Agenda - Council - July 26, 2006

Report - Standing Policy Committee on Protection and Community Services - July 10, 2006

Item No. 4 Agreement for Contractors to Perform Arboricultural Services on Trees under the Control of the Urban Forestry Branch File PB-2

STANDING COMMITTEE RECOMMENDATION:

On July 19, 2006, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submits the following to Council:

1. That a one year pilot project to evaluate the proposed agreement for contractors to perform arboricultural services on trees under the control of the Urban Forestry Branch be approved.

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

Report - Standing Policy Committee on Protection and Community Services - July 10, 2006

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 19, 2006, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 10, 2006, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

RE: Agreement for Contractors to Perform Arboricultural Services on Trees Under the Control of the Urban Forestry Branch

FOR SUBMISSION TO: **Standing Policy Committee on Protection and Community Services**

ORIGINAL REPORT SIGNED BY: **L.S.W. Larkin, P. Eng.**
Director of Public Works

REPORT DATE: **May 29, 2006**

RECOMMENDATION:

- That the Standing Policy Committee on Protection and Community Services approve a one year pilot project to evaluate the proposed agreement for contractors to perform arboricultural services on trees under the control of the Urban Forestry Branch.

Report Summary

Key Issues:

- Presently, a number of property owners are requesting the authority to prune, plant, and remove boulevard and park trees through private contractors at their own expense.
- A proposed process and legal agreement has been drafted to provide a mechanism to allow these activities on boulevard and park property.
- Ultimately, all work must be completed to city specifications, and City staff will approve and inspect work completed by private contractors as deemed necessary.

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
Involves a multi-year contract

Comment(s): The proposed agreement would be beneficial to a number of property owners wishing to pay for boulevard and tree maintenance themselves. The City of Winnipeg also benefits from additional trees being maintained at no additional expense.

Policy Implications

X No
Yes

Comment(s):

Regulatory Implications

X None
Eliminates or reduces regulatory impact
Proposes regulatory impact

Comment(s):

Environmental Implications

No
X Yes

Comment(s): A number of boulevard and/or park trees will see improved maintenance. Since the benefits of the trees accrue to the community as a whole, City of Winnipeg residents will benefit.

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:

Council approval is being sought for a one year pilot program to allow property owners to hire private contractors to prune, plant, or remove boulevard or park trees adjacent to their properties.

HISTORY:

At Council on April 27, 2005, Councillor Eadie, then Chair of the Standing Policy Committee on Public Works, was asked by Councillor O'Shaughnessy if it would be possible for residents to hire appropriately licensed private contractors to perform tree pruning services on public trees situated on the boulevard in front of their home.

On April 29, 2005, the City Forester responded to the request stating that the administration would consider a process. Further investigation by the administration revealed the following:

- Other cities, such as the City of Toronto and the City of Saskatoon, offer similar agreements with property owners.
- The opportunity for an agreement exists in current policy and by-laws.
- Since a number of citizens also request tree planting and removal agreements, the scope was expanded to include these activities.

By June 21, 2005, an agreement entitled, "Agreement for Contractors to Perform Arboricultural Services on Trees Under The Control of The Urban Forestry Branch" was developed in co-operation with the Legal Services Division.

On July 8, 2005, the administration met with the private arboricultural industry to propose this legal agreement and gauge their acceptance. The private sector overwhelmingly agreed with the concept and process.

Over the next few months, and, in co-operation with the CAO Secretariat's Communication Officer, a draft communications plan was developed which included a number of "Frequently Asked Questions" to be placed on the Urban Forestry web site, a draft media release announcing the program, and a potential media event to launch the program.

DISCUSSION:

Throughout the year, the Urban Forestry Branch receives approximately 500 different requests from private citizens who would like to prune city boulevard trees. While only a few dozen people are willing to hire and pay for a qualified contractor, the majority of requests are from people who wish to prune boulevard and park trees themselves.

Unfortunately, and in the latter case, the administration does not support citizens pruning city trees adjacent to their property because of significant liability concerns. For example, if a resident climbs a tree and hurts themselves or others through the process, the City may be held liable for damages. Moreover, few residents are qualified to prune trees, and improper pruning can significantly damage trees in the long term. As a result, enabling citizens to prune boulevard and/or park trees (themselves) is not in the City's best interest.

On the other hand, the administration supports the idea of property owners hiring and paying qualified private contactors to complete work on boulevard and park trees if they desire. The primary benefit of this agreement is that boulevard and park trees will be properly maintained at no cost to the City. In addition, these property owners are more likely to be satisfied with the result of the maintenance. The proposed legal agreement aims to protect the public's interests in this important resource. A few key highlights of this agreement include (see Attachment 1):

- The property owner must apply to the City for approval of tree related work.
- The property owner must agree that all work is at his or her own risk and at his or her own expense.
- Contractors must possess a Manitoba's Arborist Licence, carry Commercial General Liability Insurance of at least $2 million, and have proof of Worker's Compensation.
- The property owner and/or contractor must provide the City notice of their work so that the City Forester can inspect the work before and/or after the job is completed if he deems necessary.
- Any improper work can be completed by the City Forester and charged back to the property owner or contractor. Failure to complete this work may result in the City recovering payment in a like manner as municipal taxes.
- The contractor is responsible for checking all utility lines and shall not work on any energized apparatus unless approved, in writing, by Manitoba Hydro.

The proposed legal agreement also contains additional details regarding the work to be completed.

In addition to requests for pruning, some property owners have requested permission to plant and remove trees on the boulevard at their expense via a private contractor. As a result, the proposed legal agreement has included these activities. In the case of

planting, species selection and location must first be approved by Urban Forestry Branch staff. Similarly, tree removal will only be considered under City Council Policy regarding tree removals (C-222) where the City Forester and respective City Councillor have agreed to the tree removal prior to entertaining an application for removal from the property owner.

The proposed process offers both advantages and disadvantages:

- Property owners that are willing to pay for this service will be pleased.
- The boulevard and/or park trees will receive enhanced maintenance.
- Some members of the public will view this process as “downloading” the city’s responsibility to maintain boulevard and park trees.
- The exacting requirements of the proposed legal agreement will likely discourage some individuals from pursuing this prospect.
- The costs of administering this process are expected to be negligible and within current operating budget. On the other hand, if the program is extremely successful, additional staff may be required to administer this process.

Since there is some risk associated with the proposed program, a one year pilot project is proposed to determine the success or failure of this initiative. At the end of a year, the program will be assessed and a recommendation forwarded to the Standing Policy Committee on Protection and Community Services.

Financial Impact Statement

Date: May 23, 2006

Project Name:

First Year of Program **2006**

Agreement for Contractors to Perform Arboricultural Services on Trees Under the Control of the Urban Forestry Branch

	2006	2007	2008	2009	2010
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	$ 5,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 5,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	5,000	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Direct Costs are estimated to be the inspection cost for 50 requests.

"Original Signed by Darcy Stewart, CA"

Manager of Finance & Administration

6102

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:
Legal Services

External Consultation With:
The private arboricultural contractors.

THIS REPORT SUBMITTED BY:

Department: Public Works
Division: Parks and Open Space Division
Prepared by: David A. Domke 986-3701
File No.

Agreement for Contractors to Perform Arboricultural Services on Trees Under The Control of The Urban Forestry Branch

In consideration of the permission granted herein by the City of Winnipeg for the undersigned qualified contractor to undertake work on City trees as set out in Schedule "A" attached hereto, the Contractor and the undersigned property owner acknowledge and agree as follows:

1. The property owner(s) signing below is/are the registered owner(s) of the property municipally known as _____.
(Please insert address including postal code)

2. The property owner acknowledges and agrees that all work is to be undertaken and completed at the property owner's sole risk and expense and that there shall be no compensation, remuneration or reimbursement by the City of Winnipeg.

3. The Owner hereby waives any claim whatsoever that the Owner may have against the City of Winnipeg that may arise as a result of the permission being granted for the work herein described on the City's tree(s) adjacent to the Owner's property and the Owner hereby agrees to indemnify and save harmless the City of Winnipeg against all actions suits, claims and demands whatsoever which may be brought against or made upon the City and from and against all loss, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the City for or by reason of or on account of the permission hereby granted.

4. The Contractor acknowledges and agrees that all work is to be undertaken and completed at the sole expense of the property owner. All agreements for payment shall be as between the contractor and the property owner and the Contractor shall receive no compensation, remuneration or reimbursement by the City of Winnipeg whatsoever.

5. The City of Winnipeg assumes no liability for any damages or injury that may occur during, as a result of, or in connection with the work undertaken by the Contractor. The Contractor will indemnify and save harmless the City of Winnipeg against all actions suits, claims and demands whatsoever which may be brought against or made upon the City and from and against all loss, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the City for or by reason of or on account of the permission hereby granted.

6. If the work as specified should fail to be completed or shall be completed in an improper manner or a manner unsatisfactory to the City Forester, and including any damage or injury to turf or other trees, the City Forester may undertake the work and shall require all costs related to its completion to be paid forthwith by the property owner or the contractor. In default of payment, the City may recover the costs incurred in a like manner as municipal taxes.

7. All work must be authorized by and undertaken in accordance with the directions of the City Forester or designate. Notification must be provided to the City Forester or designate at least three (3) working days prior to the commencement of work by calling (204) 986-ROAD (7623).

8. The Contractor under no circumstances will work on or near energized apparatus, unless Manitoba Hydro has given express written approval as applicable. Confirmation of approval given by Manitoba Hydro must be provided to the City Forester or designate upon request, prior to the commencement of work. Based on the description of proposed work as set out in Schedule "A", the Contractor will arrange for all necessary utility clearances including hydro, gas, water and sewage, telephone and cable, and have the clearances at the work site during work.

9. The Contractor shall be qualified to perform all work and shall carry out all work in a good and professional workmanlike manner in accordance with the City's latest standards and requirements and all other legislative requirements including without limitation, the Workplace Safety and Health Act, the Highway Traffic Act and the Workers Compensation Act. The Contractor shall obtain all necessary permits and licenses and pay all required fees and shall also provide all notices as required by law or policy prior to commencement of the work.

10. The Contractor will prune trees according to the following general standards:

    (i) To encourage the health of a tree;

    (ii) According to proper arboricultural standards to clear tree limbs and branches interfering with structures, street lighting, pedestrian and vehicular traffic, utility conductors and traffic signals or signs;

    (iii) To encourage the natural form of the tree species;

    (iv) To remove dead limbs; and

    (v) To maintain structural stability and balance of a tree.

11. The Contractor shall provide proof of Workers Compensation, the Manitoba Arborist's License and Proof of Insurance.

12. Approval for the proposed work will be obtained as follows:

    (1) The agreement, including Schedule "A" and the Certificate of Insurance, must be completed in its entirety by the property owner and the contractor set out identifying each tree by species and size and the nature of the work that is proposed to be done. The contractor and any subcontractors shall provide

evidence of an acceptable safety and health program based on the report of an independent consultant (for an approved consultant list please see the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division internet site at http://www.winnipeg.ca/matmgt or telephone 986-7623). "Acceptable" means the program meets or exceeds all elements required of a safety program in Section 7.4(5) of the Workplace Safety and Health Act. All Utility clearances as applicable must also be obtained by the contractor and provided to Urban Forestry Branch upon request. The completed Agreement shall be submitted to the City of Winnipeg, Urban Forestry Branch at:

City of Winnipeg
Parks and Open Space
Urban Forestry Branch
401 Pandora Avenue West
Winnipeg, MB R2C 1M7

(2) Upon receipt of a completed agreement, which includes a description of maintenance activities satisfactory to Urban Forestry Branch and the required utility clearances, Urban Forestry Branch may grant approval for the contractor to undertake the work. The property owner will be provided with a copy of the approved agreement as proof of permission to undertake the described work.

(3) The property owner and/or contractor must provide three (3) working days notice to the City Forester or designate prior to undertaking the approved work.

(4) Where approval is granted for a contractor to perform work, the contractor is responsible for all site cleanups, appropriate disposal of any and all waste material, back filling any excavation with appropriate Material, and leaving the tree and work site in a safe state.

(5) The contractor shall provide and maintain the following insurance coverage at all times during the performance of the Work:

Commercial General Liability insurance (CGL), in the amount of at least two million dollars ($2,000.000.00) all inclusive:

- The City of Winnipeg added as an additional insured;
- Evidence of a cross-liability clause;
- Products and completed operations;
- Contractual liability;
- Non-owned auto liability;

- Unlicensed motor vehicle liability.

Automobile liability insurance for owned automobiles used for or in connection with the project in the amount of at least two million dollars ($2,000,000.00);

Evidence of insurance to include a minimum fifteen (15) days prior written notice of cancellation clause;

The Contractor shall file with the City evidence of insurance, confirming all requirements, in a form satisfactory to the City Solicitor.

13. The Contractor shall Prune Boulevard Street Trees in accordance with the requirements hereinafter specified:

(1) Trees are to be pruned in accordance with the "ANSI A300 (Part 1)-2001 Pruning standards entitled, "Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance - Standard Practices (Pruning)" (revision and re-designation of ANSI A300- 1995) (includes supplements) or most recent versions as available.

(2) Trees are also to be pruned according to "Best Management Practices: Tree Pruning" (2002), which is a companion publication to the ANSI A300. For this Contract, the primary pruning objectives as stated in these publications shall include the following:

(i) Structural;

(ii) Cleaning;

(iii) Thinning;

(iv) Raising;

(v) And restoration.

(3) In addition to the requirements specified at (1) and (2) in the following specific "light to moderate pruning" requirements shall be applicable:

(a) Where applicable, lift the crown of trees to obtain a 4.3 metre (14 ft.) clearance over road surfaces and a minimum 3.0 meter (10 ft.) clearance over sidewalks while maintaining crown balance. Clearance on small trees may be obtained by crown narrowing/branch reduction;

(b) Narrow the tree crown as required so as to minimize the overhang onto or toward private properties/roadways and favour branches growing upright as opposed to those growing horizontally;

(c) Selectively remove all dead, rubbing or broken branches;

(i) Cuts that would product a wound greater that 30 cm (6 inches) in diameter shall be approved by the City Forester or designate before Work is initiated.

(d) Remove suckers to 4.3 metres (14 ft.), but leave upper crown (above 4.3 metres (14 ft.)) suckers unless they are dead, broken or rubbing against other branches;

(e) Remove all branches:

(i) Overhanging onto buildings to minimum clearance standards determined by the City Forester while still maintaining crown balance;

(ii) Within 2 metres of all structures;

(iii) Clear of traffic signs, traffic lights and street lights.

(4) The Contractor shall prune trees in a manner satisfactory to the City Forester or his designate.

14. All waste material (i.e.: branches, logs from the pruning operations) shall be removed from the Work Site within 24 hours. The Contractor shall maintain the work site in tidy condition and free from the accumulation of waste and debris. This shall include, but not be limited to, raking of all grassed/snow covered areas and sweeping of all hard surfaced areas. Total performance of the work shall not be attained until the Contractor has cleaned up the Sites and has removed all plant, tools, equipment, waste and debris:

(a) All material that is to be chipped shall be chipped, removed and delivered from the work site daily to a location to be determined by the City Forester or his designate.

(b) The Contractor shall dispose, at the Contractor's expense, all elm wood logs and non-chipable material daily to the City of Winnipeg Brady Road Landfill Site. Alternative disposal locations must be applied for in writing and approved by the City Forester and /or Province of Manitoba.

(c) To verify proper disposal of materials identified by the City Forester for disposal to approved landfill sites, the Contractor shall provide the Contract Administrator with a copy of all weigh bills received.

15. The Contractor shall sterilize all pruning equipment between each tree with methyl alcohol which must be sprayed onto the pruning equipment until dripping.

16. The Contractor shall comply with all Federal and Provincial laws and regulations and all City of Winnipeg by-laws. This shall include, but not be limited to, all aspects of the Manitoba Workplace Health and Safety Act and laws/by-laws affecting streets, safety, hours of work, noise, street blockage, correct use of signage and line clearance regulations of Manitoba Hydro and Manitoba Telephone System.

Name of Property Owner(s): _____
(Please print)

I/We am the Registered Owner of

_____
(Please insert address)

Signature: _____ Witness: _____

Name of Contractor (corporation/company):

_____

Name of Signing Officer:

_____

(Please print)

Signature: _____ Witness: _____

(Required if Contractor is not incorporated)

I/We have authority to bind the corporation/company.

Approved:

_____

City Forester

SCHEDULE "A"

Agreement for Contractors to Perform Arboricultural Services on City Owned Street Trees

Notification to be forwarded three (3) working days prior to work

Date: _____ Anticipated Date of Work: _____

Name of Property Owner(s):

_____
(Print name)

Address:

_____
(Please include postal code)

_____ Phone: (___) _____ Fax: (___)_____

Name of Contractor (Company):

_____

Address: _____ Phone: (___)_____ Fax: (___)_____

Description of Each Tree(s) (Species & Diameter in cm):

_____

_____

_____

_____

Description of Work (check the appropriate box):

( ) Standard pruning
( ) Tree removal
( ) Stumping
( ) Planting (please specify species and caliper to be planted)

_____

Utility Clearance Obtained (check all applicable):

( ) Manitoba Hydro
( ) MTS
( ) Gas
( ) Water
( ) Cable TV