Agenda – Council – July 21, 2010

Report - Executive Policy Committee - July 14, 2010

Item No. 11 Long Plain First Nation Economic Development Zone - Municipal Development and Services Agreement
eFile GG-1

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 14, 2010, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, as amended, and submits the following to Council:

1. That the revised Municipal Development and Services Agreement (submitted at meeting of the Executive Policy Committee on July 14, 2010) be approved to facilitate the development of the Long Plain First Nation Economic Development Zone.

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

Report - Executive Policy Committee - July 14, 2010

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 14, 2010, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, with the following amendment:

- Replace the Municipal Development and Services Agreement with the version submitted by the Winnipeg Public Service at the meeting of the Executive Policy Committee on July 14, 2010,

and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Long Plain First Nation Economic Development Zone: Municipal Development and Services Agreement**

Critical Path: **Executive Policy Committee/Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
James Allum	Alex Robinson, Deputy CAO for G Laubenstein	N/A	M Ruta Acting CAO

RECOMMENDATIONS

That the attached Municipal Development and Services Agreement (MDSA) be approved to facilitate the development of the Long Plain First Nation Economic Development Zone.

That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Municipal Development and Services Agreements require Council approval.

The negotiation of an MDSA is a mandated component of the Federal Government's Additions to Reserve Policy and the Treaty Land Entitlement Framework Agreement signed by Canada and Manitoba in 1997.

IMPLICATIONS OF THE RECOMMENDATIONS

The primary purpose of an MDSA is to establish a fee structure for the provision of municipal services to a First Nation Economic Development Zone in lieu of taxes. The MDSA also establishes an understanding on by-law application and enforcement as well as a dispute resolution process when matters cannot be resolved through discussion or negotiation.

On September 23, 2003 Council approved ***First Steps: Municipal Aboriginal Pathways*** which directed the Public Service, among other things, to negotiate comprehensive MDSAs with eligible First Nations.

There are no human resource or other policy implications associated with this report. Revenues will be earned as set out in the agreement but there will also be costs associated with the provision of services. The revenues and costs relating to the agreement cannot be estimated at this time.

HISTORY

The MDSA supports the creation of the Long Plain First Nation Economic Development Zone, the first of its kind in Winnipeg though there are other such successful developments in Manitoba and Saskatchewan. The Additions to Reserve Policy and the Treaty Land Entitlement process permit First Nations to establish reserves outside the boundaries of the home reserve land in order to satisfy outstanding land requirements related to existing treaty obligations.

In order to convert the site into a reserve, the First Nation must satisfy a number of conditions with the other levels of government in addition to negotiating an MDSA with the City. The MDSA is designed to establish a long term relationship of practical cooperation which respects the First Nation's jurisdiction but also recognizes the need for ongoing compatibility and coordination between the City of Winnipeg and Long Plain First Nation.

Specifically, the MDSA sets out the terms and conditions for:

- The provision of municipal services by the City
- The payment for municipal services by the First Nation;
- The rights of the City within the Land;
- The provisions as to use and development of the Land;
- The control of activities on the Land;
- Dispute resolution and enforcement;
- A protocol for dealing with matters of mutual concern and interest.

The MDSA supports Long Plain First Nation's plan to develop a former Manitoba Hydro site on Madison Street in St. James into a commercial operation featuring office space for First Nation and other Aboriginal organizations, a training centre, a gas bar, and warehouse space.

Though the MDSA is a small, if significant, part of a much larger process developed by the federal government, the establishment of the Long Plain Economic Development Zone represents an important new partnership between the City and the First Nations of Winnipeg and Manitoba.



Municipal
Development and Ser

FINANCIAL IMPACT

Financial Impact Statement

Date: July 6, 2010

Project Name:

First Year of Program 2010

	0	1	2	3	4
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues will be earned as set out in the agreement but there will also be costs associated with the provision of services. The revenues and costs relating to the agreement cannot be estimated at this time.

original signed by R Abeysekera
Department Controller

CONSULTATION

In preparing this report there was consultation with:
Legal Services

SUBMITTED BY

Department: Office of the CAO
Division
Prepared by: James Allum, Manager, Aboriginal Initiatives
Date: July 6, 2010
File No.

MUNICIPAL DEVELOPMENT AND SERVICES AGREEMENT
("Agreement")

THE CITY OF WINNIPEG,
("City")

- and -

LONG PLAIN FIRST NATION,
("First Nation")

WHEREAS:

A. The First Nation is the owner, through LPFNT Landholding Inc., of land legally described as follows:

Parcels A, B, C, D, E and F, Plan Deposit 1426/2008 WLTO
in River Lots 39 and 40
Parish of St. James

as shown on the Sketch attached hereto as Schedule "A", (hereinafter referred to as the "Land");

B. The First Nation and Her Majesty the Queen in Right of Canada ("Canada") entered into a Treaty Land Entitlement Agreement on August 3, 1994 recognizing Canada's obligations to the First Nation under Treaty No. 1 and providing in part for the First Nation to increase the area of land set apart as reserve for the use and benefit of the First Nation;

C. By Band Council Resolution dated September 1, 2006, the First Nation requested Canada to set apart the Land as reserve land in partial fulfillment of the First Nation's Treaty Land Entitlement, (copy attached hereto as Schedule "B"). The First Nation will as soon as practicable, have the land transferred to Canada for the purpose of setting it apart as reserve land within the meaning of the *Indian Act*;

D. The Land is situated within the territorial limits of the City and benefits from municipal services;

E. The First Nation and the City wish to ensure the compatible and consistent regulation and governance of their respective territories and to ensure that activities carried out in their territories do not have an adverse impact on the other;

F. The First Nation and the City wish to define their relationship and set out their respective rights and obligations with respect to, among other things:

(a) provision of municipal services by the City;

(b) payment for municipal services by the First Nation;

(c) rights of the City within the Land;

(d) provisions as to use and development of the Land;

(e) control of activities on the Land;

(f) dispute resolution and enforcement;

(g) protocol for dealing with matters of mutual concern and interest;

G. The parties wish to establish a long term relationship of practical cooperation which respects the First Nation's jurisdiction, which also recognizes the need for ongoing compatibility and coordination between the parties, particularly as to land use, building and fire standards, public health and safety, and business regulation, because of the location of the Land in the City of Winnipeg;

H. The City has authorized the entering into this Agreement by Council Resolution at its meeting on _____, (copy attached hereto as Schedule "C").

I. The First Nation has authorized the Chief and Council to enter this Agreement by Band Council Resolution dated May 11, 2009, (copy attached hereto as Schedule "D").

THE CITY AND THE FIRST NATION AGREE AS FOLLOWS:

PART 1 BASIS OF AGREEMENT

1.1 The First Nation acknowledges and agrees that the City has no obligation to provide services in respect of the Land except as provided in this Agreement.

1.2 The parties acknowledge that subject to section 35 of the *Constitution Act, 1982*, provincial laws of general application, which are not in conflict with the provisions of the *Indian Act*, or a valid Band by-law enacted thereunder, apply to the Land and may be enforced upon the Land. Such applicable laws include but are not limited to:

(a) the *City of Winnipeg Charter* and the *Municipal Assessment Act*; and

(b) by-laws of the City.

1.3 The First Nation agrees that all land use and development, activities, persons and things on the Land must conform to requirements, standards, restrictions and prohibitions in force in the City through City by-laws, or to requirements, standards, restrictions and prohibitions that are in force through First Nation by-laws that are accepted under the procedure provided for in Section 1.4.

1.4 In the event that the First Nation intends to exercise its powers under the *Indian Act* to pass by-laws affecting matters that are the subject of this Agreement, the First Nation agrees to exercise those powers in the following manner:

(a) Before passing such a by-law the First Nation will notify the City of its intention and submit a draft of the proposed by-law to the City for comment and consultation.

(b) The parties will meet to discuss in good faith the compatibility of the by-law with the terms and conditions of this Agreement, including:

(i) its conformity with the requirements, standards, restrictions and prohibitions in force in the City;
(ii) proposed modifications to the current requirements, standards, restrictions and prohibitions as they affect the Land;
(iii) the administration and enforcement of the by-law, in which the City may or may not have a role, and the by-law's effect on the administration and enforcement of this Agreement;
(iv) the appropriateness of amending this Agreement in order to implement the by-law.

(c) If the parties are satisfied with the result of these discussions, the City will indicate so in writing.

(d) If the parties do not reach agreement on the contents of the proposed by-law, the means of administration or enforcement of the by-law, the appropriateness of amending this Agreement or the nature of such amendment, then either party may refer the matter to dispute resolution under Part 9. No such referral may take place until at least 4 months have elapsed since the First Nation submitted the proposed by-law to the City.

(e) Upon passing the by-law, the First Nation shall forward a copy of the by-law to the Minister of Indian and Northern Affairs Canada and forthwith provide the City with a certified copy.

1.5 A by-law of the First Nation lawfully passed pursuant to the *Indian Act*, and in accordance with Section 1.4, shall take effect according to its provisions, unless it is disallowed by the minister responsible for that Act.

1.6 The parties acknowledge that the regime for General Services, Specific Services Fees and payments in lieu of education support and special levies set out in Parts 4 and 5 is meant to operate in place of the statutory regime for property taxes set out in the *City of Winnipeg Charter* and the *Municipal Assessment Act*, as long as the First Nation is not in default under this Agreement.

PART 2 GENERAL SERVICES AND SPECIFIC SERVICES

2.1 The City will provide those municipal services that are provided out of the City's general revenues without charging a fee or service charge in respect of lands in a similar state of development in the City ("General Services"). At the time of signing of this Agreement the General Services provided in respect of the Land include (but are not limited to):

(a) police;

(b) fire protection;

(c) maintenance of adjacent streets, lanes and sidewalks;

(d) building inspection;

(e) public health;

2.2 The City will provide those municipal services that are provided in consideration for a fee, rate or service charge, local improvement charges or other area levies in respect of lands in a similar state of development in the City ("Specific Services"). At the time of signing of this Agreement the Specific Services provided in respect of the Land include (but are not limited to):

(a) water supply;

(b) sewage collection and disposal;

2.3 If the City changes the nature of the municipal services it provides in respect of lands in a similar state of development in the City, whether by:

(a) adding or discontinuing a service;

(b) increasing or decreasing the intensity of a service;

(c) changing the way the service is provided;

(d) changing the amount charged for the service; or

(e) changing the way the service is paid for, including turning a General Service into a Specific Service or vice versa

the changes will apply automatically to the provision of municipal services under this Agreement and to payment for them.

2.4 The City will provide the General Services and Specific Services in the same manner and frequency and to the same standard as they are provided in respect of lands in a similar state of development in the City. Except as otherwise provided in this Agreement:

(a) the First Nation's entitlement under this Agreement to the General Services and Specific Services from the City in respect of the Land will be equivalent to the entitlement of a taxpayer and resident of the City; and

(b) the City's liability in favour of the First Nation under this Agreement with respect to the provision of the General Services and Specific Services will be equivalent to those of the City to its taxpayers and residents.

PART 3 GENERAL SERVICES AND SPECIFIC SERVICES FEES

3.1 In consideration for the City providing the General Services, the First Nation will pay an annual fee ("General Services Fee") equal to the total of:

(a) property taxes for general municipal purposes; and

(b) business taxes;

which, in any given year, would have been payable to the City in respect of land, improvements, other property, premises and activities within the Land if the Land, its occupants and owners and operators of businesses conducted on the Land were taxable.

3.2 Where the City implements a new form of tax for raising general revenues, the General Services Fee will be calculated as if the tax applies to the person, thing or activity taxed within the Land. This portion of the General Services Fee will be charged, invoiced and collected in the same manner as it would be from taxable persons.

3.3 The City will invoice the First Nation for the General Services Fee no later than May 15th in each year and the First Nation will pay the City no later than June 30th of that year.

3.4 Late payments will carry interest and penalties at the rate in effect at the time in the City for arrears of taxes and charges. The First Nation will be entitled to the benefit of any discount for prepayment of taxes (if any) available to the City's taxpayers.

3.5 The assessment of the property and business premises within the Land for the purposes of calculation of the General Services Fee will be carried out as follows:

(a) Except for amendments required as a result of the erection or removal of buildings, or other changes which normally trigger amendments, the assessments in effect at the time the Land is set apart as a reserve will remain in effect until the next general assessment;

(b) When an assessment is required, the City will at its own expense have the assessment carried out by the City Assessor;

(c) The First Nation will provide whatever information is required by the assessor to carry out the assessments, and if it fails to do so the City Assessor may assess

the property and business premises on the basis of whatever information is available.

(d) The land, improvements, business premises and other property will be classified and valued in the same manner as would such properties be assessed in the City under *The Municipal Assessment Act* or *The City of Winnipeg Charter*, as the case may be, as if the Land were not set apart as reserve. Assessments, including amendments, will be carried out when and in the same manner as they would be carried out under those Acts;

(e) If the First Nation disagrees with the assessment, it may dispute it by notifying the City within 30 days of receiving notice of the assessment. If the parties cannot resolve the dispute by agreement, the matter may be referred to dispute resolution under Part 9.

3.6 If the City becomes liable to pay taxes to the First Nation under the First Nation's taxation by-law, the General Services Fee will increase by an amount equal to the amount of taxes payable by the City.

3.7 In consideration for the City providing the Specific Services, the First Nation will pay an amount ("Specific Services Fee") equal to:

(a) the fee, rate, rent or service charge payable by a person to whom such services are provided including, where required by law, the payment of federal, provincial and City taxes in relation to the provision the Specific Services; and

(b) the local improvement charges and other area levies that would have been payable to the City on land, improvements and other property within the Land if the Land, its occupants and owners of businesses conducted on the Land were subject to such charges and levies.

3.8 If any portion of the Specific Services Fee is related to a local improvement charge or other area levy, then the provisions of sections 3.3 and 3.4 apply. If any portion of the Specific Services Fee is based on an assessment, then the provisions of section 3.5 apply.

3.9 For the portion of the Specific Services Fee not related to a local improvement charge or other area levy, the City will charge, invoice and collect the Specific Services Fee in the same manner as it would from any other person to whom such services are provided. Late payments will carry interest and penalties at the rate in effect at the time in the City for late payment of such charges.

3.10 The General Services and Specific Services Fees are payable to the City despite a dispute as to the assessment or any other matter, including one where the dispute resolution process provided for by Part 9 is invoked. In the event that the assessed value or the amount of fee payable is subsequently reduced by agreement or as a result of arbitration, the City will refund the difference, with interest at the rate in effect at the time in the City for arrears of taxes.

3.11 In addition to the consideration provided for above, the First Nation will be liable for Additional Fees, consisting of charges, fees and costs payable under the by-laws of the City in connection with administration and enforcement of its by-laws, including but not limited to charges, fees and costs payable by occupiers that have not been paid within 30 days of their due date, and including enforcement and other costs that in the City may be added to taxes. Additional Fees are payable within 30 days of invoice. Article 3.4 applies.

3.12 The City and the First Nation may enter into one or more Administrative Protocols, under which certain matters will be administered directly between the City and lessees and other occupiers. Where an Administrative Protocol is in effect, the First Nation's liability to pay the fees called for above is off-set by amounts the City receives from occupiers.

PART 4 PAYMENT IN LIEU OF EDUCATION SUPPORT AND SPECIAL LEVIES

4.1 The First Nation must make an annual payment to the City equal to the education support and special levies which in that year the City would be required under the *Public Schools Act* to levy on land and improvements within the Land ("payment in lieu of education support and special levies").

4.2 The City must remit the payments in lieu of education support and special levies to the Province of Manitoba and the Winnipeg School Division.

4.3 Sections 3.3, 3.4, 3.5, 3.10 and 3.12 apply in respect of payments in lieu of education support and special levies.

PART 5 ACCESS TO THE LAND

5.1 The City will have access to the Land and any improvements and buildings, on giving reasonable notice, as required for:

(a) providing the General Services and Specific Services;

(b) carrying out the assessment referred to in Part 2;

(c) carrying out an inspection to determine compliance with any requirement referred to in Parts 6, 7 and 8;

(d) taking steps to remedy non-compliance with City Requirements under Part 8;

(e) administration and enforcement of City by-laws applicable within the Land, including access for inspection, and

(f) carrying out enforcement under Part10.

5.2 Where an emergency or danger to person or property arises or is apparently about to arise within the Land, a designated employee of the City (and those authorized for the purpose by the designated employee) may enter the Land (and any improvements or

buildings) without notice in order to respond to the emergency or danger.

5.3 Where applicable, the First Nation agrees to request an easement or other appropriate instrument from Canada and further agrees to provide any consent that may be required by the First Nation in order to grant the City access to the Land to permit necessary servicing by the City.

PART 6 USE AND DEVELOPMENT OF THE LAND

6.1 The First Nation agrees that the use or development of the Land will be consistent with the City's zoning by-law for the area. The First Nation will not use or develop, or permit the use or development of the Land:

(a) except for those purposes which are listed as permitted uses in the M1 Manufacturing District in the Winnipeg Zoning By-law No. 200/2006 ("Zoning By-law"); and

(b) except in accordance with the rules, regulations, development standards and all other requirements of the Zoning By-law.

6.2 If the City changes the list of permitted uses or any of the rules, regulations, development standards or other requirements of the Zoning By-law, the changes will apply automatically to the use and development of the Land, provided that:

(a) the changes apply generally to land in the City, or land subject to the Zoning By-law or land in the M1 Manufacturing District; and

(b) the First Nation has been afforded any rights or privileges which are available under section 6.4.

6.3 Where any matter respecting the use and development of the Land within the purview of the Zoning By-law or Part 6 of *The City of Winnipeg Charter* is subject to the discretion of the City, designated committee or of a designated employee of the City, including but not limited to:

(a) conditional use;

(b) variance;

(c) design review;

(d) subdivision approval;

the City will afford to the First Nation the same rights (under the same requirements) as any property owner to make application and to take the matter to further review and appeal, as the case may be.

6.4 The City recognizes that changes to the character and use of land within the vicinity of the Land could have an adverse effect on the use of the Land. For that purpose, the City agrees to afford to the First Nation the privileges and rights granted to property

owners under Part 6 of *The City of Winnipeg Charter* and the by-laws passed under it, including:

(a) the obligation of the City to provide notice to property owners of certain proposals and applications;

(b) the opportunity of property owners to obtain information and make representations to the City;

(c) the right to file objections and institute appeals.

PART 7 BUILDING AND SERVICE APPROVAL

7.1 Prior to carrying out any building operations, the First Nation will submit to the City plans and specifications complying with the City's by-laws on zoning, building standards, plumbing and fire codes and regulations, and with all other relevant by-laws, as well as the City's requirements with respect to water, electricity, sewer, drainage, lot grading, access to streets and any other matter, for the City's review and approval. At the same time the First Nation will submit all related fees and other charges.

7.2 "Building operations" include:

(a) excavating, filling or back-filling for the purpose of preparing a site for development;

(b) building, extending, enlarging or placing a building;

(c) altering, repairing or reconstructing a building;

(d) moving a building;

(e) demolishing a building or part of a building, or removing equipment or fixtures; and

(f) underpinning the foundation of a building.

7.3 Where the First Nation is in full compliance with the matters referred to in Parts 6 and 7 and is otherwise in full compliance with this Agreement, the City will approve the plans and specifications.

PART 8 ACTIVITIES ON THE LAND

8.1 Activities, persons and things on the Land must conform to requirements, standards, restrictions and prohibitions generally in force in the City through its by-laws ("City Requirements"), including but not limited to:

(a) building construction and demolition;

(b) equipment and materials;

(c) unsafe buildings and properties;

(d) appearance of buildings;

(e) maintenance and occupancy;

(f) trade or other activities which are dangerous, injurious or offensive to persons or property;

(g) health and sanitation;

(h) fire prevention and suppression;

(i) water supply, electricity, gas, sewage and solid waste collection and disposal;

(j) nuisances, noise, odour, insects and related matters;

(k) mobile houses, tourist camps and trailer parks;

(l) shop opening hours;

(m) animal control;

(n) overhanging shrubbery;

(o) physically disabled parking;

(p) mosquito control;

(q) numbering of buildings;

(r) weed control;

(s) derelict vehicles;

(t) firearms and fireworks.

8.2 If the City changes City Requirements (including implementing new requirements) by adoption or amendment of its by-laws, the changes will apply automatically to activities, persons and things on the Land.

8.3 Unless a City Requirement is inconsistent with a First Nation by-law on the same subject matter which has been accepted under the procedure set out in Section 1.4, the City may carry out enforcement of City Requirements under its by-laws against the persons or properties that are in contravention.

8.4 If any activity, person or thing within the Land does not comply with City Requirements, and enforcement of a by-law is not possible or is impractical in the view of the City, the City may notify the First Nation of the non-compliance. The First Nation will within the period of time specified in the notice take all steps necessary to rectify the non-compliance to the satisfaction of the City. If the non-compliance is not rectified to the City's satisfaction, the City may proceed under Part 10.

8.5 If any activity, person or thing within the Land does not comply with requirements, standards, restrictions and prohibitions that are in force through First Nation by-laws that are accepted under the procedure provided for in Section 1.4, the City may notify the First Nation of the non-compliance. The First Nation will within the period of time specified in the notice take all steps necessary to rectify the non-compliance to the satisfaction of the City. If the non-compliance is not rectified to the City's satisfaction, the City may proceed under Part 10.

PART 9 DISPUTE RESOLUTION

9.1 If there is a dispute as to:

(a) the adequacy, standard or frequency of the General Services or Specific Services required under Part 2; or

(b) the amount of an assessed value or the classification of property (for portioning of assessment) under Part 3; or

(c) a proposed First Nation by-law under Section 1.4,

the parties will resolve the dispute with the provisions of this Part using the following procedure:

(i) on the request of either party the parties will meet to attempt to negotiate a resolution of the dispute. The meeting is to be between authorized representatives of each of the parties.

(ii) if within 30 days from the meeting, the parties cannot resolve the dispute, the parties will jointly appoint a mediator. If they are unable to agree on a mediator within 40 days of the initial meeting, the mediator will be that person whom the President of the Law Society of Manitoba may designate, upon application by either party. The mediator will explore the positions of the parties, reconcile their positions to the extent possible and assist the parties in reaching a consensus on the resolution of the dispute. The mediator may offer suggestions, recommendations and alternatives for consideration by the parties.

(iii) if within 60 days after a mediator is appointed, or such other period agreed to by the parties, the dispute has not been resolved either party may refer the dispute to binding arbitration.

(iv) if the dispute is referred to binding arbitration, the parties may agree upon a single arbitrator or, where they cannot agree, the matter will be referred to a panel of 3 arbitrators. Each party will choose an arbitrator who will together choose a third to act as chair of the panel. If either party will fail to appoint a member of the panel within 14 days after the other, the person first chosen will proceed to hear and determine the matter as if they were a single arbitrator agreed upon by the parties for that purpose. If the two panel members are unable to agree on a chair, within 7 days after the second one is appointed, the chair will be that person whom the President of the Law Society of Manitoba may designate upon application by either party.

9.2 Where the dispute relates to an assessment under Part 3, any mediator or arbitrator appointed will be an expert in valuation or assessment.

9.3 The decision of the arbitrator or of a majority of the arbitration panel will be final and will bind the parties.

9.4 The arbitrator(s) may, in addition to determining an award on the issue or matter in dispute, determine:

(a) the allocation of the costs of arbitration;

(b) the payment of costs of the parties to the arbitration.

PART 10 ENFORCEMENT OF THE AGREEMENT

10.1 If the City fails to comply with any term of this Agreement, other than with respect to those matters referred to in Part 9, the First Nation may apply to court to seek any remedy available at law including an action for damages and termination of this Agreement.

10.2 If the First Nation fails to comply with any terms of this Agreement other than with respect to those matters in Part 9, the City may:

(a) despite section 2.4, suspend or withdraw or reduce the type, standard or manner of any or all of the General Services or Specific Services provided, other than police, ambulance and fire protection services, until the breach has been rectified;

(b) bring an action for damages or apply to court to seek any remedy available at law including termination of this Agreement;

10.3 Before the First Nation or the City can take any of the actions referred to in sections 10.1 and 10.2, each will notify the other of the failure to comply with the terms of this Agreement. If within 30 days after notice, the failure to comply has not been rectified to the satisfaction of the other party as the case may be, the First Nation and the City will be entitled to take any or all of the remedies available to each of them in sections 10.1 and 10.2.

10.4 Despite section 2.4, the City will have no liability to the First Nation or any person for a suspension, withdrawal or reduction of services or termination of this Agreement under section 10.2.

PART 11 SECURITY FOR GENERAL SERVICES AND SPECIFIC SERVICES FEES

11.1 To guarantee payment of the General Services and Specific Fees and payments in lieu of education support and special levies, the First Nation will provide the City at the time the Land is set part as reserve, with an irrevocable letter of credit in form and content acceptable to the City Solicitor. The letter of credit, by its terms, will be automatically renewed as of 1 January from year to year unless the issuer of the letter gives the City at least 3 months notice of its expiry. In the event that the issuer of the letter gives the City notice that the letter will expire, the City may without notice call in the letter of credit and hold the funds until it is extended or replaced.

11.2 The amount of the letter of credit to be provided by the First Nation will be determined as follows and equal to the total of:

(a) the previous year's General Service Fee, local improvement charges and area levies, plus 5%, adjusted annually;

(b) 3 months' Specific Services Fees (not including any covered in clause a), adjusted annually.

(c) the previous year's payment in lieu of education support and special levies, plus 5%, adjusted annually.

11.3 The amount of the letter of credit to be provided at the time the Land is set apart as reserve will be determined as if the Land had been set apart as reserve 1 year earlier. Thereafter, the letter of credit will be adjusted annually in accordance with section 11.2.

PART 12 TERM

11.1 The term of this Agreement and obligations of the parties will come into effect upon the date the Land is set apart as reserve, and will expire on the date the Land is no longer set apart as reserve, unless terminated under Part 10.

PART 13 MEETING AND COMMUNICATIONS

13.1 The First Nation and the City agree that in order to successfully fulfill their respective mandates, it is essential that they work together in a spirit of cooperation and maintain an open and ongoing dialogue with respect to their relationship. To this end, the First Nation and the City agree that:

(a) their representatives will hold a meeting in the City or on the Land, or at another agreed location each year in the month of November, or more often if the parties think it necessary or worthwhile, with a view to ensuring the harmonious operation of this Agreement and the resolution of any issues that may arise;

(b) either the First Nation or the City may at any time call a meeting (in the City or on the Land) by 30 days' notice to the other setting out the date, time and place of the meeting together with an agenda of the matters to be discussed at the meeting; and

(c) where new or unforeseen issues arise affecting development or activities on the Land or in its vicinity, the provision of or fees for municipal services, or any other matter covered under this Agreement, and such issues represent a material change in the context governing the Agreement at the time it was entered into, the parties will negotiate in good faith with a view to amending the Agreement to respond appropriately to the new or unforeseen issues.

13.2 For convenience and efficiency, the First Nation will, by Band Council Resolution, designate an individual who will be the contact person for the day-to-day dealings with the City. The First Nation may change the designated person by passing a Band Council Resolution and notifying the City. If the First Nation fails to designate a person under this section, the Chief of the First Nation will be the contact person. The Chief Administrative Officer for the City will be the City's contact person.

13.3 Any notice to be given under this Agreement, including a change in address, will be in writing and delivered in person or by registered mail to:

For the City:

The City of Winnipeg
510 Main Street
Winnipeg, Manitoba
R3B 1B9
Attention: City Clerk

For the First Nation:

Long Plain First Nation
5000 Crescent Road West
Box 430
Portage La Prairie, Manitoba
R1N 3B7

PART 14 AGREEMENT TO BIND OCCUPIERS OF THE LAND

14.1 Any person who leases, carries on business or any other activity, or otherwise occupies the Land, or any portion of it, will be bound by and comply with the terms of this Agreement a copy of which must be attached as a schedule to the lease or other instrument. The person will be required to acknowledge in writing, in form and content satisfactory to the City Solicitor, their notice of this Agreement.

14.2 The City will afford to lessees and other occupiers the right, subject to the written consent of the First Nation, to make applications in respect of the development and use of land and buildings, building permits, licences, and other permits and approvals in their own name.

PART 15 GENERAL

15.1 Definitions. Terms used in this Agreement will have the meanings ascribed to them in *The City of Winnipeg Charter*.

15.2 Governing Law. This Agreement will be governed by, and construed in accordance with the federal and provincial laws in force from time to time in the Province of Manitoba.

15.3 Further Assurances. Each party will, from time to time, at its own cost and expense:

(a) execute or cause to be executed all such further documents;

(b) take any further action as may be necessary or desirable; and

(c) do or cause to be done all things necessary to give effect to the provisions of this Agreement.

15.4 Entire agreement. This constitutes the entire agreement between the parties.

15.5 No presumption. There will be no presumption or special rule of interpretation in favour of or against any party.

15.6 No waiver. No term or condition of this Agreement may be waived except by the written consent of the party waiving the term or condition. Any waiver by any party of all or part of any term or condition or the breach of any term or condition of this Agreement, will affect only the matter specifically identified in the waiver and will not extend to any other matter, term, condition or breach.

15.7 Enure to the Benefit. This Agreement will enure to the benefit of and be binding upon the parties and their administrators, successors and assigns.

15.8 No Assignment. Neither party will assign this Agreement or any part of it, nor be released from its obligations or covenants under this Agreement without the prior written consent of the other party.

IN WITNESS WHEREOF the City and the First Nation have executed this agreement as of the date(s) noted below:

IN WITNESS WHEREOF The City of Winnipeg has executed this Agreement this _____ day of _____, 2010.

THE CITY OF WINNIPEG

Approved as to content:

_____
Chief Administrative Officer

_____
Mayor

_____
City Clerk

Approved as to form:

_____
Director of Legal Services and
City Solicitor

IN WITNESS WHEREOF Long Plain First Nation has executed this Agreement this _____ day of _____, 2010.

LONG PLAIN FIRST NATION

Per: _____
Chief

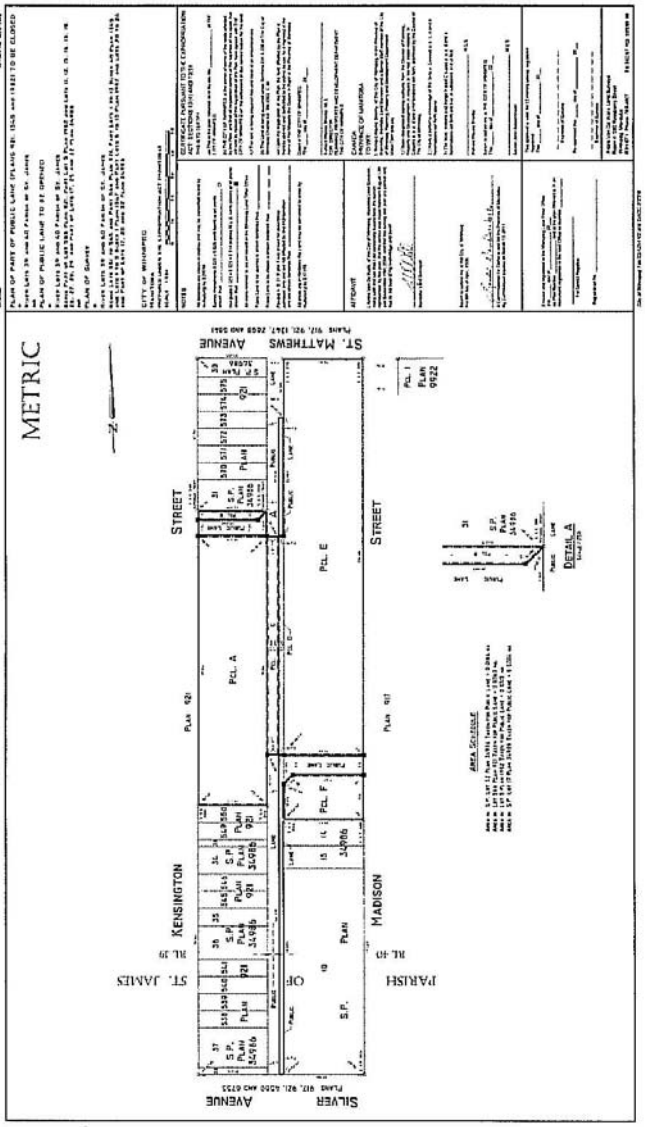
Per: _____
Councillor

Per: _____
Councillor

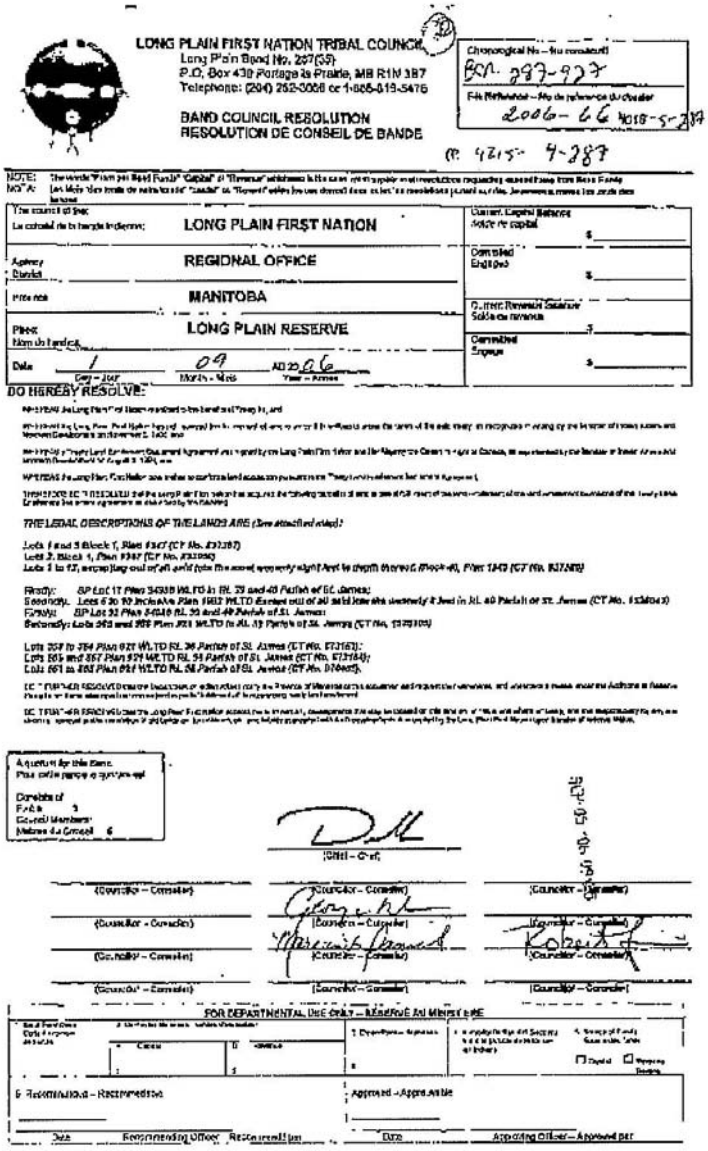
Per: _____
Councillor

Per: _____
Councillor

SCHEDULE "A"


METRIC
ST. MATTHEWS AVENUE
KENSINGTON STREET
MADISON STREET
ST. JAMES AVENUE
SILVER AVENUE
PARISH OF
PCL A
PCL E
PCL F
PCL 1 PLAN 9522
DETAIL A
AREA SCHEDULE

SCHEDULE "B"



LONG PLAIN FIRST NATION TRIBAL COUNCIL
Long Plain Band No. 287(SI)
P.O. Box 430 Portage la Prairie, MB R1N 3B7
Telephone: (204) 252-5068 or 1-866-619-5476

BAND COUNCIL RESOLUTION
RESOLUTION DE CONSEIL DE BANDE

Chronological No. – No consécutif
BCR 297-927
File Reference – No de référence du dossier
2006-66 4018-5-287
re: 4215-4-287

NOTE: The words "Trust Fund" "Capital" or "Revenue" wherever in this use are not to be applicable in connection with expenditures requested or proposed from Band Funds.
NOTA: Les mots "fonds de fiducie" "capital" ou "revenu" partout où ils sont employés dans cette résolution ne s'appliquent pas aux dépenses proposées ou requises des fonds de la bande.

The council of the: LONG PLAIN FIRST NATION
Le conseil de la bande de/des:

Agency / District: REGIONAL OFFICE

Province: MANITOBA

Place: LONG PLAIN RESERVE
Nom du lieu

Date: 1 (Day – Jour) 09 (Month – Mois) AD 2006 (Year – Année)

Current Capital Balance / Solde de capital: $

Committed / Engagé: $

Current Revenue Balance / Solde de revenus: $

Committed / Engagé: $

DO HEREBY RESOLVE:

WHEREAS the Long Plain First Nation is entitled to the benefit of Treaty No. 1 and

WHEREAS the Long Plain First Nation has, pursuant to the consent of and on behalf of the said Treaty, in exchange for valuable consideration, surrendered to Her Majesty the Queen in right of Canada, all its right, title and interest in and to those lands known as Indian Reserve No. 6 and Indian Reserve No. 6A, save and except those lands subsequently granted to the Canadian Pacific Railway Company, as more particularly described in the Surrender of Indian Reserve No. 6 and Indian Reserve No. 6A dated the 29th day of August, 1907, and accepted by Order in Council P.C. 1907-1911, dated the 3rd day of October, 1907; and

WHEREAS the Long Plain First Nation has entered into a land acquisition agreement with Her Majesty the Queen in right of Canada, as represented by the Minister of Indian Affairs and Northern Development, dated the 13th day of July, 2010 (the "Agreement"); and

WHEREAS the Long Plain First Nation has requested that Her Majesty the Queen in right of Canada set apart and transfer to Her Majesty the Queen in right of Canada, to be held by the Minister of Indian Affairs and Northern Development for the use and benefit of the Long Plain First Nation, the lands described in the Agreement; and

THEREFORE BE IT RESOLVED that the Long Plain First Nation hereby accepts the following terms and conditions of the Agreement, and covenants and agrees to perform and observe the terms and conditions of the Agreement to be performed and observed by the Long Plain First Nation;

THE LEGAL DESCRIPTIONS OF THE LANDS ARE (Une description officielle des terres est):

Lots 1 and 3 Block 1, Plan 9367 (CT No. 873787)
Lots 2, Block 1, Plan 9367 (CT No. 873788)
Lots 1 to 12, inclusive out of all and/or the second quarry right of way through Block 40, Plan 1249 (CT No. 837409)

Firstly: SP Lot 17 Plan 34938 WLTO in RL 29 and 40 Parish of St. James;
Secondly: Lots 6 to 10 inclusive Plan 9612 WLTO Extent out of all and/or the second quarry right of way through Block 40, Plan 1249 (CT No. 837409)
Firstly: SP Lot 32 Plan 34938 WLTO in RL 29 and 40 Parish of St. James;
Secondly: Lots 353 and 355 Plan 924 WLTO in RL 13 Parish of St. James (CT No. 1379109)

Lots 359 to 364 Plan 924 WLTO RL 39 Parish of St. James (CT No. 873763);
Lots 365 and 367 Plan 924 WLTO RL 39 Parish of St. James (CT No. 873764);
Lots 861 to 865 Plan 924 WLTO RL 39 Parish of St. James (CT No. 870667).

BE IT FURTHER RESOLVED that the Council or other duly authorized officers of the Band are hereby authorized and empowered to make, execute and do all acts and things as may be necessary to carry out the intent of this Resolution.

BE IT FURTHER RESOLVED that the Long Plain First Nation agrees to indemnify and save harmless Her Majesty the Queen in right of Canada, and all of Her ministers, officials, employees and agents from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon or occasioned by any injury to persons, including injury resulting in death, or damage to property, including loss of use thereof, arising out of the Agreement or the Lands.

A quorum for this Band Council is: 5
Le quorum pour ce conseil de bande est de:

Councillors of the Band: 9
Conseillers de la bande:
Council Members present: 6
Membres du Conseil présents:

(Chief – Chef)

(Councillor – Conseiller) (Councillor – Conseiller) (Councillor – Conseiller)

(Councillor – Conseiller) (Councillor – Conseiller)

(Councillor – Conseiller) (Councillor – Conseiller)

(Councillor – Conseiller) (Councillor – Conseiller) (Councillor – Conseiller)

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTÈRE

Cases / Cas

Recommended – Recommandée

Date Recommending Officer – Recommandé par

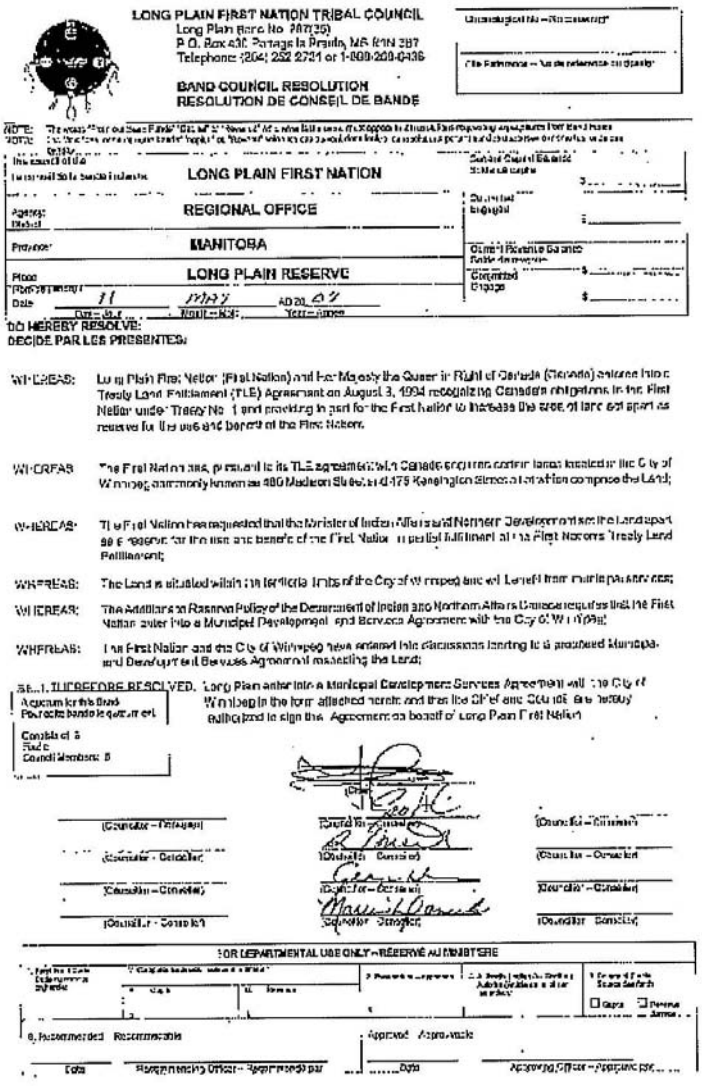
Approved – Approuvée

Date Approving Officer – Approuvé par

SCHEDULE "C"

Copy of City's authorization via Agreement by Council Resolution to be inserted here.

SCHEDULE "D"



LONG PLAIN FIRST NATION TRIBAL COUNCIL
Long Plain Band No. 287(35)
P.O. Box 430, Portage la Prairie, MB R1N 3B7
Telephone: (204) 252 2721 or 1-800-209-0436

BAND COUNCIL RESOLUTION
RESOLUTION DE CONSEIL DE BANDE

Circulation No. – No. de circulation

File Reference – No. de référence du dossier

NOTE: The words "Prior to Band Funds" "Dollars" or "Revenue" will be filled in as the Proposed Expenditure Requires Prior Band Funds
NOTE: [illegible]

Indicator of the Expenditure Indicateur	LONG PLAIN FIRST NATION	Current Capital Expenditure Solde de capital	$
Agency Bureau	REGIONAL OFFICE	Committed Engaged	$
Province	MANITOBA	Current Revenue Balance Solde de revenue	$
Place	LONG PLAIN RESERVE	Committed Engage	$
Date	11 (Day – Jour) MAY (Month – Mois) AD 20 07 (Year – Année)		

DO HEREBY RESOLVE:
DECIDE PAR LES PRESENTES:

WHEREAS: Long Plain First Nation (First Nation) and Her Majesty the Queen in Right of Canada (Canada) entered into a Treaty Land Entitlement (TLE) Agreement on August 3, 1994 recognizing Canada's obligations to the First Nation under Treaty No. 1 and providing in part for the First Nation to increase the area of land set apart as reserve for the use and benefit of the First Nation;

WHEREAS: The First Nation has, pursuant to its TLE agreement with Canada acquired certain lands located in the City of Winnipeg commonly known as 480 Madison Street and 175 Kensington Street, all of which comprise the Land;

WHEREAS: The First Nation has requested that the Minister of Indian Affairs and Northern Development set the Land apart as a reserve for the use and benefit of the First Nation in partial fulfillment of the First Nation's Treaty Land Entitlement;

WHEREAS: The Land is situated within the territorial limits of the City of Winnipeg and will benefit from municipal services;

WHEREAS: The Additions to Reserve Policy of the Department of Indian and Northern Affairs Canada requires that the First Nation enter into a Municipal Development and Services Agreement with the City of Winnipeg;

WHEREAS: The First Nation and the City of Winnipeg have entered into discussions leading to a proposed Municipal and Development Services Agreement respecting the Land;

BE IT THEREFORE RESOLVED: Long Plain enter into a Municipal Development Services Agreement with the City of Winnipeg in the form attached hereto and that the Chief and Council are hereby authorized to sign the Agreement on behalf of Long Plain First Nation.

Acquorum for this Band Pour cette bande le quorum est

Consists of 5
Fixed
Council Members: 5

(Chief)

(Councillor – Conseiller) (Councillor – Conseiller) (Councillor – Conseiller)

(Councillor – Conseiller) (Councillor – Conseiller) (Councillor – Conseiller)

(Councillor – Conseiller) (Councillor – Conseiller) (Councillor – Conseiller)

(Councillor – Conseiller) (Councillor – Conseiller) (Councillor – Conseiller)

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTÈRE

1. Fixed Fund Code Code Ministère	2. Complete Indicator Indicateur Indicateur	3. Reference	4. Authorized Indicator Indicateur Autorisé	5. Source of Funds Source des Fonds ☐ Capital ☐ Revenue Revenu
6. Recommended Recommandé		Approved Approuvé		
Date	Recommending Officer – Recommandé par	Date	Approving Officer – Approuvé par	