

**ALDERVILLE FIRST NATION
AGENT'S LAND PURCHASE SPECIFIC CLAIM
SETTLEMENT AGREEMENT**

DRAFT

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**ALDERVILLE FIRST NATION
AGENT'S LAND PURCHASE SPECIFIC CLAIM
SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT

BETWEEN:

The Alderville First Nation, a "band" within the meaning of the *Indian Act*, as represented by its Council

(hereinafter called the "First Nation")

AND:

Her Majesty the Queen in Right of Canada, as represented by the Minister of Crown-Indigenous Relations

(hereinafter called "Canada")

PREAMBLE

WHEREAS:

- A. In 2014, the First Nation submitted the Alderville First Nation Agent's Land Purchase Specific Claim under Canada's Specific Claims Policy, alleging, among other things, that Canada breached its fiduciary obligation by failing to secure proper compensation for six acres of land surrendered from Alderville IR 37, which was sold to Indian Agent Coyle in 1924.
- B. By letter dated July 6, 2017, Canada accepted Claim for negotiation under the Specific Claims Policy.
- C. The settlement of this Claim is a reflection of Canada's commitment to reconciliation and to Canada's goal of addressing historical First Nation grievances that are the subject matter of specific claims.
- D. Canada and the First Nation have negotiated terms of settlement as contained in this Settlement Agreement in order to achieve a full, fair and final settlement of the Claim.

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES
CONTAINED IN THIS SETTLEMENT AGREEMENT CANADA AND THE FIRST
NATION AGREE AS FOLLOWS:**

1.0 DEFINITIONS AND SCHEDULES

1.1 In this Settlement Agreement:

- (a) “**Band Council Resolution**” means a written resolution of the Council adopted at a duly convened meeting.
- (b) “**Band List**” has same meaning as defined in the *Indian Act*.
- (c) “**Canada**” means Her Majesty the Queen in Right of Canada, as represented by the Minister.
- (d) “**Claim**” means all matters, issues and allegations contained in the submissions of the First Nation under the Specific Claims Policy or any Proceeding, arising or resulting from the same or substantially the same facts upon which the Alderville First Nation Agent’s Land Purchase Specific Claim is based, and any liability, cause of action, suit, damage, loss or demand whatsoever, known or unknown, in law or equity or otherwise, related to or arising or resulting from the sale of the six acre parcel of Alderville IR 37 to Indian Agent Coyle in 1924.
- (e) “**Compensation**” means the amount agreed upon by the Parties as compensation for the Claim as set out in Article 2.1.
- (f) “**Council**” means the Council of the First Nation, which is a “council of the band” within the meaning of the *Indian Act*, and includes the Chief.
- (g) “**Direction to Pay**” means the document by which the Council directs Canada to deposit the Compensation in accordance with Article 2.0, authorized by the corresponding Band Council Resolution for Payment, substantially in the form attached to this Settlement Agreement as Schedule 2.
- (h) “**Financial Institution**” means any bank or trust company that is authorized by law to accept deposits, and supervised and regulated by the Superintendent of Financial Institutions as defined in the *Office of the Superintendent of Financial Institutions Act*, R.S.C. 1985, c. 18 (3rd Supp.).
- (i) “**First Nation**” means the Alderville First Nation, a “band” within the meaning of the *Indian Act*, as represented by its Council.
- (j) “**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I-5 and its regulations.
- (k) “**Information Meeting**” means those information-sharing processes deemed appropriate by Council, ~~which may include in-person or virtual meetings~~, at which legal counsel retained by the First Nation, and any

other persons as requested by the Council, will explain the nature and effect of this Settlement Agreement.

- (l) **“Member”** means a person whose name appears or who is entitled to have their name appear on the Band List of the First Nation.
 - (m) **“Minister”** means the Minister of Crown-Indigenous Relations or the Minister’s duly authorized representative.
 - (n) **“Negotiation Costs”** means all costs incurred by the First Nation for the research, preparation, negotiation and settlement of the Claim, and the ratification of the Settlement Agreement, including legal fees.
 - (o) **“Party”** means either the First Nation or Canada.
 - (p) **“Person”** means any individual, proprietor, corporation, partner, partnership, trust, joint venture, unincorporated organization, governmental body including provincial, territorial, regional and municipal governments, First Nation, self-governing First Nation, *Indian Act* band, Indigenous group, or union, including, without limitation, any past, present or future Members and each of their respective heirs, descendants, legal representatives, successors and assigns.
 - (q) **“Proceeding”** means any legal proceeding, regulatory order, action, cause of action, suit, claim, specific claim or demand whatsoever, known or unknown, whether in law, in equity or otherwise.
 - (r) **“Settlement Agreement”** means this settlement agreement including the attached Schedules.
 - (s) **“Specific Claims Policy”** means Canada’s policy on specific claims in effect from time to time.
- 1.2 Except as otherwise defined in this Settlement Agreement, any words used in this Settlement Agreement that are defined in the *Indian Act* have the same meaning as they have in the *Indian Act*.
- 1.3 The following Schedules are attached to and form part of this Settlement Agreement:
- Schedule 1 – Solicitor’s Certificate
 - Schedule 2 – Form of Band Council Resolution for Payment & Direction to Pay
 - Schedule 3 – Form of Band Council Resolution

2.0 COMPENSATION

- 2.1 Subject to the terms and conditions set out in this Settlement Agreement, Canada agrees to pay to the First Nation and the First Nation agrees to accept **[insert the total amount in numbers]** in full and final settlement of the Claim, including the Negotiation Costs.
- 2.2 The First Nation authorizes and directs Canada to deduct from the Compensation referred to in Article 2.1 the Negotiation Loan Funding, to satisfy the First Nation's full and final repayment of its Negotiation Loan Funding.
- 2.3 The First Nation authorizes and directs Canada to pay the Compensation in accordance with the Band Council Resolution for Payment and Direction to Pay.
- 2.4 If the First Nation ratifies the Settlement Agreement as set out in Article 6.0, then the First Nation will provide Canada with an irrevocable Band Council Resolution for Payment and Direction to Pay, substantially in the form attached as Schedule 2, together with any other documentation required by Canada for purposes of depositing funds.
- 2.5 Canada agrees to pay and transfer the Compensation within forty-five (45) days of the effective date referred to in Article 9.
- 2.6 The Parties agree and intend that the Compensation is not "Indian moneys" within the meaning of the *Indian Act* and accordingly the provisions of the *Indian Act* with respect to the management of Indian moneys do not apply to the Compensation.
- 2.7 The sole responsibility of Canada with respect to the Compensation is to pay and deposit the Compensation in accordance with Article 2.0. Canada will rely on the Band Council Resolution for Payment and Direction to Pay provided by the First Nation.

3.0 RELEASE

- 3.1 The First Nation agrees to forever release and discharge Canada and any of its ministers, officials, servants, employees, agents, successors and assigns from, and will not assert, any liability or Proceeding that the First Nation, its successors or assigns, or its past, present and future Members or any of their respective heirs, descendants, legal representatives, successors and assigns, including a First Nation, self-governing First Nation or Indian Act band, may ever have had, may now have or may in the future have against Canada and any of its ministers, officials, servants, employees, agents, successors and assigns or any Person with respect to:
 - (a) any aspect of the Claim;

- (b) any and all Negotiation Costs;
- (c) the negotiation, ratification or other procedures referred to in this Settlement Agreement resulting in the execution of this Settlement Agreement by the First Nation;
- (d) the adequacy of the Compensation provided in this Settlement Agreement;
- (e) the deposit of the Compensation pursuant to Article 2.0, and any subsequent management, investment, disbursement, or any other use of the Compensation, including, without limitation, by the First Nation, Council or Members;
- (f) any loss of the Compensation or interest, in whole or in part, through any failure of a Financial Institution or otherwise; and
- (g) the subject matter of any of the representations and warranties of the First Nation under Article 10.0.

4.0 INDEMNITY

- 4.1 The First Nation agrees to indemnify and forever save Canada harmless from any Proceeding brought by any Person against Canada or any of its ministers, officials, servants, employees, agents, successors and assigns with respect to any matters set out in Article 3.0.
- 4.2 Canada will provide notice to the First Nation in accordance with Article 13.0 of any Proceeding referred to in Article 4.1. However, the First Nation will not be entitled to avoid liability for indemnification by reason of the timeliness of the notice, unless a lack of timeliness precludes the First Nation from participating in the Proceeding as set out in Article 4.5.
- 4.3 If, after providing notice to the First Nation pursuant to Article 4.2, no notice is received by Canada within thirty (30) days that the First Nation wishes to participate in the Proceeding, Canada will proceed to settle or defend the Proceeding without the First Nation's participation or, with or without, joining the First Nation as a party to the Proceeding.
- 4.4 Prior to settling any Proceeding, Canada will advise the First Nation and provide the First Nation with an opportunity to respond with its position on the proposed settlement. Canada will take into consideration any response provided by the First Nation.
- 4.5 If the First Nation wishes to participate in a Proceeding that may give rise to a right of indemnity under Article 4.0, the First Nation will provide notice to Canada

that the First Nation wishes to participate in the resolution of the Proceeding within thirty (30) days of notification pursuant to Article 4.2 and to the extent permitted by law and where appropriate, and at its own expense, seek to be added as a party to the Proceeding. The First Nation may make such investigation, negotiation and settlement of any Proceeding as it deems expedient. This entitlement, however, in no way:

- (a) means that the First Nation is entitled to represent Canada, and any of its ministers, officials, servants, employees, agents, successors and assigns; or
- (b) affects the rights or abilities of Canada and any of its ministers, officials, servants, employees, agents, successors and assigns to defend or settle any such Proceeding.

4.6 Canada will not refuse to defend any Proceeding based solely on the existence of Article 4.0 and will use all reasonable efforts to defend itself.

4.7 Any demand by Canada for indemnification must be made to the First Nation in writing in accordance with Article 13.0.

4.8 Nothing in Article 4.0 prevents Canada from immediately adding or seeking to add the First Nation as a party to the Proceeding.

5.0 DISMISSAL OF PROCEEDINGS

5.1 Subject to Article 5.2, the First Nation agrees to:

- (a) abandon, dismiss or discontinue all Proceedings based on the same or substantially the same facts giving rise to the Claim within 90 days from the effective date; and
- (b) instruct its legal counsel to file all the necessary documents to do so and to serve Canada with a copy of all such documents duly filed.

5.2 For any Proceeding filed in the Federal Court that is a “representative proceeding” as per rule 114 of the *Federal Court Rules* (SOR/98-106), the First Nation agrees to obtain an order of the Federal Court approving its discontinuance or settlement prior to the execution of this Settlement Agreement by the Minister.

6.0 RATIFICATION

6.1 The First Nation ratifies this Settlement Agreement if Council provides a Band Council Resolution, substantially ~~in similar to~~ the form attached as Schedule 3, indicating that Council approves and assents to the terms and conditions of and agrees to execute this Settlement Agreement on behalf of the First Nation.

7.0 CONDITIONS PRECEDENT TO EXECUTION BY CANADA

7.1 Canada and the First Nation agree that the following are conditions precedent that must be fulfilled before Canada will consider executing this Settlement Agreement:

- (a) ratification of the terms of this Settlement Agreement by the First Nation in accordance with Article 6.0;
- (b) execution of this Settlement Agreement by the First Nation in accordance with Article 8.0;
- (c) the Minister has been authorized to sign this Settlement Agreement;
- (d) funds for the payment of the Compensation have been approved and appropriated for that purpose by Canada;
- (e) receipt by Canada of the Band Council Resolution for Payment and Direction to Pay substantially in the form attached as Schedule 2; and
- (f) receipt by Canada of a Solicitor's Certificate, which is Schedule 1 of this Settlement Agreement, from the First Nation's legal counsel, dated on or after the date of execution of this Settlement Agreement by the First Nation.

8.0 EXECUTION

8.1 This Settlement Agreement is (are) deemed to be fully executed once signed by:

- (a) Council on behalf of the First Nation following ratification of this Settlement Agreement in accordance with Article 6.0; and
- (b) the Minister on behalf of Canada.

9.0 EFFECTIVE DATE OF SETTLEMENT AGREEMENT

9.1 The effective date of this Settlement Agreement is the date this Settlement Agreement is executed by Canada in accordance with Article 8.0.

10.0 REPRESENTATIONS AND WARRANTIES

10.1 The First Nation represents and warrants that:

- (a) it intends to use the Compensation for the benefit of the First Nation and will take such actions as it deems necessary or advisable to give effect to that intent;

- (b) it has explained to its Members the terms and conditions of this Settlement Agreement;
- (c) it has retained and relied upon independent legal counsel who is qualified to practice law in the Province of Ontario to advise it in respect of the legal nature and effect of this Settlement Agreement;
- (d) its legal counsel has fully explained to the Council and to the Members, through the Information Meeting, the legal nature and effect of this Settlement Agreement as well as its implementation, including without limitation, the deposit by Canada of the Compensation into an account managed by the First Nation with a Financial Institution in accordance with Article 2.0 rather than into an account managed by Canada for the First Nation in accordance with the *Indian Act*, as confirmed by the Solicitor's Certificate, which is Schedule 1 of this Settlement Agreement;
- (e) Canada has not advised the First Nation with respect to the placement or management of the Compensation or any matter related thereto, and the First Nation has obtained the advice of its own legal and financial advisors in this regard and with regard to all other matters related to the settlement of the Claim; and
- (f) an interpreter fluent in the First Nation's language, or a translation into the First Nation's language, was not necessary to effect the Information Meeting.

10.2 These representations and warranties survive the execution of this Settlement Agreement and continue in full force and effect for the benefit of Canada.

11.0 DISPUTE RESOLUTION

11.1 In the event of a dispute regarding this Settlement Agreement, the Parties will, at their own expense, explore resolution through negotiation or other appropriate dispute resolution procedure, including mediation, before resorting to litigation. Any Party may resort to litigation thirty (30) days after the dispute arises. A dispute is deemed to have arisen after notice has been given by one Party to the other.

12.0 AMENDMENTS

12.1 Subject to Article 12.2, this Settlement Agreement may only be amended or replaced by written agreement between the Parties, upon approval pursuant to the same procedures as this Settlement Agreement was approved.

12.2 The Parties, by written agreement between the First Nation, as represented by its Council, and Canada, as represented by the Assistant Deputy Minister

responsible for the implementation of this Settlement Agreement, may agree to amend it for any of the following purposes:

- (a) to remove any conflicts or inconsistencies that may exist between any of the terms of this Settlement Agreement and any provision of any applicable law or regulation;
- (b) to amend the time provided in any of the provisions in this Settlement Agreement for doing any act or receiving any notice or written communication; or
- (c) to correct any typographical errors in this Settlement Agreement, or to make corrections or changes required for the purpose of curing or correcting any clerical omission, mistake, manifest error or ambiguity arising from defective or inconsistent provisions contained in this Settlement Agreement.

13.0 NOTICE

13.1 Any notice or other written communication required or permitted to be given under this Settlement Agreement will be given by registered mail as follows:

to Canada: Director General, Specific Claims Branch
Crown-Indigenous Relations and Northern Affairs Canada
Les Terrasses de la Chaudière
10 Wellington Street, Gatineau, QC, K1A 0H4

to the First Nation: Chief & Council of the Alderville First Nation
PO BOX 46, Roseneath, ON, K0K 2X0

or at such other address as may be provided in writing by either Party.

13.2 Any notice set out in Article 13.1 will be presumed to have been received by the Party on the earlier of the day it was received or the fifth day after it was mailed.

13.3 During an actual or anticipated postal disruption or stoppage, the mail will not be used by either Party, and if used, such notice will be of no effect. In the event of a postal disruption or stoppage, the Parties may send notice or other written communication required or permitted to be given under this Settlement Agreement by facsimile or email and in so doing, the Party sending the facsimile or email will bear the onus of ensuring its receipt by the other Party.

14.0 GENERAL PROVISIONS

14.1 This Settlement Agreement is for the benefit of and is binding upon Canada and any of its ministers, officials, servants, employees, agents, successors and

assigns, and upon the First Nation and its Members, and any of their respective heirs, descendants, legal representatives, successors and assigns.

- 14.2 This Settlement Agreement is entered into by Canada and the First Nation without any admission of fact or liability whatsoever with respect to the Claim.
- 14.3 This Settlement Agreement, and any information herein, may be recorded in Canada's databases. Any recording, publication or distribution of the above, including for the purpose of complying with requests made under the *Access to Information Act*, RSC 1985, c.A-1, or the *Privacy Act*, RSC 1985, c.P-21, does not comprise or constitute any waiver of settlement privilege that attaches to the settlement of this claim, including this Settlement Agreement.
- 14.4 The insertion of headings and recitals, and the provision of a table of contents, are solely for convenience and in no way modify or explain the scope or meaning of any part of this Settlement Agreement.
- 14.5 Words in the singular include the plural and words in the plural include the singular.
- 14.6 Ambiguity in any of the terms of this Settlement Agreement will not be interpreted in favour of any Party.
- 14.7 The rights and obligations of the Parties to this Settlement Agreement cannot be assigned or otherwise transferred without the prior consent of the First Nation, be evidenced by a Band Council Resolution, and the prior written consent of Canada, such consent not to be unreasonably withheld.
- 14.8 This Settlement Agreement is governed by the applicable laws of Ontario and Canada.
- 14.9 This Settlement Agreement sets out the entire agreement between the Parties with respect to the Claim. There is no representation, warranty, collateral agreement, undertaking or condition affecting this Settlement Agreement, except as expressly set out herein. This Settlement Agreement supersedes and revokes all previous agreements entered into during the course of the negotiation of the Claim, whether oral or in writing between the Parties with respect to the Claim.
- 14.10 All references in this Settlement Agreement to statutes and regulations of Canada include, unless a contrary intention is expressed, any such statute or regulation as the same may be amended, re-enacted or replaced from time to time.
- 14.11 The Parties will in good faith do such things, execute such further documents, and take such further measures as may be necessary to carry out and implement the terms, conditions, intent and meaning of this Settlement Agreement.

IN WITNESS WHEREOF the Minister of Crown-Indigenous Relations, on behalf of Her Majesty the Queen in Right of Canada, and the Council of the First Nation, on behalf of the First Nation, have executed this Settlement Agreement on the dates indicated below.

Signed on behalf of the Alderville First Nation

at _____ by the Council)
of the Alderville First Nation in the presence of:)

Signature: _____)

Name of Witness: _____)

Address: _____)

As to all Signatures)

Date: _____)

Per: _____
Chief David Mowat

Per: _____
Councillor Brian Beaver

Per: _____
Councillor Jason Marsden

Per: _____
Councillor Wesley Marsden

Per: _____
Councillor George Simpson

Signed on behalf of Her Majesty the)
Queen in Right of Canada, as)
represented by the Minister of)
Crown-Indigenous Relations, in the)
presence of:)

Signature: _____)

Name of Witness: _____)

Address: _____)

Date: _____)

Minister of Crown-Indigenous
Relations

**ALDERVILLE FIRST NATION
AGENT'S LAND PURCHASE SPECIFIC CLAIM
SETTLEMENT AGREEMENT**

**SCHEDULE 1
SOLICITOR'S CERTIFICATE**

I, the Honourable J. Stephen O'Neill, of Sudbury, Ontario, Barrister and Solicitor, do hereby certify:

1. THAT I am a member in good standing of the Law Society of Ontario and am qualified to practice law in the Province of Ontario;
2. THAT I was retained in my professional capacity to provide independent legal advice to the First Nation with respect to the Claim, including the terms of settlement of the Claim and the preparation, execution and implementation of the Alderville First Nation Agent's Land Purchase Specific Claim Settlement Agreement (the "Settlement Agreement"), executed by the First Nation on the ___ day of _____, 20___;
3. THAT I have advised the Council as to the legal nature and effect upon the First Nation, and its Members, of the Settlement Agreement and its implementation including, without limitation, the legal implications arising from the management, disbursement and use of the Compensation where the deposit of the Compensation is into an account managed by the First Nation with a Financial Institution rather than into an account managed by Canada for the First Nation in accordance with the *Indian Act*, and, where applicable, the potential rates of return (the "Legal Issues");
4. THAT I participated in the Information Meeting;
5. THAT I made myself available to explain the legal nature and effect upon the First Nation, and its Members, of the Settlement Agreement and its implementation, through the Information Meeting(s), to the Members participating in the Information Meeting, regarding the Legal Issues and answered any relevant legal questions raised through the Information Meeting(s); and
6. THAT I was also available, as needed, to answer Members' questions, including any Members who did not participate in the Information Meeting, about the Legal Issues.

Witness' Signature: _____)

Name of Witness: _____)

Address: _____)

) The Honourable J. Stephen O'Neill

DIRECTION TO PAY

TO CANADA:

Pursuant to the terms of the Alderville First Nation Agent’s Land Purchase Specific Claim Settlement Agreement, the First Nation hereby directs Canada to pay any and all amounts owing to the First Nation under the Alderville First Nation Agent’s Land Purchase Specific Claim Settlement Agreement as follows:

NAME OF FINANCIAL INSTITUTION: _____

ADDRESS OF FINANCIAL INSTITUTION: _____

NAME OF ACCOUNT HOLDER: _____

TRANSIT NUMBER OF FINANCIAL INSTITUTION: _____

REGISTERED ACCOUNT NAME: _____

REGISTERED ACCOUNT NUMBER: _____

AND THIS IS YOUR CLEAR AND IRREVOCABLE DIRECTION TO PAY.

The First Nation, by its Council:

Chief DATE

Councillor DATE

Councillor DATE

NOTE: the number of signature lines should equal the number of council members, and each council member’s name should be typed in under each signature line. Ideally, every council member should sign; however, if this is not possible, at least a majority of the council should sign

**ALDERVILLE FIRST NATION
AGENT'S LAND PURCHASE SPECIFIC CLAIM
SETTLEMENT AGREEMENT**

**SCHEDULE 3
FORM OF BAND COUNCIL RESOLUTION**

WHEREAS the First Nation wishes to enter into the Alderville First Nation Agent's Land Purchase Specific Claim Settlement Agreement (the "Settlement Agreement") with Her Majesty the Queen in Right of Canada.

AND WHEREAS the Council of the First Nation has held an Information Meeting for its Members on (date, time and location) to explain the terms and conditions of the proposed Settlement Agreement.

AND WHEREAS legal counsel for the First Nation explained the legal nature and effect of entering into the Settlement Agreement to the Council and to the Members present at the Information Meeting.

BE IT RESOLVED:

1. THAT the First Nation hereby approves and assents to the terms and conditions of the Settlement Agreement initialed by the Parties, which settles the Claim as defined in the Settlement Agreement.
2. THAT the Council hereby agrees to sign all documents and do everything necessary to give effect to and to execute the Settlement Agreement on behalf of the First Nation.

The First Nation, by its Council:

<u>EXAMPLE ONLY – DO NOT SIGN</u>	
Chief	DATE
<u>EXAMPLE ONLY – DO NOT SIGN</u>	
Councillor	DATE
<u>EXAMPLE ONLY – DO NOT SIGN</u>	
Councillor	DATE

NOTE: the number of signature lines should equal the number of council members, and each council member's name should be typed in under each signature line. Ideally, every council member should sign; however, if this is not possible, at least a majority of the council should sign