Minutes - Executive Policy Committee - February 12, 2003

REPORTS

Minute No. 96 Authority to Amend Shoal Lake Trust Agreement
File WW-3.1 (Vol. 3)

EXECUTIVE POLICY COMMITTEE DECISION:

The Executive Policy Committee concurred in the administrative recommendation as follows:

1. That the amendments to the Shoal Lake Trust Agreement, as proposed in the Amending Agreement, be approved.

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

DECISION MAKING HISTORY:

Moved by Councillor Eadie,
That the administrative recommendation be concurred in.

Carried

Re: Authority to amend Shoal Lake Trust Agreement

For submission to: Executive Policy Committee

Original report signed by: Director of Water and Waste

Report date: January 21, 2003

In camera item: No

Recommendation(s):

That the amendments to the Shoal Lake Trust Agreement,as proposed in the Amending Agreement attached to this report, be approved.

Report Summary

Key Issues:

- The Shoal Lake Agreement was executed by the City of Winnipeg, Province of Manitoba and Shoal Lake Indian Band #40 in 1989. It has a 60-year term.
- The Agreement requires that the First Nation regulate development and take certain actions to preserve water quality in exchange for monetary consideration.
- Winnipeg and Manitoba contributed $3,000,000.00 each to a trust (the Shoal Lake Trust) to generate income for the First Nation. The First Nation receives the investment income from the trust annually, as well as a 1/60th interest in the principal for each year the First Nation participates in the agreement. The principal remains intact until the Agreement is terminated or expires.
- An Agreement committee consisting of the Mayor, Minister of Urban Affairs and the Chief provides agreement oversight. All decisions must be made by consensus.
- The Shoal Lake Working Group, comprised of two members each from Manitoba, First Nation #40 and Winnipeg, administers the agreement.
- The trust is administered and invested by a trustee under the terms and conditions of the Shoal Lake Trust Agreement. The trustee reports periodically to the Working Group and the Agreement Committee.
- Council has delegated Winnipeg's authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.
- An amendment to the current Trust Agreement is recommended to allow the pay-out of the entire amount of annual net realized capital gains to the First Nation (the current definition of net annual income under the Trust Agreement only allows for 50%).

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:

Policy implications

X	No
	Yes

Comment:

Financial Implications

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

Comment:

Report

Recommendation(s):

That the amendments to the Shoal Lake Trust Agreement, as proposed in the Amending Agreement attached to this report, be approved.

Reason for the report:

Council has delegated Winnipeg's authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.

History:

June 1989: The Province of Manitoba, the City of Winnipeg, and Shoal Lake # 40 First Nations signed the Shoal Lake Agreement to protect Winnipeg’s water supply. The agreement made provision for establishing a trust fund made up of equal contributions of $3,000,000.00 each from the City and the Province. The income from the trust was

to be paid out to the First Nation on a regular basis for 60 years, provided the terms of the Shoal Lake Agreement were met. The Shoal Lake Trust Agreement was also signed by the parties to implement the trust fund provisions. These agreements were to come into force once a parallel agreement was signed between the First Nation and Canada.

September 1990: Shoal Lake First Nation #40 signed an agreement with Canada as required pursuant to the Shoal Lake Agreement.

September 1995: The Shoal Lake Agreement committee appointed CIBC Trust to replace Royal Trust as trustee for the Shoal Lake Trust. Several concerns were identified with respect to the Shoal Lake Trust Agreement. The Agreement committee, consisting of the Mayor, the Chief of First Nation #40 and the Minister of Urban Affairs passed a resolution, approving the revised trust agreement, subject to the approval of their respected jurisdictions.

December 1995: Council approved the revised Shoal Lake Trust Agreement.

December 2002: Council delegated Winnipeg's authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.

December 2002: The Agreement Committee, consisting of the Mayor, the Chief of First Nation #40 and the Minister of Urban Affairs passed a resolution, approving revisions to the trust agreement as proposed herein, subject to the approval of their respected jurisdictions.

Discussion:

The Shoal Lake Agreement was signed by Manitoba, Winnipeg and Shoal Lake Band #40 in June of 1989. The agreement contained language requiring that a parallel agreement be signed by the Indian Band and the Federal Government as a precedent condition to the Shoal Lake Agreement taking effect. The Shoal Lake Agreement has a term of 60 years. The objectives of the agreement are generally as follows:

- To protect and maintain the quality of Winnipeg's drinking water.
- To develop a comprehensive waste management system for Shoal Lake Indian Band #40 in order to protect the water quality at Indian Bay.
- To promote the economic viability of Shoal Lake Indian Band #40.

The Shoal Lake Agreement committee comprised of the Mayor of the City of Winnipeg, the Chief of Shoal Lake Indian Band #40, and a designated minister of the Province of Manitoba (currently the Minister of Urban Affairs) provides oversight concerning the administration of the Agreement. Decisions of the Shoal Lake Agreement committee must be by consensus. Where there is no unanimity, any party may seek recourse to arbitration or mediation.

Day to day administration of the Shoal Lake Agreement is undertaken by the Shoal Lake Working Group, which consists of two representatives each from the City of Winnipeg, the Province of Manitoba, and Shoal Lake Indian Band #40, who are appointed by their respective representatives on the Agreement Committee.

The Shoal Lake Agreement Committee is required to meet at least once annually to consider a report from the Shoal Lake Working Group concerning the operation of the Agreement and to authorize actions required pursuant to the Agreement. This includes the disbursement of funds to Shoal Lake Indian Band #40 if they have conformed to the requirements of the Shoal Lake Agreement.

A trust fund, made up of equal contributions of $3,000,000.00 each from the City and the Province, was established when the Shoal Lake Agreement was executed. A trustee, under the terms and conditions of a Trust Agreement, invests this $6,000,000.00 principal. The First Nation receives the investment income from the trust annually provided that the terms of the Shoal Lake Agreement are met. The First Nation also receives a 1/60th interest in the principal for each year the First Nation participates in the agreement. The principal remains intact until the Agreement is terminated or the term of the agreement (60 years) expires.

The Trust Agreement as currently written defines "net annual income" as income as calculated for purposes of the Income Tax Act (Canada). Consequently, the First Nation is entitled to only 50 % of the annual net realized capital gains. The First Nation is not subject to income tax relating to the income from this agreement. Accordingly, they have requested that the Trust Agreement be amended so that they can receive full payment of capital gains in order to maximize the benefits derived from the agreement.

The Shoal Lake Working Group reviewed this request and recommended to the Shoal Lake Agreement Committee that revisions to Trust Agreement as outlined in the Amending Agreement (attached) be approved. The Agreement Committee, consisting of the Mayor, the Chief of First Nation #40 and the Minister of Urban Affairs passed a resolution, approving the these revisions, subject to the approval of their respected jurisdictions.

It is recommended that the Executive Policy Committee approve amendments to the Shoal Lake Trust Agreement as proposed in the Amending Agreement attached to this report.

Financial Impact Statement:

There is no financial impact associated with this report.

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Miora L. Geer C.A.
Manager of Finance and Administration

In preparing the report, there was consultation with and concurrence by: the Legal Services Division of the Corporate Services Department.

This Report Submitted By:

Water and Waste Department
Water Services Division
Prepared by: T. R. Pearson, P. Eng.
File No. 18-28-07-00

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File No. W.1/2002(4)

AMENDING AGREEMENT

THIS AGREEMENT made as of the 19th day of December, 2002.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVICE OF MANITOBA,

(hereinafter called the ***"Province"***),

- and -

THE CITY OF WINNIPEG,

(hereinafter called the ***"City"***),

OF THE FIRST PART,

- and -

CIBC TRUST CORPORATION,

(hereinafter called the ***"Trustee"***),

OF THE SECOND PART,

- and -

SHOAL LAKE INDIAN BAND NO. 40,

(hereinafter called the ***"Band"***),

OF THE THIRD PART.

WHEREAS:

(a) The undersigned are parties to a certain Agreement made as of the 1st day of January, 1996, (the ***"Trust Agreement"***);

(b) The City of Winnipeg Council at its meeting held December 11, 2002, by way of resolution delegated authority to approve amendments to the Trust Agreement to the Executive Policy Committee;

(c) The Shoal Lake Agreement Committee by way of resolution passed December 19, 2002 agreed that the Trust Agreement be amended so as to facilitate payout of the untaxable portion of the net capital gains accrued by the Trust commencing in the year 2002;

(d) The Executive Policy Committee of the City at its meeting held , 2003 approved an amendment to the Trust Agreement to effect the foregoing;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the covenants and agreements contained herein, the parties agree as follows:

1. The parties hereby agree that the Trust Agreement be amended by deleting Paragraph 5 and substituting therefore the following:

"5. The Trustee shall invest and keep invested the Trust Fund until the Date of Distribution and the Net Annual Income and the untaxed portion of the net capital gains derived from the Trust Fund each year shall be payable to the Band, but shall be disbursed during each year or a subsequent year in such amounts and at such times as the Shoal Lake Agreement Committee shall authorize. The Shoal Lake Agreement Committee shall authorize disbursement of all or part of the Net Annual Income and the untaxed portion of net capital gains on its own volition or at the request of the Band, unless:

(i) either the City or the Province gives notice to the Shoal Lake Agreement Committee, as contemplated by Section 44 of the Memorandum of Agreement, that the Band is in breach of the Memorandum of Agreement, and the Shoal Lake Agreement Committee shall, in that event, withhold its authorization until such time as the breach is remedied; or

(ii) the capital of the Trust Fund has been eroded below $6,000,000.00 and any party hereto gives notice to the Shoal Lake Agreement Committee that it considers it prudent to remedy such erosion of the capital of the Trust Fund, and, in that event, the Shoal Lake Agreement Committee shall withhold its authorization of payment of any income attributable to capital gains until the capital of the Trust fund has been restored to $6,000,000.00.".

2. The parties hereby agree that the Trust Agreement be further amended by deleting Paragraph 6 and substituting therefore the following:

"6. At the Date of Distribution, the Trustee shall deal with the Trust Fund then remaining in the following manner:

(a) if the Date of Distribution arises by reason of the application of Paragraph 2(b)(i), the Trust Fund shall be divided among the Province, the City and the Band as follows:

(i) any undistributed Net Annual Income and the untaxed portion of the net capital gains from previous fiscal periods and the Net Annual Income and the untaxed portion of the net capital gains for the fiscal period ending with the Date of Distribution, except such part of the Net Annual Income and the untaxed portion of the net capital gains which has not been disbursed as the result of the operation of Subparagraph 5(i) hereof and the breach of the Memorandum of Agreement has not been remedied, shall be paid to the Band;

(ii) such part of the Net Annual Income and the untaxed portion of the net capital gains which has not been disbursed as the result of the operation of Subparagraph 5(i) hereof and which breach has not been remedied, shall be paid equally to the City and the Province;

(iii) the amount calculated as the product obtained by multiplying the amount remaining in the Trust Fund by the expired term and dividing by the full term of sixty years shall be disbursed to the Band and the balance of the Trust Fund, shall be paid equally to the City and the Province;

(iv) Any undistributed Net Annual Income and the untaxed portion of the net capital gains which is the subject matter of an arbitration proceeding at the Date of Distribution, shall not be distributed until the arbitration proceedings are completed, at which time it shall be distributed as the arbitrator may decide;

(b) if the Date of Distribution arises by reason of the application of Paragraph 2(b)(ii), all of the Trust Fund shall be paid to the Band.".

3. The parties hereby confirm in all other respects the provisions of the Trust Agreement;

4. This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF each of the parties caused this Agreement to be executed, delivered by duly authorized representatives as of the date first above written.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA

Per:_____

Per:_____

THE CITY OF WINNIPEG

_____
Mayor

_____
City Clerk

CIBC TRUST CORPORATION

Per_____

Per:_____

SHOAL LAKE INDIAN BAND NO. 40

Per:_____

Per:_____

Approved as to details:

_____
Manager of Water Services
Water and Waste Department

Approved:

_____
Director, Water and Waste Department

Certified as to form:

_____
City Solicitor/Manager of
Legal Services