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Non-Resident Students

- 1) Non-resident students must make application for permission to attend a school in Pine Creek School Division:
 - a) Non-resident students eligible for “School of Choice” may apply to attend a school in the Pine Creek School Division under the guidelines of the “Schools of Choice” regulations.
 - b) Non-resident students not eligible for “School of Choice” acceptance must make application to attend a school in the Pine Creek School Division to the superintendent’s office.

AGREEMENT TO ACCEPT NON-RESIDENT STUDENTS

THIS AGREEMENT effective this _____ day of _____, 20__ between:

_____ FIRST NATION, represented by its Chief and Council
(hereinafter called “the **First Nation**”)

OF THE FIRST PART

-and-

PINE CREEK SCHOOL DIVISION
(hereinafter called the “**Division**”)

OF THE SECOND PART

WHEREAS:

- A. The Division provides education programs in accordance with the Public Schools Act (Manitoba) to students attending its schools in grades K through 12;
- B. The First Nation is desirous of having one or more children ordinarily resident on the First Nation’s reserve, or other children for which the First Nation has accepted responsibility for, attend a school operated by the Division;
- C. The First Nation agrees to pay the Division for the Division’s costs in respect of providing educational services to the First Nation Students (as defined in this Agreement), all as more particularly set out herein;

NOW THEREFORE, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. DEFINITIONS. In this Agreement:

- (a) “Act” means *The Public Schools Act* (Manitoba), as same may be amended from time to time;
- (b) “Current School Year” means the school year commencing on September ____, 20__ and ending on June ____, 20__;
- (c) “School” or “Division’s school” means an elementary public school or secondary public school operated by the Division, including all “school buildings” and “school site”, as defined in the Act, associated therewith;

- (d) “Specified Student” means each of those students, as listed in Section 8 hereof, who are desirous of attending a School and whom the First Nation acknowledges are the responsibility and under the jurisdiction of the First Nation (including children who are not native nor residing on the First Nation’s Reserve (within the meaning of the *Indian Act* (Canada)) but who are recognized by the First Nation’s chief and council as being the responsibility of the First Nation), and “Specified Students” means all of them;
- (e) “Tuition” means the tuition per Specified Student, calculated in accordance with section 4(b).

2. PURPOSE

- (a) The preamble and all the appendice(s) attached form a part of this Agreement.
- (b) Subject to the payment by the First Nation of the Tuition as set out in this Agreement as and when due, the Division agrees to provide the Specified Students who are enrolled in and attend one of the Division’s schools, with an education as contemplated by the Act, during the course of the Current School Year (or so much thereof as such Specified Student attends the School in which he or she is enrolled). The Specified Students shall attend the School in which they are enrolled, as set out beside their respective names in Section 8 hereof.
- (c) The Division agrees that, in order to ensure achievement of the Specified Students in the Division’s schools, performance goals and target achievement levels will be established, strived for, monitored and reviewed on an ongoing and collaborative basis as between the Division and the First Nation. It is understood however that the obligations of the Division shall not extend beyond making available to the Specified Students an education in accordance with the Act, in any of grade K through 12, and that although the achievement of performance goals and/or achievement levels will be strived for, there is no representation by the Division that such achievements will in fact be attained in respect of any one or more of the Specified Students. Any such non-achievement shall not be grounds for the withholding of Tuition or any other action by or on behalf of the First Nation or the Specified Student(s).

3. RESPONSIBILITIES

The parties hereto agree that:

- (a) The Division shall have jurisdiction and control over the administration, control and operation of the Schools in which Specified Students are enrolled under the terms of this Agreement including, without limitation, the employment and supervision of teaching personnel, all matters relating to the curriculum, methods of instruction and material used for instruction in the School, it being understood and agreed that the exercise of such jurisdiction by the Division established pursuant to the Act in respect of any such School shall be deemed to be the exercise of jurisdiction by the Province.

- (b) Without limiting the generality of section 3(a) above, it is agreed that the Division shall have the sole discretion, according to Division policy, to discipline, suspend or expulse Specified Students in the event or need of disciplinary actions, it being acknowledged and agreed that all Specified Students shall be required to comply with all Division rules, policies and procedures established from time to time and the Division will have the discretion to take such disciplinary measures as it deems fit in order to enforce the School's policies, rules and procedures.

4. COUNT, TUITION FEE, CALCULATION FOR PAYMENT

- (a) Application for attendance in any of the Division's schools is the responsibility of the student's parent. The application must contain the following information: student's name, name of the First Nation of which the student is a member, family number, age, grade and school attended.

Upon receipt of application by the parent, if the Division is able/prepared (in its discretion) to accept the student in the School applied for (it being understood that, due to staffing, class sizes and other factors a student may not be accepted), the Division will forward a copy of the application with this agreement to the Chief of the First Nation for verification of support and responsibility for tuition for the student as applied. The Division will not accept and will have no responsibility to provide an education to any children who are the responsibility of the First Nation and who are not included as a Specified Student under this, or an equivalent agreement in writing between the First Nation and the Division.

- (b) The First Nation hereby covenants and agrees to pay a tuition fee for each Specified Student equal to \$_____ (the "**Tuition**"), being the annual average net operating cost per student of the Division for the Current School Year, as determined by the Division. For the purpose hereof, the annual average net operating cost per student of the Division has been determined by dividing the total net operating budget for education of the Division (in respect of all of its Schools and including the budgeted expenses for administration and maintenance, but excluding capital expenses, amortization or transportation costs) for the applicable fiscal year, divided by the number of total students enrolled at September 30th of the previous year. Appendix "A" hereto sets out how the Tuition for the Current School Year has been calculated. The total Tuition payable by the First Nation shall therefore be the per student Tuition as calculated by the Division multiplied by the number of Specified Students.

The First Nation agrees that an additional fee may be assessed for each Specified Student requiring additional support services or special needs education or support, and the First Nation covenants to pay such additional fees as and when assessed by the Division, in accordance with established Divisional guidelines for such support and special services.

If a Specified Student transfers or withdraws at any time during the Current School Year, the Tuition payable in respect of such Specified Student shall be pro-rated, as determined by the Division, acting reasonably and the First Nation shall pay the pro-rated amount.

- (c) The First Nation shall pay the Tuition, determined in accordance with the previous section, for each of the Specified Students, to the Division in two equal payments, the first being paid on or before October 31th for the period September 1st to December 31st and the second, on or before January 30th for the period January 1st to June 30th.
- (d) Without limiting any right of recovery the Division may have hereunder, at law or in equity, the non-payment of Tuition as outlined above may, at the option and discretion of the Division, result in the suspension of attendance privileges for some or all of the Specified Students.
- (e) Without limiting any right of recovery the Division may have hereunder, at law or in equity, when accounts are in arrears, no additional students from the First Nation's jurisdiction will be accepted until all outstanding accounts are settled in full. The First Nation agrees to pay interest to the Division on any amounts which are past due at the per annum rate of interest equal to the rate then quoted from time to time by the Royal Bank of Canada as its "prime" rate on Canadian dollar commercial loans, plus 1%, which shall be calculated and payable monthly, not in advance from the date the particular payment was due to the day on which it is paid. Any unpaid interest shall be added to the principal outstanding and interest shall be payable thereon at the same rate, and at the same time and the same manner as set out above.

5. DAILY TRANSPORTATION

Responsibility for the transportation of the Specified Students will be entirely that of the First Nation and/or the Specified Student's parent(s). The Division will not provide transportation services beyond existing bus routes established by the Division (as same may be modified from time to time) and the Division shall have no responsibility whatsoever for making any transportation services available to any of the Specified Students.

6. AMENDMENT AND EXTENSION

- (a) By mutual consent of both parties in writing, this Agreement may be amended at any time (provided it is done in writing) to include additional Specified Students, additional services that have been identified as a result of discussion and negotiations, or otherwise.
- (b) This Agreement applies in respect of the Current School Year only, but may be extended for one or more additional school years by agreement in writing between the First Nation and the Division. Any agreed upon extension shall be in writing and shall confirm: (i) the school year(s) to which such extension applies; (ii) the students which are to be included as Specified Students in Section 8 of this Agreement, as extended, for such school year, (iii) that the Tuition for such additional school year(s) is subject to change in accordance with section 4 hereof; and (iv) such other terms as have been agreed upon between the First Nation and the Division pertaining to such extension. For greater certainty however, the Division shall have no obligation to grant any extension(s) of this Agreement or to enter into any new agreement with the First Nation in respect of the continued or future education of the First Nation's Students beyond the Current School Year.

7. FIRST NATION’S OBLIGATION TO INDEMNIFY.

The First Nation agrees to indemnify and save harmless the Division from and against any and all losses, claims, liabilities, demands, costs, damages and expenses whatsoever incurred by or brought against the Division arising directly or indirectly from:

- (a) any failure by the First Nation to comply with any applicable laws or the First Nation’s responsibilities in this Agreement, including its responsibility to pay Tuition;
- (b) any injury (including death) to persons, damage or loss to property or infringement of rights caused by or brought about by a willful or negligent act or omission of one or more of the Specified Students; and
- (c) any claim, action, complaint or demand brought or made against the Division and/or any of its trustees, officers, employees or agents, by a parent or guardian of one or more Specified Student in any way pertaining to this Agreement or the attendance or education of such Specified Student(s) at any of the Division’s Schools.

8. STUDENT SUPPORT AUTHORIZATION

The First Nation hereby confirms that it will pay the Tuition for each of the following students in accordance with this Agreement, which students shall, accordingly, be the “Specified Students’ hereunder:

_____	_____	_____
Student Name	Date of Birth	School

_____	_____	_____
Student Name	Date of Birth	School

_____	_____	_____
Student Name	Date of Birth	School

_____	_____	_____
Student Name	Date of Birth	School

Student Name	Date of Birth	School
Student Name	Date of Birth	School

9. GENERAL PROVISIONS.

- (a) This Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (b) This Agreement including the Apendices hereto constitutes the entire agreement between the Division and the First Nation and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements, discussions and understandings, whether oral or written, express or implied, with respect to the subject matter hereof except that, it is acknowledged and agreed that one or more agreements in substantially the same form and content may have been, or may hereafter be, entered into between the Division and the First Nation in respect of other “Specified Students”, which agreement(s) shall continue in full force and effect and shall not be superceded by this agreement.
- (c) The covenants and agreements of the First Nation set out in Section 7 of this Agreement shall survive and continue in full force and effect after and notwithstanding the termination or expiry of this Agreement. Any amounts owing by the First Nation to the Division in accordance with Section 4 of this Agreement at the time this Agreement is terminated or expires shall continue to be owing notwithstanding such termination or expiry, and the First Nation’s covenants and agreements to pay same shall survive and continue in respect of any unpaid amounts notwithstanding the termination or expiry of this Agreement.
- (d) No waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party’s right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.
- (e) Nothing in this Agreement shall be construed as creating a relationship of partnership or joint venture between the Division and the First Nation, and the First Nation shall not have the right or be capable of binding the Division in any manner whatsoever.
- (f) This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Manitoba.

- (g) The First Nation represents and warrants to the Division that the entering into by the First Nation of this Agreement has been duly authorized and approved by the First Nation's Chief and Council, as evidenced by the copy of the Band Council resolution attached hereto as Appendix B and that no consent is required from any other person(s) in order to allow the First Nation to enter into this Agreement and to perform its obligations hereunder.
- (h) This Agreement and the Division's obligations hereunder, remain subject to the consent and approval of the Minister of Education, Citizenship and Youth for the Province of Manitoba. A copy of such consent shall be delivered to the First Nation once obtained by the Division.
- (i) This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same Agreement.

In witness whereof the parties hereto have duly executed this Agreement as of the day and year first before written.

SIGNED, SEALED, AND DELIVERED
by the Parties hereto in the presence of:

Witness

Chief in Council

Witness

Councillor

Witness

Councillor

PINE CREEK SCHOOL DIVISION

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

APENDIX "B"
BAND COUNCIL RESOLUTION
OF

(name of First Nation)

Whereas

- (A) _____ [First Nation] ("FN") desires to enter into an Agreement to Accept Non-Resident Students between FN and Pine Creek School Division (the "**Agreement**"), dealing with matters pertaining to the provision of education services by Pine Creek School Division to certain children of the FN community as set out therein, and the payment for such services by FN; and
- (B) The Chief and Council of FN have the right and authority to act on behalf of FN, pursuant to the *Indian Act* (Canada);

Now Therefore, BE IT RESOLVED THAT:

1. The entering into of the Agreement by FN be and is hereby authorized and approved.
2. The Chief and ___ members of Council be and they are hereby authorized and directed to execute and deliver the Agreement, substantially in the form of the specimen copy submitted to the Council with such alterations, additions, amendments and deletions as the Chief and such Council members may approve, whose signatures shall be conclusive evidence of such approval and that the Agreement so executed is the one authorized by this band council resolution.
3. The making of the payments required by the Agreement to be made to Pine Creek School Division from time to time be and they are hereby authorized and approved.
4. The Chief and any one or more members of Council be and they are hereby authorized and directed to do all such further and other acts and things and execute or cause to be executed such further and other instruments, agreements, certificates, acknowledgements, declarations, documents, undertakings and other writings as in their opinion may be necessary or desirable to give effect to the Agreement or to fulfill FN's obligations thereunder.
5. This Resolution shall continue in effect and shall be binding on FN, notwithstanding any change in the constitution of the Chief and the Council of FN.

THE UNDERSIGNED, being the Chief and a quorum of the Councilors of FN, did at a duly convened meeting of Chief and Council on the ___ day of _____, 2007, pass the foregoing resolutions as evidenced by their signatures hereto.

Chief

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member