

Qames ʔəms tala Tla’amin Settlement Trust (the “Trust”)

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Note to Reader

This document is intended to summarize the main aspects of the Trust and how it operates and manages the Trust Property. It does not attempt to present or summarize all the provisions of the Trust Deed or the legal duties and obligations of the Trustees. This document should not be relied upon or substituted for the Trust Deed for interpretative or legal purposes. For complete information, the reader must refer to the Trust Deed. If you require a copy of the Trust Deed, please contact a Trustee or the Guardian at your convenience.

Capitalized words or phrases used in this document are defined in the Trust Deed for the Trust.

1. Introduction

Section 87 of the *Constitution of the Tla’amin Nation* directs the Tla’amin Government to establish one or more settlement trusts to preserve and protect the Tla’amin capital transfer and amounts received under the Resource Revenue Sharing Chapter of the *Tla’amin Final Agreement* and the income derived from the investment of those monies.

As part of the *Tla’amin Final Agreement*, the Tla’amin entered into the *Tla’amin Tax Treatment Agreement* with the federal and provincial governments. Under section 9(1) of the *Tla’amin Tax Treatment Agreement*, the Minister of National Revenue may designate a trust as a Tla’amin Settlement

Trust. This designation of a trust as Tla'amin Settlement Trust will provide significant tax benefits to the monies and the income derived from those monies contributed or transferred to that trust.

The Finance & Programs Community Working Group (the "Working Group") worked with our finance negotiators, accountants, and lawyers throughout 2014-15 to develop the Trust Deed for the Trust. The Trust Deed establishes the Trust, identifies the duties and liabilities of the Trustees, and provides how the Trust will operate.

The Working Group ensured that the Trust meets the needs of the Tla'amin Government and Tla'amin Citizens and can be designated as a Tla'amin Settlement Trust within the meaning of the *Tla'amin Tax Treatment Agreement*. The Working Group named the Trust as "Qames ʔəms tala" which means "our money is put away safely."

In the end, the establishment of the Trust will meet the Tla'amin Government's obligation under section 87 of the *Constitution of the Tla'amin Nation* and, since it will be designated as a Tla'amin Settlement Trust, it will take advantage of the tax benefits provided under the *Tla'amin Tax Treatment Agreement*.

2. What is a trust?

A trust is not a legal entity like a corporation. It is a fiduciary legal relationship where one party transfers property to another party to be managed for the benefit of a third party.

Under the Trust, the Tla'amin Nation contributed or transferred certain monies payable under the *Tla'amin Final Agreement* to the Trustees to be managed in accordance with the terms of the Trust Deed for the benefit of the Beneficiaries.

This means that the Trust Property – that is, the monies contributed to the Trust - are not managed by Tla'amin Government, but by the Trustees who have a legal responsibility to ensure that the management of the Trust Property is consistent with the terms of the document that created the Trust. This document is known as the Trust Deed.

3. Why establish a trust?

Aboriginal groups establish trusts for a variety of reasons. In general, these trusts are intended to be a form of a treasury for the Aboriginal communities to manage their wealth for present and future generations. They are structured to ensure that their income is not taxable and, more importantly, they have been created to safeguard the investment and use of the monies contributed or transferred to the trust – known as the "trust property" – so that there is a legacy for future generations.

As discussed below, the benefits of a trust include protection of the trust property, increased transparency and accountability of the management of the trust property and reduced tax liability.

3.1 Protection of trust property. The monies transferred to a trust is protected from any debts or liabilities of the First Nation and any corporation or society representing or controlled by the First Nation or its members. For example, if a First Nation or a First Nation corporation or society was found by a court to owe money to a third-party, that third-party would not be able to claim any portion of the monies that were transferred to the trust to satisfy the debt owed to that third-party.

3.2 Enhanced transparency and accountability. A trust establishes checks and balances to provide transparency and accountability with respect to the management of the trust property.

Trustees are legally responsible for the management of the trust property in accordance with the trust deed. They have a legal duty to act in the best interests of the beneficiaries of the Trust with respect to the management and administration of the trust property. This means that the First Nation has no role in the management and administration of the trust property.

The trustees would determine when, why and how much money should be disbursed or expended from the Trust for any given purpose. It is the trustees who determine how the Trust Property is invested in accordance with the trust deed. The trustees must ensure that the trust property is managed and administered with a high degree of expertise, attention and oversight, without any political interference.

The Trustees must report regularly on the management of the Trust Property and the performance of the investments. They must attend the Tla'amin Community Trust Meetings to report annually to the Beneficiaries, provide information and updates, answer questions, and address comments and concerns.

3.3 Minimize tax liability. There are significant tax benefits for the Trust Property. If managed correctly, a trust can earn tax-free income, including property income and business income that can then be distributed to the beneficiaries.

In addition to taxation benefits for the income of the Trust Property, there would be no "own source revenue" offsets unless a portion of the income from the Trust Property is disbursed from the Trust directly to the Tla'amin Government.

4. Overview of the Trust

It is intended that only monies payable to the Tla'amin Nation under "Chapter 18 - Capital Transfer and Negotiation Loan Repayment" and "Chapter 19 - Resource Revenue Sharing" of the *Tla'amin Final Agreement* would be contributed to the Trust. It is estimated that the total amount of these monies has a present value of more than \$50 million. These monies and the income generated from the investment of these monies will form the Trust Property. If other monies are transferred to the Trust, the Trust may no longer qualify as a Tla'amin Settlement Trust within the meaning of the *Tla'amin Tax Treatment Agreement*.

The Trustees make decisions in accordance with the Trust Deed about the management of the Trust Property. In particular, the Trustees decide where and with whom investments are made in accordance with the Investment Policies approved pursuant to the Trust Deed and when and where disbursements or payments are made from the Trust Property to the Beneficiaries.

The Guardian operates independently from the Trustees and ensures that the Trustees are fulfilling their responsibilities and duties. The Guardian has specific responsibilities set out in the Trust Deed and has a legal duty to act in the best interests of the Beneficiaries.

The Guardian, who is appointed by Tla'amin Citizens at a Tla'amin Trust Community Meeting, appoints the Trustees. The Chief and Council appointed the Initial Guardian and the Initial Trustees as part of its approval of the Trust Deed.

5. Components of the Trust

Three components are needed for the creation of a trust: trustees, beneficiaries and objectives of the trust established by the settlor. The settlor creates the trust terms which are set out in a trust deed and contributes property to the trustees; the trustee assumes ownership of the assets and manages them in

accordance with the trust deed; and the beneficiaries enjoy the benefits of the trust property as permitted by the objectives of the trust deed.

5.1 The Settlor

Who is the settlor? The Tla'amin Nation, as represented by the Tla'amin Government within the meaning of the *Tla'amin Final Agreement*, is the Settlor of the Trust. As the Settlor, the Tla'amin Nation established the Trust and agreed to contribute the capital transfer and resource revenue sharing monies provided under the *Tla'amin Final Agreement* to the Trust, as directed by section 87 of the *Constitution of the Tla'amin Nation*. These monies contributed to the Trust by the Tla'amin Nation and any income generated by those monies will constitute the Trust Property.

The Tla'amin Nation intended the Trust to be designated as a Tla'amin Settlement Trust in accordance with the *Tla'amin Tax Treaty Agreement*, for the beneficiaries, subject to the terms of the Trust Deed.

5.2 The Trustees

Who are the trustees? There must be at least three Trustees and a majority of the Trustees must be Tla'amin Citizens.

Who appoints the Trustees and how many Trustees are appointed? The Guardian appoints the trustees for four-year terms, and they may be re-appointed for additional terms. The initial trustees are appointed by the Tla'amin Nation for staggered terms to ensure that the Trustees' terms do not end on the same date. It is important that there are always some experienced Trustees in office.

The Guardian may appoint a Tla'amin Citizen who is between the ages of 19 to 25 years as Youth Trustee for a term of one year. The Youth Trustee may be re-appointed by the Guardian for successive terms.

What are the qualification requirements for the trustees? A person must complete an accredited community trustee training program or similar training required by the Guardian or agree to complete such training within a reasonable period, in order to be qualified to be appointed as a Trustee or a Youth Trustee.

A person cannot be a Trustee if he or she:

- is under the age of 19 years.
- is a child, stepchild, parent, grandparent, grandchild, sibling or spouse of the Guardian.
- has been declared to be a bankrupt by a court.
- has been declared by a court to be mentally incompetent of managing his or her affairs.
- has been convicted of an indictable offence in the previous five years or an offence involving property held as a fiduciary or trustee.
- is an elected member of the Tla'amin Government, such as a member of the Tla'amin Government Executive; and
- is a director or officer of a corporation where the Tla'amin Nation has a majority ownership interest.

Can a Trustee be removed or disqualified? A person will no longer serve as a Trustee if he or she:

- provides written notice of his or her resignation to the other Trustees and the Guardian.

- is convicted of an indictable offence.
- is bankrupt or is convicted of any offence involving property held by the Trustee as a trustee or fiduciary.
- is declared by a court to be mentally incompetent.
- ceases to be a Tla'amin Citizen and a majority of the Trustees are no longer Tla'amin Citizens.
- dies.
- is elected as a member of the Tla'amin Government; and
- is a director or officer of a corporation where the Tla'amin Nation has a majority ownership interest.
- misses three consecutive meetings of the Trustees without reasonable cause: or
- is removed by the Guardian for failing to comply with the Trust Deed.

How do the Trustees carry out their work? The Trustees will meet at least once every calendar quarter. Notice of at least fourteen days must be provided to the Trustees with respect to the place, day and hour of each meeting of the Trustees. All the Trustees may agree in writing to waive the notice requirement for a meeting. If the Trustees fail to hold quarterly meetings, the Guardian may provide notice to the Trustees for their next meeting.

Three Trustees are required for the quorum of their meetings. The Trustees will appoint a Chair for that meeting by a majority vote.

The Trustees must use their best efforts to obtain a consensus with respect to the approval of resolutions. If consensus cannot be obtained, a majority of the Trustees in attendance at a Trustee meeting may approve a resolution. The Youth Trustee is entitled to vote on all matters.

A Trustee may participate in a meeting by way of electronic communication if all the Trustees participating in the meeting can communicate with each other. Such a Trustee would be deemed to be present at the meeting and counted in the quorum and entitled to speak and vote at the meeting.

The Trustees may make and amend rules to govern their procedures. Such procedures must be consistent with the Trust Deed and any laws that govern trusts.

Can the Trustees delegate their powers? The Trustees may delegate, in writing, their powers, authorities and discretions under the Trust Deed relating to the management, administration and operation of the Trust. But the Trustees cannot delegate any powers, authorities or discretions relating to the disbursement of Trust Property to the Beneficiaries.

What are the duties and powers of the Trustees? As discussed below, the Trust Deed sets out specific duties and powers for the Trustees. The Trustees' duties are different than their powers. While the Trustees are directed to carry out the duties, their powers authorize them to take certain actions or make certain decisions. But unlike duties, powers do not create legal requirements for the Trustees to take such actions or make such decisions. This means that the Trustees have discretion as to whether or not to exercise their powers.

The Trustees must always hold and manage the Trust Property for the benefit of the Beneficiaries. They must exercise their duties and carry out their functions honestly, in good faith and in the best interests of the Trust and the Beneficiaries. In particular, they must exercise a degree of care, diligence and skill that a "reasonably prudent trustee" would exercise in comparable circumstances.

The duties of a trustee include the following:

- invest the Trust Property in accordance with the Trust Deed.
- ensure disbursements of the Capital and Income from the Trust Property are made only for authorized purposes and on a timely basis.
- maintain complete and accurate records of trust activities, including any transactions, and minutes of each meeting of the trustees, including any decisions or resolutions.
- avoid and disclose any conflicts of interest.
- be accountable and transparent to the Beneficiaries of the Trust; and
- retain agents and consider their advice.

In addition, the Trustees must take “reasonable steps” to:

- open one or more accounts for the Trust at a bank or Financial Institution in Canada.
- establish arrangements banking procedures for the Trust.
- consider the advice of Investment Managers in accordance with the applicable Investment Policy.
- obtain annual reports from the Tla’amin Nation that confirm that monies disbursed to the Tla’amin Nation were spent in accordance with a Permitted Use pursuant to the Trust Deed.
- provide copies of audited financial statements of the Trust to the Tla’amin Government Executive and the Tla’amin Community Trust Meeting within 150 days following the end of each Fiscal Year.
- attend the Tla’amin Community Trust Meeting and any other meetings when requested by the Tla’amin Government Executive or the Tla’amin Community Trust Meeting and report on the use of the Trust Property.
- pay compensation for services rendered to the Trust and reimburse the Trustees’ for their expenses in accordance with the policies of the Trust.
- report to the Beneficiaries about the amount of income attributed to each of them under the *Income Tax Act* (Canada).
- file any tax returns or other filings for the Trust and remit all taxes and other assessments required by law.
- maintain all accounts, records and minutes of the Trustees’ meetings.
- monitor the surviving descendants of Chief Tom Timothy to determine if the Trust remains in force and effect; and
- prepare an annual budget for the Trust for each Fiscal Year.

The Trustees have broad powers under the Trust Deed with respect to the management and investment of the Trust Property. For instance, the Trustees may keep or convert the Trust Property into money or other property in accordance with the applicable Investment Policy and decide how, when and on what terms to hold it.

What is the liability of the Trustees? The Trustees would not be personally responsible or liable for any loss to the Trust so long they exercise their powers and carry out their functions under the Trust

honestly, in good faith and in the best interests of the Trust and the Beneficiaries and exercise the care, diligence and skill that a “reasonably prudent trustee” would exercise.

A Trustee would not be liable for any loss or damage to the Trust Property resulting from any investment, act or omission made in good faith by any Trustee, unless that loss or damage arises from gross negligence or actual fraud on the part of the Trustee who is sought to be made liable. The other Trustees would not be liable for that loss or damage, unless those Trustees were also grossly negligent or fraudulent.

This means that the Trustees would be responsible for any liabilities arising from their gross negligence, willful default or fraud of the Trustees or any of their employees or agents.

What about conflicts of interest? A Trustee must provide written disclosure of any conflict of interest to the other Trustees when the Trustee becomes aware of a conflict or potential of a conflict. A Trustee who has disclosed a conflict cannot be present at any discussions concerning the matter related to the conflict.

The Trust Deed provides that a potential conflict may arise where a Trustee:

- is a party to a contract of the Trustees entered into or to be entered into in accordance with the Trust Deed.
- is a director or officer of, or has an interest in any body that is a party to a contract of the Trustees entered into or to be entered into in accordance with the Trust Deed; or
- otherwise stands to benefit or whose child, stepchild, parent, grandparent, grandchild, sibling or spouse stands to benefit from a contract of the Trustees entered into or to be entered into in accordance with the Trust Deed.

In addition, it is expected that the Trustees’ code of conduct would also set out rules relating to conflicts of interest.

5.3 The Beneficiaries

Who are the Beneficiaries? The Beneficiaries of the Trust are: (a) the Tla’amin Nation; (b) the Tla’amin Citizens; (c) a person or entity designated by the Trustees as a beneficiary in accordance with the *Tla’amin Tax Treaty Agreement*; or (d) any combination of the persons or entities set out in (a) to (c).

Can the Beneficiaries direct the Trustees make a disbursement or payment to them from the Trust? No. The Beneficiaries cannot direct the Trustees to make a disbursement or payment or transfer of any Trust Property. The Beneficiaries cannot interfere or give any direction to the Trustees about the management or administration of the Trust or how the Trustees exercise their powers or authorities under the Trust Deed.

As discussed below, the Trustees have the authority to make disbursements to the Beneficiaries by paying or transferring a portion of the Trust Property to the Beneficiaries in accordance with Trust Deed and their legal duties to act in the best interests of the Trust and the Beneficiaries. The Beneficiaries must use any disbursement for a Permitted Use.

Can the Trustees make Per Capita Disbursements to the Beneficiaries? No. The Trust Deed does not permit Per Capita Disbursements. This means the Trustees cannot disburse or transfer Trust Property or make payments directly to Tla’amin Citizens.

5.4 The Guardian

What is the Guardian? The Guardian has a role to oversee and supervise the management and administration of the Trust. In particular, the Guardian is responsible to ensure that: (a) the trustees are taking prudent steps to manage and administer the Trust in the best interests of the beneficiaries; and (b) the Trust is managed in accordance with the Trust Deed. This means that the Guardian must ensure that the Trustees are carrying out their responsibilities under the Trust Deed in a competent and professional manner.

What are the qualifications for the Guardian? A person must be a member or hold a certification recognized by a professional or regulatory body for law, accounting or another regulated profession. The Guardian would also have to meet any additional qualifications established by the Tla'amin Community Trust Meeting. A person cannot be the Guardian if he or she:

- is under the age of 19 years.
- is a child, stepchild, parent, grandparent, grandchild, sibling or spouse of a Trustee.
- has been declared to be a bankrupt by a court.
- has been declared by a court to be mentally incompetent of managing his or her affairs.
- has been convicted of an indictable offence in the previous five years or an offence involving property held as a fiduciary or trustee.
- is an elected member of the Tla'amin Government, such as a member of the Tla'amin Government Executive; or
- is a director or officer of a corporation where the Tla'amin Nation has a majority ownership interest.

What are the responsibilities of the Guardian? While the Guardian may work closely with the trustees from time to time, the Guardian is not a trustee and operates independently from the Trustees. The Trust Deed directs the Guardian to attend all Trust Meetings and Tla'amin Community Trust Meetings. However, the Guardian does not have any voting rights at those meetings.

The Guardian has the specific powers under the Trust Deed, including the appointment and removal of Trustees and the approval of Investment Policies and amendments to the Trust Deed. The Guardian also approves disbursements and honoraria for the Trustees.

Who appoints the Guardian and for what term? The Tla'amin Community Trust Meeting appoints the Guardian for a term of six years. The Tla'amin Community Trust Meeting means a meeting of at least 40 Tla'amin Citizens that has been convened in accordance with the Trust Deed.

The Guardian may resign by giving 90 days' written notice to the Trustees.

Can the Guardian be removed? The Tla'amin Community Trust Meeting can remove the Guardian at any time if he or she is convicted of an indictable offence or any offence involving property held by him or her as a trustee or fiduciary or is bankrupt.

Five years after the establishment of the Trust, the Guardian may be removed from office by a resolution of two-thirds of the Tla'amin Citizens attending the Tla'amin Community Trust Meeting and appoint another person as the Guardian.

What happens if there is no Guardian or the Guardian is unable to act? If there is no Guardian or the Guardian is incapable of acting for any reason, such as medical or capacity issues, the Tla'amin

Government Executive may appoint an interim Guardian until a new Guardian is appointed at the next meeting of the Tla'amin Community Trust Meeting. The interim Guardian must meet the eligibility requirements set out in the Trust Deed.

5.5 Agents

What are agents? The Trustees may use agents, such as lawyers, accountants, agents and other professionals or advisors, to assist them in carrying out their duties. They may retain and rely on the advice of and delegate their powers to such agents. For instance, the Trustees retain Auditors to provide tax advice and Financial Advisors to advise the Trustees with respect to the investment of the Trust Property.

Are the Trustees liable for the work of the agents? The Trustees must use reasonable care in the appointment and supervision of the Trust's agents. If the agents are selected with reasonable care, the Trustees would not be liable for any neglect or misconduct of these agents nor for any loss or damage resulting from any delegation to be the agents or any action taken on the advice of the agents.

But the Trustees would be responsible for any liability arising directly from the gross negligence, willful default or fraud of their agents.

5.6 Tla'amin Community Trust Meeting

What is the Tla'amin Community Trust Meeting? It is an annual meeting convened by at least 40 Tla'amin Citizens, who are at least 19 years of age, to review materials and ask questions about the management and administration of the Trust and the investment of the Trust Property.

The Guardian must provide written notice to convene the Tla'amin Community Trust Meeting. This notice must be posted at the offices of the Tla'amin Government Executive and other public locations at least 14 days before the date of the meeting. If the Guardian fails to provide this notice, the Trustees may give such notice.

What is the role of the Tla'amin Community Trust Meeting? The Tla'amin Community Trust Meeting has specific duties and powers, including the following:

- participation in the consultations conducted by the Trustees with respect to the establishment of the Investment Policies.
- review of the annual audited financial statements provided by the Trustees.
- appointment of the Guardian.
- establishment of additional qualifications for the Guardian.
- confirmation or replacement of a substitute Guardian appointed by the Guardian.
- removal of the Guardian and designation of a replacement.
- confirmation or replacement of an interim successor Guardian appointed by the Tla'amin Government Executive; and
- approval of amendments of certain provisions of the Trust Deed.

What are the rules governing the Tla'amin Community Trust Meeting? The quorum of the Tla'amin Community Trust Meeting is at least 40 Tla'amin Citizens who are the age of majority. The Tla'amin Community Trust Meeting may adopt and amend policies and procedures for its operation.

A Tla'amin Citizen may participate in a Tla'amin Community Trust Meeting by way of electronic communication if all the persons participating in the meeting can communicate with each other. A Tla'amin Citizen participating by electronic means would be deemed to be present at the meeting and counted in the quorum and entitled to speak and vote at the meeting.

The Guardian or a Trustee will chair the Tla'amin Community Trust Meeting, unless the Tla'amin Community Trust Meeting makes policies or procedures that provide otherwise.

If the Tla'amin Community Trust Meeting cannot reach consensus, a majority vote of the Tla'amin Citizen present will be required for approval of any motions or resolutions.

6. Administration and management of the Trust Property

The Trustees will hold the Trust Property in accordance with the Trust Deed for both the long and short term benefit of the Beneficiaries and the Trust is to provide for the management, investment and disbursement of the Trust Property for those purposes.

What is the term of the Trust? The Trust is "irrevocable" by the Settlor. This means that the Settlor – that is, the Tla'amin Nation – cannot cancel or reverse the Trust.

The Trust is intended to hold the Trust Property for the long-term benefit of the Beneficiaries in accordance with the terms of the Trust Deed. It is expected that the Trust will operate for many generations of Tla'amin Citizens. To that end, the Trust Deed provides that the Trust will be in force and effect until the earlier of:

- the date when the Trust no longer qualifies as a Tla'amin Settlement Trust within the meaning of the *Tla'amin Tax Treatment Agreement*; or
- the date that is 20 years after the death of the last survivor of the lineal descendants of Chief Tom Timothy who was a Tla'amin Citizen and who was living on the date that the Trust was established.

This date is referred to as the Final Disbursement Date.

Upon the Final Disbursement Date, the Trustees must disburse any remaining Trust Property to the Tla'amin Nation or to a trust that qualifies as a Tla'amin Settlement Trust within the meaning of the *Tla'amin Tax Treatment Agreement*.

How are the different monies transferred to the Trust managed? The Trustees may divide the different types of contributions made to the Trust into separate investment funds. These separate funds are known as Segregated Funds. For example, the Trustees may be directed to place the capital transfer monies in a separate fund from the resource revenue sharing monies so they can be invested differently. Segregated Funds would be managed separately and the Trust Property cannot be transferred between them without the written agreement of the Tla'amin Nation.

What is the Economic Development Fund? The Trust Deed directs the Trustees to hold the economic development monies provided under the *Tla'amin Final Agreement* in an investment fund separately from the other monies contributed to the Trust. This separate investment fund is called the "Economic Development Fund." Since these economic development monies are intended to be used by the Beneficiaries for economic development purposes, the disbursement limitations set out in the Trust Deed do not apply to the Economic Development Fund.

The Trustees have established a policy for Beneficiaries to make an application to the Trust for a disbursement of a portion of the Economic Development Fund for specific purposes. If you wish to learn more about the Economic Development Fund, please do not hesitate to contact a Trustee.

Who pays the expenses of the Trust? The Trustees pay the expenses related to the creation and administration of the Trust from the Trust Property. These expenses would include the fees for auditors, lawyers, consultants and professional advisors, the costs for Trustee meetings and Tla'amin Community Trust Meeting and the honoraria for the Trustees in accordance with a policy approved by the Guardian.

The payment of expenses from the Trust must be made using specific funds from the Trust Property in order to minimize the tax liability of the income of the Trust Property.

How do we ensure accountability and transparency with respect to the operation of the Trust? The Trustees must appoint an independent, qualified accounting firm to provide an annual auditors' report, including a financial statement. The Trustees are responsible to provide copies of the auditors' report and the audited consolidated financial statements of the Trust to the Guardian, the Tla'amin Community Trust Meeting and the Tla'amin Government Executive.

Any Beneficiary or the Guardian may review the audited financial statement during normal business hours upon reasonable notice to the Trustees.

The Trustees must also appoint a lawyer, auditor or other suitable professional to undertake an audit of the activities and decisions of the Trustees and the Guardian, including the use, investment and disbursement of the Trust Property, to ensure compliance with the Trust Deed. This audit is referred to as a Compliance Audit and it must be carried out every two years.

Who keeps the records of the Trust? The Trustees are responsible to keep the books, records and accounts relating to the transactions of the Trust. In particular, the Trustees must maintain a "minute book" for the Trust that includes certain documents, such as the signed Trust Deed, copies of each written agreement entered into by or on behalf of the Trustees, minutes and resolutions of all the Trustees' meetings and financial records and statements of the Trust.

7. Investment of the Trust Property

What is an Investment Policy? The Trustees must establish one or more Investment Policies with respect to the investment of Trust Property. There may be more than one Investment Policy. For instance, the Investment Policy for the Economic Development Fund may differ from the policy for the investment of the other monies contributed to the Trust.

The Trustees must consult with the Tla'amin Community Meeting and the Guardian with respect to the development of such an Investment Policy. Any amendment to an Investment Policy must be reviewed and considered by the Trustees and approved by the Guardian.

An Investment Policy provides direction and guidance to the Investment Manager and other agents of the Trust with respect to the investment of the Trust Property. It also provides transparency and accountability to the Beneficiaries about the investment of the Trust Property. An Investment Policy should set out the investment objectives, asset allocation and investment risk. It should also confirm what investments are permitted.

What can the Trust Property be invested in? The Trust Property must be invested in accordance with the *Tla'amin Tax Treatment Agreement*. This means that the Trust Property can be invested in:

- investment instruments that are described as qualified investments for a trust governed by a registered retirement savings plan within the meaning of section 146 of the *Income Tax Act* or in any other investments that may be agreed among the Tla'amin Nation and the federal and provincial governments.
- certain loans to Tla'amin Citizens and the Tla'amin Nation and its public institutions and eligible corporations.
- interest free or low-interest loans to Tla'amin Citizens or partnerships or trusts in which no persons other than Tla'amin Citizens hold the interests as partners or beneficiaries where the purpose of the loan is to: (a) acquire, construct or renovate residential property in British Columbia; (b) attend education, technical or vocational courses; or (c) participate in Tla'amin Right to Harvest Fish in accordance with the *Tla'amin Final Agreement*; and
- a security interest realized in the course of carrying on a permitted activity.

Who is the Investment Manager? The Investment Manager is a person or firm who is appointed by the Trustees to manage the investment of the Trust Property. The Investment Manager must be registered with a provincial securities commission as a portfolio manager and must be independent from the Tla'amin Nation, the Trustees, the Guardian and any Financial Advisor retained by the Trustees.

The Trustees may terminate the term of an Investment Manager or the Investment Manager may resign on giving written notice of at least sixty days. They may terminate the Investment Manager if he or she fails to follow the Trust Deed or the Investment Policy.

What are the duties of the Investment Manager? The Investment Manager must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments and comply with the Trust Deed and the Investment Policies that have been established by the Trustees.

8. Disbursements to the Beneficiaries

How are monies disbursed or transferred from the Trust to the Beneficiaries? Until the Final Disbursement Date of the Trust – that is, the date when the Trust no longer qualifies as a Tla'amin Settlement Trust within the meaning of the *Tla'amin Tax Treatment Agreement* or the date that is 20 years after the death of the last survivor of the lineal descendants of Chief Tom Timothy who was a Tla'amin Citizen and who was living on the date that the Trust was established – the Trustees may make payments to the Beneficiaries by paying or transferring a portion of the Trust Property to the Beneficiaries in accordance with Trust Deed. This is referred to as a disbursement.

Can Beneficiaries call for a disbursement or division of the Trust Property? A Beneficiary has no right to call for a disbursement for any portion of the Trust Property. Of course, a Beneficiary may make a request to the Trustees for their consideration.

How can Beneficiaries use the monies disbursed from the Trust? The Trustees can only disburse Trust Property from the Trust to one or more of the Beneficiaries for one of the following Permitted Uses:

- general administration and governance of the Trust;
- culture, heritage and language;
- governance and programs;
- health and wellness;
- social development;
- economic development;

- environment and natural resources;
- education, training, bursaries, and scholarships;
- community infrastructure;
- sport and recreation;
- indemnification of Trustees in accordance with the Trust Deed; or
- prepayment of the land claim negotiation loan.

What are the limits on the Trustees' authority to make disbursements of the Trust Property to Beneficiaries? The following limits the Trustees' authority to disburse Trust Property to the Beneficiaries.

- No Trust Property may be disbursed as a Per Capita Disbursement. This means the Trustees cannot disburse or transfer Trust Property or make payments directly to Tla'amin Citizens.
- The Trustees cannot disburse any of the capital of the Trust Property for the five years following the establishment of the Trust, unless the Guardian agrees in writing otherwise. Following the five-year period following the establishment of the Trust, the Trustees cannot disburse more than 10 percent of the value of the capital of the capital of the Trust Property over any ten-year period, unless the Guardian agrees in writing otherwise. These limitations do not apply to the Economic Development Fund.
- A disbursement cannot be made to a Beneficiary who has failed to use a disbursement for a Permitted Use or failed to report on the use of a disbursement as required by the Trustees.

What happens when the term of the Trust ends? At the Final Disbursement Date, the Trustees must disburse or transfer all of the Trust Property to the Tla'amin Nation or to another trust that qualifies as a Tla'amin Settlement Trust within the meaning of the *Tla'amin Tax Treatment Agreement*.

9. Amendment of the Trust Deed

There must be certainty and clarity about how the Trust Property will be managed and administered and who receives the benefits of the Trust. If the substantive provisions of the Trust Deed are amended regularly, the stability of the Trust may be undermined, and confusion may arise for the Beneficiaries and others. Therefore, it is not expected that substantive amendments would be made to the Trust Deed on a regular basis. However, technical amendments to the Trust Deed may be required from time to time.

Therefore, the process to amend the Trust Deed is onerous. Any amendment of the Trust Deed must be approved by all of the Trustees in writing and, in addition, the amendment must also be approved by the Tla'amin Community Trust Meeting, the Tla'amin Government Executive and the Guardian.

However, the Trustees and the Guardian have an administrative power to approve certain amendments to the Trust Deed without the approval of the Tla'amin Community Trust Meeting and the Tla'amin Government Executive, for the purpose of:

- fostering compliance of the Trust with any applicable laws.
- fostering consistency of the Trust Deed with the *Tla'amin Tax Treatment Agreement*.
- addressing any conflicts or inconsistencies between the Trust Deed and any supplemental Trust Deed and any other agreement of the Trust or any applicable law.
- fostering favorable tax treatment for the Trust and the Beneficiaries; or

- addressing any ambiguities, errors or mistakes.

The Trustees must provide written notice about any amendment to the Trust Deed, approved by the exercise of their administrative power, to the Beneficiaries and the Tla'amin Community Trust Meeting. They also explain why the amendment was needed.

For further information about the Trust, please contact the following: