Agenda - Council - November 19, 2008

Report - Standing Policy Committee on Protection and Community Services - November 10, 2008

Item No. 1 Renewal of Fire Protection Services Agreement with Border Chemical Company Limited
File GF-5

STANDING COMMITTEE RECOMMENDATION:

On November 12, 2008, 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 the Winnipeg Fire Paramedic Service be authorized to renew the formal agreement for fire protection services with Border Chemical Company Limited for the property located at 595 Gunn Road in the Rural Municipality of Springfield.

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 - November 10, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 12, 2008, 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 November 10, 2008, the Standing Policy Committee on Protection and Community Services concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: RENEWAL OF FIRE PROTECTION SERVICES AGREEMENT WITH BORDER CHEMICAL COMPANY LIMITED

FOR SUBMISSION TO: Standing Policy Committee on Protection & Community Services

ORIGINAL REPORT SIGNED BY: J.R. (Jim) Brennan
Fire & Paramedic Chief

REPORT DATE: October 29, 2008

RECOMMENDATION: That the Winnipeg Fire Paramedic Service (WFPS) be authorized to renew the formal agreement for fire protection services with Border Chemical Company Limited for the property located at 595 Gunn Road in the Rural Municipality of Springfield.

Report Summary

Key Issues:

- On March 22, 2000 Council directed the Administration to divest itself of contracts for the provision of fire protection services outside the City of Winnipeg except for fire protection services to Border Chemicals' property at 595 Gunn Road in the R.M. of Springfield.
- On January 24, 2003 the Chief Administrative Officer approved a formal agreement for fire protection services between the City of Winnipeg and Border Chemical Company Limited.
- The City of Winnipeg entered into an agreement with Border Chemical Company Limited to provide fire protection services to their facility located at 595 Gunn Road on January 1, 2003 for a term of 60 months.
- The existing formal agreement has lapsed, however, verbal agreement between the parties was made to extend the contract.
- A draft agreement for a term of 60 months has been prepared and is attached. Both Border Chemical and City of Winnipeg Legal Services have reviewed the draft agreement.
- The standby rate for fire protection services, which was established by Council on May 29, 1991, represents full cost recovery.

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): Due to the nature of the business conducted at the Border Chemical plant and its proximity to the City of Winnipeg boundary, Winnipeg Fire Paramedic Service resources would be utilized to mitigate any major incident on that property to ensure appropriate protection of City of Winnipeg property.

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): There would be no appreciable increase in departmental costs to provide this service as WFPS estimates that this service can be provided with existing resources. Additional revenue would be received in the amount of the negotiated contract.

Report

REASON FOR THE REPORT:

Council approval is required to enter into a contract for the provision of fire protection services outside the City limits.

HISTORY:

On March 22, 2000 Council directed the Administration to divest itself of contracts for the provision of fire protection services outside the City of Winnipeg except for fire protection services to Border Chemicals' property at 595 Gunn Road in the R.M. of Springfield. On January 24, 2003 the Chief Administrative Officer approved a formal agreement for fire protection services between the City of Winnipeg and Border Chemical Company Limited.

The City of Winnipeg entered into an agreement with Border Chemical to provide fire protection services to their facility located at 595 Gunn Road on January 1, 2003 for a term of 60 months. The existing formal agreement has lapsed, however, verbal agreement between the parties was made to extend the contract.

A draft agreement for a term of 60 months has been prepared and is attached. Both Border Chemical and City of Winnipeg Legal Services have reviewed the draft agreement.

DISCUSSION:

Due to the nature of the business conducted at the Border Chemical plant and its proximity to the City of Winnipeg boundary, Winnipeg Fire Paramedic Service resources would be utilized to mitigate any major incident on that property. The formal agreement allows the WFPS to be compensated for the provision of this service.

The standby rate for fire protection services, which was established by Council on May 29, 1991, represents full cost recovery.

The WFPS already provides emergency medical response to the Border Chemical property as it lies within the boundaries for ambulance service.

Financial Impact Statement

Date: October 29, 2008

Project Name:

Renewal of Fire Protection Services Agreement with Border Chemical Company Ltd.

First Year of Program 2008

	2008	2009	2010	2011	2012
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	20,000	20,000	20,000	20,000	20,000
Net Cost/(Benefit)	$ (20,000)	$ (20,000)	$ (20,000)	$ (20,000)	$ (20,000)
Less: Existing Budget Amounts	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: This financial impact assumes that standby revenue is only collected. Should a fire occur additional revenue would be collected under the terms of the agreement to offset costs associated with fighting the fire.

original signed by

Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Legal Services Division – as to legal issues

External Consultation With:

Border Chemical Company Limited

THIS REPORT SUBMITTED BY:

Department: Winnipeg Fire Paramedic Service
Division: Administration
Prepared by: Michelle Weimer
File No.

Approved:

Original Signed by

J.R. (Jim) Brennan
Fire & Paramedic Chief



An Agreement made effective the 1st day of January, 2008.

BETWEEN:

BORDER CHEMICAL COMPANY LIMITED

(called "Border Chemical")

- and -

THE CITY OF WINNIPEG

(called the "City")

WHEREAS Border Chemical operates a facility just outside of the boundary of the City of Winnipeg at 595 Gunn Road, R.M. of Springfield (the "Gunn Road facility");

AND WHEREAS Border Chemical wishes to have increased fire services for the Gunn Road facility;

AND WHEREAS the City has the capacity to provide increased fire services for the Gunn Road facility;

AND WHEREAS the City has agreed to provide such fire protection services for the Gunn Road facility on the terms and conditions herein contained.

THEREFORE, the parties hereto agree as follows:

1.00 TERM

1.01 The term of this Agreement (the "Term") shall be for a period of sixty (60) months commencing January 1, 2008 and expiring at 11:59 p.m. December 31, 2013, unless extended in accordance with the terms herein.

1.02 In the event that the City Council determines that the City will no longer provide fire protection services within the boundaries of the City, the City may terminate this Agreement upon one year's notice in writing to Border Chemical.

DRAFT

2.00 FIRE AND PARAMEDIC SERVICES

2.01 Throughout the Term, the City shall provide fire services to the Gunn Road facility.

2.02 The City warrants that the fire services delivered to the Gunn Road facility throughout the Term shall be in all respects consistent with fire protection services delivered to all other areas covered by the City of Winnipeg's Fire and Paramedic Services unit. Without limiting the generality of the foregoing, the City shall provide emergency services to Border Chemical related to all types of fires, including vehicle fires and grass fires which threaten Border Chemical property at the Gunn Road facility.

2.03 It is understood and agreed that the Gunn Road facility shall not be entitled to priority fire services but that it shall receive fire services in accordance with The City of Winnipeg's Fire Paramedic Service Guidelines.

2.04 Without limiting the generality of the foregoing, the City warrants that:

(a) it will direct the Brandon 911 Centre and Manitoba Telephone System to electronically transfer all 911 fire calls concerning the Gunn Road facility to the Winnipeg Fire Paramedic Service Fire Communications Centre;

(b) it shall deliver annual fire prevention inspection and awareness programs to Border Chemical employees at the Gunn Road facility.

3.00 BORDER CHEMICAL OBLIGATIONS

3.01 Border Chemical shall pay to the City consideration for fire protection services outside the City of Winnipeg, which shall consists of:

(a) an annual stand-by charge payable in advance in the amount of $20,000.00; and

(b) standard charges, to be calculated from the time each call is received until the time the apparatus used in such calls is placed back on duty, based on the following:

Equipment	Hourly Rate
Engine Company	$880.00 per hour or fraction thereof
Aerial Ladder Company	$880.00 per hour or fraction thereof
Rescue Company	$880.00 per hour or fraction thereof
District Chief & Driver	$220.00 per hour or fraction thereof

and;

(c) the reasonable cost of any supplies used by the City for the purpose of providing fire protection services to the Gunn Road facility; and

(d) any applicable GST.

3.02 (a) The annual yearly standby charges shall be paid in advance on or before January 1;

(b) Notwithstanding the foregoing, Border Chemical may pay the annual yearly standby charges in two equal instalments of $10,000.00 each on or before January 1 and July 1 in each year of the Agreement;

(c) The standard charges shall be paid within 30 days of the invoice from the City;

(d) Border Chemical hereby agrees with the City that the City shall be entitled to charge and Border Chemical does hereby undertake to pay unto the City, a penalty calculated at the rate of one and one-half (1.5%) per cent per month, compounded and added on a monthly basis, on any and all monies not paid by Border Chemical to the City when due and payable.

3.03 Border Chemical shall be responsible for ensuring that the Gunn Road Facility complies with building and fire standards as may be determined by the City from time to time and applicable to similar facilities within the City of Winnipeg.

4.00 PERFORMANCE OF CITY'S OBLIGATIONS

4.01 The City represents and warrants that it possesses the necessary skills, expertise and experience to deliver fire protection services in accordance with the provisions of this Agreement.

4.02 The City agrees:

(a) that the person or persons designated to perform the fire protection services shall devote the time, attention, abilities and expertise necessary to properly perform the City's obligations under this Agreement; and

(b) to perform all obligations and provide the fire protection services in a professional manner in accordance with the requirements of this Agreement and in accordance with all laws, by-laws and regulations.

5.00 - INDEPENDENT CONTRACTOR

5.01 The City is an independent contractor, and this Agreement does not create the relationship of employer and employee, of principal and agent, of joint venture, or of partnership between Border Chemical and the City or between Border Chemical and any officers, employees or agents of the City.

5.02 The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

5.03 Except as otherwise provided herein, the City is responsible for any deductions or remittances, which may be required by law.

6.00 LIABILITY OF THE CITY

6.01 The City covenants and agrees to indemnify and save Border Chemical harmless of and from any and all losses, claims, damages, causes of action, demands or liabilities related to this agreement arising by virtue of

(a) the breach or default of the City of any term of this Agreement; or

(b) the negligence or willful misconduct of the City or any of its officers, employees, partners, subcontractors, agents or volunteers; or

(c) any claim resulting from any officer(s), employee(s), partner(s) sub- contractor(s), agent(s), or volunteer(s) of the City, except as may be attributed to the negligence or wilful misconduct of any officer, employees or agents of Border Chemical.

The above includes all costs and expenses associated therewith, including reasonable solicitors fees.

7.00 RENEWAL OF THE AGREEMENT

7.01 Border Chemical shall give notice in writing to the City of its intention to renew this Agreement not less than twelve (12) months prior to the end of the Term. Any renewal of this Agreement is subject to approval of the Council of The City of Winnipeg, which approval may be unreasonably withheld. Upon such notice being given, the parties shall commence good faith negotiations with respect to the terms and conditions of the renewal agreement. * option to renew ?

8.00 SURVIVAL OF TERMS

8.01 The terms and conditions contained in the Agreement that by their sense and context are intended to survive the performance of the Agreement by the parties shall so survive the completion and performance, suspension, cancellation or termination of the Agreement.

9.00 NO ASSIGNMENT OF AGREEMENT

9.01 Neither party shall assign or transfer this Agreement or any of the rights or obligations under this Agreement without first obtaining written permission from the other.

9.02 No assignment or transfer of this Agreement shall relieve either party of any obligations under this Agreement, except to the extent they are properly performed by such party's permitted assigns.

9.03 This Agreement shall be binding upon the successors and any permitted assigns of the parties.

10.00 ENTIRE AGREEMENT

10.01 This document contains the entire agreement between the parties with respect to the subject matter hereof. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement and none have been relied on.

11.00 INTERPRETATION

11.01 In this Agreement, unless the context clearly otherwise requires:

(a) person includes individuals, firms or corporations;

(b) the singular includes the plural and vice versa;

(c) the male gender includes the female gender and vice versa, and each includes the neuter gender and the neuter gender includes both the male and female genders.

12.00 AMENDMENTS

12.01 No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

13.00 SEVERABILITY

13.01 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 the Agreement.

14.00 DISPUTE RESOLUTION

14.01 In the case of any dispute between Border Chemical and the City under this Agreement, the parties may, with the consent of the Chief Administrative Officer, on behalf of the City, and Border Chemical, appoint a single arbitrator to arbitrate the matter in dispute and the decision of the said arbitrator shall be binding and final on the parties. All such disputes shall be governed in accordance with the provisions of *The Arbitration Act* (Manitoba), as may be amended from time to time, in so far as the said Act is not inconsistent with the provisions of this Agreement.

14.02 If the parties are unable to agree upon one arbitrator, each of the parties shall appoint an arbitrator and each arbitrator so selected shall elect a third arbitrator and they shall hear the matter in dispute and deliver a decision, which decision shall be binding upon the parties.

14.03 If written notice of arbitration is given by one party to the other, naming an arbitrator, and the other party shall fail to agree to the arbitrator or shall fail to name its arbitrator within fifteen (15) days of notice, the arbitrator first named shall be empowered to hear the matter in dispute and deliver a decision which decision shall be final and binding on the parties.

14.04 All costs with respect to the arbitration shall be borne equally between the parties.

15.00 APPLICABLE LAW

15.01 This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

16.00 WAIVER

16.01 Any failure or delay by either party to exercise or partially exercise any right, power or privilege hereunder shall not be deemed to be a waiver of any of the rights, powers or privileges under this Agreement. The waiver by either party of a breach of any term, condition or provision of the Agreement shall not operate as, or be construed as, a waiver of any subsequent breach thereof.

17.00 AGREEMENT TO PERFORM NECESSARY ACTS

17.01 The parties agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of the Agreement.

18.00 HEADINGS

18.01 Paragraph headings used herein are for convenience only, and shall not be deemed to be part of the Agreement.

19.00 NOTICES

19.01 Any notice or other communication to the City under this Agreement shall be in writing and shall be delivered or sent by facsimile transmission or by registered mail, postage prepaid, to:

Jim Brennan
Fire & Paramedic Chief
City of Winnipeg Fire Paramedic Service
2nd Floor 185 King Street
Winnipeg MB R3B 1J1
Fax: (204) 986-7920

19.02 Any notice or other communication to Border Chemical under this Agreement shall be in writing and shall be delivered or sent by facsimile transmission or registered mail, postage prepaid to:

Border Chemical Company Limited
2147 Portage Avenue
Winnipeg MB R3J 0L4
Attention: P.B. Smerchanski, President

Fax: (204) 832-7244

19.03 Any notice or communication sent by facsimile transmission shall be deemed to have been received on the day of transmission if it was sent during normal business hours. If a transmission is not sent during normal business hours, it shall be deemed to have been received at the start of the next business day.

19.04 Any notice or communication sent by registered mail shall be deemed to have been received on the third business day following the date of mailing. If mail service is disrupted by labour controversy, notice shall be delivered personally or by facsimile transmission.

SIGNED IN THE PRESENCE OF:
LIMITED

for **BORDER CHEMICAL COMPANY**

Per: _____

Per: _____

We have authority to bind Border Chemical Company Limited

for **THE CITY OF WINNIPEG**

Per:_____
Mayor

Per:_____
City Clerk

We have authority to bind The City of Winnipeg

Approved as to details:

_____
Chief of Fire and Paramedic Service

Certified as to form:

_____
for City Solicitor/Manager of
Legal Services

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