustee confirms that it had received and reviewed the Settlement Agreement and the Trust agreement prior to entering into this Trust agreement.
- 18.2 The terms of this Trust agreement will have priority over any conflicting term in any other agreement in regard to the Trust Property.
- 18.3 This Trust agreement represents the entire agreement among the Parties and there are no other terms, conditions, or agreements respecting the subject matter of this Trust agreement other than as specifically stated.
- 18.4 This Trust agreement will be interpreted and enforced in accordance with the laws of the Province of Ontario.
- 18.5 This Trust agreement enures to the benefit of and is binding on the Parties and their respective successors.
- 18.6 No amendment to the terms and conditions of this Trust agreement will be valid and binding on the Parties unless made in writing and signed by an authorized representative of each of the Parties.
- 18.7 No provision of this Trust agreement will be deemed to be waived unless such waiver is in writing. Any waiver of any default committed by any of the Parties hereto is limited to such default and will not extend to any other default.
- 18.8 This Trust agreement is not assignable without the prior written consent of the other Party.
- 18.9 The division of this Trust agreement into articles, sections, paragraphs, subsections and clauses and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Trust agreement.

- 18.10 Unless otherwise specified, words importing the singular include the plural and vice versa, and words importing gender include all genders.
- 18.11 All accounting terms not otherwise defined herein have the meanings generally assigned to them, and all calculations will be made and all financial data to be submitted will be prepared, in accordance with the generally acceptable accounting principles in effect in Canada, including, without limitation, those approved or recommended from time to time by the Canadian Institute of Chartered Accountants, or any successor institute, applied on a consistent basis.
- 18.12 Unless otherwise indicated, all dollar amounts referred to in this Trust agreement are in lawful money of Canada.
- 18.13 Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect, and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.
- 18.14 It is intended that all the provisions of this Trust agreement will be fully binding and effective between the Parties, but in the event that any particular provision or provisions or part of one is found to be void, voidable, or unenforceable for any reason whatever, then the particular provision or provisions will be deemed severed from the remainder of this Trust agreement and all other provisions will remain in full force.
- 18.15 No Party will be held responsible for damages caused by delay or failure to perform its obligations under the terms of this Trust agreement when the delay or failure is due to fires, strikes, floods, acts of God, civil insurrection, lawful acts of public authorities, or delays or defaults caused by common carriers, which cannot reasonably be foreseen or provided against.

18.16 Each Party will, at any time and from time to time, upon request by any other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent, and meaning of this Trust agreement.

IN WITNESS WHEREOF the Trustee's authorized officer has executed this Trust agreement this _____ day of _____, 2011, at _____, in Ontario.

Witness

The Trustee

AND FURTHERMORE IN WITNESS WHEREOF FWFN as represented by the Chief and Councillors, for themselves and on behalf of the First Nation, have executed this Trust agreement under their respective hands this _____ day of _____, 2011, at _____, in Ontario.

Approved and passed at a duly convened meeting of the Council of FWFN First Nation this _____ day of _____, 2011.

Witness

Chief

Witness

Councillor

Witness

Councillor

Witness

Councillor

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SCHEDULE "A"

AUTHORIZED INVESTMENTS

PART I

1. Debt instruments issued or guaranteed by the Government of Canada, a Province of Canada, or a Municipality of Canada, or mutual or pooled funds investing in these debt instruments, all of which shall have a term not exceeding three years.
2. Debt instruments issued or guaranteed by any of the following chartered bank including bankers' acceptances:
 - Bank of Montreal;
 - Royal Bank of Canada;
 - Canadian Imperial Bank of Commerce;
 - Toronto-Dominion Bank;
 - National Bank of Canada; and
 - Bank of Nova Scotia;including mutual or pooled funds thereof investing in these debt instruments, all of which shall have a term not exceeding three years.
3. Mortgage backed securities guaranteed by the Government of Canada, an agency of the government of Canada, or one of the above chartered banks, including mutual or pooled funds thereof investing in these securities, all of which shall have a term not exceeding three years.
4. Commercial paper issued by corporations rated R-1 or A-1 by the Dominion Bond Rating Services or Standard and Poors Bond Rating Services including mutual or pooled funds thereof investing in commercial paper, all of which shall have a term not exceeding three years.
5. Corporate Bonds rated A or better by the Dominion Bond Rating Services or Standard and Poors Bond Rating Services including mutual or pooled funds thereof investing in these corporate bonds, all of which shall have a term not exceeding three years.

PART II

Upon the development and implementation of an Investment Policy, any investment that complies with the Prudent Investor / Prudent Portfolio Standard but not limited to common or preferred shares and any or all other debt or equity-like instruments, including derivatives, which take into consideration the following factors:

- 1) General economic conditions;
- 2) The possible effect of inflation or deflation on the investment;
- 3) The expected tax consequences of investment decisions or strategies;
- 4) The role that each investment or course of action plays within the overall trust portfolio;
- 5) The expected total return from income and appreciation of capital;
- 6) The needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 7) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
- 8) Should the Investment Manager deem it in the best interests of FWFN and the FWFN Boundary Claim Trust to purchase or retain shares in a financial institution or its affiliates, the Client hereby authorizes this purchase of, or retention of shares notwithstanding any connection between the financial institution or its affiliates and the Trustee. The Trustee, its successors and assigns, are hereby released, discharged and indemnified, from any liability to which the Trustee may become subject to as a result of such authorization and direction to retain or purchase shares in a related financial institution or its affiliates. It is acknowledged that the Trustee shall not be held responsible for any loss resulting from the retention or purchase of such shares. The Trustee is authorized to charge fees as agreed in respect of these shares.