Minute No. 696
Report - Standing Policy Committee on Public Works - September 13, 2005

Item No. 3 **Servicing Agreement between the Rural Municipality of East St. Paul and the City of Winnipeg for Water, Sewer and Land Drainage Services on Glenway Avenue**
Files WW-2.4

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Public Works and adopted the following:

1. That the new servicing agreement, as outlined on Appendix "A", with the Rural Municipality of East St. Paul be approved for continued water, sewer and land drainage services on a boundary street, subject to payment of outstanding arrears by the R.M. of East St. Paul of $94,771.20 plus interest, totaling $100,046.12.

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

Reports - Standing Policy Committee on Public Works - September 13, 2005

DECISION MAKING HISTORY:

Moved by Councillor Eadie,

That the recommendation of the Standing Policy Committee on Public Works be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 21, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Public Works and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 13, 2005, the Standing Policy Committee on Public Works concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

COUNCIL:

On May 28, 2003, Council concurred in the recommendation of the Standing Policy Committee on Public Works and adopted the following:

1. That the Water and Waste Department be authorized to negotiate a new servicing agreement with the Rural Municipality of East St. Paul for continued service on a boundary street for approval by City Council and for outstanding arrears from a lapsed agreement.

RE: A NEW SERVICING AGREEMENT BETWEEN THE RURAL MUNICIPALITY OF EAST ST. PAUL AND THE CITY OF WINNIPEG FOR WATER, SEWER AND LAND DRAINAGE SERVICES ON GLENWAY AVENUE

FOR SUBMISSION TO: THE STANDING POLICY COMMITTEE ON PUBLIC WORKS

ORIGINAL REPORT SIGNED BY: Barry D. MacBride, P. Eng.
Director of the Water and Waste Department

REPORT DATE: August 26, 2005

RECOMMENDATION(S):

1. That the attached new servicing agreement with the Rural Municipality of East St. Paul be approved for continued water, sewer and land drainage services on a boundary street, subject to payment of outstanding arrears by the R.M. of East St. Paul of $94,771.20 plus interest, totaling $100,046.12.

REPORT SUMMARY

KEY ISSUES: In 2000, the Rural Municipality of East St. Paul launched a legal proceeding to settle a disputed provision of an agreement under which the City of Winnipeg provided sewer, water and land drainage services to East St. Paul residences on Glenway Avenue. After investigation, both parties concluded that the agreement had in fact lapsed in 1996 and East St. Paul agreed to abandon its legal action and to begin negotiations towards a new agreement. In addition to settling the terms of a new agreement, the negotiations addressed outstanding issues arising from the old agreement and outstanding issues that have arisen in the time period since the lapse of the agreement.

IMPLICATIONS OF THE RECOMMENDATION(S):

General Implications

	None
	For the organization overall and/or for other departments
X	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s): This Agreement will provide for continued provision of municipal water and sewer services to an adjoining municipality.

Policy Implications

	No
X	Yes - Comment(s): Involves the sharing of water and sewer services with an adjoining Capital Region municipality.

Environmental Implications

X	None
	Yes – Comment(s):

Human Resources Implications

X	No
	Yes – Comment(s):

Financial Implications

X	Within approved current and/or capital budget
	Current and/or capital budget adjustment required

Comment(s):

REPORT

REASON FOR THE REPORT:

Section 211 of the City of Winnipeg Charter gives City Council the authority to enter into servicing agreements with adjacent municipalities.

HISTORY:

On November 9, 1976 the City of Winnipeg entered into a servicing agreement with the Rural Municipality of East St. Paul.

In 1996, City Council approved an increase to the sewer maintenance frontage levy.

In 1998 and 1999, the Rural Municipality of East St. Paul started withholding payment of the sewer maintenance frontage levy to the City although they had collected these charges from the East St. Paul residents on Glenway Avenue.

In 2000, the Rural Municipality of East St. Paul launched a legal proceeding for a determination of its residents' obligation to pay the sewer maintenance frontage levy, and they withheld payment of all charges associated with the provision of services.

In 2001 while conducting research in preparation for this legal proceeding, the City's Legal Services Division concluded that the agreement had in fact ended in 1996. The Rural Municipality of East St. Paul agreed and discontinued its legal action.

On January 20, 2003, the Chief Administrative Officer of East St. Paul wrote to the City indicating that the Council of East St. Paul would like to proceed with negotiating a new agreement.

On May 28, 2003, Winnipeg City Council adopted Item No. 4 of the Report of the Standing Policy Committee on Public Works dated May 13, 2003, regarding the servicing agreement between the Rural Municipality of East St. Paul and the City of Winnipeg for water, sewer and land drainage services on Glenway Avenue. Council authorized the Water and Waste Department to "negotiate a new servicing agreement with the Rural Municipality of East St. Paul for continued service on a boundary street for approval by City Council and for outstanding arrears from a lapsed agreement".

DISCUSSION:

The Servicing Agreement signed in 1976 obligated the City, subject to a successfully petitioned local improvement, to construct wastewater sewers, land drainage sewers and watermains on

Glenway Avenue, between Henderson Highway and Raleigh Street, which is laterally contiguous to the boundary line between Winnipeg and East St. Paul. After construction of said works East St. Paul was obligated to pay their share of the capital cost and collect and remit to the City quarterly water and sewer charges, frontage levies for maintenance and renewal and hydrant charges. Until 1997 East St. Paul collected the relevant charges and fees, including frontage levies, from the residents in East St. Paul on Glenway Avenue and provided them to the City.

Between 1996 and 2001, the City increased the sewer frontage levy for the purposes of increasing funding to the sewer renewal program and for the basement flood relief capital program. The total sewer frontage levy increased from $0.70 per foot in 1996 to $1.90 per foot in 2001. Of these totals, the basement flood relief program comprised $0.10 per foot in 1996 and increased to $0.75 per foot by 2001. East St. Paul considered the charges for the basement flood relief program to be outside the scope of the original 1976 Servicing Agreement. The City took the view that the sewer frontage levy comprised a legitimate charge for services and therefore was owed to the City. Pending resolution of this disagreement, East St. Paul collected the portion of the levy attributable to the basement flood relief program from the residents and remitted it to the City in 1996 and 1997, but in 1998 and 1999, withheld payment for this portion from the City. From 2000 to 2004 East St. Paul withheld all frontage charges associated with the provision of services. The City considers East St. Paul to owe a total of $94,771.20 not including interest and penalties for past frontage charges.

In order to resolve this dispute, in January 2000 East St. Paul applied to the Court for an interpretation of the Agreement. While conducting research in preparation for this legal proceeding the City's Legal Services Division came to the conclusion that the provisions of the City of Winnipeg Act limited the duration of the Agreement with East St. Paul to a maximum term of 20 years. As a result, despite the fact that neither party was aware of it at the time, the Agreement ended in 1996. East St. Paul agreed with this conclusion and agreed to discontinue its application for judicial interpretation of the Agreement without costs to either side.

The fact that the Agreement ended in 1996 means that East St. Paul is currently not obliged to collect and pay for the City's services. However, it also means that the City has no obligation to provide services to these residents. A negotiation with a view to a new agreement was in the interests of both parties. The future obligation of residents of East St. Paul to pay the frontage levy was addressed in the course of these negotiations.

In January 2003 the Chief Administrative Officer of East St. Paul wrote to the City indicating that the Council of the R.M. of East St. Paul would "like to proceed with negotiating a new agreement". Subsequently City Council authorized the administration to undertake negotiations and develop an agreement for Council approval. The fundamental principles of the negotiations involved:

- Compliance with the City's Water By-law and Sewer By-law;
- Collection and remittance of all water and sewer charges to the City;
- Collection and remittance of all frontage and maintenance charges to the City;
- Remittance of all outstanding charges collected since 1998, plus interest and penalties.

Following several information sharing meetings, including a public meeting with affected area residents, The Chief Administrative Officer of East St. Paul and the City's negotiator developed a new agreement. This draft agreement (copy attached as Appendix "A") has been reviewed by the Legal Services Division of the Corporate Services Department, Water and Waste Department Staff and the Council of the R.M. of East St. Paul. Each of the foregoing is in agreement with the form and content of the document.

Throughout the period of dispute East St. Paul has been applying a frontage levy to the affected residents and holding the collected monies in a separate interest bearing account. It has been agreed administratively that the arrears plus accumulated interest would be turned over to the City to satisfy the financial obligations flowing from the past dispute. The total amount is $100,046.12. The two parties agree on this amount. While the Council order contemplated the collection of interest and penalties there is no statutory provision for imposing a penalty since no formal agreement exists between the parties, rather this is a negotiated settlement. It is the view of the administration that paying arrears plus interest is an appropriate way to settle this long standing dispute.

During the course of the negotiations it was found that another lapsed agreement existed dated July 15, 1997. The agreement was for servicing on McNair Crescent (now called Glenway) which runs west of Henderson Highway to Eastwood Drive. There are three houses on this section. This settlement and the new agreement also address this issue.

FINANCIAL IMPACT:

The following financial impact statement for this project has been prepared in accordance with the recommendation adopted by Council on December 13, 2000.

A NEW SERVICING AGREEMENT BETWEEN THE RURAL MUNICIPALITY OF EAST ST. PAUL AND THE CITY OF WINNIPEG FOR WATER, SEWER AND LAND DRAINAGE SERVICES ON GLENWAY AVENUE

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	(17,870)	(17,870)	(17,870)	(17,870)	(17,870)
Net Cost/(Benefit)	$ 17,870	$ 17,870	$ 17,870	$ 17,870	$ 17,870
Less: Existing Budget Amounts	17,870	17,870	17,870	17,870	17,870
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: There is no financial impact associated with the new servicing agreement. The payment of arrears plus interest will be applied against the oustanding account and the ongoing revenues from the servicing agreement are included in the utilities' operating projections for 2005 and beyond.

Moira L. Geer C.A.
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Legal Services Division of the Corporate Services Department.

THIS REPORT SUBMITTED BY:

Department: Water and Waste
Division: Engineering
Prepared by: Mike Shkolny, P.Eng.
File No. 020-06-02-07-15

Appendix "A"

SERVICING AGREEMENT BETWEEN THE CITY OF WINNIPEG AND THE RURAL MUNICIPALITY OF EAST ST. PAUL FOR WATER, SEWER AND LAND DRAINAGE SERVICES ON GLENWAY AVENUE

THIS AGREEMENT made as of the day of , 2005.

BETWEEN:

THE CITY OF WINNIPEG,
(herein called "Winnipeg"),

OF THE FIRST PART,

and

THE RURAL MUNICIPALITY OF EAST ST. PAUL,
(herein called "East St. Paul"),

OF THE SECOND PART,

WHEREAS On November 9, 1976, Winnipeg entered into a servicing agreement with East St. Paul for the provision of water, sewer and land drainage services to properties within East St. Paul on the north side of Glenway Avenue, an unpaved street laterally contiguous to the boundary line between Winnipeg and East St. Paul;

AND WHEREAS, as a result of that agreement, watermains, sanitary sewers and piped connections from the ditch drainage to the Winnipeg land drainage sewers were constructed, connecting properties on the north side of Glenway Avenue within East St. Paul (hereinafter "the serviced properties") to water, sanitary sewer and land drainage sewer services of the City of Winnipeg;

AND WHEREAS the provisions of *The City of Winnipeg Act*, applicable at the time, limited the duration of the aforementioned agreement to a maximum term of 20 years;

AND WHEREAS the water, sewer and land drainage services continue to be provided to the serviced properties and both parties wish to continue this arrangement into the future;

NOW THERFORE THIS AGREEMENT WITNESSETH THAT in consideration of the premises, the parties hereto covenant and agree, with each other, as follows:

1. Both parties will

(a) do all such things and execute and deliver all such further or other assurances as may be necessary to carry out the provisions of this agreement;

(b) notify and keep each other advised of policy or bylaw or other regulatory changes that impact the terms of this agreement and the ratepayers;

(c) advise one another by giving three years written notice if either party wishes to terminate this agreement.

2. Winnipeg will

(a) operate and maintain the watermains, wastewater sewers, land drainage sewers and appurtenances servicing the serviced properties;

(b) read and maintain the installed water meters in accordance with utility policy;

(c) issue utility bills to the owners of each serviced property, which bills shall include the quarterly water and sewer charge, the water charge, the sewer charge and other charges as may be uniformly imposed upon utility customers resident within the City of Winnipeg and which may be amended from time to time by the Council of The City of Winnipeg;

(d) treat the owners of the serviced properties as it would any other customer of the utility, including discontinuing service in the event of non-payment;

(e) issue to East St. Paul an annual bill in respect of each fire hydrant installed in the street by Winnipeg equivalent to one half of the annual charge generally imposed by Winnipeg for the maintenance of such installations in private property, which charge is currently $194.00 and which may be amended from time to time by the Council of The City of Winnipeg;

(f) issue to East St. Paul an annual bill in respect of frontage levies for the serviced properties equivalent to those imposed upon properties within the City of Winnipeg for upgrading, repair, replacement and maintenance of water and sewer mains and streets and sidewalks, which charge currently totals $2.55 per front foot and which may be amended from time to time by the Council of The City of Winnipeg;

(g) advise East St. Paul of any changes to the aforementioned rates and charges.

3. East St. Paul will

(a) pay to Winnipeg the annual fire hydrant charge;

(b) pay to Winnipeg as they become due the annual bill in respect of frontage levies referred to in clause 2(f) .

4. Agreement Scope

The foregoing arrangements applies to the properties presently serviced by the City of Winnipeg in East St. Paul on Glenway Avenue between Henderson Highway and Raleigh Street and the properties on Glenway Avenue (formerly McNair Crescent) between Eastwood Drive and Henderson Highway and any infill development on fronting property.

IN WITNESS WHEREOF the parties hereto have executed these presents in the manner appropriate to each, the day and year first above written.

THE CITY OF WINNIPEG	THE RURAL MUNICIPALITY OF EAST ST. PAUL
_____	_____
Mayor	Reeve
_____	_____
City Clerk	Chief Administrative Officer
Approved:	*Certified as to form:*
_____	_____
for Director of Water and Waste	*for* City Solicitor/Manager of Legal Services