Minutes - Executive Policy Committee - February 13, 2008

Minute No. 150
Report – Standing Policy Committee on Infrastructure Renewal and Public Works – January 8, 2008

Item No. 2 Memorandum of Understanding between The City of Winnipeg and Shoal Lake First Nation #40
File WW-3.1

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service dated January 31, 2008, and submits the following to Council:

1. That the City of Winnipeg enter into a Memorandum of Understanding with Shoal Lake First Nation #40 to explore economic opportunities beneficial to both parties.

2. That the Chief Administrative Officer be delegated the authority to finalize a Memorandum of Understanding upon terms and conditions substantially in the form outlined in the report of the Director of Water and Waste dated January 31, 2008 and having an expiry date of two years following the commencement of the Memorandum of Understanding.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – January 8, 2008

DECISION MAKING HISTORY:

Moved by Councillor Clement,

That the recommendation of the Winnipeg Public Service dated January 31, 2008 be concurred in and forwarded to Council.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 16, 2008, the Executive Policy Committee laid over the matter for up to 60 days.

Further on January 16, 2008, the Executive Policy Committee directed the Winnipeg Public Service to have further discussions with the Shoal Lake First Nation #40 regarding the Memorandum of Understanding to remove references to commercialization opportunities at Shoal Lake, with the intent of ensuring the protection of the water quality in the Aqueduct for the City of Winnipeg.

STANDING COMMITTEE RECOMMENDATION:

On January 8, 2008, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service dated December 13, 2007, and submitted the matter to the Executive Policy Committee and Council.

RE: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WINNIPEG AND SHOAL LAKE FIRST NATION #40

FOR SUBMISSION TO: Executive Policy Committee

ORIGINAL REPORT SIGNED BY: Barry MacBride, P. Eng.
Director, Water and Waste

REPORT DATE: January 31, 2008

RECOMMENDATION(S):

1. That the City of Winnipeg enter into a Memorandum of Understanding with Shoal Lake First Nation #40 to explore economic opportunities beneficial to both parties.

2. That the CAO be delegated the authority to finalize a Memorandum of Understanding upon terms and conditions substantially in the form attached and having an expiry date of two years following the commencement of the Memorandum of Understanding.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REPORT SUMMARY

KEY ISSUES:

- The City of Winnipeg and Shoal Lake First Nation #40, along with the Province of Manitoba, are parties to a Tripartite Agreement. The intent of the agreement is to provide the First Nation with economic development opportunities while protecting water quality at Shoal Lake, which is the source of drinking water for Winnipeg and the First Nation.
- The Memorandum of Understanding will expand on a clause in the Tripartite Agreement regarding promotion of economic development beneficial to Shoal Lake First Nation #40.

IMPLICATIONS OF THE RECOMMENDATION(S):

General Implications

x	None
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract
	Comment(s):

Policy Implications

x	No
	Yes

Comment(s):

Regulatory Implications

x	None
	Eliminates or reduces regulatory impact
	Proposes regulatory impact

Comment(s):

Environmental Implications

x	No
	Yes

Comment(s):

Human Resources Implications

x	No
	Yes

Comment(s):

Financial Implications

x	Within approved current and/or capital budget
	Current and/or capital budget adjustment required

Comment(s):

REPORT

REASON FOR THE REPORT:

Approval of City Council is required to enter into a formal Memorandum of Understanding.

HISTORY:

June 30, 1989 — The City of Winnipeg, along with Shoal Lake First Nation #40 and the Province of Manitoba, signed the Tripartite Agreement.

January 16, 2008 — Executive Policy Committee considered a report submitted by Standing Policy Committee on Infrastructure Renewal and Public Works, and laid over the matter for up to 60 days.

Further, the Executive Policy Committee directed the Winnipeg Public Service to have further discussions with Shoal Lake First Nation #40 regarding the Memorandum of Understanding to remove references to commercialization opportunities at Shoal Lake, with the intent of ensuring the protection of the water quality in the Aqueduct for the City of Winnipeg.

DISCUSSION:

Winnipeg's water supply source is Indian Bay, which is an arm of Shoal Lake straddling the Manitoba/Ontario border. Shoal Lake has been Winnipeg's sole source of drinking water since 1919 and has provided high quality water since that time, due to the fact that the water body is still largely undeveloped.

Shoal Lake First Nation #40 lands surround the western and southern portions of Indian Bay, while the principal population concentration of approximately 200 is on the south shore of Indian Bay. On June 30, 1989 the City of Winnipeg, Province of Manitoba and Shoal Lake First Nation #40 signed a Tripartite Agreement. The intent of the agreement is to provide the First Nation with economic development opportunities while protecting water quality at Shoal Lake, which is the source of drinking water for Winnipeg and the First Nation. The agreement is administered by the Shoal Lake Agreement Committee, made up of the Chief of Shoal Lake First Nation #40, the Mayor, and the provincial Minister of Intergovernmental Affairs. The Agreement Committee meets annually to consider the report and recommendations of a working group comprised of members from all three parties.

One of the clauses of the Tripartite Agreement requires that the City and Province are to make every effort to promote economic development beneficial to the First Nation which is consistent with the preservation of water quality. In this regard, the City and Province have made available to the First Nation various employment opportunities. There is also an Economic Opportunity sub-committee which explores a variety of economic opportunities for the First Nation, but progress has been limited.

Most recently, the First Nation has approached the City to discuss potential opportunities for commercial infrastructure redevelopment which may benefit both the First Nation and the City of Winnipeg, and have requested that the City enter into a formal Memorandum of Understanding to explore these opportunities.

The Memorandum of Understanding does not commit the City to any legal obligation. A committee will be established but its authority will be limited to exploring development options and providing reports and recommendations to Council. As well, a clause has been included in the Memorandum of Understanding to ensure that the Tripartite Agreement takes precedence should any conflict in the terms and conditions of either document arise.

As per the direction by Executive Policy Committee, the Public Service has met and discussed the terms and conditions of the Memorandum of Understanding with the First Nation. The revised Memorandum of Understanding is attached. It is recommended that the City enter into this arrangement.

FINANCIAL IMPACT:

The following financial impact statement for this project has been prepared in accordance with the recommendation adopted by Council on December 13, 2000.

Financial Impact Statement Date: January 24, 2008

Project Name: Memorandum of Understanding - City of Winnipeg and Shoal Lake First Nation #40

COMMENTS:

There is no financial impact associated with the recommendations within this report.

"Original signed by M. L. Geer, C.A."

Moira L. Geer C.A.
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:
Legal Services Division, Department of Internal Services

External Consultation With: N/A

THIS REPORT SUBMITTED BY:

Water and Waste Department
Water Services Division
Prepared by: D. P. Sacher, P. Eng.
File Nos.

DPS:
Attachment

January 24, 2008


revised MOU.doc

MEMORANDUM OF UNDERSTANDING (MOU)

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated as of (insert date)

BETWEEN: **Shoal Lake First Nation No. 40**

(the "First Nation")

- **AND –**

The City of Winnipeg

(the "City")

RECITAL:

A. The First Nation and the City have historically maintained a relationship with regards to the water supply at Shoal Lake.

B. The relationship is currently expressed through a Memorandum of Agreement made as of the 30th day of June, 1989 between the City, the First Nation and the Province of Manitoba.

C. The First Nation has been exploring economic and commercial opportunities and is actively developing an investment grade commercial platform for the First Nation.

D. The First Nation and the City have had informal discussions regarding future infrastructure projects.

E. The City brings to this MOU certain expertise and resources including project development expertise, and operations and maintenance expertise.

F. The First Nation brings to this MOU the knowledge and expertise including human resources as well as unique opportunities as a First Nation to develop unique business and financing models.

G. The parties wish to ensure that any development activity involving the City and the First Nation recognizes the importance of the environment.

H. The parties agree that exploring commercial infrastructure development models is in the interest of both parties.

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1.0 COLLABORATIVE REVIEW COMMITTEE

1.1 The Parties agree that within 30 days of the execution of the confidentiality agreements described in section 5.1 they shall establish an operating committee (the "Collaborative Review Committee" or "Committee").

1.2 The Committee shall consist of 6 members, three of whom shall be appointed by each party.

1.3 The parties agree that, to the extent reasonably possible, each of the Committee's meetings shall be held in a convenient location for the parties.

1.4 At the first meeting of the Committee, the Committee shall determine and adopt such rules and administrative processes as are deemed appropriate for the Committee.

1.5 Subject to any legislation governing privacy and access to information, the City and the First Nation shall make reasonable efforts to provide to the Committee such data, studies, information and reports (the "Information") required by the Committee from time to time to carry out its functions. The Parties acknowledge and agree that all Information provided hereunder shall remain at all times subject to the confidentiality agreements and obligations described in section 5.1, and the Parties further acknowledge and agree that their Committee members and advisors shall abide by the provisions of this MOU and such confidentiality agreements.

1.6 The Parties acknowledge and agree that the Committee shall be an advisor committee only and shall only have authority to examine development options and report its findings and make recommendations to the City Council and the First Nation Chief and Council.

2.0 PROJECT AGREEMENTS

2.1 The Parties acknowledge and agree that the following objectives shall be incorporated into any development option recommended by the Committee which the Parties agree to consider:

2.1.1 For the purposes of investment and participation in any commercial infrastructure development, the First Nation shall incorporate under the laws of either Canada or Manitoba a corporation and shall capitalize such corporation so that it achieves an investment grade rating prior to entering into any arrangement with the City;

2.1.2 Development shall be designed, constructed, operated and maintained in compliance with the applicable laws, regulations, permits and approvals and in a manner that minimizes incremental adverse environmental impacts;

2.1.3 Developments shall be designed, constructed, operated and maintained in a manner which provides opportunities to create employment, training, business and educational opportunities for the First Nation and its members; and

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2.1.4 Commercial agreements between the parties shall provide for a dispute-resolution mechanism which respects equally the processes and traditions of the First Nation as well as the laws of Manitoba, Ontario and laws of Canada.

3.0 CO-OPERATION AND COSTS

3.1 Unless otherwise provided herein, the Parties shall each pay their own costs of this MOU, including any and all costs arising for or associated with their committee members and such Party's advisors participating in the Committee up to the creation of a project operating company or companies a referred to in section 2.1 above, after which said costs shall be paid by the operating company or companies.

4.0 TERM

4.1 The term of the MOU commences as of the date hereof and expires two years following the commencement (insert date) unless terminated by operation of section 5.1 or unless terminated at any time by either of the Parties as provided in section 4.2.

4.2 This MOU may be terminated by the Parties upon (90) calendar days written notice to each of the other Parties, provided that all financial obligations of the Parties accrued up to and including the date of termination will survive the termination of this MOU.

4.3 Upon termination of this MOU pursuant to section 4.2 hereof:

4.3.1 The Committee will cease immediately any and all work then underway; and

4.3.2 There will be no liabilities or obligations as between the Parties, nor shall any Party have any rights as against the Party with respect to the matters discussed pursuant to this MOU, except for all financial obligations as described in section 4.2 and those contained in the confidentiality agreement as described in section 5.1.

5.0 CONFIDENTIALITY AND EXCLUSIVITY

5.1 The Parties agree that they shall negotiate in good faith a confidentiality agreement which agreement shall be in a form satisfactory to each of the Parties and each Party's counsel.

5.2 The Parties agree that nothing in this MOU is intended nor shall be deemed to constitute, create or otherwise recognize any legally binding relationship, or obligation to either Party. Any legal obligations shall only arise upon the completion and execution of a mutually satisfactorily definitive legal agreement or agreements.

5.3 The Parties agree that should there be any conflict as between this MOU and the terms and conditions of the Shoal Lake Agreement, the Shoal Lake Agreement shall take precedence.

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6.0 NON DEROGATION

For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

7.0 NOTICE

7.1 Any notice or other communication under or related to this MOU shall be in writing and shall be delivered personally, by telecopy, by prepaid registered mail, addressed;

In the case of the First Nation:

Shoal Lake First Nation No. 40
P O Box No Kejick Post Office
Shoal Lake, Ontario
P0X 1E0

And in the case of the City of Winnipeg:

The City of Winnipeg
(address)

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RE: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WINNIPEG AND SHOAL LAKE FIRST NATION #40

FOR SUBMISSION TO: STANDING POLICY COMMITTEE ON INFRASTRUCTURE RENEWAL AND PUBLIC WORKS

ORIGINAL REPORT SIGNED BY: Barry MacBride, P. Eng.
Director, Water and Waste

REPORT DATE: December 13, 2007

RECOMMENDATION(S):

1. That the City of Winnipeg enter into a Memorandum of Understanding with Shoal Lake First Nation #40 to explore economic opportunities beneficial to both parties.

2. That the CAO be delegated the authority to finalize the terms and conditions of the Memorandum of Understanding.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REPORT SUMMARY

KEY ISSUES:

- The City of Winnipeg and Shoal Lake First Nation #40, along with the Province of Manitoba, are parties to a Tripartite Agreement. The intent of the agreement is to provide the First Nation with economic development opportunities while protecting water quality at Shoal Lake, which is the source of drinking water for Winnipeg and the First Nation.
- The Memorandum of Understanding will expand on a clause in the Tripartite Agreement regarding promotion of economic development beneficial to Shoal Lake First Nation #40.

IMPLICATIONS OF THE RECOMMENDATION(S):

General Implications

x	None
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

Policy Implications

x	No
	Yes

Comment(s):

Regulatory Implications

x	None
	Eliminates or reduces regulatory impact
	Proposes regulatory impact

Comment(s):

Environmental Implications

x	No
	Yes

Comment(s):

Human Resources Implications

x	No
	Yes

Comment(s):

Financial Implications

x	Within approved current and/or capital budget
	Current and/or capital budget adjustment required

Comment(s):

REPORT

REASON FOR THE REPORT:

Approval of City Council is required to enter into a formal Memorandum of Understanding.

HISTORY:

The City of Winnipeg, along with Shoal Lake First Nation #40 and the Province of Manitoba, signed the Tripartite Agreement on June 30, 1989.

DISCUSSION:

Winnipeg's water supply source is Indian Bay, which is an arm of Shoal Lake straddling the Manitoba/Ontario border. Shoal Lake has been Winnipeg's sole source of drinking water since 1919 and has provided high quality water since that time, due to the fact that the water body is still largely undeveloped.

Shoal Lake First Nation #40 lands surround the western and southern portions of Indian Bay, while the principal population concentration of approximately 200 is on the south shore of Indian Bay. On June 30, 1989 the City of Winnipeg, Province of Manitoba and Shoal Lake First Nation #40 signed a Tripartite Agreement. The intent of the agreement is to provide the First Nation with economic development opportunities while protecting water quality at Shoal Lake, which is the source of drinking water for Winnipeg and the First Nation. The agreement is administered by the Shoal Lake Agreement Committee, made up of the Chief of Shoal Lake First Nation #40, the Mayor, and the provincial Minister of Intergovernmental Affairs. The Agreement Committee meets annually to consider the report and recommendations of a working group comprised of members from all three parties.

One of the clauses of the Tripartite Agreement requires that the City and Province are to make every effort to promote economic development beneficial to the First Nation which is consistent with the preservation of water quality. In this regard, the City and Province have made available to the First Nation various employment opportunities. There is also an Economic Opportunity sub-committee which explores a variety of economic opportunities for the First Nation, but progress has been limited.

Most recently, the First Nation has approached the City to discuss potential opportunities for commercial infrastructure redevelopment which may benefit both the First Nation and the City of Winnipeg, and have requested that the City enter into a formal Memorandum of Understanding to explore these opportunities.

The Memorandum of Understanding does not commit the City to any legal obligation. A committee will be established but its authority will be limited to exploring development options and providing reports and recommendations to Council. As well, a clause has been included in the Memorandum of Understanding to ensure that the Tripartite Agreement takes precedence should any conflict in the terms and conditions of either document arise.

The Memorandum of Understanding is attached. It is recommended that the City enter into this arrangement.

FINANCIAL IMPACT:

The following financial impact statement for this project has been prepared in accordance with the recommendation adopted by Council on December 13, 2000.

Financial Impact Statement Date: November 5, 2007

Project Name: Memorandum of Understanding - City of Winnipeg and Shoal Lake First Nation #40

COMMENTS:
There is no financial impact for this project.

"Original signed by M. L. Geer, C.A."
Moira L. Geer C.A.
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:
Legal Services Division, Department of Internal Services

External Consultation With: N/A

THIS REPORT SUBMITTED BY:

Water and Waste Department
Water Services Division
Prepared by: D. P. Sacher, P. Eng.
File Nos.

DPS:

Attachment

November 5, 2007


draft MOU.doc

MEMORANDUM OF UNDERSTANDING (MOU)

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated as of (insert date), 2007

BETWEEN: **Shoal Lake First Nation No. 40**

(the "First Nation")

- **AND –**

The City of Winnipeg

(the "City")

RECITAL:

A. The City owns and operates an aqueduct which transports water to the City of Winnipeg.

B. The First Nation and the City have historically maintained a relationship with regards to the water supply at Shoal Lake.

C. The relationship is currently expressed through a Memorandum of Agreement made as of the 30th day of June, 1989 between the City, the First Nation and the Province of Manitoba.

D. The First Nation has been exploring economic and commercial opportunities and is actively developing an investment grade commercial platform for the First Nation.

E. The First Nation and the City have had informal discussions regarding the future replacement of the aqueduct as well as other water related infrastructure projects.

F. The City brings to this MOU certain expertise and resources including project development expertise, and operations and maintenance expertise.

G. The First Nation brings to this MOU the knowledge and expertise including human resources as well as unique opportunities as a First Nation to develop unique business and financing models.

H. The parties wish to ensure that any development activity involving the City and the First Nation recognizes the importance of the environment.

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I. The parties recognize that the historical development of the aqueduct occurred without meaningful consultation with the First Nation. The parties recognize that this is an era of new relations with the First Nation and will involve the First Nation in the future redevelopment of the aqueduct to the benefit of both parties.

J. The parties agree that exploring commercial infrastructure development models is in the interest of both parties.

K. It is recognized that based on current information available regarding the condition of the aqueduct, its capacity and the current water consumption projections for Winnipeg, the City does not require either a supplementary aqueduct or a replacement aqueduct to meet its needs for the foreseeable future.

1.0 COLLABORATIVE REVIEW COMMITTEE

1.1 The Parties agree that within 30 days of the execution of the confidentiality agreements described in section 5.1 they shall establish an operating committee (the "Collaborative Review Committee" or "Committee").

1.2 The Committee shall consist of 6 members, three of whom shall be appointed by each party.

1.3 The parties agree that, to the extent reasonably possible, each of the Committee's meetings shall be held in a convenient location for the parties.

1.4 At the first meeting of the Committee, the Committee shall determine and adopt such rules and administrative processes as are deemed appropriate for the Committee.

1.5 The initial responsibilities of the Committee include discussions and review of the current condition and capacity of the aqueduct and the potential for commercialization and redevelopment in a manner beneficial to both the City and the First Nation as deemed appropriate by the City.

1.6 Subject to any legislation governing privacy and access to information, the City and the First Nation shall make reasonable efforts to provide to the Committee such data, studies, information and reports (the "Information") required by the Committee from time to time to carry out its functions. The Parties acknowledge and agree that all Information provided hereunder shall remain at all times subject to the confidentiality agreements and obligations described in section 5.1, and the Parties further acknowledge and agree that their Committee members and advisors shall abide by the provisions of this MOU and such confidentiality agreements.

1.7 The Parties acknowledge and agree that the Committee shall be an advisor committee only and shall only have authority to examine development options and report its findings and make recommendations to the City Council and the First Nation Chief and Council.

2.0 PROJECT AGREEMENTS

2.1 The Parties acknowledge and agree that the following objectives shall be incorporated into any development option recommended by the Committee which the Parties agree to consider:

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2.1.1 For the purposes of investment and participation in any commercial infrastructure development, the First Nation shall incorporate under the laws of either Canada or Manitoba a corporation and shall capitalize such corporation so that it achieves an investment grade rating prior to entering into any arrangement with the City;

2.1.2 Development shall be designed, constructed, operated and maintained in compliance with the applicable laws, regulations, permits and approvals and in a manner that minimizes incremental adverse environmental impacts;

2.1.3 Developments shall be designed, constructed, operated and maintained in a manner which provides opportunities to create employment, training, business and educational opportunities for the First Nation and its members; and

2.1.4 Commercial agreements between the parties shall provide for a dispute-resolution mechanism which respects equally the processes and traditions of the First Nation as well as the laws of Manitoba, Ontario and laws of Canada.

3.0 CO-OPERATION AND COSTS

3.1 Unless otherwise provided herein, the Parties shall each pay their own costs of this MOU, including any and all costs arising for or associated with their committee members and such Party's advisors participating in the Committee up to the creation of a project operating company or companies a referred to in section 2.1 above, after which said costs shall be paid by the operating company or companies.

4.0 TERM

4.1 The term of the MOU commences as of the date hereof and expires on , unless terminated by operation of section 5.1 or unless terminated at any time by either of the Parties as provided in section 4.2.

4.2 This MOU may be terminated by the Parties upon (90) calendar days written notice to each of the other Parties, provided that all financial obligations of the Parties accrued up to and including the date of termination will survive the termination of this MOU.

4.3 Upon termination of this MOU pursuant to section 4.2 hereof:

4.3.1 The Committee will cease immediately any and all work then underway; and

4.3.2 There will be no liabilities or obligations as between the Parties, nor shall any Party have any rights as against the Party with respect to the matters discussed pursuant to this MOU, except for all financial obligations as described in section 4.2 and those contained in the confidentiality agreement as described in section 5.1.

5.0 CONFIDENTIALITY AND EXCLUSIVITY

5.1 The Parties agree that they shall negotiate in good faith a confidentiality agreement which agreement shall be in a form satisfactory to each of the Parties and each Party's counsel.

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5.2 The Parties agree that nothing in this MOU is intended nor shall be deemed to constitute, create or otherwise recognize any legally binding relationship, or obligation to either Party. Any legal obligations shall only arise upon the completion and execution of a mutually satisfactorily definitive legal agreement or agreements.

5.3 The Parties agree that should there be any conflict as between this MOU and the terms and conditions of the Shoal Lake Agreement, the Shoal Lake Agreement shall take precedence.

6.0 NON DEROGATION

For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

7.0 NOTICE

7.1 Any notice or other communication under or related to this MOU shall be in writing and shall be delivered personally, by telecopy, by prepaid registered mail, addressed;

In the case of the First Nation:

Shoal Lake First Nation No. 40
P O Box No Kejick Post Office
Shoal Lake, Ontario
P0X 1E0

And in the case of the City of Winnipeg:

The City of Winnipeg
(address)

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