

Claystone Trust Deed



TRUST DEED

As part of provincial legislation governing landfills and waste management, Claystone Waste, much like Beaver Municipal Solutions today, would have an obligation to remediate the landfill site once its functional lifecycle concludes. Every landfill has a lifespan and thus an important component of the Claystone Waste proposal is to ensure effective remediation funding.

The Claystone Trust Deed binds Claystone Waste to setting aside revenues in a remediation fund and establishes safeguards through the creation of a non-profit society to ensure remediation liability is completely funded.

KEY PROVISIONS

ESTABLISHES REMEDIATION TRUST FUND

The Trust Deed formalizes how Claystone Waste will set aside funds to remediate and close the landfill site. In order to ensure Claystone Waste will never find itself without dedicated money for remediation, these funds have been separated from the day-to-day operational accounting through the Claystone Trust Deed.

The Trust Deed creates a non-profit society called the Claystone Trustee Association to safeguard and oversee the remediation fund.

The Claystone Trustee Association would be made up of the Chief Administrative Officers (CAO) of the partner municipalities. All trustees would be required to respect and strictly adhere to the limitations, directions and obligations as laid out by the Claystone Trust Deed.

Critical details like how contributions will be made to the Trust, how money in the Trust can and can't be invested, the course of action needed to release funds, and accountability processes like annual reporting of the Trust's financials are also included in the Trust Deed.

The Claystone Trust Deed creates a non-profit society with one goal – to collect and then safeguard the funds that will be needed to effectively remediate the landfill site.

THIS TRUST AGREEMENT made as of the ____ day of _____, 20__.

BETWEEN:

CLAYSTONE WASTE LIMITED PARTNERSHIP,
by its general partner,
CLAYSTONE WASTE LTD.
("Claystone")

- and -

CLAYSTONE TRUSTEE ASSOCIATION
(hereinafter called the "**Trustee Co**")

WHEREAS:

- A.** The Municipalities are the sole limited partners of Claystone;
- B.** The Landfill is located within the municipal boundaries of Beaver County and is in close physical proximity to the Village of Ryley;
- C.** Claystone operates the Waste Business;
- D.** Claystone collects Revenue for the provision of the services in the Waste Business;
- E.** Claystone will have an obligation to remediate the lands whereby the Landfill is operated on, pursuant to the Permits;
- F.** Claystone shall set aside a portion of the Revenue (the "**Remediation Fund**" or the "**Closure Fund**") for the purposes of remediation of the Landfill in accordance with the Permits, this Agreement and all Applicable Laws, and the Beaver Regional Waste Management Commission (the "**Commission**") shall transfer to the Trustee Co its existing Closure Fund in accordance with the terms of that memorandum of agreement between the Commission and Claystone dated the ____ day of _____, 20__ (the "**Operating Agreement**");
- G.** Claystone wishes to establish and maintain a trust for the purposes of holding the Remediation Fund for the sole purposes of conducting remediation of the Landfill as it closes;
- H.** In order to achieve the vision and goals established for this Trust, Claystone requires that the Trustee Co adhere to the strict limitations, directions and approval obligations contemplated within this Trust Deed.

NOW THEREFORE THIS TRUST DEED WITNESSETH THAT in consideration of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.01 Definitions

Whenever used in this Trust Deed, the following terms will have the meaning given below unless the context clearly indicates otherwise.

- (a) "**Applicable Laws**" means any statute, regulation, code, order, directive or other legal requirement of a governmental or quasi-governmental body having jurisdiction over one or more of the parties or the subject matter of this agreement pursuant to law including, without restriction, the requirements of any permits or approvals issued thereunder;
- (b) "**Auditor**" means the auditor of the Trust from time to time;
- (c) "**Claystone**" means the Claystone Waste Limited Partnership, as represented by its general partner, Claystone Waste Ltd.;
- (d) "**Income**" means the accumulating income of the Trust within the meaning of the Income Tax Act, and for certainty shall include only the taxable portion of capital gains of the Trust;
- (e) "**Income Tax Act**" means to the *Income Tax Act*, R.S.C. 1985, c.1, as amended, including the Regulations thereto, or any legislation of the Parliament of Canada from time to time in force of like or similar effect. Where there are proposals for amendments to the Income Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustee may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force. Reference in this Trust Deed to provisions of the Income Tax Act shall be deemed to include references to their successor provisions.
- (f) "**Landfill**" or "**Lands**" mean the landfill operated by Claystone in relation to the Waste Business and all lands associated with the same, including the "**Lands**" as defined in the Operating Agreement, and includes any further lands or landfills which Claystone may acquire in relation to the Waste Business which require remediation upon their closure:
- (g) "**Municipalities**" means Beaver County, the Town of Tofield, the Town of Viking, the Village of Holden and the Village of Ryley;

- (h) **"Permits"** mean any approval, license or permit issued by a governmental body having regards to the operation of the Landfill;
- (i) **"Remediation Fund"** or **"Trust Fund"** means those funds that are deducted from the Revenue by Claystone and provided to the Trustee Co for the purposes of being deemed trust property, and includes the funds provided to the Trustee Co by the Commission for the same purpose;
- (j) **"Revenue"** means those funds that are earned by Claystone for the operation of the Waste Business;
- (k) **"Trust"** means the trust established and administered pursuant to this Trust Deed;
- (l) **"Trust Year"** refers to a calendar year, unless otherwise indicated within this Trust Deed or any amendments hereto;
- (m) **"Trustee Board of Directors"** refers to the duly constituted board of Directors of the Trustee Co which as of the date of this Trust Deed are those Trustee/Directors named and appointed within Schedule "A" attached to this Trust Deed;
- (n) **"Trustee Co"** refers to the Claystone Trustee Association;
- (o) **"Trustee/Directors"** refer to those individuals who have been appointed to be directors of the Trustee Co; and
- (p) **"Waste Business"** means the waste services provided for the collection, transport, disposal and treatment of waste at the Landfill.

ARTICLE 2 TRUST

2.01 Establishment of the Trust

Claystone hereby consents to, declares and establishes the Trust in accordance with all provisions of this Trust Deed, as amended from time to time. The sole legal beneficiary of the Trust shall be Claystone.

2.02 Purpose of the Trust

The Trust is established so that the Remediation Funds as received from time to time from Claystone or the Commission may be utilized for the purposes set forth within, contemplated within, or to be established from time to time under, this Trust Deed, namely to fund the remediation obligations of Claystone with respect to the Landfill in accordance with the Permit and all Applicable Laws, as such portion or portions of the Landfill are closed from time to time.

2.03 Name of the Trust

The name of the Trust shall be the "**Claystone Remediation Trust**", and shall not be used by the Trustee Co other than in connection with the affairs of the Trust.

2.04 Registration of Name

Claystone shall effect such registrations with respect to the name "**Claystone Remediation Trust**" as may be necessary or desirable to preserve Claystone's ownership right in the name and to ensure use of the name solely in connection with the Trust.

2.05 Term

This Trust Deed is effective as of the date of _____, 20__, and shall continue to be in full force and effect until duly amended, or the Trust is terminated as provided in Article 8 hereof.

ARTICLE 3 TRUSTEE/DIRECTORS

3.01 Appointment to Board

The Trustee Board of Directors shall be the chief administrative officer of each one of the five Municipalities.

3.02 Termination of a Trustee/Director

A Trustee/Director shall deemed to have resigned as a Trustee/Director once he/she ceases to be a chief administrative officer of a Municipality.

3.03 Trustee Compensation

The Trustees/Directors shall not be compensated for acting as Trustees/Directors of the Trust. The Trustees/Directors shall, however, have all reasonable expenses incurred personally in connection with their duties hereunder reimbursed by the Trustee Co (which shall in turn be reimbursed by Claystone in accordance with the terms hereof).

ARTICLE 4 TRUST FUNDS

4.01 Trust Fund

Subject to the terms of this Trust Deed, the Trustee Co may maintain and operate the Trust Fund through the establishment of one or more trust accounts at a financial institution chosen from time to time by the Trustee Co.

4.02 Investment of the Trust Fund

The Trust Fund shall be invested so as to comply with the *Trustee Act*. Furthermore, the authorized investments of the Trust Fund shall be the same criteria for authorized investments as is set forth in Section 250 of the *Municipal Government Act*, RSA 2000, c.M-26, as may be amended from time, as if the Trustee Co is a municipality, and shall further include any investments authorized by the *Muni Funds Investment Regulation*, Alta Reg 22/2010 and the *Investment Regulation*, Alta Reg 66/2000.

4.03 Trust Agent

Subject to the terms of this Trust Deed, the Trustee Co may appoint a third party trust agent for the purposes of holding and administering the Trust Fund, as well as amend or revoke such appointment from time to time as appropriate.

4.04 Contributions

Claystone shall make contributions to the Trust Fund in accordance with the Claystone Waste Business Plan, as approved in accordance with the terms of the Unanimous Shareholder Agreement of Claystone Waste Ltd. and as amended from time to time, however at all times in accordance with the requirements outlined by the Public Sector Accounting Board and Chartered Professional Accountants of Canada, as applicable, in the CPA Canada Public Sector Accounting Handbook, or as otherwise required by law, and at all times in accordance with the requirements outlined in the IFRS Accounting Standards. In the event of a conflict between any of the standards outlined herein, the more strict and/or onerous requirements shall apply.

4.05 Expenditure of Income

- (a) All contributions to the Trust Fund by Claystone shall be utilized solely for the purposes of funding Claystone's remediation obligations with respect to closure of the Landfill or such portion(s) thereof, from time to time, in accordance with the terms of the Permit and with all Applicable Laws at the time.
- (b) Save and except for as may be specifically contemplated within, or approved under terms of, this Trust Deed, any and all contributions received or receivable from Claystone shall be distributed to further the goals, objectives and purposes of the Trust as contemplated within this Trust Deed.
- (c) In the event Claystone requires funds for the purpose of performing its remediation obligations with respect to the Landfill or a portion thereof, Claystone shall write to the Trustee Co outlining the amount of funds required and the purpose for their usage. The Trustee Co shall subsequently provide to Claystone the required amount of funds.

4.06 Administrative Costs of Trustee Co

The parties hereto agree that Claystone shall be responsible for all reasonable administrative costs of Trustee Co. In addition to the contributions to the Remediation Fund, Claystone shall, on written request from Trustee Co, provide such additional funds as Trustee Co requires in relation to its administration. Such costs may include, but are not limited to:

- (a) Costs of corporate maintenance and professional fees, including corporate filings, tax filings, audit costs, legal fees and accounting fees, and such other similar costs as are required for the maintenance of Trustee Co;
- (b) Costs incurred by the Trustee/Directors personally in accordance with the terms outlined herein; and
- (c) Any other reasonable costs incurred by the Trustee Co in furtherance of the obligations of this Agreement.

4.07 Projections

On an annual basis, or such other basis as Trustee Co and Claystone may determine, each acting reasonably, Claystone shall provide Trustee Co with a document outlining its anticipated needs with respect to its remediation obligations, including, without limitation, anticipated amounts required for remediation and anticipated timelines for the usage of such funds. The purpose of this projection is to allow Trustee Co and the Trustees/Directors to make prudent investment decisions based on anticipated need, including with respect to timelines for need. It is the intent of the parties that the Trustees/Directors will make investments (to the extent permitted hereunder) which align with the timeline and amounts outlined in the projection. In the event, based on the returns available or being obtained by the Trustee Co the Trustees/Directors determine, to the best of their knowledge and ability, that there is a risk the Remediation Fund will not match the projection provided by Claystone, the Trustees/Directors shall inform Claystone of the same and Claystone shall, to the extent possible and determined necessary, provide the Trustee Co with further funds. Notwithstanding the above, the parties acknowledge that the Trustee Co assumes no liability for the actual remediation and any shortfall in funds available for the remediation shall be borne by Claystone.

ARTICLE 5 TRUST AND TRUSTEE OPERATIONS

5.01 Establishment of the Trustee

The Trustee Co has been established for the purpose of implementing this Trust Deed and administering the Trust.

5.02 Power and Authority

Except as otherwise provided for in this Trust Deed, the Trustee Co shall only have the power and authority to carry out the functions, exercise the discretions, make the decisions, and provide

the consents and approvals as are provided or contemplated herein. Without restricting the foregoing, the Trustee/Directors shall have the authority to receive requests for distributions from the Trust for purposes of remediation of the Landfill, or any portion thereof and to distribute to Claystone such sums out of the net income of the Trust is required for this purpose.

ARTICLE 6 FINANCIAL AND ACCOUNTING MATTERS

6.01 Trust Year

The Trust Year of the Trust shall be the calendar year.

6.02 Books and Records

Proper and complete books, records, and accounts of the Trust shall be kept at the principal office of the Trustee Co. The books and records shall fully and accurately reflect all transactions of the Trust and shall be maintained in conformity with generally accepted accounting principles and applicable legislation, including being in compliance with IFRS Standards.

6.03 Annual Reports

Within ninety (90) days after the end of the Trust Year, the Trustee Co shall furnish to both Claystone and the Municipalities, an annual report of the operations of the Trust in accordance with the form and detail as requested by both Claystone and the Municipalities, including, without restriction:

- (a) the audited financial statements as prepared by the Auditor;
- (b) a summary of all contributions received during the year from Claystone;
- (c) a summary of disbursements during the year;
- (d) a statement of the financial position of the Trust Fund at the end of such year; and
- (e) any additional information that either Claystone or the Municipalities, or any of them, may require.

In addition, the Trustee Co shall make any filings as may be required by Canada Revenue Agency on an annual basis, including, without restriction, the filing of T3 trust returns.

6.04 Bank and Other Accounts

The Trustee Board of Directors shall determine who from amongst its members shall have signing authority on bank accounts of the Trust, but in any event the number of signatories on any negotiable instrument shall not be less than two (2).

**ARTICLE 7
TERMINATION OR AMENDMENT OF THE TRUST**

7.01 Termination

Subject always to Section 7.02 of this Trust Deed, the Trustee Co may terminate the Trust upon receipt of unanimous consent of both Claystone and each of the Municipalities.

7.02 Application of Assets on Termination

Upon termination of the Trust, after satisfying all current debts and other obligations of the Trust any and all monies, accounts, assets forming the property of the Trust, and any and all rights, benefits and privileges to be derived therefrom, shall automatically vest in and to Claystone and shall be utilized by Claystone firstly for the remediation obligations related to the Landfill, secondly for any outstanding, unpaid administrative expenses of the Trustee Co and thirdly for the general administration, construction or enhancement of Claystone.

7.03 Amendments to Trust Deed

The Trustee Corp may from time to time amend, delete or add terms or provisions to this Trust Deed without the requirement of obtaining the prior approval of the Court of Queen's Bench of Alberta, provided that no such amendment, deletion or addition shall become effective unless approved by an instrument signed by Claystone and each of the Municipalities.

**ARTICLE 8
GENERAL PROVISIONS**

8.01 Notice

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing and served personally, or sent by letter, postage prepaid, or e-mail, addressed to:

(a) the Trustee Co at:

Box 322
Ryley, AB
T0B 4A0
Attention: Board of Trustee Co

(b) Claystone at:

Box 322
Ryley, AB
T0B 4A0
Attention: General Manager
Email: Pierre.Breau@BeaverMunicipal.com

(c) Beaver County at:

PO Box 140
Ryley, Alberta
T0B 4A0
Attention: CAO
E-mail: bbeck@beaver.ab.ca

(d) Village of Holden at:

PO Box 357
Holden, Alberta
T0B 2C0
Attention: CAO
E-mail: vholden@telusplanet.net

(e) Village of Ryley at:

PO Box 230
Ryley, Alberta
T0B 4A0
Attention: CAO
E-mail: cao@ryley.ca

(f) Town of Tofield at:

PO Box 30
Tofield, Alberta
T0B 4J0
Attention: CAO
E-mail: cneufeld@tofieldalberta.ca

(g) Town of Viking at:

PO Box 369
Viking, Alberta
T0B 4N0
Attention: CAO
E-mail: don.mcleod@viking.ca.

or to such other address as may be provided in writing from time to time. Such notices, requests, demands, acceptances and other communications shall be deemed to have been received when delivered, or if sent by mail shall be deemed to have been received on the fifth day following the date of mailing the letter, or if sent by e-mail shall be deemed to have been received as of the date and time of the receipt of a return receipt confirmation evidencing successful transmission to the addressee.

8.02 Currency

All references to dollars shall be in Canadian funds.

8.03 Gender and Number

Words imparting the singular number only shall include the plural, and vice-versa, and words imparting the masculine gender shall include the feminine gender and neuter gender, and words imparting persons shall include a natural person, firm, trust, partnership, association, corporation, government or governmental board, agency or instrumentality.

8.04 Headings

The division of this Trust Deed into articles and sections and the article and section headings are for convenience of reference only and shall not affect the interpretation construction of this Trust Deed.

8.05 Applicable Legislation

This Trust Deed shall be construed and enforced in accordance with the rights of the parties hereto and shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the parties hereto do hereby irrevocably adjourn to the jurisdiction of the courts of the Province of Alberta.

8.06 Severability

If any provision of this Trust Deed shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Trust Deed shall not be affected or impaired thereby.

8.07 Entire Agreement

This Trust Deed constitutes the entire agreement among the parties relating to the establishment and administration of the Trust and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, among the parties with respect thereto.

8.08 Waiver

No waiver by any party hereto of any breach of any of the provisions of this Trust Deed by such party shall take effect or be binding upon the party unless in writing and signed by such party. Unless otherwise provided therein, such waiver shall not limit or affect the rights of such party with respect to any other breach.

8.09 Time of Essence

Time shall be of the essence of this Trust Deed.

8.10 Successors and Assigns

This Trust Deed shall endure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8.11 Counterparts

This Trust Deed may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

8.12 Further Acts

The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Trust Deed and every part thereof.

DATED effective as of the date first above written.

**CLAYSTONE WASTE LIMITED
PARTNERSHIP, by its general partner,
CLAYSTONE WASTE LTD.**

Per: _____

Per: _____

CLAYSTONE TRUSTEE ASSOCIATION

Per: _____

Per: _____