

This Municipal Development and Services Agreement, dated for reference the 14<sup>th</sup> day of April, 2023.

BETWEEN:

Pine Creek First Nation,  
("Pine Creek")

-and-

Ebb and Flow First Nation,  
("Ebb and Flow")

("Ebb and Flow", and collectively with Pine Creek, the "Two Nations")

and -

The City of Dauphin,  
(the "City")

WHEREAS:

- A. each of Pine Creek (Minegoziibe Anishinabe) and Ebb and Flow (Ka Ka Kwe Kwe Jeong) have been in a relationship with their territories since time immemorial and have aboriginal and treaty rights recognized and affirmed by Section 35 of the *Constitution Act, 1982* based on this relationship;
- B. each of Pine Creek (Minegoziibe Anishinabe) and Ebb and Flow (Ka Ka Kwe Kwe Jeong) have agreed to form PCEF Property Management Limited Partnership;
- C. each of the First Nations are signatories to Treaty No. 2 with His Majesty the King in Right of Canada, which was signed at Manitoba Post on August 21, 1871 and therefore, the Two Nations are entitled to the benefits of Treaty No. 2;
- D. each of the First Nations have established rights to self-determination as Indigenous Peoples in both domestic and international law as recognized by Section 35 of the *Constitution Act, 1982* and the *United Nations Declaration on the Rights of Indigenous Peoples*, which includes the pursuit of economic and resource development of the First Nations lands including traditional territories;
- E. The Two Nations and the City have negotiated this Agreement on a government to government basis;
- F. the City is an urban municipality as such term is defined in *The Municipal Act* C.C.S.M. c.M225;
- G. the City is located wholly within the bounds of Treaty No. 2 and the traditional territories of the Two Nations;
- H. the parties recognize that reconciliation requires action on addressing the ongoing legacies of colonialism that have had destructive impacts on the First Nations;
- I. the Two Nations, have each passed band council resolutions dated February 10, 2020, which provide that the Two Nations approve and intend to have the First Nations Land set apart as reserve land for the Two Nations' use and benefit pursuant to Canada's Additions to Reserve Policy;

- J. the Two Nations and the City wish to ensure maximum mutually compatible and consistent regulation and governance of their respective jurisdictions and to ensure that uses, activities, and improvements carried out in their jurisdictions are consistent and compatible;
- K. by this Agreement, the Two Nations and the City wish to define their relationship and set out their respective rights and obligations with respect to, *inter alia*, the:
  - i. Provision of municipal services by the City;
  - ii. Payment for municipal services by the Two Nations ;
  - iii. Interests of the City within the Land;
  - iv. Provisions as to use and development of the First Nation Land and the Area of Interest;
  - v. Dispute resolution; and
  - vi. Protocols for dealing with matters of mutual concern and interest.
- L. with respect to the provision of General Services and Specific Services, as defined below, the parties acknowledge that this Agreement is intended to be interpreted as though the Two Nations are each a “taxpayer”, as same is defined by *The Municipal Act*, C.C.S.M. c. M225, and as “taxpayer”, “rate-payer”, or other similar terms that may be used in the by-laws of City, and that the Two Nations will be entitled to the same rights and remedies available to other taxpayers and rate-payers in the City and that the City will have the same obligations as other taxpayers and rate-payers in the City;
- M. the Councils of each Pine Creek (Minegoziibe Anishinabe), Ebb and Flow (Ka Ka Kew Ke Je Ong), and the City have duly authorized the entering into of this Agreement, which authorizations are attached hereto as Schedule “A”,

THIS AGREEMENT is evidence that in consideration of the promises exchanged below (the receipt and sufficiency of which is acknowledged by the parties), the parties agree as follows:

## **DEFINITIONS, INTERPRETATION AND PRINCIPLES**

### **Section 1. Preamble**

1.1 The Preamble will and does form an integral part of this Agreement.

### **Section 2. Definitions**

2.1 In this Agreement

- a) “Access Location Improvements” to existing City streets and in the First Nations Land includes but is not limited to impacted intersections, turning lanes, right-turn cut-offs, acceleration/deceleration lanes, sidewalks, active transportation treatments, signage, traffic signals, street furniture, and any improvements thereof;
- b) “Agreement” means this agreement and all recitals and schedules hereto;
- c) “Act” means *The Municipal Act*, C.C.S.M. c. M225;

- d) "Area of Interest" means the area shown on the map attached as Schedule "C" to this Agreement which shall be a 100 meter radius around the First Nation Land;
- e) "Business Day" means any day except Saturday, Sunday, or any day deemed to be a statutory holiday by the Federal or Provincial Governments.
- f) "Canada" means His Majesty the King in Right of Canada;
- g) "City Requirements" means the standards, restrictions, and prohibitions generally in force in the City through its bylaws, as amended;
- h) "City Personnel" means any staff or agent directed by the City;
- i) "City Sewer System" means the City's system and processes for wastewater collecting, storing, pumping, treating, or disposing of wastewater;
- j) "City Water System" means the City's system of water mains and all pipes, pumps, and other facilities and equipment used and accessed by the City that is used to supply potable water;
- k) "Construction" means any construction within the First Nations Land;
- l) "Consultation and Review Process" means the process set out in Section 16;
- m) "Council" means the Chief and Council of each individual First Nation, or the Mayor and Council of the City, as the context requires;
- n) "Development" means:
  - i. construction of a building on, over, or under land;
  - ii. a change in the use or intensity of use of a building or land;
  - iii. the removal of soil or vegetation from land; or
  - iv. the deposit or stockpiling of soil or material on land and the excavation of land;
- o) "Dispute Resolution Process" means the process set out in Section 20;
- p) "Effective Date" means the date on which the First Nations Land is set apart as reserve land for the use and benefit of the First Nations pursuant to Canada's Additions to Reserve Policy;
- q) "First Nations Land" or "Land" means those lands set apart as the Anishinaabe Aki reserve lands for the use, occupation and benefit of the Two Nations that require the provision of the Services located on Main Street South, Dauphin, Manitoba and currently legally described as (and which legal description shall be subject to change once the lands are set apart as joint reserve):

PARCEL A PLAN 28535 DLTO  
EXC PUBLIC ROAD PLAN 69464 DLTO  
IN NE 1/4 4-25-19 WPM

PARCELS B AND C PLAN 28535 DLTO  
IN NE 1/4 4-25-19-WPM

("Anishinaabe Aki")

- r) "Force Majeure Event" means, with respect to a Party, any act, occurrence, condition, event or circumstance, whether or not foreseeable, that was not caused by that Party, or was beyond the control of that Party, and that delays, hinders or prevents that Party from complying with any term, covenant or act under this Agreement. A Force Majeure Event may include, but shall not be limited to, acts of God, pandemic or virus outbreak (or government response thereto), acts of war, riot, fire, flood or other disaster, acts of government, strike or lockout.
- s) "General Services" means the municipal services that are provided to other taxpayers in the City;
- t) "General Services Fee" means the annual fee equal to the amount calculated in accordance with Schedule "B" and payable as set out in Section 10;
- u) "Highway Controlled Area" means the area located outside a highway right-of-way that requires a permit from the Provincial Government to approve development;
- v) "Parties" or "party" means the First Nations and the City, or either of them, as the case may be;
- w) "Representative" means a representative appointed by the City, Pine Creek or Ebb and Flow under Section 17 or their respective designates from time to time;
- x) "Reserve" means a tract of land, the legal title to which is vested in His Majesty, that has been set apart by His Majesty for the use and benefit of a band as is set out in the *Indian Act*.
- y) "Services" means, collectively, the General Services and the Specific Service;
- z) "Specific Services" means the services provided by the municipality to perform specific services or as a local improvement or special services tax that are not provided and paid for by general taxation;
- aa) "Specific Services Fee" means the fee equal to the amount of service provided billed at the normal frequency to municipal operations, which fee or service charge may be
  - a. is payable by a person to whom such services are provided including, if and where required by law, the payment of Federal and Provincial taxes in relation to the provision of the Specific Services;
  - b. the local improvement or special services tax that would have been payable if the property were not set apart as Reserve and the property, its occupants, and owners of businesses conducted on the property were taxable; and
  - c. any fee or change in respect of the costs of existing public works that is payable by a person to whom such services are provided.
- bb) "Zoning" refers to the regulation of the uses of land, parcel sizes, and the use, size, height, density, and location of buildings.

### **Section 3. Interpretation**

3.1 In this Agreement unless the subject matter or context otherwise requires:

- a) All monetary amounts refer to Canadian Dollars, unless otherwise stated.
- b) References to “includes” or “including” mean “including, without limitation”.
- c) Reference to a statute includes the regulations and any other subordinate legislation made pursuant to that statute and includes any amendment, consolidation, re-enactment, substitution, or replacement of all or any part of such statute, regulation, or other subordinate legislation, as may be enacted from time to time.
- d) The words “herein”, “hereof”, “hereto”, and “hereunder” refer to this Agreement as a whole and not to a particular article, section, or schedule in which such word may be used.
- e) Unless otherwise specified, a reference to an “article”, “section”, or “subsection” is a reference to an article, section, or subsection of this Agreement.
- f) Reference to any Schedule means a Schedule to this Agreement.
- g) Words importing the singular include the plural and vice versa, and words importing the masculine gender include the feminine and vice versa.

3.2 The following schedules do and shall form part of this Agreement:

- a) Schedule “A” – Pine Creek (Minegoziibe Anishinabe), Ebb and Flow (Ka Ka Kew Ke Je Ong), and the City Authorization;
- b) Schedule “B” – Calculation of General Service Fee;
- c) Schedule “C” – Area of Interest;
- d) Schedule “D” – List of Uses.

#### **Section 4. Principles of Agreement and Relationship of the First Nations**

4.1 The First Nations and the City have negotiated this Agreement on a government to government basis. The parties acknowledge that the actions of one party shall directly impact the other and that the parties will strive to maintain a respectful relationship with one another.

4.2 Each of the parties recognize and respect the governmental jurisdiction of the other party over their lands within their geographical boundaries, and neither of the parties give up any jurisdiction, right, or power by entering into this Agreement.

4.2 The First Nations desire that the First Nations Lands, save as expressly set out herein, be serviced and subject to regulations and requirements of other properties with the same Zoning requirements located in the City.

4.3 The City recognizes and respects the responsibilities the First Nations has to its residents and citizens and the First Nations recognizes and respects the responsibilities the City has to its residents and taxpayers.

4.4 The parties acknowledge and agree that it is their mutual intention to work cooperatively under this Agreement and to at all times use good faith best efforts to actively identify and resolve any issues or concerns related to this Agreement as they arise.

4.5 The First Nations represent and warrant that they have reached an agreement between them that facilitates and allows for the development to the First Nations Land. The obligations of Pine Creek and Ebb and Flow shall be joint and several.

## **Section 5. No Impact on Aboriginal and Treaty Rights**

5.1 This Agreement is not intended to derogate, diminish, lessen, or prejudice the constitutional, treaty, aboriginal, or other rights possessed by the First Nations or their citizens.

5.2 This Agreement shall not be construed or relied upon by the parties as being relevant to any other legal dispute involving any other legal rights the First Nations may have other than for compliance with the terms of this Agreement.

5.3 The parties agree to acknowledge this Agreement is a contract and does not grant any jurisdiction or legal right in the City over the First Nations Land.

## **TERM AND TERMINATION**

### **Section 6. Term of Agreement**

6.1 The term of this Agreement, and obligations of the parties, shall begin on the date the Land is set apart as reserve and shall expire on the date when the Land is no longer set apart as reserve or this Agreement is otherwise terminated pursuant to the terms contained herein.

### **Section 7. Termination**

7.1 This Agreement may be terminated upon the written and mutual consent of all parties.

7.2 Either the First Nations or the City may terminate this Agreement, in that party's sole discretion, by giving at least one (1) year's notice of termination to the other party. For greater certainty, neither Pine Creek nor Ebb and Flow may terminate this under section 7.2 without the other First Nation also terminating.

7.3 The parties agree that, despite any other provision of this Agreement, none of the parties will terminate this Agreement during any attempt to resolve any issue through the Dispute Resolution Process in Section 20. In the event that the parties do not follow the process set forth in Section 20, this Agreement may be terminated pursuant to Section 20.6 hereof.

7.4 If this Agreement is terminated for any reason, the parties agree that the City shall be under no further obligation to provide the services to the First Nations Land after that date of termination.

7.5 In the event that one of the Services listed herein shall no longer be offered to the residents of the City, the City shall have the right to unilaterally terminate that specific Service by providing ninety (90) days' notice to the First Nations. The right for the City to terminate a specific Service under this Section 7.5 shall be limited to situations where the service is no longer being offered by the City to its residents.

## **SERVICES, SERVICE STANDARDS, AND SERVICE CHARGE**

### **Section 8. General Services and Specific Services**

8.1 The City shall provide to the Land all those general municipal services that are provided within the municipality, without charging a Specific Services fee or service charge

in respect of land to which the General Services are provided, to the same standard such services are provided to lands in a similar state of development within the City.

8.2 The City shall provide all those Specific Services that are provided herein upon payment by the Two Nations in respect of lands in a similar state of development in the City.

8.3 Where due to a change in the use or development of the Land, the making of a capital expenditure would be required to meet General Services or Specific Services requirements, the City is not required to provide the General Services or Specific Services, as the case may be, or make the capital expenditure unless the parties mutually agree. If the parties mutually agree, the City shall provide the General Services and Specific Services, to the change in the use or development of the land.

8.4 The First Nations, and any occupier of the First Nations Land, shall have equivalent entitlement to the provision of the Services by the City subject to the terms of any ancillary agreements between the Two Nations and the City and the City shall provide the Services to the First Nations Land in the same manner as the City provides to residents in the City respecting lands in a similar state of development within the City. The City's liability for loss or damage with respect to the provision of General or Specific Services shall be equivalent to those of a Manitoba municipality.

8.5 The Two Nations shall ensure that the supporting infrastructure owned by the Two Nations, or their lessees to allow the City to provide the General Services and Specific Services located on the Land comply with the standards, terms, and conditions required by the City for the provision of such services in respect of lands in the City.

8.6 The City does not represent or warrant that the quantity or quality of the services will be maintained to a specific standard other than as expressly stated in this Agreement.

8.7 The Land is not currently serviced by municipal water and sewer. The Two Nations shall, at its sole cost and in accordance with municipal standards, be responsible for construction of the water and sewer works required to provide water and sewer services to the Land. Upon completion of the construction in accordance with the municipal standards, the City shall be responsible for the water and sewer services up to the line of the Land, and the Two Nations shall be responsible for the water and sewer services located on and servicing the Land. The City shall only be responsible to provide water and sewer services as may normally be provided to other Lands within the municipality and as provided under legislation and policies. The City shall place one water meter at the boundary of the First Nations Land to measure consumption of water provided by the City and which consumption shall be reflected in the General Services Fee.

8.8 Except as otherwise provided in this Agreement, no party shall have any duty or responsibility to inspect, maintain, repair, or replace the property and equipment owned by another party.

8.9 The Services shall at all times be under the control and direction of the City's Personnel, and the City's Personnel shall have absolute discretion with respect to the equipment and personnel used to provide the Services. The City agrees that it shall provide reasonable notice to the Two Nations of any significant changes to the Services.

8.10 The City confirms that the General Services will exclude any and all services related to City governance matters which appear on an invoice to a City taxpayer or rate-payer and the invoice shall be reflected as appears in Schedule "B".

## **Section 9. Service Interruptions and Limitations**

9.1 The City shall provide adequate advance notice to the First Nations of any material change to the General Services, including any change in the quantity or quality of any of the General Services.

9.2 The First Nations acknowledge and agree that the City, in its sole and absolute discretion, may reduce or interrupt the provision of the Services and where such an interruption or reduction is planned, the City shall give reasonable notice to the Two Nations as soon as affected, to allow the Two Nations to provide notice to affected occupants of the First Nation Land, and such notice shall be provided in the same manner that the City gives such notice to its residents generally. Subject to Sections 9.3 and 9.4, the Two Nations acknowledge and agree that they will not hold the City liable for any losses, costs, damages, claims or expenses arising from or connected with a temporary interruption to or reduction of the Services, unless the temporary interruption to or reduction of the Services is the result of the gross negligence of the City or its Personnel.

9.3 If a Force Majeure Event prevents a party from complying with any term, covenant or act under this Agreement, that inability to comply will not constitute breach for the period of the Force Majeure Event and that Party shall be entitled to comply with such term, covenant or act within the appropriate time period after the Force Majeure event ends.

9.4 A Force Majeure Event will not operate to excuse the Two Nations from any payments required by this Agreement and any ancillary agreements between the parties, at the times and in no greater amounts than specified in this Agreement or any ancillary agreements between the parties, nor shall it entitle the Two Nations to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

9.5 The Two Nations agree that the interruption or reduction of the provision of, or the inability or failure to provide, the Services by the City to the First Nation Land will not be a breach of this Agreement and will not entitle the Two Nations to damages or to terminate this Agreement, unless the interruption or reduction of the provision of the Services:

- a) exceeds thirty (30) days;
- b) does not stem from a Force Majeure Event;
- c) is not due to an act or omission of the Two Nations.

## **Section 10. General Services and Specific Services Fees**

10.1 In consideration for the City providing the General Services, the First Nations shall pay the City an annual fee equal to the property taxes for general municipal purposes, which, in any given year, would have been payable to the City on land, improvements, and other property if

- a) the Land were not set apart as Reserve; and



- b) the Land, its occupants, and owners of business(es) conducted on the Land were taxable;

which annual fee shall be the General Services Fee.

10.2 The City shall invoice the Two Nations for the General Services Fee by May 31<sup>st</sup> in each year, and the Two Nations shall pay the City by no later than July 31<sup>st</sup> of that year.

10.3 Late payment of the General Services Fee shall carry interest at the rate in effect at the time in the City for arrears of real property tax. The Two Nations shall be entitled, in paying the General Services Fee, to the same benefit of any discount for prepayment of taxes (if any) available to the City's taxpayers.

10.4 If the Two Nations have any concerns with the contents of the invoice, they shall, within thirty (30) days of the receipt of the invoice, provide notice in writing to the City. The City and the Two Nations shall, as soon as reasonably possible, discuss and attempt to resolve any concerns raised by the Two Nations respecting the invoice in accordance with the Dispute Resolution Process in Section 20.

10.5 The assessment of the Land for the purpose of calculation of the General Services Fee shall be carried out as follows:

- a) Except for an amendment required as a result of construction or removal of buildings, or changes that normally trigger amendments, the assessment in effect at the time the Land is set apart as Reserve shall remain in effect until the next general assessment in the City under the *Municipal Assessment Act*. For the next general assessment, the Land's assessment shall be adjusted based on the *Municipal Assessment Act*.
- b) Once construction or removal of a building, or a change that normally triggers an amendment occurs, the assessment for the Land and building(s) shall, from that date forward, be determined as follows:
  - i. The City shall have the market value or current property assessment method undertaken as for other lands within the City (currently completed by Manitoba Assessment on a contract basis);
  - ii. if the Two Nations disagree with this assessment, the Two Nations shall engage a qualified appraiser to carry out the assessment in accordance with this Agreement at their cost;
  - iii. the Two Nations shall provide whatever information is required by the assessor and/or appraiser to carry out the assessment. If the Two Nations fail to do so, the assessor and/or appraiser may do the assessment on the basis of whatever information is available;
  - iv. the assessor and/or appraiser shall provide a report to the City and the Two Nations on the amount of the assessment following which the City and the Two Nations Partnership shall meet to reach an agreement on the assessed value to be used; and
  - v. if no agreement can be reached on the value of assessment, the parties shall refer the assessment to dispute resolution under Section 20 of this Agreement for determination.
- c) The assessment determined under paragraph 10.5(b) shall remain in effect until the next general assessment in the City. At the time of the next general

assessment, the assessment shall be determined following the procedure in paragraph 10.5(b).

10.6 The Parties agree that, as between them the Two Nations shall be the sole taxing authority for the First Nation Land and the improvements, occupants and businesses located on the First Nations Land.

10.7 In consideration for the City providing the Specific Services, the Two Nations shall pay the "Specific Services Fee".

10.8 If any portion of the Specific Services Fee is related to a local improvement or special services tax, then the provisions of paragraphs 10.2 and 10.3 apply. If any portion of the Specific Services Fee is based on assessment, then the provisions of paragraph 10.5 apply.

10.9 For the portion of the Specific Services Fee not related to a local improvement or special services tax, the City shall invoice the Two Nations for the Specific Services Fee in the same manner as any other person to whom such services are provided within the City. The Two Nations shall pay the City no later than forty-five (45) days following the end of the applicable billing cycle. Late payments shall carry interest and penalties at the rate in effect at the time in City for late payment of fees or service charges.

10.10 The General Services Fee and Specific Services Fee are payable to the City notwithstanding any disagreement between the Two Nations and the City under paragraph 10.5(b)(ii). In the event the assessed value is subsequently reduced by agreement or under paragraph 10.5(b)(ii), the City shall refund the difference in a manner consistent with current practices in of the City.

10.11 Where any amount payable by the Two Nations to the City pursuant to this section is due, unpaid, and not disputed, the City may reduce or discontinue the provision of the Services or any portion of them upon the City providing ninety (90) days' written notice to the Two Nations.

10.12 The City agrees that in the case where the Two Nations desire to construct a connection or connection in order to access municipal services and other municipal land occupants subsequently benefit from the First Nations owned construction, the City shall enter into a separate agreement that may provide a contribution for payment, or deduction of charges specific to the service or Services provided for the capital expenditure incurred by the First Nations. Any payment obligation would arise through a standalone cost share contribution agreement which would set out the obligations of the parties and which would grant access rights for the infrastructure subject to the cost share construction.

## **SERVICE CONNECTIONS**

### **Section 11. Service Connections**

11.1 The City shall permit the Two Nations to connect to the City Water System and the City Sewer System at connection points as are agreed upon by the parties, provided that:

- a) the costs of each connection to the main are paid by Two Nations in a manner consistent with current practices in the City; and
- b) each connection point is:

- i. installed and constructed in accordance with the City's specifications and standards; and
- ii. subject to the City's inspection and approval.

11.2 The Two Nations covenant and agree that prior to any connection being made to the City Water System and the City Sewer System, the City shall have the opportunity to review and approve the plans and construction work to ensure all connections meet the City's standards.

## **LAND USE AND DEVELOPMENT**

### **Section 12. Recognition of Jurisdiction**

12.1 The parties acknowledge that each party has the sole and exclusive authority over Land Use and Development within its respective boundaries, and that each party will implement and administer its respective laws within its boundaries, including respecting land use planning, development processes, and development approvals.

12.2 The parties acknowledge that First Nations Land laws will apply to the Reserve land and those laws shall be updated as required to be compatible with the relevant prevailing City by-laws.

12.3 For greater certainty, each party acknowledges the other party's exclusive jurisdiction to review and approve Development within its jurisdiction and agrees that neither party is required to obtain the approval of the other party under subsection 13.

### **Section 13. General Agreements in Relation to Planning and Development**

13.1 The Two Nations and the City shall cooperate to the greatest extent possible to ensure that the use and development of the First Nations Lands and the Area of Interest within both jurisdictions are consistent and compatible.

13.2 Both parties agree to initiate and undertake the Consultation and Review Process listed in Section 16 herein with respect to Development of the Lands and any Development by the City in the Area of Interest. Notwithstanding section 12.3, when either party desires to develop a conditional or non-compatible use then the Consultation and Review Process listed in Section 16 herein is required.

13.3 The First Nations and the City covenant and agree that all Development on the First Nations Land and any Development by the City in the surrounding lands / Area of Interest, will follow the standards and requirements as set out in the National Building, Plumbing, and Fire Codes of Canada and any amendments applicable to Manitoba.

### **Section 14. Use and Development of the Land**

14.1 In consideration of the mutual covenants contained in this Agreement, the parties undertake as follows:

- a) The Two Nations shall ensure that, all use and development of the Land conforms with the permitted and conditional uses listed in the City's Zoning Bylaw for the CM (Commercial Mixed) Zone in force at the time of the signing of this Agreement ("List of Uses") or like zone that may be approved from time to time. A copy of the List of Uses is attached as Schedule "D".

- b) The City shall notify the Two Nations as provided to other landowners within the municipality under *The Planning Act* of Manitoba of applications for:
  - i. the subdivision of land;
  - ii. the amendment of the City's Development Plan or Zoning Bylaw; or
  - iii. A conditional use or variance order,in the same manner as provided for in *The Planning Act*. Where the Two Nations requests, the City shall provide information respecting the application.
- c) The Two Nations shall notify the City of a proposed change in the use or development of the Land. Where the City requests, the Two Nations shall provide information respecting the proposal.
- d) If the Two Nations proposes a use or development of the Land that does not conform with the List of Uses, the use or development may only proceed by mutual agreement of the parties, or upon the decision of the arbitrator(s) in accordance with Section 20.0 herein.

14.2 All changes or amendments to zones in the City's Zoning Bylaw are advertised on a specific application or general review basis. The City shall notify the Two Nations on specific application as per guidelines established in *The Planning Act of Manitoba*. Generally, Zoning Bylaw reviews are advertised with no specific notices sent. It is the responsibility of the Two Nations to ensure they register for and review communications from the City. Where possible, if the City amends the list of permitted or conditional uses for the CM (Commercial Mixed) Zone or like zone in the City's Zoning Bylaw, the City will make every effort to notify the Two Nations upon any amendment coming into force. The Two Nations shall have sixty (60) days from the passage of the new City Zoning Bylaw to advise the City if the List of Uses is to be amended to include the change, in which case the List of Uses shall be amended to include the change. If the Two Nations do not advise the City within sixty (60) days or advises the City it will not accept the change, the List of Uses shall not be amended to include the change. The Two Nations may apply at any time for the City's consideration to amend the List of Uses.

14.3 The Lands are located adjacent to the right-of-way of Provincial Trunk Highway 5A/10A or Main Street South in the City, where the Province of Manitoba, department of Manitoba Transportation and Infrastructure is the sole traffic authority. Notwithstanding paragraphs 14.1 and 14.2, the Two Nations will be required to apply for permission from the Province of Manitoba for an approved access location and to develop the Lands within the Highway Controlled Area and the Two Nations acknowledge and agree that the City shall have no obligations as it relates to the access to the Lands from the highway described in this section 14.3.

## **Section 15. Construction of Buildings and Services**

15.1 All buildings and services on the Land shall conform to the National Building, Plumbing, and Fire Codes of Canada, any Manitoba amendments, and their respective Regulations. Prior to construction, the Two Nations shall provide the City with plans and specifications detailing any work to be carried out. The Two Nations shall not permit the construction of any buildings or services that do not conform to these standards.

15.2 In this paragraph, "construction" includes:

- a) Excavating, filling, or backfilling for the purpose of preparing a site for development;
- b) Building, extending, enlarging, or placing a building;
- c) Altering, repairing, or reconstructing a building;
- d) Moving a building;
- e) Demolition of a building or part of a building, or removing equipment fixtures;
- f) Underpinning the foundation of a building; and
- g) Installation of services and related works.

15.3 Following completion of construction, the Two Nations shall forthwith provide the City with a Letter of Assurance of Professional Design ensuring the construction meets the approved plans and the National Building, Plumbing and Fire Codes and any Manitoba amendments. The Two Nations shall also provide a Letter of Certification prior to being issued an Occupancy Permit from the appropriate governmental authority. The necessary inspection services for the purpose of providing written confirmations shall be contracted and paid for by the Two Nations.

#### **Section 16. Consultation and Review Process**

16.1 Where this Agreement provides that a party will undertake or has engaged a Consultation and Review Process in respect of a matter within the First Nations Land, or respecting any City land in the Area of Interest or adjacent area or surrounding lands, the parties shall, on a good faith basis:

- a) give notice to the other of the matter to be decided in sufficient detail to enable the other party to consider the matter and determine its views;
- b) provide at least thirty (30) days' notice for the other party to review and determine its views on the matter;
- c) respond to any questions and requests for additional information, including technical studies related to servicing, from the other party in a timely manner;
- d) be available to meet with the other party to review and discuss the matter;
- e) give full and fair consideration to the concerns, recommendations, or other comments provided by the other party; and
- f) make best efforts to address any concerns raised, and implement recommendations made, by the other party, to the extent those concerns are within the scope of issues set out in this Agreement and within the party's ability or control.

16.2 In addition to the process set out in this Article, where the Two Nations or the City undertakes the Consultation and Review Process pursuant to Section 16:

- a) the party shall provide plans to the other party showing the proposed development, including access and servicing plans;
- b) the party shall review these plans and, within twenty-one (21) days following the date on which the party receives these plans:

- i. advise of any engineering, construction, or access concerns directly relating to the provision of the services to the new development and set out how those concerns can be addressed; or
  - ii. advise the party that it has no concerns in respect of providing the services to the proposed development; and
- c) where concerns are raised by a party, the parties agree to cooperate to resolve these concerns and attempt to reach an agreement to enable the party to provide the services to the new development.

16.3 The parties agree that where this Agreement requires that a party undertakes the Consultation and Review Process, this party will not proceed with the matter that is subject to this process until the Consultation and Review Process has been concluded.

16.4 Where the parties have completed a Consultation and Review Process and a party is not satisfied with the outcome of this process, either party may invoke the Dispute Resolution Process by giving a notice under Section 20. Where a party invokes the Dispute Resolution Process, no party shall proceed with the matter that is subject to that process until the Dispute Resolution Process has been completed.

## **ONGOING COMMUNICATIONS AND ANNUAL REVIEW**

### **Section 17. Ongoing Communications**

17.1 Each the City, Pine Creek (Minegoziibe Anishinabe), and Ebb and Flow (Ka Ka Kwe Kwe Jeong) shall appoint a representative or representatives to act on behalf of that party as the primary contact person for all matters arising under this Agreement.

17.2 The role of each representative shall be to:

- a) oversee the implementation of this Agreement and the provision of the Services;
- b) review and attempt to resolve any issues related to the provision of Services that may arise from time to time, including reductions or interruptions in the provision of Services;
- c) review and discuss any changes that may be required to the Services that arise from time to time, including respecting the level, delivery, and scope of the Services;
- d) consider and recommend to their respective Councils any amendments to this Agreement required or advisable to address changes in circumstances or other issues that arise; and
- e) meet as needed with the other representatives to review and discuss any issues arising under this Agreement.

### **Section 18. Annual Review and Planning**

18.1 On or before December 1<sup>st</sup> in each year, the representatives and any other persons designated by each party shall meet to review and discuss the implementation of the Agreement and delivery of the services for the upcoming year, including any desired or potential changes to the Services, cost-sharing, anticipated cost increases, or concerns of the parties.

18.2 The representatives will review the issues discussed in the process outlined in Section 17.0 and any other issues identified.

## **DISPUTE RESOLUTION**

### **Section 19. Disputes**

19.1 The parties acknowledge and agree that it is their mutual intention to work cooperatively under this Agreement and to at all times use good faith best efforts to actively identify and resolve any issues or concerns related to this Agreement as they arise.

19.2 The parties agree that should a dispute or other disagreement arise under this Agreement, or in the event of a breach or alleged breach by a party, the parties will follow the processes set out in Sections 19 and 20 herein.

19.3 If there is a dispute or other disagreement between the parties respecting this Agreement, or in the event of a breach or alleged breach by a party, which cannot be resolved through the Consultation and Review Process, a party may give notice to the other party of that party's intention to refer the matter to the Dispute Resolution Process, describing the circumstances of the dispute or disagreement, or the nature of the breach or alleged breach, as the case may be.

### **Section 20. Dispute Resolution Process**

20.1 Where a notice is given under Section 19.3, the parties shall, within thirty (30) days of the notice, meet and attempt to resolve the matter, acting reasonably and in good faith.

20.2 The parties acknowledge that this Agreement cannot restrict the legislative function of any of the parties respective Councils to enact laws or bylaws within its respective jurisdictional boundaries and that either party's Council may, from time to time, enact laws or bylaws within its jurisdictional boundaries prior to the Dispute Resolution Process being complete. The parties acknowledge and agree that the City does not have jurisdiction to enact bylaws in respect of the Two Nations or the First Nations Land and each Pine Creek or Ebb and Flow do not have jurisdictions to enact laws in respect of the City.

20.3 If the parties are unable to resolve the matter under Section 20.1, the parties may, by agreement, appoint a mutually acceptable person to mediate the matter. The parties shall appoint a jointly selected mediator within twenty (20) days from the date upon which mediation is agreed upon. The costs of the mediator will be shared equally, with one-half of the costs paid by the City and one-half of the costs paid by the Two Nations. The mediation process shall be the opportunity for the exploration of the positions of the parties to the issue or matter in dispute by the mediator by means of increasing the level of understanding of the positions of the parties, reconciling their positions to the extent possible and assisting the parties in reaching a consensus on the resolution of the issue or matter in dispute, and the mediator may offer suggestions, recommendations and alternatives for consideration by the parties, and, if requested, assist in preparing a written agreement or amendment to this Agreement as the means of resolving the issue or matter in dispute.

20.4 If the parties are unable to resolve the matter under Section 20.3, or where the parties do not agree to mediation or the appointment of a mediator, a party may refer the matter to binding arbitration. When a matter is referred to binding arbitration, the

arbitration is to be conducted by a single arbitrator. The arbitrator shall be appointed by agreement between the City and the Two Nations, in default of agreement, such arbitrator shall be appointed by a Judge of the Court of King's Bench upon application of either party. A Judge of the Court of King's Bench shall be entitled to act as such arbitrator, if he or she so desires. Any such arbitration shall be held in the City. The procedure to be followed shall be agreed upon by the Two Nations and the City or, in default of agreement, determined by the arbitrator. The arbitrator shall have the power to proceed with the arbitration and to deliver his or her decision notwithstanding the default by any party in respect of any procedural order made by the arbitrator. The arbitration shall proceed in accordance with the provisions of *The Arbitration Act* (Manitoba), as amended. The decision arrived at by the arbitrator shall be final and binding and any party may apply to a court of competent jurisdiction for an order to confirm or ratify the decision of the arbitrator. Notwithstanding the existence of any matter proceeding to arbitration, the parties agree to continue to perform their respective obligations in accordance with the terms of this Agreement.

20.5 Each the City and the Two Nations shall share equally in the fees and expenses of the arbitrator and each party shall bear its own legal expenses.

20.6 In the event that the parties do not agree to the binding arbitration process set forth within Section 20.4, the Agreement shall terminate within ninety (90) days written notice.

20.7 Notwithstanding the provisions of this Section, no order of an arbitrator shall be binding if such order purports to compel the exercise of legislative powers by any party.

## **INDEMNITIES AND INSURANCE**

### **Section 21. Indemnities**

21.1 The City covenants and agrees to indemnify and save harmless the Two Nations from and against any and all third party action, cause of action, suit, debt, cost, damage, expense, claim, or demand arising out of this Agreement, unless such claim is caused by or attributable to the negligence, willful misconducts, or breach of this Agreement by the Two Nations or its officials, employees, agents, or contractors, or by any occupant of the Two Nations Land.

21.2 The Two Nations, on a joint and several basis, shall indemnify and hold harmless the City from and against any and all third party action, cause of actions, suit, debt, cost, damage, expense, claim, or demand arising out of this Agreement, unless such claim is caused by or attributable to the negligence, willful misconduct, or breach of this Agreement by the City or its officials, employees, agents, or contractors.

21.3 The indemnifications contained in Section 21 hereof shall survive the termination of this Agreement.

### **Section 22. Insurance**

22.1 While this Agreement is in force, each party agrees to maintain comprehensive general liability (including bodily injury, death, property damage, and damage or loss) insurance on an occurrence basis with respect to its Services, infrastructure, and performance or non-performance under this Agreement on a specific rider basis as it relates to their obligations under this Agreement of no less than \$5,000,000.00 per occurrence, which insurance shall include the other party as an additional insured and



include a cross-liability clause with a requirement that the insurer provides to the other parties thirty (30) days' prior written notice of cancellation or material alteration of its terms.

22.2 Upon execution of this Agreement and on the annual anniversary date thereafter, each party shall furnish evidence of insurance to the other parties by providing a certified copy of the policy or policies of insurance with all amendments.

## **ACCESS AND COORDINATION**

### **Section 23. Access to the First Nations Lands**

23.1 The City shall have access to the Land and any improvements and buildings, Monday to Friday, between the hours of 9:00 am and 5:00 pm on giving the Two Nations twenty-four (24) hours' notice, and with the Two Nations' consent outside these days and hours with such consent not to be unreasonably withheld, as required for:

- a) the General Services and Specific Services;
- b) the assessment referred to in Section 10; and
- c) carrying out an inspection, ensuring compliance with or enforcement under this Agreement.

23.2 Despite subsection 23.1, where the City requires access to buildings or other improvements on First Nations Lands, it shall make arrangements in advance for the Two Nations to provide the necessary access. Where the City requires access to privately held or occupied premises, the City shall obtain the consent of the holder of those premises as necessary.

23.3 Notwithstanding paragraphs 23.1 and 23.2, where an emergency or danger to a person or property arises or is about to arise, the City and those authorized for the purpose by the City, including but not limited to fire department and police, may enter the Land and any improvements and buildings located on the Land without notice to the Two Nations or owner or tenant in order to respond to the emergency.

23.3 If required, the Two Nations agrees to request an easement or other appropriate instrument or permit from Canada and further agrees to provide consent that may be required by Two Nations in order to grant the City access to the Two Nations Land for the purposes of providing the services pursuant to the terms of this Agreement.

### **Section 24. INTENTIONALLY DELETED**

### **Section 25. Coordination of Laws**

25.1 The parties acknowledge that City Bylaws will not apply to the First Nations Lands once the First Nations Lands are set apart as Reserve land for the use, occupation and benefit of the Two Nations, as the First Nations Lands will not be within the jurisdictional boundaries of the City.

25.2 The parties agree to cooperate and work together to identify those areas where Two Nations Bylaws or Laws are required on the First Nations Lands to support the provision of the Services.

25.3 The parties agree to work towards aligning their relevant regulatory laws and bylaws to be compatible in areas that support the provision of the Services, where applicable.

25.4 Subject to Section 16, each party agrees that it will undertake the Consultation and Review Process prior to enacting a new bylaw or law, or a substantive amendment to an existing bylaw or law that:

- a) relates directly to the provision of Services to the First Nations Lands;
- b) is likely to limit the ability of the Two Nations to proceed with development on the First Nations Lands; or
- c) is likely to otherwise negatively impact the livability or habitability of the First Nations Land or the Area of Interest.

25.5 The parties agree that nothing in Section 25 hereof fetters the legislative or law-making discretion of a party.

25.6 The parties agree to provide each other with a copy of any new bylaw or law that relates to the services or affects the First Nations Land or Area of Interest, or amendment to an existing bylaw or law, enacted by either party within fourteen (14) days following the date on which the said bylaw or law, or amendment, is enacted.

## **Section 26. Ownership of Infrastructure**

26.1 Each party is responsible for and retains ownership of its respective infrastructure related to the Services provided under this Agreement.

## **MISCELLANEOUS PROVISIONS**

### **Section 27. Development and Services Agreement**

27.1 This Agreement is an agreement for the provision of development rules/guidelines and services, and nothing contained in this Agreement is intended or is to be construed so as to constitute the parties as partners, joint ventures, or one party as an agent or employee of the other. Neither party has any express or implied right under this Agreement to assume or create any obligation on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party, and no conduct of a party shall be deemed to infer such right.

### **Section 28. Agreement to Bind Occupiers of the Land**

28.1 The Two Nations will insure that as a condition of the designation of the Land by way of a surrender that is not absolute to the Federal Crown and subsequent lease of the Land, there shall be a requirement that the lessee agree to be bound by this Agreement. The lessee's agreement to be bound shall not relieve the Two Nations from their obligations under this Agreement.

28.2 Any person who leases, carries on a business, or any other activity, or otherwise occupies the Land, or any portion of it, shall be bound by and comply with the terms of this Agreement, to the extent that such term(s) may apply. The Two Nations shall require such person to enter into an agreement confirming that they are bound by the terms of this

Agreement through which action this Agreement shall be referentially incorporated into such lease agreement.

**Section 29. Notice**

29.1 Any notice or other communication required or permitted under this Agreement shall be in writing and delivered in person or by courier or registered certified mail, or sent via email, as follows:

a) to the Two Nations:

Attention: Chief and Council

Pine Creek First Nation  
Box 70  
Camperville, Manitoba  
R0L 0J0

and

Attention: Chief and Council

Ebb and Flow First Nation

Chief and Council  
Box 159  
Ebb and Flow, Manitoba  
R0L 0R0

to the City at:

The City of Dauphin  
Attention: City Manager  
100 Main Street South  
Dauphin, MB R7N 1K3  
Email: [cm@dauphin.ca](mailto:cm@dauphin.ca)

or to such other address, fax number, or email address that is delivered by a party to the other party in accordance with this section.

29.2 Notices under this Agreement shall be deemed to be duly given: a) when delivered by hand; b) one (1) day after electronic mail transmission; c) two (2) days after deposit with a recognized courier; or d) on the delivery date indicated in the return receipt for registered or certified mail.

**Section 30. Governing Law**

30.1 This interpretation of this Agreement is governed by, and to be interpreted according to primarily, the laws of Canada as a federal undertaking, the laws of the Province of

Manitoba, and the laws of the Two Nations, and the parties agree that the courts of the Province of Manitoba have exclusive jurisdiction over any proceeding concerning this Agreement and to attorn to the jurisdiction of such courts.

### **Section 31. Entire Agreement**

31.1 This Agreement constitutes the entire agreement between the parties and there are no undertakings, representations, or promises express or implied, other than those expressly set out in this Agreement. This Agreement supersedes, merges, and cancels any and all pre-existing agreements and undertakings in the course of the negotiations between the parties.

### **Section 32. Time of Essence**

32.1 Time is of the essence of this Agreement, except as otherwise explicitly provided.

### **Section 33. Severance**

33.1 If any portion of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, the illegal or invalid portion shall be severed, and the Agreement read without reference to that provision. The parties agree that they shall meet in good faith within ninety (90) days in an attempt to resolve any illegal or invalid portion.

### **Section 34. Waiver**

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

### **Section 35. Assignment**

35.1 The rights, benefits, and obligations of the parties shall not be assigned or subcontracted, in whole or in part, without the express, prior written consent of the other party.

### **Section 36. Amendment**

36.1 This Agreement, or any part thereof, shall not be amended except by the written agreement of the parties, duly approved and executed by each of the parties.

### **Section 37. Presumption**

37.1 There shall be no presumption or special rule of interpretation in favour or against any party.

**Section 38. INTENTIONALLY DELETED**

**Section 39. Enure to the Benefit**

39.1 This Agreement enures to the benefit of and binds the parties and their administrators, successors, and assigns.

**Section 40. Counterparts**

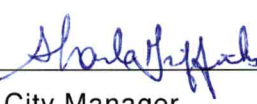
40.1 This Agreement may be executed in any number of counterparts, including by way of facsimile or electronic transmission, each of which counterparts, whether by facsimile, electronic or otherwise, shall for all purposes be deemed to be an original, and all such counterparts shall, together, constitute one and the same Agreement.

AS EVIDENCE OF their agreement to be bound by the above terms and conditions, the parties have duly executed this Agreement below.

SIGNED AND DATED at Dauphin, Manitoba this 14<sup>th</sup> day of April, 2023.

**THE CITY OF DAUPHIN**

Per:  \_\_\_\_\_  
Mayor


Per:  \_\_\_\_\_  
City Manager

SIGNED AND DATED at Dauphin, Manitoba this 14<sup>th</sup> day of April, 2023.

**PINE CREEK FIRST NATION**

Per:  \_\_\_\_\_  
Chief

Per:  \_\_\_\_\_  
Councillor

Per:  \_\_\_\_\_  
Councillor


Per: \_\_\_\_\_  
Councillor

Per: \_\_\_\_\_  
Councillor

Per: \_\_\_\_\_  
Councillor


SIGNED AND DATED at Dauphin, Manitoba this 14<sup>th</sup> day of April, 2023.


**EBB AND FLOW FIRST NATION**

Per:   
Chief

Per:   
Councillor

Per:   
Councillor

Per:   
Councillor

Per:   
Councillor

Per: \_\_\_\_\_  
Councillor

**SCHEDULE "A" – PINE CREEK FIRST NATION (MINEGOZIIBE ANISHINABE), EBB  
AND FLOW FIRST NATION (KA KA KWE KWE JEONG), AND THE CITY OF DAUPHIN  
AUTHORIZATION**



## Ebb and Flow First Nation

Box 159

Ebb and Flow, Manitoba

R0L 0R0

Phone No: (204) 448-2134 Fax No: (204) 448-2305

Toll Free No: 1 800-328-4431



### Ebb and Flow First Nation Band Council Resolution

**Re; Authorizing Ebb and Flow First Nation Chief and Council to enter into MDSA with City of Dauphin Re Anishinaabe Aki**

DO HEREBY RESOLVE THAT: A Quorum of Ebb and Flow First Nation met on the 28<sup>th</sup> day of March, 2023.

**WHEREAS** Ebb and Flow First Nation (the "First Nation") Chief and Council, pursuant to its authority is empowered to make legally-binding decisions on its own behalf and on behalf of the membership of the Ebb and Flow First Nation;

**AND WHEREAS** the First Nation is entitled to the benefits of Treaty No. 2 (the "Treaty");

**AND WHEREAS** the First Nation has, along with Pine Creek First Nation purchased land in the City of Dauphin, Manitoba for the purposes of creating a joint reserve of the two First Nations (the "Two Nations") which lands are legally described as (to be replaced with a CLSR number):

PARCEL A PLAN 28535 DLTO  
EXC PUBLIC ROAD PLAN 69464 DLTO  
IN NE 1/4 4-25-19 WPM

PARCELS B AND C PLAN 28535 DLTO  
IN NE 1/4 4-25-19-WPM

(the "Property");

**AND WHEREAS** the First Nation has requested the Minister of Indigenous Services Canada to set the Property apart as a joint reserve of the Two Nations;

**AND WHEREAS** section 5 of the *Addition of Lands to Reserve and Reserve Creation Act* (ALARCA) enables the First Nation to designate conditionally or unconditionally by way of surrender to His Majesty the King in Right of Canada that is not absolute, any right or interest in the Property, or such part of it as may be set apart as reserve, including for the purpose of the replacement of an existing right or interest in those lands, prior to the Property, or such part of it as may be set apart as reserve;

**AND WHEREAS** the Property will become joint reserve land upon the Minister signing off on a Ministerial Order pursuant to ALARCA;

**AND WHEREAS** the Property is situated within the boundary limits of the City of Dauphin and will benefit from and require municipal services;

**AND WHEREAS** the Two Nations and the City of Dauphin have negotiated and concluded the terms and conditions of a Municipal and Development Services Agreement ('MDSA') for the Property (attached hereto);





**Ebb and Flow First Nation**

Box 159

Ebb and Flow, Manitoba

R0L 0R0

Phone No: (204) 448-2134 Fax No: (204) 448-2305

Toll Free No: 1 800-328-4431



**AND WHEREAS** under the MDSA, each of the First Nations and the City of Dauphin recognize and respect the governmental jurisdiction of the other party over its lands within its geographical boundaries, and neither party gives up any jurisdiction, right or power by entering into the MDSA;

**AND WHEREAS** under the MDSA the parties wish to ensure the compatible and consistent regulation and governance of their respective jurisdictional boundaries;

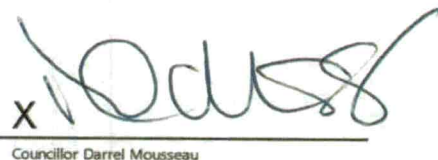
**AND WHEREAS** the Two Nations and the City have negotiated the MDSA on a government to government basis, with each recognizing and respecting the jurisdiction of the other and the responsibilities each has to its residents, citizens and taxpayers;

**AND WHEREAS** the Two Nations must each approve of the terms and conditions of the MDSA as this approval will be added a Schedule "A" to the MDSA;

**THEREFORE BE IT RESOLVED THAT:** Ebb and Flow First Nation Chief and Council hereby confirm and approve of the terms and conditions of the MDSA regarding the Anshinaabe Aki joint reserve land in the City of Dauphin, Manitoba.

X   
Chief Wayne Desjarlais

X   
Councillor Margaret Racette

X   
Councillor Darrel Mousseau

X   
Councillor Darren Mousseau

X   
Councillor Brenda Baptiste



**PINE CREEK FIRST NATION  
BAND COUNCIL RESOLUTION**

Chronological no. <b>282 - 1319</b>
File reference no.

NOTE: The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

					Cash free balance			
The council of the PINE CREEK FIRST NATION BAND					Capital account \$ _____			
Date of convened meeting	D	M	Y	Province	Revenue Account \$ _____			
	3	0	0	3	2	3	MANITOBA	

- 1 -

**DO HEREBY RESOLVE:**

**WHEREAS;** Chief and Council are the duly elected representatives of the Pine Creek First Nation and are empowered through inherent and treaty rights to make binding decisions for the benefit of the Minegoziibe Anishinabe (also known as members of the Pine Creek First Nation "PCFN"); and,

**WHEREAS;** the First Nation has, along with Ebb and Flow First Nation purchased land in the City of Dauphin, Manitoba for the purposes of creating a joint reserve of the two First Nations (the "Two Nations") which lands are legally described as (to be replaced with a CLSR number):

PARCEL A PLAN 28535 DLTO  
EXC PUBLIC ROAD PLAN 69464 DLT  
IN NE 1/4 4-25-19 WPM

PARCELS B AND C PLAN 28535 DLTO  
IN NE 1/4 4-25-19-WPM

(the "Property");

Quorum 3

\_\_\_\_\_  
(Chief)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

FOR DEPARTMENTAL USE ONLY					
Expenditure	Authority (Indian Act) Section	Source of funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue	Expenditure	Authority (Indian Act) Section	Source of funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
Recommending officer _____ Signature Date			Recommending officer _____ Signature Date		
Approving officer _____ Signature Date			Approving officer _____ Signature Date		



**PINE CREEK FIRST NATION  
BAND COUNCIL RESOLUTION**

Chronological no. <b>282 - 1319</b>
File reference no.

NOTE: The words "from our Band Funds", "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

					Cash free balance
The council of the <b>PINE CREEK FIRST NATION BAND</b>					Capital account \$ _____
Date of convened meeting	D	M	Y	Province	Revenue Account \$ _____
	3	0	0	3	2
				3	<b>MANITOBA</b>

- 2 -

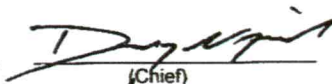


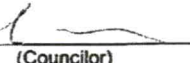
**AND WHEREAS** the First Nation has requested the Minister of Indigenous Services Canada to set the Property apart as a joint reserve of the Two Nations;


**AND WHEREAS** section 5 of the *Addition of Lands to Reserve and Reserve Creation Act* (ALARCA) enables the First Nation to designate conditionally or unconditionally by way of surrender to His Majesty the King in Right of Canada that is not absolute, any right or interest in the Property, or such part of it as may be set apart as reserve, including for the purpose of the replacement of an existing right or interest in those lands, prior to the Property, or such part of it as may be set apart as reserve;

**AND WHEREAS** the Property will become joint reserve land upon the Minister signing off on a Ministerial Order pursuant to ALARCA;

**AND WHEREAS** the Property is situated within the boundary limits of the City of Dauphin and will benefit from and require municipal services;

**AND WHEREAS** the Two Nations and the City of Dauphin have negotiated and concluded the terms and conditions of a Municipal and Development Services Agreement ('MDSA') for the Property (attached hereto);

_____		_____
Quorum 3	(Chief)	
_____		_____
(Councilor)	(Councilor)	(Councilor)
_____		_____
(Councilor)	(Councilor)	(Councilor)
_____		_____
(Councilor)	(Councilor)	(Councilor)

FOR DEPARTMENTAL USE ONLY					
Expenditure	Authority (Indian Act) Section	Source of funds	Expenditure	Authority (Indian Act) Section	Source of funds
		<input type="checkbox"/> Capital <input type="checkbox"/> Revenue			<input type="checkbox"/> Capital <input type="checkbox"/> Revenue
Recommending officer			Recommending officer		
Signature _____ Date _____			Signature _____ Date _____		
Approving officer			Approving officer		
Signature _____ Date _____			Signature _____ Date _____		
					



**PINE CREEK FIRST NATION  
BAND COUNCIL RESOLUTION**

Chronological no. <b>282 - 1319</b>
File reference no.

NOTE: The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

					Cash free balance			
The council of the <b>PINE CREEK FIRST NATION BAND</b>					Capital account \$ _____			
Date of convened meeting	D	M	Y	Province	Revenue Account \$ _____			
	3	0	0	3	2	3	MANITOBA	

- 3 -

**AND WHEREAS** under the MDSA, each of the First Nations and the City of Dauphin recognize and respect the governmental jurisdiction of the other party over its lands within its geographical boundaries, and neither party gives up any jurisdiction, right or power by entering into the MDSA;

**AND WHEREAS** under the MDSA the parties wish to ensure the compatible and consistent regulation and governance of their respective jurisdictional boundaries;

**AND WHEREAS** the Two Nations and the City have negotiated the MDSA on a government to government basis, with each recognizing and respecting the jurisdiction of the other and the responsibilities each has to its residents, citizens and taxpayers;

**AND WHEREAS** the Two Nations must each approve of the terms and conditions of the MDSA as this approval will be added a Schedule "A" to the MDSA;

**THEREFORE BE IT RESOLVED THAT:** Pine Creek First Nation Chief and Council hereby confirm and approve of the terms and conditions of the MDSA regarding the Anshinaabe Aki joint reserve land in the City of Dauphin, Manitoba.

Quorum 3

\_\_\_\_\_  
(Chief)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

\_\_\_\_\_  
(Councilor)

FOR DEPARTMENTAL USE ONLY							
Expenditure	Authority (Indian Act) Section	Source of funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue		Expenditure	Authority (Indian Act) Section	Source of funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue	
Recommending officer				Recommending officer			
Signature		Date		Signature		Date	
Approving officer				Approving officer			
Signature		Date		Signature		Date	



# Dauphin

MOVED BY: COUNCILLOR DALEY

MOTION #: SC2023-2

SECONDED BY: COUNCILLOR REA

DATE: March 30, 2023

Agenda Item 9.a)

**WHEREAS** under the Federal Government's Additions to Reserve (ATR) process, land owned by a First Nation within a municipality can be removed from the jurisdiction and tax base of the municipality and turned over to the Federal Government to be administered as Reserve Land by that First Nation;

**AND WHEREAS** Pine Creek and Ebb and Flow First Nations have undertaken the ATR process to add to reserve approximately 5.7 acres of land legally described as:

Parcel A Plan 28535 DLTO  
Exc Public Road Plan 69464 DLTO  
in NE ¼ 4-25-19 WPM  
Parcels B and C Plan 28535 DLTO  
in NE ¼ 4-25-19 WPM  
("Anishinaabe Aki")

which requires a Municipal Development and Services Agreement (MDSA) with the City of Dauphin to define terms for the provision of and payment for services to this land;

**BE IT RESOLVED** that Council accepts as information a Municipal Development and Services Agreement between the City of Dauphin and Pine Creek and Ebb and Flow First Nations and a memorandum dated March 23, 2023 from the City Manager, advising that the City's lawyer, Iain C. McDonald of Filmore Riley LLP, indicates the MDSA meets the requirements of the Federal Government with respect to the ATR process and is satisfied that this Agreement protects the City's interests while respecting the First Nations' intent, and recommending that the Agreement be approved;

**FURTHER BE IT RESOLVED** that Council agrees with the City Manager's recommendation and authorizes the Municipal Development and Services Agreement with Pine Creek and Ebb and Flow First Nations for land added to reserve as per the description above to be signed and sealed by the Mayor and the City Manager on behalf of the City of Dauphin.

**MOTION CARRIED**

**DAVID BOSIAK**  
Mayor



CERTIFIED a true and correct copy of Resolution No. 2023-2 duly passed by Council of the City of Dauphin the 30<sup>th</sup> day of March 2023.

WITNESS MY HAND and the Corporate Seal of the City of Dauphin this 31<sup>st</sup> day of March 2023.

Lisa Gaudet, PhD  
Deputy City Manager

## **SCHEDULE "B" – CALCULATION OF GENERAL SERVICE FEE**

General Services Fee = (Total Mill Rate – School Division Levy - Provincial Education Support Levy - Governance Portion of Total Mill Rate) / 1000 x Portioned Assessment

Where:

Total Mill Rate is the sum of:

- General Government Services
- Protective Services
- Transportation Services
- Environmental Health Services
- Public Health and Welfare Services
- Environmental Development Services
- Economic Development Services
- Recreation and Cultural Services
- Other Fiscal Services

Portioned Assessment for Commercial Use is 65% of the Total Assessment.

Specific Service Fee is the fee equal to the amount of service provided to the recipient of the Specific Services billed at the normal frequency to municipal operations.

**SCHEDULE "C" – AREA OF INTEREST**

MAIN STREET SOUTH

363100

371

267450

267460

270160

270165

270170

270150

285050

362000

361900

361800

361850

386800

150



## **SCHEDULE "D" – LIST OF USES**

### Permitted Uses:

- Hotel or Motel
- Animal Hospital or Veterinary Clinic
- Kennel or Animal Pound
- Pet Daycare
- Restaurant/Drinking Establishment
- Catering/Caterer
- Micro Brewery, Distillery, or Winery
- Mobile Food Vendors\*\*
- Call Center
- Office
- Research Institution
- Personal Services/Office
- Body Modification Establishment
- Cheque-Cashing Facility
- Dental, Optical, or Counselling Clinic
- Funeral Chapel, Mortuary or Crematorium
- Laundry Services/Dry Cleaning
- Retail Sales
- Auction Room
- Landscape or Garden Supplies
- Mobile Homes & RTM Sales
- Travel Trailer Sales/Recreational Vehicle Sales
- Shopping Centre
- Farmers Market
- Pawnshop
- ISO Containers/Non-Licensed Semi-Trailers used for Storage\*\*
- Auto/Light Truck/Motorcycle, Recreational Vehicles, Repair Service, Sales & Rental
- Auto Parts and Supplies, Sales\*\*

- Car Wash
- Fuel Sales
- Parking, Structure/Surface
- Towing & Storage Facility
- Bus Depot
- Shuttle Service
- Utility Facility, Minor
- Non-Federally Regulated Wireless Communication, Bldg. Mounted Tower
- Non-Federally Regulated Wireless Communication, Freestanding Tower
- Gallery/Museum
- Cultural Centre
- Amusement Enterprise, Indoor
- Auditorium/Concert Hall/Theatre/Cinema
- Private Club, Not Licensed
- Studio, Radio/TV/Cable/Motion Picture Broadcast & Production
- Casino or Gaming Centre
- Convention Centre
- Contractor's Establishment
- Fleet Services
- Heavy Equipment Sales, Service, and Rental
- Landscape/Garden Supply or Production
- Wholesaling
- Light Manufacturing
- Freight or Truck Yard
- Feed, Seed, Grain & Vegetable Sales, Storage and Distribution
- Community/Recreation Centre
- Protection and Emergency Services
- Social Services Facility
- Amusement Enterprise, Outdoor
- Park/Plaza/Square/Playground

Conditional Uses:

- Dwelling, Two-Family
- Dwelling, Multi-Family
- Condominium
- Assisted Living Facility
- Neighbourhood Rehabilitation Home\*\*
- Dormitory
- Boarding or Rooming House
- Hostel
- Drive Through
- Adult Service & Entertainment
- Advertising Signage
- Utility Facility, Major
- Heavy Manufacturing
- Mini Warehouse, Self-Storage
- Outside Storage
- Warehouse
- Feed, Seed, Grain & Vegetable Manufacturing & Processing
- Recycling Collection Centre
- Recycling Plant
- Child Care Centre
- Medical Clinic
- Place of Worship
- Camping Ground
- Planned Unit Development

\*\* - A specific standard applies to these uses.