





TITLE: FLEMING SCHOOL LAND TRANSFER AGREEMENT		
PRESENTER: T. E. Snure, P. Eng. General Manager of Development Services	AGENDA NO:	
DEPARTMENT: Property Administration	DATE: August 28, 2008	
CLEARANCES: 1. Treasury Department 	ATTACHMENTS: 1. Brandon School Division Letter dated April 12 th , 2006 (# of pages 1) 2. City Council Resolution of May 8 th , 2006 (# of pages 1) 3. Agreement (# of pages 6)	
APPROVALS:		
 <hr/>	August 27, 2008 <hr/>	 <hr/>
Department Head	Date	City Manager
		28/08/08 <hr/>
		Date

SUMMARY OF HISTORY/DISCUSSION & FUNDING:

On April 12th, 2006, the Superintendent of the Brandon School Division advised the Property Department that the Board of Trustees of the Brandon School Division authorized the Division to enter into an agreement with the City of Brandon for the exchange of land between the two parties for the Division’s disposal of the Fleming School site. A copy of the letter is attached to this report.

On May 8th, 2006, City Council passed a similar resolution with some specific clause wording for the agreement as part of the resolution. A copy of the resolution is attached to this report.

Since May, 2006, administrative staff for both the City of Brandon and the Brandon School Division have been working on an agreement which would be acceptable to our respective authorities and to the Public Schools Finance Board. The attached agreement represents said final document.

Agreement Highlight – the agreement is consistent with City Council’s resolution dated May 8th, 2006 with the exception of the following:

- 1) that Lots 1 to 6 and 33 to 38, Block 47, Plan 15 BLTO and the closed public lane in Block 47, Plan 15 BLTO from the southerly limits of Block 47 to the northerly limits of Lots 6 and 33, Block 47, Plan 15 BLTO (subject to and upon completion of an Application for Subdivision) be included to be acquired by the City from the Brandon School Division (this land was unintentionally excluded from the recommendation to City Council on May 8th, 2006). **Inclusion of this clause in the agreement ensures the cited lots which were owned by the City and transferred to the Brandon School Division for school purposes are now transferred back to the City;
- 2) that the \$15,000.00 payment to the Brandon School Division for part of Lots 1 to 4 and all of Lot 5 in Block 48 was increased to \$65,000.00 to properly reflect the actual out of pocket payment made by the Brandon School Division to buy these lots in 1998. **The result of this is that the City will now be responsible for a total of \$115,000.00 in costs associated with the exchange of lands. \$50,000.00 payable to Robert Bachinski, pursuant to Clause 5 of the Agreement, upon a rezoning of the lands on or before June 15th, 2014; and \$65,000.00 payable to the Brandon School Division, pursuant to Clause 9 of the agreement, upon the City selling Lots 1 through 5, Block 48, Plan 15 BLTO; and
- 3) pursuant to Clause 6 of the agreement, the City agrees it will not market the acquired lands until the Brandon School Division has accepted an Offer to Purchase for its lands or the date of January 1st, 2010, whichever occurs first.

RECOMMENDATION:

That the City of Brandon enter into the agreement with the Brandon School Division attached to the report of the General Manager of Development Services dated August 27, 2008 with respect to the City acquiring from and disposing to the Division land at the Fleming School property situated between Victoria and Louise Avenues from 23rd to 25th Streets as set-out in said agreement.



Brandon School Division

"Accepting the Challenge"

File Code:

April 12, 2006

Attention: Rod Sage, C.E.T.
Property & Traffic Coordinator
Development Services Division
Department of Engineering
City of Brandon
410 - 9th Street
Brandon, MB R7A 6A2

Dear Mr. Sage:

At the Regular Meeting of the Board of Trustees of the Brandon School Division, held Monday, April 10, 2006, a motion was approved to enter into an Agreement with the City of Brandon regarding an exchange of land with respect to the Division's disposal of the Fleming School Site, as outlined in your letter of March 21, 2006. Please forward a draft Agreement to the School Division for review. Should you have any questions or concerns, please do not hesitate to contact Mr. Mel Clark, Supervisor of Property, at 729-3977.

Yours truly,

Dr. D.M. Michaels
Superintendent of Schools/CEO

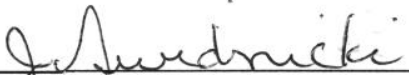
/sb
c.c. M. Clark, Supervisor of Property.

FILE



I, Joni Swidnicki, Deputy Clerk of the City of Brandon, DO HEREBY CERTIFY the resolution written hereunder to be a true and correct copy of a resolution of the Council of the City of Brandon passed at a meeting held on the 8th day of May A.D. 2006 of which it purports to be a copy.

Dated at the City of Brandon this 25th day of September A.D. 2007.



Joni Swidnicki, Deputy City Clerk

“That the City of Brandon enter into a land exchange agreement with the Brandon School Division regarding the Fleming School property from Victoria Avenue to Louise Avenue between 23rd and 25th Streets whereby the City shall:

- (a) acquire from the Division:
 - (i) Part of Lots 1/4, All of Lots 6/11, Part of Lot 14, All of Lots 15/17, All of Lots 20/38 and the public lane in Block 48, Plan 15 and the closed portion of 24th Street between Victoria and Louise Avenues for the sum of \$1.00;
 - (ii) Part of Lots 1/4 and All of Lot 5 in Block 48, Plan 15 for the sum of \$1.00 subject to the City paying to the seller of the property to the Division an additional \$50,000 should the property be re-zoned from its present Educational and Institutional Zoning prior to 2015 and a further \$15,000 to the Division should the City sell the property with Blocks 47 and 48, Plan 15; and
 - (iii) All of Lots 12/13, Part of Lot 14 and All of Lots 18 and 19 in Block 48, Plan 15 for the sum of \$1.00;
- (b) dispose of to the Division, subject to subdivision approval, that portion of the closed lane from the Northerly limit of Block 47 to the Northerly limits of Lots 7 and 32 in Block 47, Plan 15; and
- (c) release any claim or interest it has against Lots 7/9 and Lot 32 in Block 47, Plan 15 to the Division.”

THIS AGREEMENT made in duplicate this day of A.D. 2008.

BETWEEN:

BRANDON SCHOOL DIVISION,
(hereinafter called the "School Division")
OF THE FIRST PART.

-and-

THE CITY OF BRANDON
(hereinafter called the "City")
OF THE SECOND PART.

WHEREAS the City and the School Division entered into an Agreement signed April 28th, 1986 (the "1986 Agreement");

AND WHEREAS the 1986 Agreement set forth certain terms and conditions which would become applicable in the event the School Division wished to sell property which the School Division had previously obtained from the City for nominal consideration;

AND WHEREAS, with the closing of Fleming School, the School Division is intent on selling property which includes the property previously conveyed to the School Division by the City for nominal consideration, which land is depicted by cross-hatching on the map attached as Schedule "A" hereto and referred to as the "Fleming School Property";

AND WHEREAS the City and School Division have now reached further terms and conditions which this particular Agreement seeks to clarify and confirm with respect solely to the Fleming School Property;

NOW THEREFORE the City and School Division, for valuable consideration which has been exchanged between the parties, covenant and agree with each other as follows:

1. The preamble hereof and attached schedules shall form an integral part of this Agreement.
2. The School Division agrees to convey the following lots to the City on or before June 1st, 2009, for consideration of one dollar (\$1.00):
 - a) Lots 1 through 6 inclusive, Block 47, Plan 15 BLTO;
 - b) Lots 33 through 38 inclusive, Block 47, Plan 15 BLTO;
 - c) Lots 6 through 38 inclusive, Block 48, Plan 15 BLTO;
 - d) 24th Street right-of-way (closed);
 - e) the closed public lane in Block 47, Plan 15 BLTO from the southerly limits of Block 47 to the northerly limits of Lots 6 and 33, Block 47, Plan 15 BLTO (subject to and upon completion of subdivision pursuant to paragraph 4 herein), and;
 - f) the closed public lane in Block 48, Plan 15 BLTO.

as these lots are depicted through cross-hatching on Schedule "B" hereto, and the School Division hereby releases any claim or interest therein.

3. The City and School Division acknowledge and agree that Lots 7, 8, 9 and 32, Block 47, Plan 15 BLTO shall continue to be owned by the School Division, and the City hereby releases any claim or interest therein.
4. The City agrees, at its cost, to apply for a Plan of Survey/Subdivision of that portion of the closed public lane in Block 47, Plan 15 BLTO from the northerly limits of Block 47, Plan 15 BLTO to the southerly limits of Lots 7 and 32 in Block 47, Plan 15 BLTO. Should the application for subdivision be approved by City Council, the School Division shall retain the portion of the closed lane, from the northerly limits of Block 47, Plan 15 to the southerly limits of Lots 7 and 32, Block 47, Plan 15 BLTO, for consideration of one dollar (\$1.00).
5. Subject to the provisions of paragraph 3 hereof, the School Division agrees to convey to the City, forthwith, and for consideration of one dollar (\$1.00), all rights, claims, interests, or otherwise to Lots 1 through 5 inclusive, Block 48, Plan 15 BLTO. The City confirms and acknowledges it is aware of an Agreement dated January 4th, 1999 entered into between the School Division and Robert Bachinski (the "Bachinski Agreement").

Initials

The City agrees with the School Division that should Lots 1 through 5 inclusive, Block 48, Plan 15 BLTO be rezoned (from its present zoning classification of "EI" Educational & Institutional Zone) on or before June 15th, 2014, the City shall pay, on behalf of the School Division, the sum of fifty thousand dollars (\$50,000.00) for which the School Division is contractually obligated to Robert Bachinski, and do so within sixty (60) days of the effective date of rezoning. However, and in all other respects, the City shall not assume any other obligations of the School Division pursuant to the Bachinski Agreement, other than as set forth herein.

6. The School Division agrees to consult with the City regarding all proposals received by the School Division for marketing, disposal of, and/or development of, Lots 7 through 32 inclusive, Block 47, Plan 15 BLTO. The City agrees that it will not market, dispose of, and/or develop its lands in Blocks 47 and 48, Plan 15 BLTO until the School Division has accepted an Offer to Purchase for Lots 7 through 32 inclusive, Block 47, Plan 15 BLTO, or any part thereto, or the date of January 1st, 2010, whichever occurs first.
7. If the School Division, prior to the City selling its portions of Block 47 and 48, Plan 15 BLTO, accepts an Offer to Purchase for Lots 7 through 32 inclusive, Block 47, Plan 15 BLTO, from an organization that will maintain/develop the lots for the "good of the community" (such determination to be made in writing by both the School Division and the City) then the City will not sell its portion of the lands within Blocks 47 and 48, Plan 15 BLTO if, in the opinion of the City and the School Division, both acting reasonably, that the sale would prejudice the future ability of the "good of the community" Purchaser from the School Division to develop and expand its proposed operations. In the event that there is any dispute between the School Division and the City with respect to the interpretation of this agreement which cannot be resolved, same shall be determined by the arbitration provisions contained in paragraph 18 hereof.
8. If the School Division pursues an offer to purchase that is not for the "good of the community" (such determination to be made in writing by both the School Division and the City), the City shall be released of it's conditions as indicated in paragraph 7 hereof, in order to utilize its lands within Blocks 47 and 48, Plan 15 BLTO, separate from any lease agreements the School Division may have in place now, or in the future, as it pertains to leasing the former Fleming School building to third parties.
9. The City agrees that upon sale of Lots 1 through 5, Block 48, Plan 15 BLTO, or any portion thereof, the City shall pay to the School Division the sum of sixty five thousand (\$65,000.00) dollars as final consideration for the terms and conditions of this Agreement and in recognition of the School Division agreeing to convey property to the City as confirmed herein; the City shall pay the agreed upon sum of sixty five thousand (\$65,000.00) dollars to the School Division immediately upon the City's receipt of the net sale proceeds upon closing of any such land sale.
10. The City and School Division agree that signing of this Agreement and the transfer of Title to the above Lots shall supersede the 1986 Agreement with respect to the Fleming School Property.
11. This Agreement is not assignable by the School Division.
12. For the purpose of this Agreement, any correspondence to the City by the School Division shall be addressed to Development Services Division, Manager of Property & Traffic, City Hall 410-9th Street, Brandon, Manitoba, R7A 6A2, and any correspondence to the School Division shall be addressed to Secretary-Treasurer, Brandon School Division, 1031-6th Street, Brandon, Manitoba, R7A 4K5.
13. The City and School Division shall each be entitled to register a caveat against Certificate of Title to the property which forms the subject of this Agreement so as to provide notice to all parties of this Agreement.
14. Any amendments to this Agreement shall have no force or affect whatsoever unless same are in writing, and signed by each of the parties hereto.
15. This Agreement contains the entire Agreement between the parties with respect to the Fleming School Property. There are no undertakings, representations, or promises, expressed or implied, other than those contained in this Agreement.
16. The City and the School Division acknowledge and agree they shall each sign such further and other documents, materials, undertakings, or assurances as may be necessary to carry out the responsibilities and obligations of the City and the School Division pursuant to this Agreement and the Fleming School Property.

Initials

17. If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid provision had never been included in this Agreement.
18. This Agreement is made pursuant to the laws of Manitoba. It shall be interpreted pursuant to the laws of Manitoba and any adjudication related to this Agreement shall be before the Court of Queen's Bench (Brandon Centre), or alternatively and with consent of both parties, pursuant to arbitration in accordance with The Arbitration Act (Manitoba).
19. The rule or interpretation principle of construing a document, in the event of perceived uncertainty against the drafter of such document shall not apply to this Agreement, as both the School Division and City both played a joint role in negotiating and coming to the terms of this Agreement.
20. This Agreement shall enure to the benefit of and be binding upon the parties hereto, as well and including but not limited to the employees, directors, officers, trustees, agents, affiliates, subsidiaries, executors and administrators.
21. Time is of the essence.
22. The City and the School Division agree and acknowledge that each:
- (a) has had independent legal advice;
 - (b) has read this Agreement in its entirety and has full knowledge of the contents thereof;
 - (c) understands this Agreement;
 - (d) in signing this Agreement, does so freely and voluntarily and believes this Agreement will not result in circumstances that are either unconscionable or unfair to either party.
23. This Agreement shall require approval of the Public Schools Finance Board prior to final execution on the part of the School Division.

IN WITNESS WHEREOF the parties have hereunto caused their corporate seals to be affixed duly attested to by the hands of their proper signing officers in that behalf and/or set their hands and seals the day and year first above written.

BRANDON SCHOOL DIVISION

"Authorized Signatory
I am authorized to bind the company"

"Authorized Signatory
I am authorized to bind the company"

THE CITY OF BRANDON

T. E. Snure, P. Eng.
CITY ENGINEER

THIS AGREEMENT made in duplicate this
day of _____ A.D. 2008.

BETWEEN:

BRANDON SCHOOL DIVISION,
(hereinafter called the "School Division")
OF THE FIRST PART.

- and -

THE CITY OF BRANDON
(hereinafter called the "City")
OF THE SECOND PART.

AGREEMENT

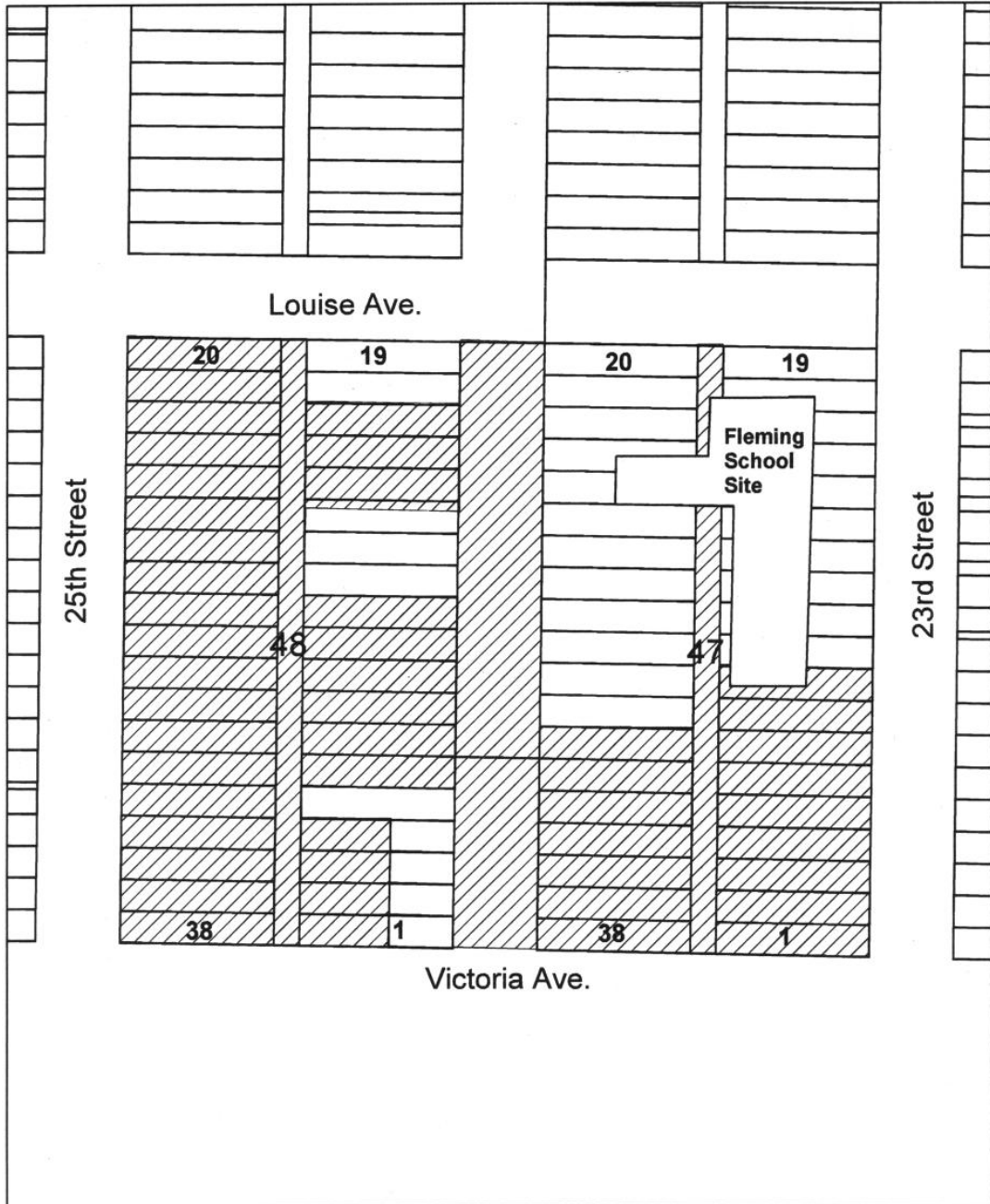
January 28, 2008

City of Brandon
Property Administration
410 - 9th Street
Brandon, Manitoba
R7A 6A2


T. E. Snure, P. Eng.
CITY ENGINEER

Phone: (204) 729-2214
Fax: (204) 725-3235

Schedule "A"

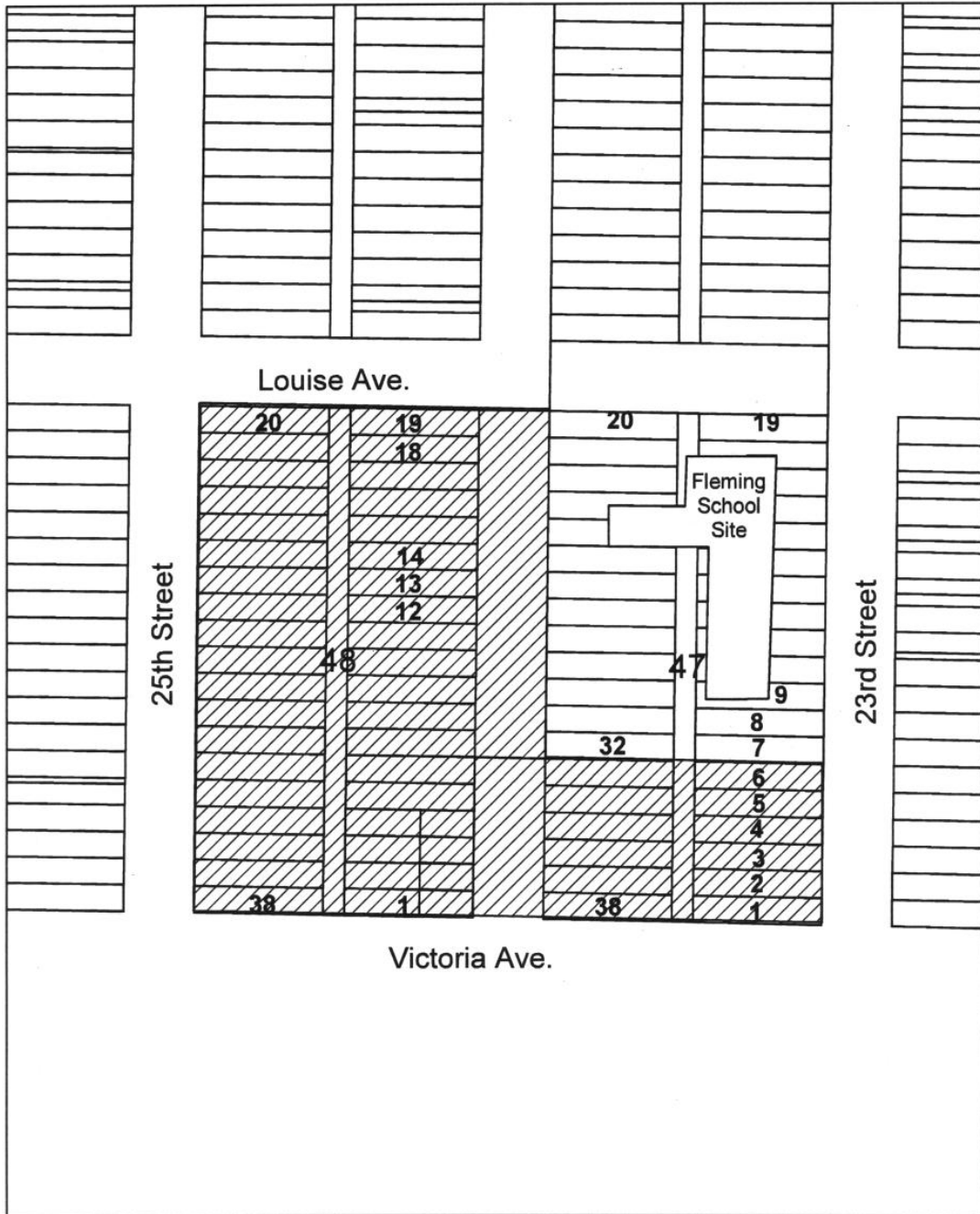


Legend

 Property acquired from City of Brandon



Schedule "B"



 Property to be re-acquired by the City

