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KWANLIN DÜN FIRST NATION

ORDER IN COUNCIL

ORDER IN COUNCIL TITLE:

AMENDMENT TO THE KDFN TRUST DISTRIBUTION FRAMEWORK

THE COUNCIL ORDERS THAT the "KDFN Beneficiary Trust Distribution Framework", first adopted through OIC-2025-13 is amended as set out in the schedule of amendments attached to this Order and marked as Schedule 'A'.

The Seal
of the Kwanlin Dün
First Nation

Chief Sean Smith

Cross Reference: OIC-2025-13

CERTIFIED AND DEPOSITED
IN THE KWANLIN DÜN FIRST NATION
REGISTRY OF LAWS AND POLICIES

2025 09 26
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Executive Council Office

Memorandum of Understanding

KDFN Trust Distribution Framework

Effective September 9, 2025

Background

A. The Kwanlin Dün First Nation Trust Deed (the "**Trust Deed**"), dated December 1, 2016, is the primary vehicle for management and distribution of settlement funds received pursuant to Chapter 19 of the Kwanlin Dün First Nation Final Agreement;

B. The Kwanlin Dün First Nation Trust (the "**Trust**") is overseen and managed by trustees appointed from time to time in accordance with the Trust (the "**Trustees**");

C. Section 7 of the Trust authorizes the Trustees to make distributions of Trust funds in accordance with its terms ("**Distributions**");

D. Paragraph 7.6 requires that the Trust seek and consider the recommendation of the KDFN Council (the "**Council**") in respect of future Distributions of Income;

E. It is the view of the Trust and the Council that in most cases, the Council will be best placed to receive and administer Distributions of Income.

F. Without limiting the Trustees power to make any other Distributions in accordance with the Trust, the Trustees expect to make one annual Distribution.

G. In order to ensure transparency and accountability and to facilitate orderly administration of the Trust, the Trustees and Council wish to establish a framework to guide how annual Distributions will be determined and made.

Therefore, the Trustees and the Council confirm their intention to conduct themselves in accordance with the Framework set out herein:

Introduction

1. This Framework is not intended to create legally enforceable obligations for either party or to limit in any way the legal authority that may be exercised by either Party from time to time.

2. This Framework is a supplement to the Trust Deed and this Framework is to be read in a manner that is consistent with the Trust Deed and in the event of a conflict between the Trust Deed and this Framework, the Trust Deed shall govern.

3. Unless otherwise defined as follows or elsewhere in this Framework, capitalized terms will have the meaning given to them in the Trust Deed:

   a) "**Distribution**" means a payment of Income or Capital to a Trust Beneficiary or a Minor in accordance with Part 7 of the Trust Deed;

   b) "**Distribution of Income**" means in accordance with section 7.4 of the Trust Deed, no later than the last business day of each fiscal year, the greater of the annual rate of return on Agreement Capital and Net Taxable Income must be made payable to a Trust Beneficiary and paid by the Trustees as soon as the amount of Income has been

determined, provided however that if in any year the Kwanlin Dün First Nation has failed to provide any recommendations in accordance with section 7.6, then the Trustees may in their discretion pay the whole or any part of the Income for that fiscal year to a Trust Beneficiary or any one or more of the other Trust Beneficiaries of this Trust in such proportions and in such manner as the Trustees in their discretion shall determine to the extent necessary to ensure the Income is not taxed in the hands of the Trustees. For certainty, the Income paid or made payable in accordance with this section to a Trust Beneficiary is income of the Trust Beneficiary and taxable in the hands of that Trust Beneficiary to whom it is allocated and not the Trust.

It is intended that sufficient amounts of expenses and Distributions from the Trust be paid, made payable or distributed to Trust Beneficiaries in each fiscal year so that the Trust will not be liable to income tax under Part I of the Income Tax Act. To the extent that the Trust would otherwise be liable for income tax, the Trustees must pay or declare payable distributions of Income so as to offset that liability and where those amounts of Income are not paid out during the year, the Trustees are deemed to have declared a distribution of that Income to the Kwanlin Dün First Nation for the primary benefit of the Kwanlin Dün First Nation for Community Benefit and must evidence that making payable with a promissory note. If there is any change in the treatment under the Income Tax Act of the Income of the Trust or of any other relevant amount that would frustrate this intention, the Trustees may without any amendment to this Trust Deed, alter the method of payment or Distribution or discontinue this policy for the purpose of minimizing taxes payable by the Trust, provided that no alteration or discontinuation under this section is prejudicial to the Trust Beneficiaries.;

c) "**Kwanlin Dün Beneficiary**" means an individual who is a "Beneficiary", as that term is defined in section 67(1)(c) of Chapter 11 – General Provisions of the Kwanlin Dün Constitution, and who is at least 19 years old and not disqualified from voting in KDFN elections;

d) "**Trust Beneficiaries**" means:

   i. the Kwanlin Dün First Nation,

   ii. one or more Kwanlin Dün Beneficiaries,

   iii. any other trust or registered charity or non-profit organization, within the meaning of the Income Tax Act, that, in the reasonable opinion of the Trustees, directly or indirectly benefits one or more Kwanlin Dün Beneficiaries, and

   iv. any combination of the entities and Persons referred to in paragraphs (i) to (iii); and

e) "**Capital**" means Agreement Capital, Minor's Capital, Additional Capital or Initial Capital.

f) "**Community Benefit**" means an activity or undertaking which is intended to provide benefit to a Trust Beneficiary in one or more of the following categories:

   i. constructing, operating, maintaining and administering community infrastructure on Kwanlin Dün lands;

   ii. carrying out initiatives that support the retention and advancement of Kwanlin Dün culture, language, traditional land uses and practices;

   iii. supporting education and training initiatives, including leadership and

managerial capacity building, for one or more Kwanlin Dün Beneficiaries;

iv. supporting community health and wellness initiatives;

v. providing housing for Kwanlin Dün Beneficiaries;

vi. after the 10th anniversary of the effective date of this Trust Deed, per capita Distributions to Kwanlin Dün Beneficiaries made in accordance with section 7.5(b);

vii. after the 15th anniversary of the effective date of this Trust Deed, supporting economic development initiatives carried out by the

ii. Kwanlin Dün First Nation, including the purchase of land, provided that the purchases of land is for the benefit of the Kwanlin Dün First Nation as a whole;

i. administering and operating the Trust; and

ii. supporting other initiatives not specifically prohibited by this Trust Deed and as approved by both the Trustees and Council.

g) "**Settlement Property**" means the property received by the Trustees from the Kwanlin Dün First Nation as settlement of the Kwanlin Dun First Nation Trust referred to in section 2.1 of the Trust Deed.

h) **"Additional Capital"** means any contributions referred to in section 2.6(a) of the Trust Deed and any Income, other than Income earned on Minor's Capital, not Distributed in the particular fiscal year it is earned.

Objectives & Principles

4. The Trustees and Council affirm that this Framework:

   a) is intended to help Kwanlin Dün Beneficiaries better understand how the Trust Deed is managed and how Distributions of Income are made;

   b) aims to coordinate the annual activities of the Trustees and the Council respecting Distributions and particularly annual Distributions of Income, respecting Distributions and respective annual budgeting cycles; and

   c) contemplates that the Council will normally receive and administer a Distributions of Income subject to any terms and conditions that the Trustees may impose on that Distributions of Income in accordance with Article 7 of the Trust Deed.

5. The Trustees and Council affirm that annual Distributions of Income:

   a) must be made for Community Benefit;

   b) maintain the Settlement Property and Additional Capital be preserved by the Trustees in perpetuity in an amount equivalent to its value on the date it was transferred to the Trustees, indexed annually for inflation at a rate determined by the Administrative Trustee; and

   c) should be made in a manner that is transparent and accountable.

Distributions & Annual Distributions of Income

6. Nothing in this Framework shall bind the Trustees to do anything and the Trustees will at all

times enjoy the full scope of discretion afforded to them by the Trust Deed..

It is the expectation of the Trustees and the Council that compliance to the Trust Deed would be maintained at all times in relation to the Trust Distributions and annual Distributions of Income. 8. The Council will make every reasonable effort to make their recommendations available to the Trustees in compliance with 7.6 on an annual basis.

7. The timelines established by this Framework in respect of annual Distributions of Income are intended to set reasonable expectations and guidelines aimed at coordinating the respective administrative and fiscal planning needs of the Trustees and Council and, noting that these timelines are intended to apply with some flexibility.

8. If either party determines that it will not be able to comply with its obligations under this Framework in respect of an annual Distributions of Income for a given year, regardless of the cause, it will give notice to the other party.

9. If a notice is given under the section above, or if the Trustees have not determined an annual Distribution of Income by May 15:

   a) any Distribution made for that year will still be determined as a Distribution of Income from the preceding fiscal year; and

   b) the Trustees and the Council will discuss the factors leading to the delay and consider whether the Framework would benefit from revision.

Determination Distribution Amount of Income

10. As soon as practicable after the completion of the audited financial statements of each year and before May 15, the Trustees will communicate to Council the annual Distribution amount as reported in the Trust's audited financial statements .

11. The annual Distribution of Income shall be calculated in accordance with 7.4 of the Trust Deed, quoted as follows:

    7.4 Distribution of Income

    No later than the last business day of each fiscal year, the greater of the annual rate of return on Agreement Capital and Net Taxable Income must be made payable to a Trust Beneficiary and paid by the Trustees as soon as the amount of Income has been determined, provided however that if in any year the Kwanlin Dun First Nation has failed to provide any recommendations in accordance with section 7 .6, then the Trustees may in their discretion pay the whole or any part of the Income for that fiscal year to a Trust Beneficiary or any one or more of the other Trust Beneficiaries of this Trust in such proportions and in such manner as the Trustees in their discretion shall determine to the extent necessary to ensure the Income is not taxed in the hands of the Trustees. For certainty, the Income paid or made payable in accordance with this section to a Trust Beneficiary is income of the Trust Beneficiary and taxable in the hands of that Trust Beneficiary to whom it is allocated and not the Trust.

    It is intended that sufficient amounts of expenses and Distributions from the Trust be paid, made payable or distributed to Trust Beneficiaries in each fiscal year so that the Trust will not be liable to income tax under Part I of the Income Tax Act. To the extent that the Trust would otherwise be liable for income tax, the Trustees must pay or declare payable distributions of Income so as to offset that liability and where those amounts of Income are not paid out during the year, the Trustees are deemed to have declared a

distribution of that Income to the Kwanlin Dun First Nation for the primary benefit of the Kwanlin Dun First Nation for Community Benefit and must evidence that making payable with a promissory note. If there is any change in the treatment under the Income Tax Act of the Income of the Trust or of any other relevant amount that would frustrate this intention, the Trustees may without any amendment to this Trust Deed, alter the method of payment or Distribution or discontinue this policy for the purpose of minimizing taxes payable by the Trust, provided that no alteration or discontinuation under this section is prejudicial to the Trust Beneficiaries.

Council Recommendation for Annual Distribution of Income

12. Upon receiving notice of the audited financial statements of the Trust, Council will develop and deliver to the Trustees its recommendation for an annual Distribution of Income and other spending priorities within 45 days following May 15.

13. In accordance with 7.6 of the Trust Deed, which is quoted as follows:

7.6 Recommendations from Council

The Trustees will annually seek the recommendation of Council, and will give full and fair consideration to any recommendation made, to establish annual spending priorities for the Trust as Trust Property becomes available for Distribution.

Distributions to KDFN or a tax-exempt beneficiary should be paid, after the payment of expenses in section 7 .1, in priority based on the source of the particular funds in the following order:

a) Fund Secondary Income;
b) Fund Secondary Capital;
c) Fund Primary Income; and then
d) *Fund Primary Capital.*

Council shall provide the KDFN annual recommendation to the Board of Trustees, which includes a work plan on the annual spending priorities including a budget that is compliant with the Community Benefit definition as outlined in section 14 below. The workplan shall include a brief overview of the funding allocation(s) including a summary of the intended outcome and benefit to the Trust Beneficiaries. The Trustees will give full and fair consideration to any recommendation made by Council for the intended annual Distribution of Income.

14. Council's recommendation to the Trustees will normally:

a) describe the recommended project or program or other spending priority to be funded, providing details respecting the budget, administration, deliverables, and timelines commensurate with the size and complexity with the project or program and KDFN's proposed involvement in the administration or delivery of the project or program;

b) detail and disclosed the number of KDFN Beneficiaries will benefit from the program or project;

c) identify a suitable proponent if the project or program would not be delivered or administered by KDFN;

d) KDFN Chief and Council may request an administration fee for the coordination of a program or project in connection with a KDFN Trust Distribution of Income for Community Benefit, where the circumstances warrant it (for example: staffing).

e) if KDFN is the proponent, identify if and how the project or program relates to KDFN's other existing or planned programs or projects;

f) describe why the project or program is a suitable spending priority, having regard to:

   i) the interests of Trust Beneficiaries and any available information evidencing those interests;

   ii) other sources of funding allocated or available to be allocated to the program or project and utilize the other external funding before the Trust's annual Distribution of Income;

   iii) the Community Benefits to be provided in compliance with the Trust Deed;

g) describe any other details respecting the design or implementation of the program or project that will ensure that any annual Distribution of Income made in respect of that program or project will be in service of and compliance with the Trust Deed; and

h) propose how the funds should be advanced.

15. In developing a recommendation for an annual Distribution of Income, the Council may consult with the Trustees, the Kwanlin Dün Beneficiaries, any other Trust Beneficiary, or any other person.

16. Unless Council determines that it would be inappropriate to do so, Council will inform the Trustees of its consultations with a Trust Beneficiary respecting an annual Distribution of Income and invite the Trustees to observe that consultation process.

Trustees Decision Respecting Annual Distribution of Income

17. The Trustees will give Council's recommendation for an annual Distribution of Income due consideration within 30 days of June 30 and will transfer the annual Distribution of Income outlined within Council's recommendation within 15 days.

18. At any time after receiving Council's recommendation for annual Distribution of Income, the Trustees may discuss with the Council the Council's recommendation in order to:

   a) request further information or clarification regarding Council's recommendation;

   b) discuss the benefits of Council amending the Council's recommendations; and

   c) discuss the impact of Council's recommendation on the Community Benefit definition within the Trust Deed and any particular terms or conditions as agreed upon by the Trustees and the Council.

Beneficiary Consultation

19. In recognition of the special interest that Kwanlin Dün Beneficiaries have in the Trust, the Trustees and the Council affirm the importance of consulting with Kwanlin Dün Beneficiaries in advance of determining the allocation of the annual Distribution of Income.

20. Without limiting the Trustees' right to consult with Kwanlin Dün Beneficiaries, the Trustees and Council agree that the Council will, in the normal course, be primarily responsible to:

    a) ensure that its recommendations to the Trustees are in the best interest of Kwanlin Dün Beneficiaries; and

    b) satisfy the Trustees that it has taken sufficient steps to understand those interests and take them into account when formulating its recommendations to the Trustees.

Reporting to the KDFN Beneficiaries

21. Reporting on the use of the annual Distribution of Income would be as follows:

    a) Annual Reporting

        i) The actual expenditures compared to the budget provided to the Trustees in Council's annual recommendation;

        ii) Progress reporting on programs or projects funded by the KDFN Trust's annual Distribution of Income including information on how the program or project was managed.

        iii) A commitment to reallocate any unspent funds to another eligible program or project compliant with the Trust Deed's definition of Community Benefit with supporting reasons for the reallocation.

Reporting to Trustees

22. Reporting on the use of the annual Distribution of Income would be as follows:

    a) Annual and Interim Reporting

        i) In house financial statements inclusive of the budget-to-actual and expenditures incurred to date to be provided to the Trustees at by November 30 and April 30 each year;

        ii) Verbal updates at joint Council and Trustees meetings on progress and/or brief written updates for any programs or projects that may be delayed potentially requiring a fund reallocation or carryforward into the next fiscal.

        iii) A commitment to reallocate any unspent funds to another eligible program or project compliant with the Trust Deed's definition of Community Benefit with supporting reasons for the reallocation which shall be included in a report to the Trustees as an amendment to Council's original recommendation.