Minute No. 560
Report - Executive Policy Committee – July 18, 2007

Item No. 5 Amending Agreement to the Asset Purchase Agreement between the City of Winnipeg and The Manitoba Hydro-Electric Board
File HG

COUNCIL DECISION:

Council concurred in the recommendation of Executive Policy Committee and adopted the following:

1. That the Chief Administrative Officer be authorized to finalize an amending agreement to the Asset Purchase Agreement between The City of Winnipeg and The Manitoba Hydro–Electric Board in order to facilitate an extension of time within which to complete all City obligations contained within the Asset Purchase Agreement.

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

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DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,
That the recommendation of the Executive Policy Committee be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 18, 2007, the Executive Policy Committee concurred in the administrative recommendation and submitted the matter to Council.

RE: Proposed Amending Agreement to the Asset Purchase Agreement between the City of Winnipeg and The Manitoba Hydro-Electric Board

FOR SUBMISSION TO: **Executive Policy Committee**

ORIGINAL REPORT SIGNED BY: **Director of Planning, Property and Development**

REPORT DATE: **July 13, 2007**

RECOMMENDATION:

1. That the Chief Administrative Officer be authorized to finalize an amending agreement to the Asset Purchase Agreement between The City of Winnipeg and The Manitoba Hydro–Electric Board in order to facilitate an extension of time within which to complete all City obligations contained within the Asset Purchase Agreement.
2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report Summary

Key Issues:

- The City of Winnipeg and The Manitoba Hydro – Electric Board entered into an Asset Purchase Agreement for the sale of the former Winnipeg Hydro effective September 3, 2002 that required the transfer of the property interests of the former Winnipeg Hydro to Manitoba Hydro be completed by September 3, 2007.
- Due to the complexity and the large number of interests to be resolved there are several issues that remain outstanding and cannot be completed before September 3, 2007, being the original deadline for completion of all works.
- An amending agreement to extend the original Agreement must be in place prior to September 3, 2007.
- The proposed amendment to the Agreement will also secure the City's right to receive a 50% share of the External Survey Costs from Manitoba Hydro.
- In order to have a new Agreement in place prior to September 3, 2007 the approval of Council at its July 18, 2007 meeting is required.

Implications of the Recommendation(s):

General Implications

(X) None
( ) For the organization overall and/or for other departments
( ) For the community and/or organizations external to the City
( ) Involves a multi-year contract
Comment(s):

Policy Implications

(X) No
( ) Yes
Comment(s):

Regulatory Implications

(X) None
( ) Eliminates or reduces regulatory impact
( ) Proposes regulatory impact
Comment(s):

Environmental Implications

(X) No
( ) 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:

Council approval is required to authorize the Chief Administrative Officer to finalize an agreement to amend the Asset Purchase Agreement.

HISTORY:

Council at its meeting held on February 27, 2002, adopted a report of the Executive Policy Committee dated February 20, 2002 approving the following recommendations:

I. That Council direct the Chief Administrative Officer to finalize terms and conditions of an agreement, together with any and all collateral or ancillary agreements, for the sale of the whole of the assets, business and undertakings of the City of Winnipeg with respect to its Winnipeg Hydro operations pursuant to the proposals made by Manitoba Hydro dated February 7 and 19, 2002, and outlined on Appendix "A" and "B" which, in the opinion of the Chief Administrative Officer, together with any and all collateral or ancillary agreements, will satisfy the intent of Council.

II. That Council declare surplus those lands and buildings incorporated within the financial statements for Winnipeg Hydro.

III. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing and execute such documents as required.

After delays in securing final documents and accompanying Provincial Legislation, the final closing and sale of Winnipeg Hydro to Manitoba Hydro occurred on September 3, 2002. The said Asset Purchase Agreement expires on September 3, 2007.

At the time of closing being September 3, 2002, the City was not in a position to transfer all of the real property interests associated with the transaction. In fact, at the date of closing, only 14 properties of approximately 510 properties were transferred to Manitoba Hydro. The transfer of other real property assets was held up due to various complications with titles, ownership issues, etc. that required resolution prior to the transfer of same.

As this circumstance had been foreseen, the Asset Purchase Agreement was negotiated to provide the City with time beyond the date of closing to accomplish the transfers of title, to acquire gaps in title and to effect the orderly transition of all other real property related issues.

Clause 13.11(d) of the Asset Purchase Agreement provided for the City to make an election as to the length of time it would choose to satisfy its covenants under the Agreement. The option selected by the City came under Clause 13.11(d)(i), which reads:

> *"The Vendor may elect to perform or cause to be performed, within four (4) years after the Closing Date, all the work described in paragraph (e) hereof in which case, and provided that all such work is completed within such four (4) year period, the Purchaser shall pay to the Vendor 50% of all External Survey Costs incurred by the Vendor."*

Since September 3, 2002, the Planning, Property and Development Department and the Legal Services Division have been proceeding with the administration of those activities related to the finalization of the real property issues, including the transfer of real property to Manitoba Hydro. As previously noted, approximately 510 properties were to be transferred to Manitoba Hydro. The transfer of many of these properties was delayed because of various complications with titles, prior agreements (early 20th Century agreements), ownership issues, interpretation discrepancies between the City and Hydro etc. that required resolution prior to the transfer of same. Nevertheless, the City has completed 98% of the required property interests to date.

DISCUSSION:

Subsequent to the September 3, 2002 closing date of the Asset Purchase Agreement the City of Winnipeg and Manitoba Hydro began working on the transfer of the identified property interests. During the initial stages of the transfer process a substantial number of transfers were completed with little or no difficulty. However, as the process continued significant issues developed, both with the originally identified property interests as well as with emerging collateral issues, which could not be routinely resolved.

Hydro and the City have continued to attempt to resolve these issues, but the magnitude and complexity of the issues combined with the fact that the participation and cooperation of authorities other than the City of Winnipeg and Manitoba Hydro are required e.g. Manitoba Conservation/Crown Lands, it became apparent that resolution of some of the more complex contentious issues was not possible prior to the September 3, 2007 deadline.

As a result of discussions between the Planning, Property and Development Department and Manitoba Hydro, a proposed amending agreement to extend the original Asset Purchase Agreement to 2009 was forwarded by Manitoba Hydro and is now under consideration.

Given the substantial progress the parties have made and to avoid the time and expense associated with litigated resolutions, an amending agreement that provides for an extension to September 3, 2009 to resolve outstanding property issues will enable the City to recover 50% of external survey costs as originally contemplated.

Financial Impact Statement

Date: July 12, 2007

Project Name:

First Year of Program 2007

Proposed Amending Agreement to the Asset Purchase Agreement between the City of Winnipeg and The Manitoba Hydro-Electric Board

	2007	2008	2009	2010	2011
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	-	-	700,000	-	-
Net Cost/(Benefit)	$ -	$ -	$ (700,000)	$ -	$ -
Less: Existing Budget Amounts	-	-	(700,000)	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Assuming the transfer of real property interests is completed by September 3, 2009, the City will recover from Manitoba Hydro 50% of external survey costs currently estimated to amount to $700,000.

"Original signed by"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Legal Services Division

External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Department: Planning, Property and Development
Division: Real Estate
Prepared by: Bill James
PPD File No. 8297

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