Minutes - Executive Policy Committee – April 18, 2012

Minute No. 238
Report – Standing Policy Committee on Infrastructure Renewal and Public Works – April 12, 2012

Item No. 2 Landfill Gas Project - Brady Road Resource Management Facility

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submits the following to Council:

1. That the Funding Agreement between the Province of Manitoba and The City of Winnipeg for the landfill gas collection and destruction project be approved.

2. That the amendments of the conditions for the proposals (RFP) for a landfill gas project at the Brady Road Resource Management Facility be approved in accordance with the revised conditions outlined in the report of the Winnipeg Public Service.

3. That the Chief Administrative Officer be delegated the authority:

    A. To award of the multi-year contract for the Landfill Gas Project for the Brady Road Resource Management Facility; and

    B. To finalize the terms and conditions of the contract.

4. 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 – April 12, 2012

DECISION MAKING HISTORY:

Moved by Councillor Vandal,

That the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On April 12, 2012, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **LANDFILL GAS PROJECT AT BRADY ROAD RESOURCE MANAGEMENT FACILITY: PROVINCE OF MANITOBA – CITY OF WINNIPEG FUNDING AGREEMENT, AND NEW REQUEST FOR PROPOSAL**

Critical Path: **Standing Policy Committee on Infrastructure Renewal and Public Works, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
D. E. Drohomerski, C.E.T. Manager of Solid Waste Services	D. P. Sacher, P. Eng. Director, Water and Waste Department	M Ruta CFO	D Joshi COO

RECOMMENDATIONS

1. That Council approve the attached Funding Agreement between the Province of Manitoba and The City of Winnipeg for the landfill gas collection and destruction project.

2. That Council approve the amendments of the conditions for the proposals (RFP) for a landfill gas project at the Brady Road Resource Management Facility (Brady) according to the revised conditions outlined in this report.

3. That the Chief Administrative Officer be delegated the authority:
    a. To award of the multi-year contract for the Landfill Gas Project for the Brady Road Resource Management Facility and
    b. To finalize the terms and conditions of the contract.

4. 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

Re: Recommendation 1

Council has directed the Public Service to bring forward for approval an agreement for cost sharing a landfill gas (LFG) project with senior levels of government.

Re: Recommendation 2 and 3

Council approval is required for the new terms and conditions under a new RFP, because this is an amendment of conditions previously approved by Council.

IMPLICATIONS OF THE RECOMMENDATIONS

Re: Recommendation 1

The City must transfer to the Province, all of its rights, title and interest in any Environmental Attributes (i.e. renewable energy credits) arising from the Project for the 20 year term of the Funding Agreement.

The Province has offered funding in the maximum amount of $2,550,000.00 pursuant to a funding agreement to support the development of a LFG collection and destruction system for mitigating LFG emissions at Brady.

Re: Recommendation 2

The essential changes from the original RFP requirements approved by Council are as follows:

- Reducing the contract term from 20 years to five years, with options to renew;
    - Change in contract length will give the City the flexibility to confirm Landfill Gas quality and quantity.
- The system is City owned and directly financed;
    - Future utilization of Land fill Gas becomes City Owned with no resource sharing.
- Removal of the utilization and/or revenue sharing component of the project;
    - Removed due to the loss of attributes/credits required by the Province for signing the Funding Agreement, and low energy rates made the utilization uneconomical.
- Removal of the resource recovery option of the project;
    - No response in original RFP, City to manage and partner with future recovery options if viable.

Financial:

Additional costs will be incurred to meet regulatory requirements.

There is approved capital budget for this project but the funding source will change since provincial funding is less than budgeted for and the LFG project is not currently expected to generate revenues to pay for borrowing for the facility.

The operating and debt servicing costs are not included in the current estimates.

Regulatory:

The City is committed under *The Climate Change and Emissions Reduction Act* to commence mitigating landfill emissions at the Brady Landfill by March 31, 2013.

Re: Recommendation 3

Due to the time constraints of the project implementation requirements, it is recommended that the CAO be delegated the authority to:

- Award of the multi-year contract for the Landfill Gas Project for the Brady Road Landfill, and
- Finalize the terms and conditions of the contract.

HISTORY

Re: Recommendation 1 – Funding Agreement

On March 19, 2008, Council adopted the recommendations to initiate a LFG capture program at Brady, which included negotiating an agreement with senior levels of government on cost sharing this project.

The Request for Proposal closed on March 12, 2010.

On June 9, 2011 at Brady, Premier Greg Selinger and the Mayor's Office announced the City's acceptance of the funding by the Province to assist in the LFG Project. Executing the subject agreement would formalize the acceptance.

In a letter dated February 2, 2012, the Minister of Conservation indicated acceptance of a proposal submitted by the City for an extension to March 31, 2013 to complete the LFG project. This acceptance is subject to a number of conditions including submission of the signed Manitoba - City of Winnipeg Funding Agreement. The Minister has been advised of the need for Council approval and that signing of the agreement is being pursued as quickly as possible.

The Water and Waste Department Solid Waste Services Division has reviewed and negotiated the terms and conditions of the Funding Agreement and recommends that the City accept the provincial funding in the maximum amount of $2,550,000.00 to assist in the construction of the LFG mitigation system. Although this funding is less than originally budgeted as a contribution from the Province, it may potentially be sufficient to construct the project.

Until such time as the actual amount of cost sharing for this project had been determined, the approved Capital Budget for this project has included assumed funding support of $4,450,000.00 from the Province. The actual level of funding has been set by the Province and is based on the final LFG collection and destruction capacity as verified by a third party, calculated at the rate of $1,500.00 per cubic meter per hour to a maximum contribution to the Project of $2,550,000.00.

The following is a summary of notable conditions in the funding agreement:

- The City must transfer to the Province, all of its rights, title and interest in any Environmental Attributes (i.e. renewable energy credits) arising from the Project for the 20 year term of the Funding Agreement.

- The funding payment schedule is as follows: 67% when construction of the LFG collection and destruction system has been initiated and the balance when the City provides independent third party verification of the quantity and composition of LFG that is collected and destroyed.

- Submission of a report to Manitoba within six months of completion of the Project summarizing all funds received, expenses and costs incurred and any other financing details.

- Maintaining records respecting maintenance and shutdown of the LFG collection and destruction system, quantity and composition of gases collected and composition of LFG that is destroyed.

- Submission of an annual report to Manitoba including, description of any significant maintenance or operational problems encountered, modifications or other significant changes made to the LFG collection and destruction system, and additional information requested in writing by Manitoba.
- Agreement to reflect Manitoba's contributions in its financial statements, in accordance with established accounting practices.

- The Agreement comes into effect when both Parties have signed and: continues in effect until commissioning of the Project in accordance with the plan approved by the Minister under Section 15 of *The Climate Change and Emissions Reductions Act*, and continues in effect for an operating term of twenty years.

- At any time after the first ten years of the operating term, the City may request Manitoba to consider earlier termination of this Agreement. Manitoba may, at its sole discretion, agree to earlier termination.

- Joint arrangement of any public announcements pertaining to the Project, as well as any official ceremony related to the Project, all according to a Communications Protocol specified by Manitoba.

Re: Recommendations 2 and 3 – New RFP and Delegation to CAO

On November 25, 2009 Council approved the Landfill Gas and Resource Recovery Project based on the mandatory requirements as identified in the attached report.

In late 2009 a Request for Proposal (RFP) was issued for a landfill gas project at Brady to comply with requirements under The Climate Change and Emissions Reductions Act for mitigating landfill gas emissions at Brady.

In July 2010, Council delegated authority to the CAO to approve the award of the multi-year contract for the Landfill Gas and Recovery Project for the Brady Road Landfill (RFP 704-2009).

On October 21, 2010 the CAO approved a Letter of Intent (LOI) agreement with Element Markets LFG, LLC (EM), the successful bidder for a Landfill Gas (LFG) project at Brady to allow EM to carry out due diligence and to jointly develop terms and conditions for a contract for the project. The final agreement was to be brought forward to the CAO for approval.

There have been protracted negotiations and due diligence conducted, but the City and EM have not been able to reach agreement on the terms for a final agreement, mostly as a result of a decrease in energy prices causing the payback period of the project to exceed the term of the agreement. As a result the LOI lapsed on July 30, 2011. Since then, efforts have been directed

at assessing alternative project implementation options including further negotiations, as described in the following two points:

- Increased time has been required to assess energy markets for LFG utilization, the impact on project financing, and the City accepting the terms of project funding support from the Province, which require the City to relinquish all present and future Environmental Attributes, namely renewable energy credits. The outcomes of these assessments resulted in the need to negotiate a modified approach to implementing the project and to put more emphasis on constructing the gas collection and destruction (flaring) station and confirming the amount and quality of the LFG before negotiating a contract for utilization.

- Attempts were made to negotiate an agreement to proceed with this modified approach with EM without success. As this would be a significant departure from the intent of the original RFP, and given the length of time since the Proposals were submitted for RFP 704-2009, it would be more appropriate and more advantageous to the City to proceed with a new RFP for this work rather than trying to negotiate with second highest scoring bidder from RFP 704-2009.

The new RFP would be for the design, construction and operation of a LFG collection and flare system, with construction starting in the fall of 2012 and being fully operational by March 31, 2013, in accordance with a plan which has been submitted to the Minister of Conservation. As the results of testing of the LFG quantity and quality become available, they will be beneficial for determining a business case for LFG utilization and marketing of the gas.

A proposed amendment reflecting this changed implementation plan was sent to the Minister of Conservation prior to year's end as required pursuant to *The Climate Change and Emissions Reduction Act*.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 23, 2012

Project Name: **First Year of Program** **2012**

LANDFILL GAS PROJECT AT BRADY ROAD RESOURCE MANAGEMENT FACILITY: PROVINCE OF MANITOBA – CITY OF WINNIPEG FUNDING AGREEMENT, AND NEW REQUEST FOR PROPOSAL

	2012	2013	2014	2015	2016
Capital					
Capital Expenditures Required	$ 7,000,000	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	7,000,000	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	$ 3,450,000	-	-	-	-
Grants (Provincial Funding)	$ 1,708,500	841,500	-	-	-
Reserves, Equity, Surplus	1,000,000	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ 6,158,500	$ 841,500	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 154,000	$ 478,000	$ 528,000	$ 528,000	$ 528,000
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 154,000	$ 478,000	$ 528,000	$ 528,000	$ 528,000
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 154,000	$ 478,000	$ 528,000	$ 528,000	$ 528,000

Additional Comments: The capital estimate is subject to change based on the Request for Proposal. The provincial contribution will not change if the project cost changes. Final funding allocation will be determined when capital estimates are know.

Provincial funding will flow over two years. The project will be completed in year one, interim financing may be required, dependant on the timing of the Provincial payment.

Direct costs represent debt servicing and operational costs for gas capture and flaring.

"Original signed by Moira Geer, CA"
Moira Geer, CA
Manager of Finance and Administration

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department

SUBMITTED BY

Water and Waste Department
Solid Waste Services Division
Prepared by: Darcy Strandberg C.E.T., Tony Kuluk P. Eng, Trevor Sims P. Eng
Date: April 5, 2012
File No. 011-15-04-07-00

c: Director of Legal Services/City Solicitor, Legal Services Department (email**)**
D. Drohomerski, C.E.T., Water and Waste Department (email)
J. Smalley, C.E.T., Water and Waste Department (email)
S. Cournoyer, P.Eng, Water and Waste Department (email)
M. Poapst, Water and Waste Department (email)
A. McMillan, P.Eng, Water and Waste Department (email)

PROVINCE OF MANITOBA – CITY OF WINNIPEG

FUNDING AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA
represented by
The Minister of Conservation
("Manitoba")

AND

THE CITY OF WINNIPEG
("Winnipeg")

SUMMARY INFORMATION ON THE AGREEMENT AND PROJECT:
This is an agreement between the Province of Manitoba ("Manitoba") and the City of Winnipeg ("Winnipeg"), to support the development of a landfill gas ("LFG") collection and destruction system for mitigating LFG emissions at Brady Road Landfill that is owned and operated by The City of Winnipeg.

PREAMBLE

1. Under section 15 of *The Climate Change and Emissions Reductions Act* (the "Act"), the owner or operator of a prescribed landfill is required to submit to the Minister of Conservation

   (a) an assessment of the potential for mitigating landfill gas ("LFG") emissions at the landfill site, and

   (b) for approval by the Minister, a proposed plan for monitoring, controlling, collecting or using the emissions before they are released into the atmosphere, both during the operation of the landfill and after its closure.

2. Brady Road Landfill meets the criteria for a prescribed landfill under the Act.

3. Winnipeg is the owner and operator of Brady Road Landfill.

4. Winnipeg is committed to implementing and operating an LFG gas collection and destruction system at Brady Road Landfill to reduce greenhouse gas emissions.("Project")

5. Manitoba is committed to mitigating greenhouse gas emissions at prescribed landfills and supports Winnipeg's efforts in this regard.

NOW THEREFORE, in consideration of the mutual promises herein set forth, the Parties covenant and agree as follows:

1. INTERPRETATION

1.1 *Entire Agreement*

This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect.

1.2 *Schedules*

The following schedule is attached to and forms part of this Agreement:

Schedule A: Communications Protocol

1.3 *Precedence*

In the event of a conflict, the main body of this Agreement takes precedence over the Schedules.

2. PURPOSE OF THIS AGREEMENT AND DESCRIPTION OF PROJECT

2.1 *Purpose of this Agreement*

The purpose of this Agreement is to set out the terms and conditions for assisting The City of Winnipeg with capital funding to implement the LFG mitigation plan for the Brady Road Landfill, in accordance with the plan approved under *The Climate Change and Emissions Reductions Act.*

2.2 *Description of Project*

The Project consists of establishing an LFG collection and destruction system at the Brady Road Landfill to reduce the environmental impact of the LFG emissions before they are released to the atmosphere. Project components include:

(a) the design, construction, commissioning and operation of an LFG collection and destruction system; and

(b) the verification of the LFG flow volumes of the LFG collection and destruction system.

Winnipeg may enter into agreements with other parties to utilize some or all the collected LFG for the purposes of displacing other fossil fuels or generating electricity in lieu of destruction. The utilization of the LFG shall be such that the environmental benefit is not less than what it would have been by thermal destruction of the LFG at the Brady Road Landfill. Winnipeg shall provide copies of the executed agreement to Manitoba.

Final

2.3 ***Design and Technology***

The design and technology used in this Project to mitigate the environmental impacts of LFG must be consistent with currently available and commercially reasonable practices and technology.

2.4 ***Project Timelines***

Winnipeg represents that the Project will follow the time frames for design, construction, performance testing and operation to be set out in the approved LFG mitigation plan.

3. FINANCING, CONDITIONS, CLAIMS AND PAYMENTS

3.1 ***Project Capital Contributions by Manitoba to Winnipeg***

(1) Subject to section 3.2, Manitoba agrees to contribute funding for the Project as follows:

(a) Manitoba's contribution will be made based on the final LFG collection and destruction capacity of the Project as verified by a third party selected by Winnipeg and approved by Manitoba, calculated at the rate of $1,500.00 per cubic metre per hour to a maximum contribution to the Project of $2,550,000.00.

(b) Manitoba's contribution will be paid as follows:

(i) an initial instalment equal to 67% of the Project's designed LFG collection and destruction capacity to be paid in Manitoba's fiscal year 2011-2012 upon evidence satisfactory to Manitoba that construction of the LFG collection and destruction system has been initiated; and

(ii) the balance of Manitoba's contribution as calculated under (a), to be paid when the LFG collection and destruction system performance testing is complete and Winnipeg has provided independent third party verification of the quantity and composition of LFG that is collected and destroyed.

(2) An overpayment by Manitoba is a debt due and owing by Winnipeg to Manitoba, payable on demand.

3.2 ***Conditions of Funding — Appropriation by the Legislature and Approval of LFG Mitigation Plan***

(1) Project funding is conditional on:

(a) the Legislature of the Province of Manitoba duly appropriating the funds payable by Manitoba in the fiscal year in which they are required;

Final

(b) the representations and warranties of Winnipeg being true at all times; and

(c) Winnipeg strictly complying at all times with all terms and conditions of this Agreement, and fulfilling all its obligations and undertakings under this Agreement.

(2) Project funding is also conditional on:

(a) Winnipeg complying with the provisions of section 15 of *The Climate Change and Emissions Reductions Act* which includes an assessment of the potential for mitigating the LFG emissions that may be generated at the Brady Road Landfill and a proposed plan for monitoring, controlling, collecting or using the emissions before they are released into the atmosphere, both during the operation of the Brady Road Landfill and after its closure ("LFG mitigation plan"); and

(b) the Minister having approved the LFG mitigation plan provided by Winnipeg under 3.2(a).

3.3 ***Project Capital Funding by Winnipeg***

(1) Winnipeg agrees to be responsible for the complete, diligent and timely implementation of the Project, in accordance with the terms of this Agreement, and for payment of all of the costs thereof.

(2) Manitoba is not responsible for payment of any of Winnipeg's Project costs which are in excess of Manitoba's contribution amount provided under subsection 3.1.

4. CONDUCT OF PROJECT, CONTRACT PROCEDURES AND ENVIRONMENTAL ATTRIBUTES

4.1 ***Carrying out of the Project***

(1) Winnipeg undertakes to:

(a) use the Project funding from Manitoba solely for the costs of completing the Project; and

(b) do all things necessary to complete the Project in accordance with this Agreement and the approved LFG mitigation plan.

(2) Without limiting the generality of the foregoing, Winnipeg must:

(a) carry out, manage and complete the Project in a professional, safe and prudent manner and in accordance with the LFG mitigation plan as approved by the Minister;

(b) carry out the Project in accordance with good business practices, applicable laws and regulations, orders and orders in councils, including environmental laws and

regulations, and requirements of all regulatory bodies and any other requirements that may be stipulated by Manitoba;

(c) obtain all necessary permits, licenses and authorizations, including any permits or approvals under *The Environment Act*, required to complete the Project;

(d) award all significant dollar-value contracts using transparent and competitive procurement processes;

(e) obtain such professional (including architectural and engineering) advice, inspections, certificates and reports as may be necessary to ensure that the Project is designed, constructed and completed in accordance with this Agreement and the approved LFG mitigation plan, acceptable engineering and construction standards, all applicable statutes, regulations, by-laws, and codes and all Project documents, specifications, working drawings, plans, work plans, and construction schedules relating to the Project;

(f) operate the LFG collection and destruction system in accordance with the approved LFG mitigation plan; and

(g) comply with all reasonable directions and requests of Manitoba relating to the Project.

4.2 ***Awarding of Contracts***

(1) Without limiting the generality of the foregoing, Winnipeg must:

(a) provide Manitoba, upon request, a copy of all design documents, request for bids, contracts, and commissioning reports (collectively referred to as "Contracts").

(b) award Contracts in a manner that is consistent with the applicable policies approved by City Council.

4.3 ***Contract Provisions***

(1) Winnipeg must ensure that all Contracts are consistent with the relevant provisions of this Agreement.

(2) More specifically but without limiting the generality of 4.3(1), except for existing Contracts entered into prior to the signing of this Agreement, Winnipeg must include in the Contracts, provisions to ensure that:

(a) proper and accurate accounts and records of third parties are maintained;

(b) all applicable labour, environmental and human rights legislation is respected; and

Final

(c) Manitoba, to the extent possible under the applicable laws of Manitoba, will have free access to the Project sites and to any documentation, including documentation from third parties, required by Manitoba for the purpose of audit of this Funding Agreement.

4.4 ***Environmental Attributes***

(1) "Environmental Attributes" means all benefits or entitlements associated with decreased environmental impacts, including decreased greenhouse gases, now or in the future, direct or indirect, arising as a result of, relating to, or in connection with the Project including the measures undertaken by Winnipeg and all contractors, consultants, service providers and any other party it engages on the Project.

For greater certainty, if any government or non-government agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term "Environmental Attributes" includes the right or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the Project.

(2) Winnipeg hereby transfers to Manitoba, unconditionally and absolutely for the duration of the operating term, all of its right, title and interest in and to all Environmental Attributes arising from the Project (which include the Environmental Attributes arising from measures undertaken by all contractors, consultants, service providers and any other party Winnipeg engages on the Project) free and clear of all liens, claims and encumbrances and including the right to quantify and register such Environmental Attributes with competent authorities.

(3) Winnipeg agrees:

(a) it will include appropriate wording in its Contracts with contractors, consultants, service providers and any other party it engages on the Project to ensure that Winnipeg obtains Environmental Attributes earned by or otherwise accruing to them in connection with the Project in order that they can be transferred to Manitoba under subsection 4.4(2);

(b) upon request by Manitoba, it will use commercially reasonable efforts to ensure the ownership by Manitoba of all such transferred Environmental Attributes, including:

(i) on behalf and in the name of or in trust for Manitoba, quantifying, verifying, certifying and registering with the relevant governmental authorities or other agencies all such transferred Environmental Attributes,

(ii) obtaining, registering, certifying or delivering all such transferred Environmental Attributes or any evidence of Manitoba's right, title and

interest thereto to Manitoba, to any markets, or to any person as Manitoba may direct, on behalf, or for the benefit, of Manitoba, and

(iii) assisting Manitoba in doing any of the foregoing.

(4) This subsection 4.4 continues for the operating term of this Agreement as defined in section 8 even if Manitoba reduces or terminates its capital contribution under section 9 of this Agreement. .

5. WAIVER

A failure by either Party to take action to enforce its rights does not constitute a waiver of any right or remedy under this Agreement unless it is in writing signed by the Party granting the waiver.

6. RECORD KEEPING, AUDIT AND REPORTING

6.1 ***Record Keeping***

Winnipeg must:

(a) ensure that proper and accurate accounts and records, including invoices, statements, receipts and vouchers, are kept for at least three (3) years after the commissioning of the Project; and

(b) upon reasonable notice, make them available to a representative of Manitoba for inspection and audit.

6.2 ***Project Reporting***

(1) Winnipeg must submit a report to Manitoba within six (6) months of commissioning of the Project, in a format agreed to by both Parties, summarizing all funds received, expenses and costs incurred and any other financing details.

(2) In addition to any projections, reports, statements, plans or documents required under this Agreement, Winnipeg must promptly provide such further reports, documents and information as may be reasonably requested by Manitoba with respect to the Project or this Agreement, or both.

6.3 ***Ongoing Records and Reporting***

(1) Winnipeg must also maintain records for the Project respecting

(a) maintenance and shutdown of the LFG collection and destruction system installed and operated at the Brady Road Landfill;

(b) the quantity and composition of gases collected at the Brady Road Landfill ; and

(c) the quantity and composition of landfill gas that is destroyed or, if landfill gas is utilized as an alternative to destruction, a description of that utilization.

Final

(2) The information in paragraphs 6.3 (1) (b) and (c) must be verified in a manner and by an independent third party approved by Manitoba.

(3) Winnipeg must ensure that the records required under this section 6.3 are retained for a period of at least 10 years after they are made.

(4) Winnipeg must produce these records to Manitoba for inspection or copying within 7 days of request by Manitoba.

(5) Winnipeg must, during the operating term, submit an annual report to Manitoba in the manner and form required by Manitoba, setting out the following information for the reporting period:

(a) the information described in 6.3(1);

(b) a description of any significant maintenance or operational problems encountered;

(c) a description of any significant modifications or other significant changes made to the LFG collection and destruction system;

(d) plans to be implemented at the Brady Road Landfill in the next reporting year for significant modifications or other significant changes to the LFG collection and destruction system; and

(e) any additional information related to the Project reasonably requested in writing by Manitoba.

(6) An annual report required under this section must be submitted to Manitoba:

(a) if an operational certificate, permit or license has been issued for the Brady Road Landfill, and the operational certificate, permit or license specifies a date for submission of an annual report, on or before that date, or

(b) if the operational certificate, permit or license does not specify a date for submission of an annual report, or an operational certificate, permit or license has not been issued, on or before March 31 of the year immediately following the year for which the report is prepared.

6.4 ***Audits***

(1) Manitoba may, at its expense, audit all accounts, records and claims for reimbursement relating to the Project and may undertake reviews of Winnipeg's administrative, financial and claim certification processes and procedures to ensure compliance with this Agreement.

Final

(2) Winnipeg must give Manitoba access to all records and sites, as Manitoba may require, to carry out the audits and must include Manitoba's right to audit its Contracts with third parties.

6.5 ***Financial Statements***

Winnipeg agrees to reflect Manitoba's contributions in its financial statements, in accordance with established accounting practices.

7. REPRESENTATIONS AND INDEMNITY

7.1 ***Indemnification***

(1) Winnipeg must at all times undertake the Project in a safe manner, and take all reasonable steps to mitigate the risk of personal injuries, property damage and infringement of third party rights.

(2) Winnipeg agrees to indemnify and save harmless Manitoba, its officers, servants, employees or agents, from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

(a) the Project;

(b) the performance of this Agreement or the breach of any term or condition of this Agreement by Winnipeg, its officers, employees and agents, or by a third party, its officers, employees, or agents;

(c) the ongoing operation, maintenance and repair of any part of the Project; and

(d) any omission or other willful or negligent act of Winnipeg or a third party and their respective employees, officers, or agents

except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the act or negligence of an officer, employee, or agent of Manitoba in the performance of his or her duties.

(3) Manitoba's responsibility for the Project is limited to providing a capital contribution to Winnipeg in accordance with the terms and conditions set out in this Agreement and Manitoba is not responsible for any injury, loss or damage experienced or caused by Winnipeg, or any officers, employees, agents or contractors of Winnipeg, including (without limitation) death or economic loss, while carrying out the Project or other obligations of this Agreement.

8. TERM OF THIS AGREEMENT

(1) This Agreement comes into effect when both Parties have signed and:

Final

(a) continues in effect until Winnipeg has commissioned the Project in accordance with the plan approved by the Minister under section 15 of *The Climate Change and Emissions Reductions Act*; and

(b) upon commissioning of the Project, continues in effect for an operating term of twenty years.

(2) Despite clause 8 (1)(b), at any time after the first ten years of the operating term, Winnipeg may request Manitoba to consider reducing the duration of the operating term of this Agreement. Manitoba may, at its sole discretion, agree to a reduction in the duration of the operating term.

9. DEFAULT AND TERMINATION OF CONTRIBUTION AND REPAYMENT REQUIREMENTS

(1) An event of default under this Agreement has occurred if at any time during the term of this Agreement:

(a) Winnipeg is in default under any other agreements, present or future, relating to the Project; or

(b) any representation or warranty made by Winnipeg has been found to be false or misleading in any material respect; or

(c) Manitoba is reasonably of the opinion that the progress of the Project is not satisfactory; or

(d) Manitoba is reasonably of the opinion that:

(i) Winnipeg is not carrying out the Project in accordance with the terms and conditions of this Agreement, or

(ii) Winnipeg has failed to comply with, or is about to fail to comply with, any of its obligations or undertakings under this Agreement, or

(iii) without limiting subclauses (d)(i) and (ii), Winnipeg will be unable to commission the Project by March 31, 2013.

(2) Except as otherwise provided in this subsection, when an event of default has occurred, Manitoba must give written notice to Winnipeg of the default and require Winnipeg to remedy the default within 10 business days of receiving the notice. If Manitoba is of the opinion that Winnipeg cannot remedy the default within ten business days of receiving the notice, Winnipeg must provide Manitoba with a plan, acceptable to Manitoba, to remedy the default within a reasonable period of time.

(3) If Winnipeg has not remedied the default within the ten business days or within the time provided for in the plan acceptable to Manitoba, as the case may be, Manitoba may do one or more of the following:

Final

(a) stop making payments of its capital contribution until Winnipeg has remedied the default to Manitoba's satisfaction;

(b) reduce the amount of its capital contribution otherwise payable until Winnipeg has remedied the default to Manitoba's satisfaction or on other terms and conditions satisfactory to Manitoba;

(c) terminate Manitoba's capital contribution; or

(d) demand that Winnipeg repay any portion or all of the capital contribution provided under this Agreement, which amount constitutes an overpayment and a debt due and owing by Winnipeg to Manitoba, payable on demand;

by giving notice in writing to Winnipeg, effective on receipt of the notice or on the date specified in the notice.

(4) When Manitoba has given notice to Winnipeg that Manitoba has terminated its capital contribution, Manitoba no longer has any obligation to make any further payments to Winnipeg.

(5) If Winnipeg does not commission the Project on or before March 31, 2013, in addition to other obligations set out in this Agreement, Manitoba may ask Winnipeg to repay any portion or all of the capital contribution provided under this Agreement, which amount constitutes an overpayment and a debt due and owing by Winnipeg to Manitoba, payable on demand.

10. GENERAL

10.1 *No Agency*

No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between Manitoba and Winnipeg or between Manitoba, Winnipeg and a third party.

10.2 *No Authority to Represent*

Nothing in this Agreement is to be construed as authorizing any third party to contract for, or to incur any obligation on behalf of, a Party or to act as agent for a Party.

10.3 *Assignment and Amendment*

(1) Winnipeg may not transfer or assign its rights or obligations under this Agreement to any person without the prior written consent of Manitoba, which consent will not be unreasonably withheld.

(2) This Agreement can only be amended with the consent of the Parties, in writing.

10.4 *Counterpart Signature*

This Agreement may be signed in counterpart, and the signed copies will, when attached, constitute an original Agreement.

10.5 ***Values and Ethics Code***

No person governed by any post-employment, ethics and conflict of interest guidelines or policies of Manitoba or Winnipeg shall derive a direct benefit from this Agreement unless that person complies with the applicable provisions of the guideline or policy.

10.6 ***Severability***

If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between the Parties is found to be or becomes invalid or unenforceable, in whole or in part, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

10.7 ***Notice***

Any notice, information or document provided for under this Agreement will be effectively given if delivered in person or by courier. Any notice that is delivered will be deemed to have been received on delivery as indicated by the date on the signed receipt. Each Party may change the address that it has stipulated below by notifying the other Parties of the new address in writing.

Any notice to <u>Manitoba</u> will be addressed to:

Assistant Deputy Minister
Climate Change and Environmental Protection
Manitoba Conservation
1200 - 155 Carlton Street
Winnipeg MB R3C 3H8

Any notice to <u>Winnipeg</u> will be addressed to:

Manager of Solid Waste Services
Water and Waste Department
City of Winnipeg
109-1199 Pacific Avenue
Winnipeg, MB R3E 3S8

10.8 ***Governing Law***

This Agreement is governed by the laws of Manitoba.

11. COMMUNICATION

11.1 ***Strategy***

Final

The Parties will co-operate in the development and implementation of a communications strategy respecting the implementation of this Agreement, consistent with the Communications Protocol set out in Schedule A of this Agreement and any other Agreements through which funding is being provided for the Project.

11.2 ***Signage***

The Parties further agree to support, erect and maintain:

(a) during the course of implementing the Project, a sign or signs consistent with visual identity guidelines of the governments providing funding for the Project, specifying that funding for the Project is being provided by these governments; and

(b) upon commissioning of the Project, a permanent sign or plaque to the effect set forth in 11.2(a).

11.3 ***Public Announcements***

The parties agree that in accordance with Schedule A, Communications Protocol, and the communications strategy, they shall jointly arrange any public announcements pertaining to the Project, as well as any official ceremony related to the Project.

12. BINDING OBLIGATIONS AND SIGNATURES

(1) Each Party declares to the other that the signing and execution of this Agreement was duly and validly authorized, and that each has incurred a legal and valid obligation that is binding on it in accordance with the terms and conditions of this Agreement.

(2) This Agreement has been executed on behalf of Manitoba by the Minister of Conservation and on behalf of Winnipeg by the Mayor and the City Clerk.

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF MANITOBA

Original signed by:

Minister of Conservation

Date:

Final

CITY OF WINNIPEG

Original signed by:

Mayor	City Clerk
Date:	Date:

Final

SCHEDULE A: COMMUNICATIONS PROTOCOL

This communications protocol establishes the principles that will guide the communications activities of Manitoba and Winnipeg. The protocol will be in effect for all announcements and events related to the Project.

Principles

1. To operate in an open, timely and cooperative manner.

2. To take a consultative approach to communications activities.

3. To respect the communications approaches and requirements of Winnipeg and Manitoba.

4. To carry out the communications approval process in a reasonable and expedient timeframe.

5. All governments providing funding for the Project will receive recognition in all project-related advertising, promotional and programming materials – regardless of actual financial support.

Practices

1. The Parties will ensure that all governments providing funding for the Project will receive the opportunity for representation at events, announcements and news conferences.

2. The Parties must mutually agree on dates for public announcements, news conferences, news releases and other events.

3. All joint communications materials (media advisory, news release, invitation, agenda, MC script, etc.) will be equally representative of and will be shared with each of the Parties for review. Written approval of each party must be obtained before public release.

4. At a news event Manitoba's representative will speak and be quoted first, followed by Winnipeg's representative.

5. When the provincial Minister or Mayor are not available for a news conference, announcement or event, they may be represented by designated Members of the Legislative Assembly of Manitoba and by a City Councillor respectively.

Decisions regarding the appropriateness of staging a news conference or issuing a news release will be determined in consultation with both Parties.