Minute No. 479
Report – Executive Policy Committee – July 11, 2018

Item No. 13 Municipal Development and Services Agreement between the City of Winnipeg and Peguis First Nation regarding 1075 Portage Avenue

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee, as amended, and adopted the following:

1. That the provision of municipal services to Peguis First Nation for a proposed urban reserve at 1075 Portage Avenue in exchange for a service fee, be approved as set forth in this report.

2. That the City enter into, execute and deliver a 5 year Municipal Development and Services Agreement with Peguis First Nation, and such other agreements as determined necessary by the Director of Legal Services and City Solicitor to implement the intent of the foregoing (the "Ancillary Agreements").

3. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Municipal Development & Services Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

4. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of all future renewals of the MDSA with Peguis First Nation, in accordance with this report and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

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

6. That the Winnipeg Public Service be directed to report back 1 year after the date the "First Nation Land" is set apart as reserve, on the status of the Municipal Development and Services Agreement.

Report – Executive Policy Committee – July 11, 2018

DECISION MAKING HISTORY:

Moved by His Worship Mayor Bowman,
That the recommendation of the Executive Policy Committee be adopted.

In amendment
Moved by Councillor Gillingham,
Seconded by Councillor Pagtakhan,

BE IT RESOLVED that Item 13 of the Report of the Executive Policy Committee dated July 13, 2018 be amended by adding the following new Recommendation 6.:

"6. That the Winnipeg Public Service be directed to report back 1 year after the date the "First Nation Land" is set apart as reserve, on the status of the Municipal Development and Services Agreement."

The amendment was put and declared carried.

The motion for adoption of the item, as amended, was put and declared carried.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 11, 2018, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: Municipal Development & Services Agreement between the City of Winnipeg and Peguis First Nation regarding 1075 Portage Avenue

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Jack	D. McNeil	P. Olafson, acting for M. Ruta	D. McNeil

EXECUTIVE SUMMARY

This Report seeks Council approval to enter into a five year Municipal Development & Services Agreement ("MDSA") between The City of Winnipeg and Peguis First Nation ("Peguis") for the City to provide municipal services for a proposed urban reserve at 1075 Portage Avenue, in exchange for a service fee. The parties have participated in a lengthy negotiation spanning several years, and the proposed MDSA is the result of a great deal of discussion, review and analysis of common and best practices across Canada, but more importantly, through the lens of reconciliation.

Terms of the MDSA would require Peguis to pay a service fee to the City equivalent to 80% of the municipal tax otherwise payable by any other taxpayer subject to the City's jurisdiction. Through the Province's compensation program, the City of Winnipeg is eligible to apply for compensation for this difference for the first five years of the MDSA. The City is continuing to have dialogue with the Province to amend the program to ensure that recovery through the Province is available on an ongoing basis.

RECOMMENDATIONS

1. That Council approve the provision of municipal services to Peguis First Nation for a proposed urban reserve at 1075 Portage Avenue in exchange for a service fee, as set forth in this report.

2. That the City enter into, execute and deliver a 5 year Municipal Development & Services Agreement with Peguis First Nation, and such other agreements as

determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Municipal Development & Services Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

4. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of all future renewals of the MDSA with Peguis First Nation, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

5. 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

Council approval is required to enter into a MDSA as proposed herein.

IMPLICATIONS OF THE RECOMMENDATIONS

Terms of the MDSA would require Peguis to pay a service fee to the City equivalent to 80% of the municipal tax otherwise payable by any other taxpayer subject to the City's jurisdiction. Through the Province's compensation program, the City of Winnipeg is eligible to apply for funds through the program for the first five years of the MDSA. The City is continuing to have dialogue with the Province to amend the program to ensure that recovery through the Province is available on an ongoing basis beyond the first five years.

In its response to the Calls to Action of the Truth and Reconciliation Commission, the City has also committed to supporting the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"). Collaborating and cooperating with Peguis First Nation in the process required for the creation of this urban reserve would also support and promote the following UNDRIP Articles:

- Article 3 - Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- Article 5 - Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining

their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

- Article 20(1) - Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
- Article 21(2) - States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

HISTORY/DISCUSSION

First Nations who did not receive all the land they were entitled to under treaties signed by the Crown and First Nations can file a Treaty Land Entitlement ("TLE") claim with the Government of Canada. TLE settlement agreements are negotiated between First Nations and the Government of Canada, typically with the participation of provincial/territorial governments. The federal government must adhere to treaty obligations to provide the promised amount of reserve land to treaty First Nations.

Generally, a TLE settlement agreement specifies an amount of land that a First Nation may either purchase on a willing buyer-willing seller basis, or select from unoccupied Crown land, or both in some cases, within an agreed to acquisition or selection area.

Once purchased or selected, the First Nation may submit a proposal to the Government of Canada for the land to be added to the First Nation's reserve under the Additions to Reserve process.

One key feature of this process is that the First Nation is directed and encouraged to enter into an MDSA with the municipality within which the reserve is to be located. Discussions commenced in 2015 between representatives of Peguis and the City's Public Service concerning the process to be followed toward negotiation of a mutually acceptable MDSA.

<u>Long Plain First Nation</u>

Presently, only one such reserve exists within City of Winnipeg boundaries, occupied by Long Plain First Nation ("Long Plain"). The reserve is located at 480 Madison Street, near Polo Park shopping complex in Winnipeg. Bounded by St. Matthews Avenue on the north, Madison Street on the east, Silver Avenue on the south and Kensington

Street on the west, the developed land is 3 acres. Yellowquill College is currently located on the site.

The Madison Reserve was acquired in 2006 by the Long Plain First Nation Trust from Manitoba Hydro. The land acquisition is in part a fulfilment of Canada's outstanding treaty land entitlement to Long Plain.

In July 2010, Long Plain and The City of Winnipeg executed an MDSA, setting the stage for development of the 3 acre parcel. On May 23, 2013 the property was set aside as a reserve. A Petro Canada gas station and convenience store opened in 2014 and an 80,000 square foot office complex is being planned.

As this is the City's only urban reserve, the MDSA proposed herein would facilitate the creation of the City's second urban reserve.

In addition, recently the City of Brandon completed an MDSA with Gambler First Nation where it was negotiated that a service fee equivalent to 75% of municipal tax would be payable to the City of Brandon.

Attached hereto as Appendix "A" is the City's own document, "An Overview of Best Practices for the Establishment of and Development within Aboriginal Economic Development Zones".

Manitoba Treaty Land Entitlement Agreement - Municipal Tax Loss Compensation

The Public Service has been in discussion for some time with the Province of Manitoba concerning its compensation program. In the Province's own words, the program provides compensation:

"…to municipalities who experience a net loss of municipal tax revenue upon conversion of land situated within the municipality to reserve under the Manitoba Treaty Land Entitlement Framework Agreement…Compensation will be paid directly to those municipalities demonstrating a net loss in municipal tax revenues as a result of conversion of land to reserve status in an amount equivalent to five times (5x) the annual net loss at the time of conversion. Upon approval, a one-time payment will be made to eligible municipalities after the land converts to reserve."

As indicated above, the proposed arrangement would require Peguis to pay a service fee to the City equivalent to 80% of the municipal tax otherwise payable by any other taxpayer subject to the City's jurisdiction.

Using the 2018 taxation year to illustrate, the following was assessed and levied in relation to 1075 Portage Avenue:

Municipal Tax Levy: $58,474.62
School Tax Levy: $66,466.64
Prov. Ed. Support 2: $45,354.19
Special Charges: $3,342.80

Focusing solely on the municipal tax levy for ease of calculation, agreeing to the 80% fees for service vs. tax equivalence will result in an annual cost to the City of $11,694.92. Therefore, under the Province's existing compensation program, the City could be eligible for a one-time lump sum payment of $58,474.60 in compensation for any and all tax loss going forward in perpetuity.

The Office of the CAO has asked the Province for consideration to amend their program to compensate municipal tax loss on an ongoing basis. That request has been formally denied. The communications and provincial documentation is included as Appendix B.

The Public Service is not recommending that the City await resolution of this compensation issue before formally entering into the MDSA with Peguis. Rather, it is being recommended that the City enter into a 5-year agreement on the terms proposed herein, to accord with the 5 years of tax loss compensation currently offered by the Province. The City has already placed the Province of Manitoba on notice that it expects a significant change to the existing regime whereby the Province compensates municipalities for municipal tax loss on an ongoing basis. The City has proposed that the Province amend the program to ensure that municipalities are made whole for any difference between services fees agreed to under an MDSA and the municipal taxes that would otherwise be payable by a taxpayer subject to that municipality's jurisdiction.

Given the obligations and duties of the Crown at both the federal and provincial level to our First Nations, it is hoped and assumed that these levels of government will move swiftly to ensure that municipalities in Manitoba are made whole when accepting service fees at a discounted rate.

Other proposed terms of the MDSA

The proposed MDSA shall have an initial term of five (5) years beginning on the date the First Nation Land is set apart as reserve and shall terminate at the end of the fifth calendar year. The following municipal services will be provided by the City to Peguis pursuant to the proposed MDSA:

(a) animal control;
(b) building permits and inspection;
(c) fire protection and emergency response;
(d) parks and community services;
(e) police;

(f) solid waste;
(g) transit;
(h) wastewater and land drainage sewer; and
(i) water supply.

On or before April 30 in each year of the proposed MDSA, the parties will meet to review and discuss the implementation of the MDSA and delivery of the services for the upcoming year. In the event of disputes between the City and Peguis that cannot be resolved by them or at a Consultation and Review Process, the parties will go to mediation or binding arbitration.

The MDSA establishes a framework for future collaboration and the coordination of planning efforts, ensuring land use and development compatibility with adjacent City of Winnipeg lands.

The proposed MDSA acknowledges existing City of Winnipeg zoning entitlements as agreed uses within the FN lands and City lands adjacent to the subject property. This reflects compatible land development opportunities of the area irrespective of municipal boundaries or jurisdiction.

The development of an Agreed Use within the FN lands may require upgrades or improvements to City infrastructure. A consultation and review process has been established to negotiate the costs or improvements that may be required to adequately provide services based on development intensity.

The Consultation and Review Process can also be invoked to address future development not presently contemplated. This process ensures a collaborative and joint planning approach to future land development on a government to government basis.

FINANCIAL IMPACT

Financial Impact Statement Date: June 28, 2018

Project Name:

Municipal Development and Services Agreement between the City of Winnipeg and Peguis First Nation regarding 1075 Portage Avenue

COMMENTS:

1. A 5-year Municipal Development and Services Agreement (MDSA) with the Peguis First Nation would not result in tax revenue loss to the City, as the City is eligible to apply for reimbursement of tax losses from the Province's Municipal Tax Loss Compensation program in the amount equivalent to five times (5x) the annual net loss . The total amount of tax revenue losses during the Agreement period is approximately $58,474.60, and the same amount is available for reimbursement from the Province.

2. Any tax revenue losses resulting from Agreements beyond the above 5-year MDSA would not be eligible for reimbursement under the Province's Municipal Tax Loss Compensation program. For this reason that the City has proposed that the Province amend the program to ensure that municipalities are reimbursed on an ongoing basis.

(Original signed by T. Yanchishyn)
Tanis Yanchishyn
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

Peguis First Nation

The City of Winnipeg:
- Indigenous Relations Division
- Assessment & Taxation Department
- Planning Property & Development Department
- Legal Services Department
- Fire Paramedic Service
- Water & Waste Department

OURWINNIPEG POLICY ALIGNMENT

01-3 Prosperity
Direction 3: Maintain strong intergovernmental cooperation

03-1 Opportunity
Direction 5: Acknowledge that Aboriginal Winnipeggers bring a diverse richness of cultures, traditions, languages, teachings, values, skills and perspectives to our city
Direction 6: Foster opportunities for Aboriginal Winnipeggers, particularly youth, to obtain meaningful employment by building on current civic practices, processes and community partnerships

SUBMITTED BY

Department: Office of the CAO
Prepared by: M. Jack
Date: June 28, 2018

Attachments:
Appendix A - An Overview of Best Practices for the Establishment of and Development within Aboriginal Economic Development Zones

Appendix B – Provincial Tax Loss Compensation Guide and Correspondence