

Request for Decision City Council



Type of Decision

Meeting Date	February 24, 2005				Report Date	February 18, 2005			
Decision Requested		Yes	<input checked="" type="checkbox"/>	No	Priority	<input checked="" type="checkbox"/>	High		Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open		Closed

Report Title

Development Charges Collected for the
Year Ended December 31, 2004

Policy Implication + Budget Impact

☒

This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.

N/A

☒

Background Attached

Recommendation

FOR INFORMATION ONLY

Recommendation Continued

Recommended by the Department Head

for

S. Jonasson
Acting Chief Financial Officer / Treasurer

Recommended by the C.A.O.

M. Mieto
Chief Administrative Officer

Date: February 18, 2005

Report Prepared By

Silvana St-Onge

S. St-Onge
Acting Manager of Current Accounting Operations

Division Review

Name
and Title

BACKGROUND

Pursuant to Section 43 of the Development Charges Act, the Treasurer shall furnish to Council a financial statement relating to the Development Charges By-law and reserve funds.

A copy of this statement shall be forwarded to the Ministry of Municipal Affairs and Housing. This is also a requirement under the Act.

In accordance with By-Law 2004-200F(6), development charges shall be imposed and related reserve funds credited for the following categories of services: police, roads, sanitary sewers and water. Accordingly all development charges collected are transferred monthly to the appropriate Capital Financing Reserve Fund.

Attached is a Development Charges Distribution Statement for the year ended December 31, 2004. Shown is the collection and allocation of development charges for 2004. In total \$845,338 was collected and distributed to the appropriate Capital Financing Reserve Funds.

CITY OF GREATER SUDBURY

**DEVELOPMENT CHARGE DISTRIBUTION STATEMENT
FROM JANUARY 1, 2004 TO DECEMBER 31, 2004**

	SEWER SERVICE (35950-30)	WATER SERVICE (35960-30)	POLICE (35930-30)	PUBLIC WORKS ROADS (35940-30)	RESERVE FUND TOTAL (30105-01)
Balance as of January 1, 2004					
Development Charge Study					
Development Charge Proceeds:					
January	\$0.00	\$0.00	\$84.55	\$685.45	\$770.00
February	\$8,712.00	\$12,892.00	\$1,183.64	\$9,596.36	\$32,384.00
March	\$15,840.00	\$26,956.00	\$2,368.17	\$19,199.83	\$64,364.00
April	\$13,770.00	\$20,374.00	\$1,645.02	\$13,336.98	\$49,126.00
May	\$30,528.00	\$46,386.00	\$3,955.65	\$32,070.35	\$112,940.00
June	\$45,103.00	\$67,948.00	\$6,214.02	\$50,379.98	\$169,645.00
July	\$13,589.00	\$24,173.00	\$2,829.55	\$22,940.45	\$63,532.00
August	\$24,484.00	\$52,231.00	\$3,607.59	\$29,248.41	\$109,571.00
September	\$21,708.00	\$44,498.00	\$3,488.57	\$28,283.43	\$97,978.00
October	\$11,457.00	\$22,249.00	\$1,855.62	\$15,044.38	\$50,606.00
November	\$14,722.00	\$29,761.00	\$2,247.17	\$18,218.83	\$64,949.00
December	\$6,633.00	\$14,052.00	\$964.92	\$7,823.08	\$29,473.00
Total Development Charge Proceeds	\$206,546.00	\$361,520.00	\$30,444.47	\$246,827.53	\$845,338.00
Resolution #99-106: Reallocate	(\$206,546.00)	(\$361,520.00)	(\$30,444.47)	(\$246,827.53)	(\$845,338.00)
December 31, 2004 Balance	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

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									Closed

Report Title
2004 Lease Financing Report

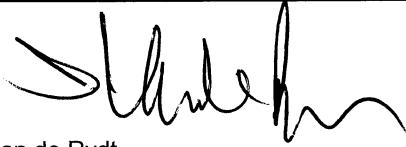
Policy Implication + Budget Impact	
<input checked="" type="checkbox"/>	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
N/A	
<input checked="" type="checkbox"/>	Background Attached

Recommendation
FOR INFORMATION ONLY
Recommendation Continued

Recommended by the Department Head
 S. Jonasson Acting Chief Financial Officer / Treasurer

Recommended by the C.A.O.
 M. Mieto Chief Administrative Officer

Date: February 18, 2005

Report Prepared ByJ. Van de Rydt
Co-ordinator of Capital Budget & Risk Management**Division Review**C. Mahaffy
Manager of Financial Planning & Policy/Deputy Treasurer**EXECUTIVE SUMMARY**

This report summarizes the lease financing activities for the year and certifies that all lease financing arrangements made in the year 2004 were in compliance with both the Lease Financing Policy and Ontario Regulation 266/02.

BACKGROUND

In the past few years, there have been a number of well-publicized issues regarding capital financing leases and their impact on a few municipalities in Ontario (e.g. the MFP leases entered into by Toronto). As a consequence, in 2002, a new regulation was filed under the Municipal Act that required municipalities to prepare and adopt a statement of leasing policies and goals.

In response, City Council passed By-Law 2003-213 establishing a Lease Financing Policy. This policy ensures that no "off-balance sheet" financing of major or significant asset acquisitions will occur without Council's prior approval and that all material financing lease rates or lease commitments are disclosed to Council prior to their approval. This report summarizes the financing lease activities for the year and certifies that all lease arrangements made in the year 2004 were in compliance with both the policy and Ontario Regulation 266/02.

Financing leases are leases where the benefits and risks of ownership of the asset acquired are considered, under generally accepted accounting principles, to have been transferred from the lessor to the City, such as the computers leased by the City. Under the Lease Financing Policy, a material financing lease is defined as:

- an individual lease with annual payments exceeding \$100,000, or
- any combination of non-material leases entered into or proposed to be entered into, for like or similar assets, in any particular year, if the total annual lease payments collectively exceed \$500,000.

In 2004 the City of Greater Sudbury entered into 16 leasing agreements. Six of the leasing agreements, were operating leases, similar to rental agreements where payments were made for the use of the asset, but ownership remained with the lessor. These leases are not considered financing leases. The remaining ten leasing agreements were capital financing leases for computer equipment where the benefits and risks of ownership of the assets transferred to the City. The combined annual lease payments for these ten leases total \$104,714. None of, or a combination of, these leases were material financing leases by definition. All of the individual leases entered into were non-material, and the sum total of these non-material leases was less than the \$500,000 threshold. Capital lease obligations, which total \$836,916 over the term of the leases, represent 2.5% of the total long-term debt of the City as at December 31, 2004.

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	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open		Closed

Report Title

Update on Federal Gas Tax

Policy Implication + Budget Impact

☒ This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.

N/A

☒ Background Attached

Recommendation

N/A

Recommendation Continued

Recommended by the Department Head

S. Jonasson
Acting Chief Financial Officer / Treasurer

Recommended by the C.A.O.

M. Mieto
Chief Administrative Officer

Date: February 18, 2005

Report Prepared By

S. Jonasson
Acting Chief Financial Officer / Treasurer

Division Review

Name
and Title

Executive Summary

The Federal Government has announced further details about the New Deal for Cities and Communities as it relates to gas tax funding. The allocation for Ontario is \$1.865 billion over five years with \$746.2 million representing the yearly funding as of year five. Allocations for 2005 will be announced in the next Federal Budget and actual municipal allocations will be determined through bilateral negotiations with the provinces and territories.

Background

On February 1st, 2005, Infrastructure and Communities Minister John Godfrey made an announcement with respect to federal gas tax funding. The announcement included details as to how the \$5 billion in gas tax funding over five years would be allocated between the provinces, territories and First Nations. The allocation was based on a per capita distribution, with a targeted amount for Nunavut, the Northwest Territories, the Yukon and Prince Edward Island.

Ontario's share over five years is \$1.865 billion with \$746.2 million representing the yearly funding as of year five. Allocations for provinces and territories for 2005 will be announced by the Minister of Finance in the next Federal Budget and funding for municipalities will begin in 2005. The actual municipal allocations will be determined through bilateral negotiations with the provinces and territories.

The Federal Government has indicated that gas tax funds will be directed to *"environmentally sustainable municipal infrastructure such as public transit, water and wastewater systems, community energy systems, solid waste management, rehabilitation of roads and bridges, and capacity building as these investments will help Canada's cities and communities improve the quality of the environment through reduced greenhouse gas emissions and cleaner air and water"*.

The Association of Municipalities of Ontario (AMO) has created a staff level advisory committee to advise the AMO Executive and Board of Directors on options for allocation models for Ontario. I was invited to participate on this advisory committee. As further information becomes available, I will report back to Council.

Attached is a copy of the Federal Government's news release of February 1st, 2005 for the information of Council.

News Release

GOVERNMENT ON TRACK TO DELIVER NEW DEAL FOR CITIES AND COMMUNITIES

Ottawa (ONTARIO), February 1, 2005 – Infrastructure and Communities Minister John Godfrey has outlined to his provincial and territorial counterparts the details of how he will negotiate the New Deal for Cities and Communities with each jurisdiction. This includes each province and territory's share of \$5 billion in federal gas tax funding over five years, which will be made available to municipalities starting in 2005. This is a major step forward in the implementation of the New Deal for Cities and Communities.

With \$5 billion from the gas tax slated to benefit municipalities over a five-year period starting in 2005, the Minister told his provincial and territorial counterparts, the Federation of Canadian Municipalities (FCM), as well as a representative of First Nations that allocation is based on a per capita distribution, with a targeted allocation for Nunavut, the Northwest Territories, the Yukon and Prince Edward Island. This recognizes the need for less-populated jurisdictions to have sufficient funds for significant infrastructure investments, and the increased costs associated with infrastructure in Northern and remote areas.

"A number of different approaches were put forward for allocating the gas tax among provinces and territories; we chose a balanced approach that is comparable to that recommended by the FCM and which will benefit all cities and communities," concluded Minister Godfrey.

The allocation benefiting First Nations communities will be delivered in consultation with the Minister of Indian and Northern Affairs and First Nations stakeholders. In addition, bilateral agreements with the territories will include provisions for First Nations in the North.

Funds from the gas tax will be directed at environmentally sustainable municipal infrastructure, such as public transit, water and wastewater systems, community energy systems, solid waste management, rehabilitation of roads and bridges, and capacity building. These investments will help Canada's cities and communities improve the quality of the environment, through reduced greenhouse gas emissions and cleaner air and water.

The gas tax funding is in addition to the Goods and Services Tax (GST) rebate announced in the 2004 Budget, which provided municipalities with \$7 billion over 10 years. The Government of Canada is also delivering on the \$1-billion Municipal-Rural Infrastructure Fund for smaller communities and the \$4-billion Canada Strategic Infrastructure Fund.

A number of provinces and territories have developed their positions on the New Deal and have signalled their readiness to move ahead quickly to conclude the negotiation of bilateral agreements. "Our officials are working hard with their provincial and territorial counterparts as we speak," said Minister Godfrey.

Minister Godfrey also joined Finance Minister Ralph Goodale at pre-Budget consultations with the FCM and municipal stakeholders in Regina last week. The meeting clearly demonstrates this government's commitment to recognize municipal governments as partners in implementing Canada's national agenda. It builds on Minister Godfrey's extensive consultations with provincial and territorial ministers responsible for local government, mayors, municipal leaders and stakeholders, and Aboriginal representatives from coast to coast to coast.

"These pre-budget meetings reflect the New Deal commitment to give municipalities a voice in decisions that affect them," Minister Godfrey said. "This is what the New Deal is about – more than just money – it is about new relationships and a new way of doing business through partnerships."

ALLOCATION TO THE PROVINCES, TERRITORIES AND FIRST NATIONS OF \$5 BILLION OVER 5 YEARS (2005-2010)

Provinces, territories and First Nations	Total over five years (\$ Millions)	Yearly funding as of year 5
Newfoundland and Labrador	82.3	32.9
Prince Edward Island	37.5	15.0
Nova Scotia	145.2	58.1
New Brunswick	116.1	46.4
Québec	1151.0	460.4
Ontario	1865.5	746.2
Manitoba	167.3	66.9
Saskatchewan	147.7	59.1
Alberta	476.9	190.8
British Columbia	635.6	254.2
Yukon	37.5	15.0
Northwest Territories	37.5	15.0
Nunavut	37.5	15.0
First Nations	62.5	25.0
TOTAL	5000.0	2000.0

The amount that each province and territory will receive in Year 1 will be announced by the Minister of Finance in his next Budget. The intra-jurisdictional allocation will be determined through bilateral negotiations with the provinces and territories.

Contact:

Carla Ventin, Director of Communications
Office of Minister Godfrey
(613) 948-2688

Request for Decision City Council




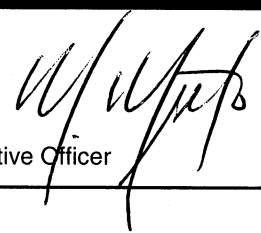
Type of Decision									
Meeting Date	February 24 th , 2005				Report Date	February 16 th , 2005			
Decision Requested		Yes	<input checked="" type="checkbox"/>	No	Priority	<input checked="" type="checkbox"/>	High		Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open		Closed

Report Title
The Whitefish Lake First Nation Potable Water Agreement

Policy Implication + Budget Impact	
<input type="checkbox"/>	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input checked="" type="checkbox"/>	Background Attached

Recommendation
For information only.
<input type="checkbox"/> Recommendation Continued

Recommended by the Department Head
 Alan Stephen General Manager of Infrastructure & Emergency Services

Recommended by the C.A.O.
 Mark Mieto Chief Administrative Officer

Date: February 16th, 2005

Report Prepared By

Allan P. Sweetman, P.Eng.
Sewer and Water Engineer

Division Review

R.G. (Greg) Clausen, P. Eng.
Director of Engineering ServicesBackground:

In July 2001, the Whitefish Lake First Nation completed a Capital Planning Study which recommended that they abandon their well system and connect to the City of Greater Sudbury's water system as shown on Exhibit 'A', attached.

After considerable discussions, an agreement was prepared by our Legal Services and on May 29th, 2003 the City of Greater Sudbury's Council approved By-Law 2003-124A authorizing an agreement with the Whitefish Lake First Nation for the supply of potable water, as shown on Exhibit 'B', attached.

The agreement was prepared with a date of August 13th, 2003, and sent to the Executive Director of the Whitefish Lake First Nation on September 26th, 2003, for signing. The signed agreement was returned to the City on January 31st, 2005, and has been forwarded to Legal Services to process the final signing by the City of Greater Sudbury.

This agreement is possible as we have capacity in excess of future anticipated demands in our system.

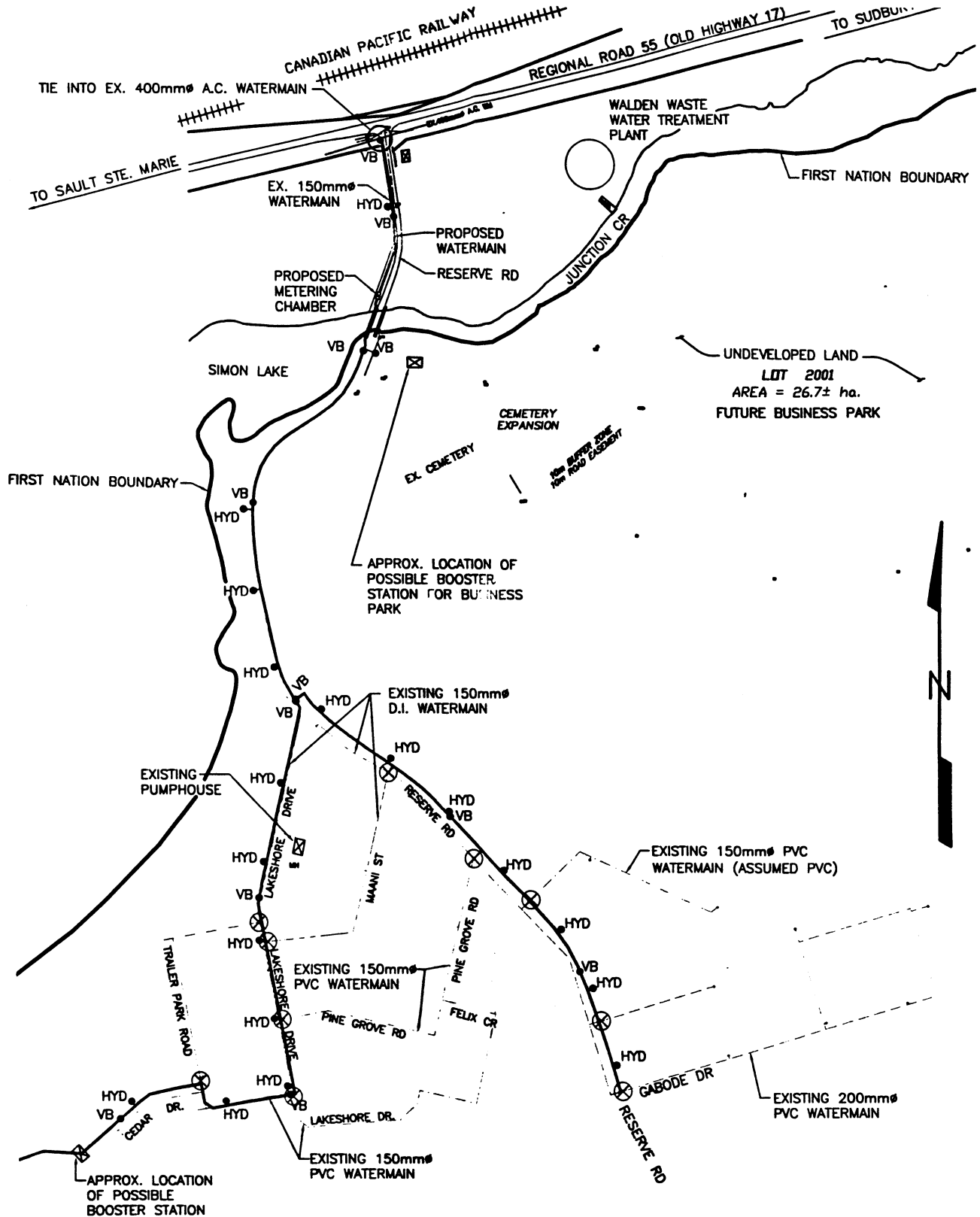
Some aspects of the agreement are:

- 1) The Whitefish Lake First Nation must carry \$3,000,000 of insurance with the City of Greater Sudbury as additional insured.
- 2) The Whitefish Lake First Nation is responsible to pay for 100 percent of all work whether it is on the City right of ways or on their property. They must maintain all the facilities on their property.
- 3) The Whitefish Lake First Nation must build all facilities to our satisfaction. They are to build to current MOE guidelines, and have approvals as required. Certification of the installation is currently being done by J.L. Richards and Associates.
- 4) The Whitefish Lake First Nation must supply all deposits and a one year warranty as any developer would.
- 5) The agreement expires in 20 years from the connection date which will be sometime this spring.
- 6) The Whitefish Lake First Nation pays for water at a premium of 15 percent above the per M³ rate established by the City to a residential customer. There is a minimum charge based on 30 M³ usage per day at 100 percent of the per M³ rate.

The Whitefish Lake First Nation is currently installing the main on the reserve with R.M. Belanger Construction. It is anticipated they will be working on our section of Reserve Road early in the spring. Our Construction Services and Operations staff are aware of this and will be periodically reviewing the work.

It is anticipated that this system will be commissioned this summer.

EXHIBIT: A



WHITEFISH FIRST NATIONS

PROPOSED WATER DISTRIBUTION SYSTEM

2005/02/16

N.T.S.

SK-1

Request for Decision City Council



Type of Decision

Meeting Date	May 29, 2003				Report Date	May 21, 2003			
Decision Requested	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Priority	<input checked="" type="checkbox"/>	High	<input type="checkbox"/>	Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open	<input type="checkbox"/>	Closed

Report Title

Water Supply Agreement, City of Greater Sudbury, Whitefish Lake First Nation

Policy Implication + Budget Impact

This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.

Background Attached

Recommendation

That Council authorize the Mayor and Clerk to sign an Agreement with Whitefish Lake Indian Reserve No. 6 known as the Whitefish Lake First Nation for the supply of potable water to the First Nations, subject to final approval by the City Solicitor.

Recommendation Continued

Recommended by the General Manager


D. Bélisle
General Manager of Public Works

Recommended by the C.A.O.


M. Mieto
Chief Administrative Officer

Date: May 21, 2003

Report Prepared By

Division Review

J. P. Graham, P.Eng.
Plants Engineer

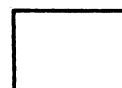
The Whitefish Lake First Nation have approached the City of Greater Sudbury requesting to purchase water from the City to supply the First Nations' lands. Their proposal is to provide a new water supply to the existing residential population and for a new business park located immediately south of Junction Creek and east of Reserve Road.

We have had advance discussions with the Band and the agreement is nearing finalization. A copy of the draft agreement is attached to the report.

The agreement anticipates that the City will supply a maximum flow of water of 600 cubic meters per day to the First Nations. This agreement has been modelled after a very similar agreement where the City of Greater Sudbury supplies water to the Markstay area.

We therefore recommend that Council authorize the signing of this agreement subject to a final review and approval by the City Solicitor.

Attachment



WATER SUPPLY AGREEMENT
CITY OF GREATER SUDBURY - WHITEFISH LAKE INDIAN RESERVE NO. 6

CONTENTS

- | | |
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| 1. Date | 16. Rate of Payments |
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| 4. Object | 19. Indemnities |
| 5. Conditions | 20. Dispute Resolution |
| 6. Term | 21. General |
| 7. City Reservoir | 21.1 Severability |
| 8. Maximum Charge | 21.2 Governing Law |
| 9. Minimum Charge | 21.3 Notices |
| 10. Quality of Water | 21.4 Assignment |
| 11. Connection to City | 21.5 Further Assurances |
| 12. Construction within City | 21.6 Entire Agreement |
| 13. Ownership and Maintenance | 21.7 Schedules |
| 14. Future Uses | 21.8 Continuation of Water Supply |
| 15. Metering | 22. Signing |

WATER SUPPLY AGREEMENT

CITY OF GREATER SUDBURY - WHITEFISH LAKE INDIAN RESERVE NO. 6

1. DATE OF AGREEMENT:

This Agreement is made as of and is effective from

2. PARTIES:

There are two parties to this Agreement, being:

WHITEFISH LAKE INDIAN RESERVE NO. 6 (as represented by the Whitefish Lake Band Council) (hereafter called the "First Nation").

- and -

THE CITY OF GREATER SUDBURY (hereafter called the "City").

3. RECITALS:

- 3.1 The First Nation requires a source for the supply of water to serve the First Nation Lands in order to accommodate future development within the First Nation Lands.
- 3.2 The First Nation desires, and the City has agreed to provide water from the City's water system to the First Nation Lands, pursuant to the terms of this Agreement.
- 3.3 The First Nation will construct a Transmission Water Main that will connect with the City's Water Distribution System, and will carry water to the First Nation Lands.
- 3.4 The construction to be undertaken by the First Nation within the City will be limited to those works which are required to implement the supply of potable water to the First Nation Lands pursuant to the terms of this Agreement.
- 3.5 Section 21 of the *Municipal Act, 2001*, S.O.2001.c.25 (the "Municipal Act"), as amended, provides that a municipality may enter into an agreement with a First Nation to supply potable water to the reserve occupied by the First Nation, whether the reserve is within the municipality or not;
- 3.6 In consideration of the mutual covenants of the Agreement, and other valuable consideration which each party acknowledges to be received and adequate, the parties now agree to the following provisions;

4. OBJECT:

The City agrees to supply water to the First Nation Lands in accordance with the provisions of this Agreement. More specifically, the City agrees to supply water to the First Nation Lands at a point along the Transmission Water Main coincident with the City's Boundary.

It is intended that this water be for the use or consumption of the (occupants from time to time of the First Nation Lands, including, without limitation, unless otherwise noted in agreement, permanent or temporary residents, tenants, subtenants, licensees, individuals, businesses, corporations or institutions).

The City agrees that it will take reasonable steps to ensure that the supply of water is not interrupted or reduced, unless the First Nation requires. The parties acknowledge that interruptions of supply will occur for the purposes of maintenance and repair. The City will take reasonable steps to notify the First Nation in advance of any interruption or reduction where advance notice is feasible and will proceed with due diligence to remedy any conditions which result in such interruption or reduction.

Nothing in this Agreement shall detract from the right of the First Nation to procure water from one or more alternate sources. In the event that the First Nation procures water from an alternate source, the First Nation shall be required to provide 90 days advance notice to a change in the demand for water as a result of procuring such alternative source.

5. **CONDITION:**

This Agreement is conditional upon the First Nation obtaining, at its own expense:

- (a) All necessary approvals, including without limitation, approvals from the Ministry of the Environment and Energy (or its successor ministry), pursuant to *The Environmental Assessment Act* and *The Ontario Water Resources Act*;
- (b) easements, if required, for the purpose of constructing, installing or maintaining the Transmission Water Main and Community Water Works, and
- (c) the approval of the Ontario Municipal Board to this Agreement, should such approval be required to give effect to this Agreement.

by the day of 2004, and then providing written notice to the City that these approvals have been obtained or conditions have been met, subject to such extensions as may be reasonably required from time to time by the First Nation.

In the event that these conditions are not met within the time set out, as extended from time to time, this Agreement is at an end, subject to any further agreement between the parties to extend the time period for the satisfaction of these conditions beyond (month /day/year).

6. **TERM:**

For all purposes of this Agreement except the supply of water, the right and obligations contemplated shall take effect on the first business day following receipt by the City of written notice referred to in the Conditions section being paragraph 5 of this Agreement.

For the purposes of the "supply of water" as contemplated by the Municipal Act, this Agreement shall be effective as of the day of substantial performance, as defined in the *Construction Lien Act*, of the last contract associated with the construction of the works contemplated in this Agreement and shall continue for a period of 20 years. The parties agree that at the completion of year 15 of the Agreement the parties shall meet as required over the remaining five years of the Agreement to determine whether the Agreement shall be renewed, revised or terminated. This five year period is intended to provide the parties with sufficient flexibility to resolve the long term interest of both parties regarding the supply of water to the First Nation provided that at the option of the First Nation, this Agreement may be extended from time to time for successive periods of ten (10) years each provided that the First Nation shall provide to the City no less than twelve (12) months notice of its intention to renew.

7. **CITY RESERVOIR:**

n/a

8. **MAXIMUM QUANTITY:**

The City is not obligated to supply more than 600m³ of water per day to the First Nation except under temporary unusual or emergency conditions where more water may be required.

8.1 **Minimum Pressure:**

The Region shall consistently supply potable water to the Whitefish Lake First Nation community at a minimum system pressure of 485 kPa (70 psi) as measured at the water metering station except under temporary unusual or emergency conditions such as watermain breaks, fires, etc.

8.2 Maximum Fire Flows and Duration:

The City is obligated to supply fire flows up to 6,500 L/min to the Whitefish Lake First Nation as measured at the water metering station and for a duration of 2 hours.

9. MINIMUM CHARGE:

Independent of how much water is actually supplied by the City to the First Nation Lands, the First Nation shall be invoiced and responsible to pay a minimum charge based on calculation of 5% of the maximum quantity (600m³/day), multiplied by the prevailing rate for each cubic metre of water. This minimum charge shall not be imposed by the City for a transition period of one year from the date of the first supply of water to permit the First Nation an opportunity to connect their consumers to the Community Water Works.

During the second year of the Agreement and all subsequent years the minimum charge shall be imposed by the City unless the amount of water consumed by the First Nation exceeds the minimum charge at which point the metered charge shall apply to the First Nation.

10. QUALITY OF WATER:

As concerns to the quality of the water to be supplied by the City to the First Nation; the City's obligations shall be limited to a supply of water in accordance with Ontario Drinking Water Standards established by the Ontario Ministry of Environment (MOE) and the MOE Certificate of Approval for the water facility. The assessment of water quality, including turbidity and chlorine residual levels shall be based on water samples collected by the City at the water metering station which shall be located at or near the boundary of the First Nation Lands. Chlorine residual levels and turbidity levels at the water metering station shall be maintained within the levels established in MOE Procedure B 13-3, Chlorination of Potable Water Supplies in Ontario and Regulation 459/00.

The City assumes no responsibility for the quality of water in the Community Water Works or the Transmission Water Main beyond the Water Metering Station. Any Transmission Water Main on the First Nation Lands over or above those delivered by the City, shall be solely the responsibility of the First Nation. The City reserves the right to modify, add or delete treatment processes in its treatment facilities, with notice to the First Nation, provided that the City obtains the appropriate approvals from the Ministry of Environment and Energy, or its successors.

The City will forward to the First Nation, 3 copies of all correspondence, notifications, warnings, postings, reports, etc. as required in Ontario Regulation 459/00 Sections 8 through 13 inclusive. Where notices are issued by the Ontario MOE and/or the Medical Officers of Health, these notices will also be forwarded to the Health Canada Medical Services Branch, Senior Environmental Health Officer, Indian and Northern Affairs Canada office in Sudbury and the designated person at the Whitefish Lake First Nation (refer to Schedule B) Analytical results from all samples collected at the water metering station shall also be forwarded to the First Nation in accordance with the procedure outlined in Schedule B.

11. CONNECTION TO CITY:

The First Nation shall have the right to connect the First Nation's Water Distribution System to the City's water distribution system at the intersection of Municipal Road 55 and Reserve Road.

12. CONSTRUCTION WITHIN CITY:

In addition to making a connection with the City's Water Distribution System, the parties contemplate that there will be other construction within the City's boundaries to facilitate the purposes of the Agreement. These will include installation of a new water main from Municipal Road 55 to Junction Creek, a water metering station, and a creek crossing (Junction Creek) which may be required to permit the implementation of the terms of this agreement to transport and deliver water to the First Nation Lands.

The First Nation agrees to assume all responsibility for the expense of designing and construction of the Water Distribution System within the City Boundaries. The First Nation also agrees that such construction shall be in accordance with the City's standards and requirements, as well as

all applicable provincial standards. These works shall be designed and supervised by a professional consulting engineering firm retained by the First Nation, which firm is licensed to practice in the Province of Ontario.

The design and contract documents for works within the City Boundary shall be reviewed and approved by the City, acting reasonably, prior to the award of any contract for these works.

The First Nation agrees that the construction works shall include a form of back check valve, at or near the City's Boundary, to prevent back flows of water supplied to the First Nation Lands.

13. OWNERSHIP AND MAINTENANCE:

All elements of the Water Distribution System located south of the water metering chamber shall be owned by, and, or be the responsibility of the First Nation. The First Nation shall be responsible for the proper operation, performance, maintenance and repair of such Water Distribution System.

Until such time as the City has received satisfactory evidence of compliance (based on both the City's own inspection and the inspection of others it may reasonably require) that the Water Distribution System within the City Boundary has been constructed in accordance with the construction contract documents, the elements of the Water Distribution System being constructed or installed by reason of this Agreement shall be owned and at the risk of the First Nation. The City shall act diligently in requesting and approving the evidence of compliance. Once the contemplated satisfactory evidence of compliance is received, the City shall notify the First Nation. Thereafter, the City shall own and be responsible for the proper operation, performance, maintenance and repair of the Water Distribution System within the City Boundaries up to and including the metering chamber.

It is contemplated that the City will be entitled to the benefit of all guarantees and warranties that might usually attach to the Water Distribution System installed within the City Boundaries. The First Nation agrees to do such things that may be required to allow the City to have the benefit of such guarantees or warranties.

After the City has assumed the Water Distribution System within the City Boundaries, the City will be responsible for the operation and maintenance of same, including the operation and maintenance of the water meter in the water metering station and any subsequent capital improvements required on those works.

14. FUTURE USES:

Nothing in this Agreement shall prevent the City from using that part of the Transmission Water Main located within the City's Boundary provide it does not impact, reduce or interrupt the water flow rate, capacity, pressure or water quality established at the date of this Agreement.

The First Nation agrees that it will not supply water originating in the Water Distribution System within City Boundaries to users other than those within the First Nation Lands without the specific written consent of the City.

15. METERING:

In the event that the City or the First Nation wishes to have the City's water meter(s) checked for accuracy, the City agrees to have the meter checked forthwith for accuracy by the meter manufacturer or by an independent testing firm as agreed to and approved by both the First Nation and the City.

The First Nation and the City shall be provided with a copy of the test results and if the test results reveal that the meter was registering correctly as determined by the parties with reference to the manufacturer's specifications on accuracy, the expense of removing and testing the meter shall be paid by the party requesting such a test.

If the meter when tested is found to register incorrectly, an adjustment will be made in an amount equal to the percentage of error to the water rates paid for the preceding three months prior to the testing of the meter. In such event, the expense of removing, testing, calibrating, reconditioning

and/or repairing the meter shall be born by the City. Upon the installation of the reconditioned or new totalizer water meter, the City shall notify the First Nation in writing and shall provide the First Nation with a copy of the meter accuracy test report as prepared by the manufacturer or by an independent testing firm.

16. **RATE OF PAYMENTS:**

The First Nation shall pay the City for water supplied in the 2004 calendar year at a rate of \$0.684 per cubic metre.

17. **INVOICES:**

The City shall supply the First Nation with invoices on a monthly basis. These invoices shall include such details about the water supplies as the First Nation may reasonably request, provided such details are reasonably available to the City. Payment shall be due on the date specified on the invoice, and not to be less than 30 days of the invoice mailing date, which shall not be earlier than 10 days following the month-end of the period covered by the invoice.

18. **INTEREST:**

Interest shall be paid to the City on any amount not paid by the due date at a rate equivalent to that charged to residential consumers in the City, as may be established by City by-law.

19. **INDEMNITIES:**

The First Nation hereby agrees to indemnify and save harmless the City from any and all manner of actions, claims and demands which are made against the City with respect to any losses or damages suffered by the City as a result of the First Nation's breach of the terms of this Agreement, provided that the First Nation's covenant to indemnify and save harmless the City as foresaid shall not include or extend to any action, claim or demand which is made against the City by reason of, or arising from, negligence on the part of the City or its workmen, employees and/or agents.

The City agrees to indemnify and save harmless the First Nation from any and all manner of actions, claims, demands, losses or damages suffered by the First Nation as a result of the breach by the City of the terms of this Agreement or as a result of the negligence in the performance of the terms and conditions thereof by the City or its workmen, employees and/or agents.

20. **DISPUTE RESOLUTION:**

In a general way, the parties hereby commit themselves to making reasonable efforts to resolve any disputes that may arise in connection with this Agreement in a timely and cost-effective manner, which may include a mediation process. Failing resolution by negotiations between the parties or mediation, disputes arising out of this Agreement except those arising from the Rate of Payments as contained in paragraph 16 of the Agreement shall be resolved by an arbitration process consistent with the provision of *The Arbitrations Act* (Ontario) or successor legislation.

Any arbitration shall be conducted by a single arbitrator agreed upon by the parties to the dispute. If the parties shall be unable or unwilling to agree on an arbitrator within a period of 40 days from the receipt of notice of the dispute, the arbitrator shall be appointed by a judge of the Ontario Court (General Division) on application to it. The award and determination which shall be made by the arbitrator shall be final and binding on the parties. The provision of this paragraph shall be deemed to be a submission to arbitration within the provision of *The Arbitrations Act* (Ontario) and any amendment to it provided that any limitation in the remuneration of the arbitrator imposed by the legislation shall not be applicable.

Disputes between the parties arising with respect to the Rate of Payments governed by paragraph 16 of the Agreement which can not be resolved shall be referred to the Ontario Municipal Board pursuant to section 54(k) of the *Ontario Municipal Board Act*, R.S.O. 1990 c. o.28.

21. GENERAL:

21.1 Severability:

If any term or provision of this Agreement or the application thereto any person shall to an extent to be held to be invalid or unenforceable, the balance of the Agreement shall not be affected thereby and each term and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

21.2 Governing Law:

This Agreement shall be read and construed in accordance with the laws of the Province of Ontario.

21.3 Notices:

All notices which may or are required to be given pursuant to any provision of this Agreement shall be given or made in writing and shall be delivered by prepaid courier to or mailed by prepaid registered mail, in the case of:

the City, to:

[need an address for delivery]

P.O. Box 5000 Station A
Sudbury, Ontario P3A 5P3

Attention: General Manager of Public Works

the First Nation, to:

[need an address for delivery]

P.O. Box 39
Naughton, Ontario POM 2MO

Attention: Executive Director

Or to such other address as either party hereto may from time to time advise the other party hereto by notice in writing. The date of receipt of any such notice shall be deemed in the case of delivery to be the date of delivery, or in the case of mailing to be the fifth day of business following the date of mailing.

21.4 Assignment:

This Agreement shall not be assigned by either party hereto without the prior written consent of the other party.

21.5 Further Assurances:

The parties hereto, and each of them, covenant and agree that each of them shall and will, upon reasonable request of the other party, make, do, execute or cause to be made, one or executed, all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

21.6 Entire Agreement:

With the exception of such contracts as are contemplated relating to the construction of water works between the parties, this Agreement contains the entire Agreement between the parties, with reference to the subject matter hereof, and shall not be altered or amended except by an agreement in writing duly executed by these parties. This Agreement shall ensure to the benefit of and be binding upon these parties and their successors and assigns.

21.7 Schedules:

The Schedules noted below form part of this Agreement:

Schedule "A" - Definitions

Schedule "B" - First Nation designated persons

21.8 Continuation of Water Supply:

The City agrees to provide a continuous supply of water, where practicable, to the First Nation Lands for the term of this agreement and shall maintain the City's Distribution System within the City Boundaries in a first class condition. The City will not shut-off or discontinue the supply of water to the First Nation for any reason other than where there has been a default in payment for a period greater than six (6) months, and where after at least thirty (30) days prior written notice of such default to the First Nation, such default has not been remedied. Alternatively, the City, at its discretion, may reduce but not entirely shut-off the supply of water to the First Nation Lands.

22. SIGNING:

As evidence of their agreement, those proper signing officers of the parties, duly authorized, sign their names and affix their respective party's corporate seals:

WHITEFISH LAKE INDIAN RESERVE NO. 6
(as represented by the Whitefish Lake Band Council)

PER: _____

PER: _____

THE CITY OF GREATER SUDBURY

PER: _____

PER: _____

WATER SUPPLY AGREEMENT
CITY OF SUDBURY - WHITEFISH LAKE INDIAN RESERVE NO. 6

SCHEDULE "A"

DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) "FIRST NATION" shall mean Whitefish Lake First Nation;
- (b) "CITY" shall mean the City of Greater Sudbury;
- (c) "PERSON" shall include an individual, corporation, partnership, business and/or firm;
- (d) "WATER" shall mean potable water (water storage, fire flows, fire storage) supplied from and by the City's water distribution system;
- (e) "SCHEDULE" shall mean an appendix document attached to and forming part of this Agreement;
- (f) "COMMUNITY WATER WORKS" shall mean all of the water mains, services and appurtenances within the First Nation Lands;
- (g) "CITY BOUNDARY" shall mean that area included within the City of Greater Sudbury and extending to point where the intersection of Junction Creek and Reserve Road meet the northerly boundary of the First Nation Lands;
- (h) "FIRST NATION LANDS" shall mean the Whitefish Lake Indian Reserve No. 6.

WATER SUPPLY AGREEMENT
CITY OF SUDBURY - WHITEFISH LAKE INDIAN RESERVE NO. 6

SCHEDULE "B"

DESIGNATED PERSONS

1. Community Health Representative
2. Director of Community Infrastructure

WATER SUPPLY AGREEMENT

CITY OF SUDBURY - WHITEFISH LAKE INDIAN RESERVE NO. 6

Insert Band Council Resolution (BCR)