New Underground Structures Committee Agreement

File GP-1.33 (Vol. 1)

4. The Standing Policy Committee on Public Works has been advised that the first Underground Structures Agreement, signed in 1974, was an agreement between the City of Winnipeg and several external utilities that created an Underground Structures Committee.

The original members of the Committee were:

- The City of Winnipeg (formerly various City departments)
- Manitoba Hydro
- Manitoba Telephone System
- Greater Winnipeg Gas Company
- CN Telecommunications
- CP Telecommunications

This Committee was established primarily to provide services to the Members of the Committee and other clients which included:

- information on location of underground infrastructure,
- management of underground infrastructure data, and drawings,
- an approval mechanism for location and alignment of underground and related surface infrastructure

The Committee also provided a forum for discussion of issues of mutual concern by the Members.

An organizational unit was established at that time within the then Streets and Transportation Division to provide these services. Funding was provided through a formula, which required the City of Winnipeg to provide 70%, Manitoba Hydro, MTS and Greater Winnipeg Gas, 10% each and CN/CP contributing token amounts of $100 each.

Since 1974, many of the original internal and external signatories to the Agreement have ceased to exist, merged with other members, and/or have undergone a name change.

The Underground Structures Committee currently consists of the following organizations:

- City of Winnipeg (Winnipeg Hydro, Water and Waste, Public Works, and Planning, Property and Development Services)
- Centra Gas Manitoba Inc.
- Manitoba Hydro
- MTS Communications Inc.
- AT & T Canada Corp.

The new Agreement, which is effective retroactive to January 1, 2001, substantially revises and updates the 1974 version to reflect these organizational changes and to more clearly define the mandate of the Committee. It also revises the duties and responsibilities of the organizational unit within the Public

Works Department that acts as the Committee Secretariat (the Underground Structures and Microfilm Branch of the Transportation Division).

The new Agreement also provides for a revised method of funding the Committee and its Secretariat based on a membership fee and "user pay" model as follows:

- The annual membership fee will support the activities of the Committee such as the regular meeting costs, and the preparation of a composite construction list.
- The funds necessary to support the services provided by the Underground Structures Secretariat will be obtained through an hourly charge to both Members and non-members based on all direct costs of the operation of the Secretariat, indirect support costs, as well as periodic provision for funds for significant expenditures (such as computers, software, and land base information and application development).

It is anticipated that this new funding arrangement will, on average, result in a significant reduction in the annual financial contribution made by the City of Winnipeg member Departments to the operation of the Committee Secretariat.

The financial impact statement is outlined on Appendix "A".

The Standing Policy Committee on Public Works recommends:

I. That the Underground Structures Committee Agreement, as outlined on Appendix "B", be approved.

II. That the Proper Officers of the City take appropriate action to implement this agreement in conjunction with the external signatories.

Appendix "A" referred to in Clause 4 of the Report of the Standing Policy Committee on Public Works dated January 11, 2002

Financial Impact Statement

Date: December 18, 2001

Project Name:

First Year of Program 2001

New Underground Structures Committee Agreement

	2001	2002	2003	2004	2005
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	$ 341,131	$ 383,484	$ 391,758	$ 403,158	$ 403,158
Less: Incremental Revenue/Recovery	475,000	475,000	475,000	475,000	475,000
Net Cost/(Benefit)	$ (133,869)	$ (91,516)	$ (83,242)	$ (71,842)	$ (71,842)
Less: Existing Budget Amounts	(133,869)	(91,516)	(83,242)	(71,842)	(71,842)
Net Budget Adjustment Required	$ (0)	$ 0	$ (0)	$ (0)	$ (0)

Additional Comments:

The restructuring of the Underground Structures budget has shifted the branch from being supported by tax dollars to making a contribution to the overall Transportation budget. The changes that occurred during restructuring have already been budgeted in the 2002-2004 current estimates and therefore require a net budget adjustment of 0.

Approved by Darcy Stewart, CA
Manager of Finance & Administration

Approved by Divisional Accountant Trainee: ☒

Appendix "B" referred to in Clause 4 of the Report of the Standing Policy Committee on Public Works dated January 11, 2002

APPENDIX

NEW

UNDERGROUND

STRUCTURES

COMMITTEE

AGREEMENT

THIS AGREEMENT made as of the First day of January, 2001.

BETWEEN:

THE CITY OF WINNIPEG

AND

MANITOBA HYDRO

CENTRA GAS MANITOBA INC.

MTS COMMUNICATIONS INC.

AT&T CANADA CORP

hereinafter known as the "parties"

WHEREAS the parties have constructed and operate and maintain services within the City's streets rights-of-way and in carrying out their objectives have constructed or placed certain facilities or structures including pipes, wires, mains, sewers, ducts, conduit and related equipment (hereinafter referred to as "structures") in, on, over, under, along or across the streets rights-of-way of the said City which structures will from time to time require repair, extension or replacement.

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

1. COMMITTEE STRUCTURE

The existing Committee known as the "Underground Structures Committee" (hereinafter referred to as "the Committee") shall be continued and maintained with the following composition:

(1) Voting members consisting of:

i) One representative from each of the City of Winnipeg Departments as listed in Schedule "A";

ii) One representative from each of the Member Companies as listed in Schedule "A";

(2) A Chairperson of the Committee who shall be elected bi-annually by and from the voting members and who shall retain his voting rights;

(3) A Vice-Chairperson of the Committee who shall be elected bi-annually by and from the voting members and who shall retain his voting rights;

(4) A permanent Secretary who shall not have voting rights on the Committee nor be eligible for the offices of Chairperson or Vice-Chairperson.

(5) Membership on the Committee shall be open to any party that constructs, operates and maintains services within the City of Winnipeg street rights-of- way.

(6) New members who are added to the Committee after the signing of this agreement will be required to agree to be bound by the terms of this Agreement through a Letter of Agreement.

2. COMMITTEE PURPOSE

The Director of Public Works of the City of Winnipeg is accountable for the effective, efficient and safe management of the public right-of-way. The Underground Structures Committee provides a forum for the discussion of matters pertaining to infrastructure within the public right-of-way and a vehicle for recommending improvements to the Director of Public Works. Through the Public Works Department of the City of Winnipeg, the Committee also provides a resource for the management and dissemination of records related to said infrastructure.

3. COMMITTEE MANDATE

The general mandate of the Committee will be as follows:

(1) To recommend for approval to the City's Director of Public Works:

(i) The standard locations established for future construction or installation of structures in, on, over, under, along or across streets rights-of-way in order to ensure the continued most beneficial use of the streets rights-of-way;

(ii) the location and type of structures including joint use or excess capacity tunnels and conduits to eliminate or reduce congestion and construction in, on, over, under, along or across streets rights-of-way;

(iii) the standards established for rights-of-way widths for future streets in order that the streets and the proposed sub-divisions adjoining or incorporating them may continue to be safely and economically serviced;

(iv) the establishment and maintenance of drawing submission and approval requirements.

(v) an annual budget/business plan for the operation of the Committee and the operation and administration of the Secretariat.

(2) To ensure that accurate records of all structures placed in, on, over, under, along or across streets rights-of-way are maintained;

(3) To establish and maintain operating procedures which will govern the ongoing activities of the Committee and the Secretariat and duties and responsibilities of the Chair and Vice-Chair.

4. COMMITTEE SECRETARIAT

A Committee Secretariat shall be established whose staff, including the Secretary of the Committee, shall be employees of the City of Winnipeg Public Works Department. On behalf of the Committee, the City of Winnipeg Public Works Department shall provide such office space, equipment, and materials as the Director of Public Works deems necessary to carry out the functions of the Secretariat. These functions shall include:

(1) Compilation of information defining the location and type of structures installed in, on, over, under, along or across streets rights-of-way and to update this data as and when appropriate.

(2) Preparation and circulation to each of the Committee members (and others as appropriate) on an annual basis, with periodic updates as required, a coordinated construction list showing the proposed construction to be undertaken by each party to this agreement in, on, over, under, along or across the streets rights-of-way. This coordinated construction list is provided for the purpose of scheduling and coordinating construction activities within the streets rights-of-way.

(3) Provision of information to Committee members or their representatives, and non-members of the Committee or their representatives.

(4) Review of long range planning programs submitted by the parties concerning the width, location, alignment and continuity of major future streets rights-of-way, which shall take into consideration any major structures planned by any of the parties to this agreement.

(5) Provision of information on proposed alignments for future major utility facilities.

(6) Approval of all drawings showing proposed structures in, on, over, under, along or across rights-of-way on the established and approved standard alignment if the general alignments and utility clearances meet the criteria established by the Committee. Departures from standard alignments may be approved by the Secretary provided the parties involved and/or effected are in agreement with the change

(7) Establishment and maintenance of financial records of the operation of the Secretariat.

(8) Billing and collection of fees and charges from Members and non-Members.

(9) Submission of a business plan (including a budget) to the Committee for approval, and submission to the Director of Public Works on an annual basis.

5. COMMITTEE SECRETARY

The Secretary of the Committee shall be appointed by the Director of Public Works and shall be responsible for the following:

(1) Overall operation and administration of the Secretariat.

(2) Ensuring accurate minutes of the Committee meetings are taken and distributed in a timely manner.

(3) Ensuring that the mandate of the Committee is undertaken in a timely, effective and efficient manner.

(4) Ensuring timely receipt of as-constructed drawings and withholding service for non-compliance.

(5) Issuance of approvals for departures from standard alignments provided the parties involved and/or effected are in agreement with the change

(6) Such other related duties as may be assigned from time to time by the Committee or the Director of Public Works.

6. FISCAL YEAR

For budget and accounting purposes, the fiscal year of the Underground Structures Committee and Secretariat shall be January 1 to December 31.

7. FINANCIAL SUPPORT FOR THE UNDERGROUND STRUCTURES COMMITTEE AND SECRETARIAT

The cost of operating the Underground Structures Committee and the cost of providing the services of the Secretariat shall be borne and paid for by the parties to this agreement and non-members who utilize the services of the Secretariat through an annual Membership Fee and / or Charges for Service, as hereinafter outlined:

(1) To support the Committee activities, Parties to this agreement shall pay an annual Membership Fee which will be established as part of the annual budget/business plan recommended for approval by the Committee to the Director of Public Works.

(2) The annual Membership Fee shall be submitted to the City of Winnipeg Public Works Department by January 31 of each fiscal year. The penalty for non-payment shall be revocation of membership.

(3) A Member who withdraws from the agreement after January 31 of the fiscal year will forfeit the annual Membership Fee.

(4) The funds necessary to support the services provided by the Underground Structures Secretariat shall be obtained through an hourly charge to both Members and non-members hereinafter referred to as the Charge for Service. The Charge for Service shall be reviewed and, if necessary, recommended for adjustment as part of the preparation and submission of the annual budget/business plan for the Underground Structures Secretariat by the Committee to the Director of Public Works for approval. In general, the Charge for Service shall be based on all direct costs of the operation of the Secretariat, indirect support costs, as well as periodic provision for funds for significant expenditures (such as computers, software, and land base information and application development).

(5) The penalty for non-payment of Charges for Service by Members or non-members shall be withholding of services until payment is received.

8. PROVISION OF AS-CONSTRUCTED DRAWINGS

Following the completion of any construction, extension, repair or replacement that modifies the location of the facility or structure, as-constructed drawings shall be submitted within 120 days of completion and in a form compatible with the standards in place at the time for receipt of such records by the Secretariat.

Failure of a Member or Member's representative to comply with this submission deadline may result in Secretariat services being withheld.

Each party further covenants and agrees that they will advise within 30 days of any abandoned structures or any that have ceased to be used.

9. LIABILITY

Excluding the negligence or wilful misconduct of any of the parties, including the Secretariat and the Committee, each party and its officers, directors, employees, servants and agents (the Indemnifying Party) covenants and agrees to indemnify and save harmless any other party and its officers, directors, employees, servants and agents (the Indemnified Party) from and against all damages, losses, actions, causes of action, claims, demands, builders' liens, liabilities, costs and expenses of any nature or kind whatsoever , whether at law or in equity, which may arise or accrue to the Indemnified Party as a result of any negligent act or omission or wilful misconduct of the Indemnifying Party in connection with the observance or performance of the obligations and rights of the Indemnifying Party under this Agreement. Notwithstanding anything contained in this Agreement, under no circumstances shall any of the parties, including the Secretariat and the Committee, be liable to the other parties for any indirect, incidental, consequential, reliance or special damages, including without limitation, damages for harm to business, lost profits, lost savings, or lost revenues in any manner from this Agreement and the performance or non-performance of obligations hereunder, arising directly or indirectly, whether or not such party has been advised of the possibility of such damages.

10. DISPUTE RESOLUTION

The parties agree that, in the event of a disagreement that cannot be resolved within the Committee, the Director of Public Works of the City of Winnipeg shall have the authority to resolve the matter and that decision shall be final and binding.

11. WITHDRAWAL FROM AGREEMENT

Subject to 7.(3), any party may withdraw from this agreement and be relieved of all of its rights, privileges and duties there under upon giving the Committee Chair written notice of its intention to withdraw. The withdrawal date shall be the last day of the month in which the written notice to withdraw is received by the Chair. Should The City Of Winnipeg withdraw from this agreement, the agreement shall terminate as of the withdrawal date.

12. EFFECTIVE DATES

This agreement shall be deemed to have come into effect as and from the 1st day of January 2001 notwithstanding its date of execution. This agreement shall continue in force as and from the 1st day of January 2001 and thereafter from year to year.

13. PRIOR AGREEMENT

The prior agreement establishing the Underground Structures Committee, made as of January 1, 1974, and any related letters of understanding which reference said Agreement are cancelled and terminated as of January 1, 2001.

14. NO REPRESENTATIONS OR WARRANTIES

It is understood and agreed that the City has made no representation or warranties as to the state of repair of the streets rights-of-way or the suitability of the streets rights-of-way for any business, activity or purpose whatsoever and the Companies hereby agree to take the streets rights-of-way on an “as is” basis.

15. COOPERATION

The Parties agree that they shall use reasonable efforts to schedule work and share alignments and support structures including joint use tunnels or excess capacity conduits with other companies and the City occupying and using the streets rights-of-way with the intent of minimizing the necessity for road cuts and construction, including the placement of support structures in, on, over, under, along or across the streets rights-of-way, except where a Company considers it impractical to do so for competitive reasons.

16. VARIANCE AND TERMINATION

It is understood and agreed that nothing in this agreement shall prevent or restrict the City’s right to enact legislation or to enter into agreements which may add to, vary or contradict the terms of this agreement and, in the event the City so acts, it shall not be liable for any damages, loss or injury directly or indirectly caused thereby, however each of the parties to this Agreement shall be entitled to terminate this Agreement immediately in such event.

If at any time subsequent to the entering into of this Agreement, the provincial or federal government or a regulatory authority, acting within its jurisdiction, enacts or repeals any legislation or regulation, or orders, directs or mandates anything which pertains to the subject matter of this Agreement, then any of the parties, including the Secretariat and the Committee, may notify the other parties to enter into good faith negotiations to amend this Agreement or to enter into a new agreement reflecting such legislative or regulatory action or court or tribunal decision, as the case may be, within 30 days after written notice (the "Notice") from the notifying party and any newly permitted charges or fees pursuant to such new or amended agreement will take effect from the date upon which the Notice expires.

17. ALTERATION OF RESPONSIBILTY

Where a party proposes to alter its responsibility or liability for any facility or structure, including any installation, repair or maintenance work, notification in writing shall be provided to the Director of Public Works within 30 days of the alteration.

18. ALTERATION OF USE

Where a party proposes to alter the existing use to which a facility or structure or any part thereof is put, including the installation of any fixture or equipment different in type or function from that already in place; no such alteration shall occur without the prior written approval of the Director of Public Works or his designate being first obtained, which approval shall not be unreasonably withheld.

19. NON-EXCLUSIVE USE

Notwithstanding that each of the Companies have ownership of the facilities which have been approved for installation within the street right-of-way, it is understood and agreed that each of the Companies is a non-exclusive user and occupier and has no ownership or property rights in the street rights-of-way.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

THE CITY OF WINNIPEG

_____
Mayor

_____
City Clerk

Certified as to details:

_____
Director of Public Works

_____
Director of Water & Waste

_____
Director of Hydro

_____
Director of Planning,
Property & Development

Certified as to form:

_____
City Solicitor/
Manager of Legal Services

MANITOBA HYDRO

_____

_____

CENTRA GAS MANITOBA INC.

_____

_____

MTS COMMUNICATIONS INC.

_____

_____

AT & T CANADA CORP

_____

_____

SCHEDULE "A"

UNDERGROUND STRUCTURES COMMITTEE MEMBERS as of January 1, 2001:

CITY OF WINNIPEG DEPARTMENTS:

PUBLIC WORKS

WINNIPEG HYDRO

WATER & WASTE

PLANNING, PROPERTY & DEVELOPMENT

MEMBER COMPANIES:

MANITOBA HYDRO

CENTRA GAS MANITOBA INC.

MTS COMMUNICATIONS INC.

AT&T CANADA CORP