

**WHITEFISH RIVER FIRST NATION
BOUNDARY CLAIM SETTLEMENT
DRAFT TRUST AGREEMENT**

PLAIN LANGUAGE VERSION

THIS TRUST AGREEMENT

is dated for reference
the ___ day of _____, 2018

BETWEEN:

WHITEFISH RIVER FIRST NATION
(the Settlor and Beneficiary)
represented by its Chief and Council

- and -

THE TRUSTEES

a Corporate Trustee registered in Canada

and

*Named Trustees
Appointed from time to time*

PREAMBLE

The preamble to the Trust Agreement sets out the vision and mission of the Whitefish River First Nation. It also includes a short summary of the Boundary Claim that lead to the requirement for the Trust Agreement.

1. DEFINITIONS

This section includes the definitions of key words that are used in the Trust Agreement. All the key words that are defined have a capital letter at the start of the word. This identifies to the reader what words are defined in the definitions section.

Examples of the defined words are set out below.

“Auditor” means an auditor who is a member in good standing of an institute or association of accountants incorporated under the laws of the Province of Ontario and who is independent of the Council and the Trustees;

“Citizen” means a person who is registered as a Citizen and whose name appears on the WRFN Citizenship Register according to the Whitefish River First Nation Citizenship Code, from time to time;

“Citizen Trustee” means a Citizen appointed to act as a Trustee pursuant to the terms of this Trust Agreement;

“Effective Date” means the date on which this Trust Agreement has been executed by the parties and the Compensation has been deposited into the Trust Account by Canada;

“member” means a person who is a status Indian and belongs to Whitefish River First Nation, unless otherwise obvious from the context;

“Qualifying Recipient” means a member that was both alive on the day of the Vote and was a member on the day of the Vote, and who has reached the age of 21 or has reached the age of 18 and graduated from high school or local equivalent, whichever occurs first;

“Settlement Agreement” means the WRFN Settlement Agreement, dated for reference December 18, 2013, between the Whitefish River WRFN and Her Majesty the Queen in Right of Canada ratified by the Vote held on [month] [day], [year];

“Vote” means the ratification vote held on [month] [day], [year], ratifying the Settlement Agreement and this Trust Agreement;

“Voter” means a member and who is 18 years of age or older on the date of any given vote;

2. **SCHEDULE**

There is 1 schedule that is attached to the Trust Agreement. The Schedule describes the Authorized Investments.

3. **TRUST**

This article establishes the Trust. The WRFN is setting up the Trust and it is the Beneficiary of the Trust. The WRFN, for purposes of the Trust, includes all members. The rules governing how the Trust money can be used are set out in the Trust Agreement. There is 1 corporate trustee (Peace Hills Trust), 2 Citizen Trustees (to be appointed) and 2 ex-officio trustees (to be appointed).

4. **PURPOSE**

The overall purpose of this Trust is to promote the long-term benefit of WRFN and its members.

5. **APPOINTMENT OF TRUSTEES**

The Corporate Trustee

The Corporate Trustee is appointed by Council. The Corporate Trustee must sign a Management Fee Agreement that sets out the fees and expenses that will be paid to the Corporate Trustee by the Trust.

Citizen Trustees

Council will establish a selection committee made up of a least 3 Citizens and 1 ex-officio member from Council to review applications and make a recommendation to Council on the appointment of 2 Citizen Trustees. Each Citizen Trustee will serve a 2-year term.

Any Citizen that is considering becoming a Trustee must take some training to help them understand the role of a trustee.

Each applicant for a Citizen Trustee must:

- a) be a status Indian;
- b) be at least 25 years old;
- c) be of good character;
- d) not be an undischarged bankrupt;
- e) provide a clear CPIC and Vulnerable Sector Check.

No one from Council can be appointed as a Citizen Trustee, unless he or she resigns from Council.

The Citizen Trustees will be paid an honorarium and expenses.

Ex-Officio Trustees

In addition to the Corporate Trustee and the Citizen Trustees, Council shall appoint 2 ex-officio trustees under a process determined by Council. These 2 ex-officio trustees will also be appointed for a 2-year term of office. One ex-officio trustee shall be a member of Council and the other a Citizen with status aged 18 to 25 years identified as a youth representative.

6. POWERS AND DUTIES OF TRUSTEES

The Trustees must act in good faith, faithfully, honestly and to the best of their abilities in all their dealings and decisions as Trustees, not for personal gain.

The Trustees and Council must follow the rules set out in the Trust Agreement and cannot use the Trust Property for anything other than what is allowed under the Trust Agreement.

Each year, the Trustees have to prepare and submit an annual written report and audited financial statement to Council that sets out the status and expenditures from the Trust Account and if the Trust operated within the rules set out in the Trust Agreement.

Any member can get a copy of the annual report and audited financial statement by sending a written request to the Trustees or Council.

Trustees have to attend meetings for members that are called by Council to review and explain the reports from the Trustees.

Trustees also have to submit a financial statement and explanation on trust expenses to the Council.

The Trustees have the power to:

- a) hire, dismiss and replace lawyers, accountants, bookkeepers and other advisors to help the Trustees make the best decisions for the Trust;
- b) start or defend lawsuits related to the Trust;
- c) pay reasonable salaries, fees and costs for lawyers, accountants, bookkeepers and other advisors;
- d) make decisions to limit the amount of taxes the Trust has to pay.

There are 3 Trustees. Decisions of the Trustees have to be made by a majority and the Corporate Trustee must be part of that majority.

The Trustees have to make sure there is enough money in the Trust to pay out the Per Capita Distributions.

7. **LIABILITY OF TRUSTEES**

As long as the Trustees follow the rules in the Trust Agreement, they will not be held personally liable for any decisions they make or actions they take.

After the Trustees advance the money for the Per Capita Distribution to Council, the Council, not the Trustees are responsible for the Per Capita Distributions.

If the Trustees act dishonestly or fraudulently or they break the rules set out in the Trust Agreement, they might be held personally liable.

8. **REMOVAL OF CORPORATE TRUSTEE**

The Corporate Trustee might resign or be removed by a Council Resolution with 90-days' notice.

The replacement Corporate Trustee has to be in place before the current Corporate Trustee is done. If a replacement Corporate Trustee is not in place, then the Corporate Trustee must go to court to get a decision on what happens next.

When a Corporate Trustee resigns or is removed, there has to be a full accounting on the handling of the Trust Property.

9. **REMOVAL OF CITIZEN TRUSTEES**

Citizen Trustees and ex-officio trustees can be removed from office if:

- a) his or her 2-year term ends;
- b) he or she die;
- b) he or she resigns;
- c) he or she is elected as a member of Council, except for the ex-officio trustee appointed from Council;
- d) he or she is declared to be mentally incompetent by a court of competent jurisdiction in Canada or elsewhere;
- e) he or she is convicted of an indictable offence or a dual offence in which the Crown has elected to proceed by indictment under the Criminal Code of Canada;
- f) he or she has been declared a bankrupt or filed for bankruptcy protection;
- g) he or she has been charged with a criminal offence relating to:
 - i) possession for the purposes of trafficking or trafficking;
 - ii) the Trust Property; or
 - iii) his or her duties as a Trustee;
- h) he or she fails, without cause, to attend 3 consecutive meetings of the Trustees of which prior notice was given;
- i) he or she is incapable of performing the duties of a Trustee for whatever reason for a period longer than 3 months;
- j) he or she ceases to be a Citizen;
- k) he or she breaks the rules in the Trust Agreement, and by a unanimous decision of the Council and the remaining Trustees, is removed from

- office; or
- 1) he or she fails to provide a clear CPIC and Vulnerable Sector Check.

If a Citizen Trustee or an ex-officio trustee is removed from office a replacement is put in office for a 2-year term using the process approved by Council.

10. INVESTMENT POLICY

Council must develop an Investment Policy in line with the Trust Agreement. The Corporate Trustee or Investment Manager will help with this. The Investment Policy covers how the Trust Property will be invested. The policy has to be reviewed at least every 4 years.

11. AUTHORIZED INVESTMENTS AND INVESTMENT MANAGERS

The Trustees must hire 1 or more Investment Managers as approved by Council. The Investment Manager will make investments based on the Investment Policy. The Investment Manager will sign an Investment Management Agreement with the Trustees that matches the requirements of the Investment Policy and the Trust Agreement. The Investment Manager has to submit a quarterly report to the Trustees that sets out the list of investments and the rate of return on those investments.

12. TRUST ACCOUNT

The Trustees will open 1 trust account: the Trust Account. The account has to be an interest-bearing account that meets the rules set out in the Trust Agreement.

13. INITIAL PAYMENTS TO AND FROM TRUST ACCOUNT

The costs for finalizing the Settlement Agreement and the Trust Agreement may be paid out of the Trust.

14. PER CAPITA DISTRIBUTION

There will be a one-time payment to all members who are alive on the date of the Vote and was a member on the day of the Vote on the Settlement Agreement and Trust Agreement. To receive this one-time payment, a person must be:

- a) a member of WRFN;
- b) 25 years of age or 18 years of age and a high school graduate, whichever is earlier; and
- c) alive on the date of the Vote to approve the Trust Agreement.

The amount of the one-time payment is still being reviewed by Council.

Interest will be paid on the one-time payment when minors reach 25 or 18 and have a high school diploma, whichever is earlier.

No additional interest is paid on amounts that are not collected the year the one-time payment becomes payable.

If member dies before they reach the age to get their one-time payment, the one-time payment will go to their estate.

Each member has 10 years to collect their one-time payment from the date that they become eligible to receive the payment. If the one-time payment is not claimed in 10 years, then the money goes back to the Trust.

15. USE OF CAPITAL

The Trust Capital can be used to:

- a) pay initial expenses;
- b) pay the per capita distribution;
- c) purchase lands for the WRFN;
- d) purchase Authorized Investments;
- e) for community development purposes;
- f) help pay for Natural Disasters or Emergencies;
- g) provide Authorized Loans and Authorized Loan Payments; and
- h) pay the Authorized Expenses.

16. ENCROACHMENTS FOR LAND PURCHASES

Funding from the Trust may be used to purchase lands in the name of the First Nation for the benefit of the First Nation. Before any purchase occurs, Council has to show how the purchase will benefit the First Nation. There must be a referendum under a process approved by Council to approve using Trust funds for purchasing lands. The purchase of lands will be a priority over other uses of the Trust capital.

17. COMMUNITY DEVELOPMENT BANK ACCOUNT

The WRFN shall open the Community Development Bank Account. The Annual Income from the Trust will be put into this account. Once the income goes into the Community Development Account, it is no longer Trust Property.

18. EXPENDITURES FROM THE COMMUNITY DEVELOPMENT ACCOUNT

Money in the Community Development Bank Account will be spent on:

- a) protecting WRFN's aboriginal and treaty rights;
- b) education;
- c) health;
- d) housing;
- e) culture;
- f) economic and community development;
- g) the environment;
- h) new or existing initiatives that have been identified in the WRFN capital plan; and
- i) all reasonable administration costs associated with this Trust.

Each year, before Council spends money in the Community Development Account,

Council has to have at least 2 community meetings to consult with members on how the money should be spent. These 2 meetings have to happen in the first 4 months of the year.

Council has to have at least 2 community meetings to report on how they actually spent the money from the Community Development Account.

19. ENCROACHMENTS FOR NATURAL DISASTERS OR EMERGENCIES

Funding from the Trust may be used to pay for expenses related to natural disasters or emergencies. This can only happen after Council has exhausted funding from Canada and/or Ontario. There are limits on how much can be used for this purpose and Council must report to members on any funding used for natural disasters or emergencies.

20. AUTHORIZED LOANS AND AUTHORIZED LOAN PAYMENTS

Funding from the Trust can be used for authorized loans and guarantees. This has to be approved by a referendum and must be of a benefit to the First Nation. This covers the Trust capital being used as a loan or guarantee to the First Nation for the following purposes:

- a) protecting WRFN's aboriginal and treaty rights;
- b) education;
- c) health;
- d) housing;
- e) culture;
- f) economic and community development;
- g) the environment;
- h) new or existing initiatives that have been identified in the WRFN capital plan.

21. AUTHORIZED EXPENSES

The Trustees must submit reports on the costs for operating the Trust to Council for approval for payment.

22. AMENDMENTS TO THIS TRUST AGREEMENT

The Trust can be amended if 20% of the Voters vote in favour of the change and there is a simple majority 'yes' vote. The rules governing the process are set out in this Article.

23. DURATION & TERMINATION OF THE TRUST

The Trust will exist for a minimum of 25 years so that all of the one-time payments can be paid out. After that, Council may prepare a plan on how the Trust will be resettled or transferred for the use and benefit of the First Nation. Any plan developed by Council has to be approved if 20% of the Voters vote in favour of the plan and there is a simple majority of "yes" votes. If the plan is not approved, then the Trust stays in place for 50 years.

24. NOTICES

This Article includes the address and contact information for the Corporate Trustee, the Citizen Trustees and the WRFN.

25. GENERAL

This Article includes standard legal provisions that are required in the Trust Agreement.

Signature lines are at the end of the Trust Agreement. The Corporate Trustee, the Citizen Trustees and the Chief and Council will sign the Trust Agreement.

**SCHEDULE “A”
AUTHORIZED INVESTMENTS**

This schedule sets out where the Trust money can be invested.