Agenda - Council - November 19, 2008

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

Item No. 2 Renewal of Fire Protection Services Agreement with Manitoba Public Insurance
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 Manitoba Public Insurance for the property located at 1981 Plessis 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 MANITOBA PUBLIC INSURANCE

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 Fire Paramedic Service be authorized to renew the formal agreement for fire protection services with Manitoba Public Insurance (MPI) for the property located at 1981 Plessis 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.
- On November 21, 2001 Council amended its policy direction of March 22, 2000 and approved a formal agreement for fire protection services with Manitoba Public Insurance for the property located at 1981 Plessis Road in the Rural Municipality of Springfield.
- The City of Winnipeg entered into an agreement with MPI to provide fire protection services to the MPI facility located at 1981 Plessis Road on October 23, 2002 for a term of 72 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 72 months has been prepared and is attached. Both MPI 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. MPI has agreed to the same terms as the previous agreement whereby they will supply a Rapid Response Vehicle in lieu of payments under the terms of the agreement. The value of the Rapid Response Vehicle is equal to 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): Winnipeg Fire Paramedic Service assesses the fire risk to 1981 Plessis Road as minimal, however, a serious fire occurred at this location in 2001 resulting in a loss of $400,000. Another serious fire could easily impact neighbouring properties within the City boundaries.

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.

On November 21, 2001 Council amended its policy direction of March 22, 2000 and approved a formal agreement for fire protection services with Manitoba Public Insurance for the property located at 1981 Plessis Road in the Rural Municipality of Springfield.

The City of Winnipeg entered into an agreement with MPI to provide fire protection services to the MPI facility located at 1981 Plessis Road on October 23, 2002 for a term of 72 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 72 months has been prepared and is attached. Both MPI and City of Winnipeg Legal Services have reviewed the draft agreement.

DISCUSSION:

1981 Plessis Road is on the northeast corner of Plessis Road and Gunn Road. Plessis Road and Gunn Road form the boundary between the City of Winnipeg and the R.M. of Springfield. The other three corner properties at this intersection fall within City boundaries.

Winnipeg Fire Paramedic Service assesses the fire risk to 1981 Plessis Road as minimal, however, a serious fire occurred at this location in 2001 resulting in a loss of $400,000. Another serious fire could easily impact neighbouring properties within the City boundaries.

The standby rate for fire protection services, which was established by Council on May 29, 1991, represents full cost recovery. MPI has agreed to the same terms as the previous agreement whereby they will supply a Rapid Response Vehicle in lieu of payments under the terms of the agreement. The value of the Rapid Response Vehicle is equal to full cost recovery.

MPI is a partner with WFPS on initiatives such as the car seat installation and training program and arson investigation for automobiles. In addition, WFPS has recently entered into a partnership with MPI to allow WFPS to utilize space at the MPI facility located at 1981 Plessis Road so that WFPS can provide adequate response coverage to the Harborview area during the Red River Floodway Expansion Project. This was necessitated by reconstruction of the railway bridge, which will result in staged trains sitting stationary on the track for extended periods of time, thereby blocking the crossing at Peguis Street and affecting WFPS response capability to the Harborview area.

Financial Impact Statement Date: October 29, 2008

Project Name:
Renewal of Fire Protection Services Agreement with Manitoba Public Insurance

COMMENTS:

Manitoba Public Insurance has agreed to the same terms as the previous agreement whereby they will supply a Rapid Response Vehicle in lieu of payments under the terms of this agreement. WFPS has determined there are no additional costs incurred to enter into this agreement. Therefore there is no financial impact affecting the budget by entering into this agreement.

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:

Manitoba Public Insurance

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



4024

Manitoba Public Insurance

An Agreement dated the day of , 2008

BETWEEN:

THE MANITOBA PUBLIC INSURANCE CORPORATION

(called "Manitoba Public Insurance")

- and -

THE CITY OF WINNIPEG

(called the "City")

WHEREAS Manitoba Public Insurance operates a facility just outside of the boundary of the City of Winnipeg at 1981 Plessis Road (the "Plessis Road facility");

AND WHEREAS Manitoba Public Insurance wishes to have increased fire services for the Plessis Road facility;

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

AND WHEREAS the City has agreed to provide such increased fire services for the Plessis 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 seventy-two (72) months commencing October 23, 2008.

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 Manitoba Public Insurance. If such a termination occurs, the City shall pay Manitoba Public Insurance a sum calculated at a rate of two thousand, five hundred ($2,500.00) Dollars for each month that the Agreement has been terminated in advance of the scheduled termination date listed in section 1.01. The said sum shall be paid as liquidated damages by the City to Manitoba Public Insurance. The City agrees that the said sum is not a penalty, but a genuine pre-estimate of Manitoba Public Insurance's damages relating to the difference in the cost of the Rapid Response Vehicle and the value of fire services received by Manitoba Public Insurance from the City.

2.00 FIRE AND PARAMEDIC SERVICES

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

2.02 The City warrants that the fire services delivered to the Plessis Road facility throughout the Term shall be in all respects consistent with fire 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 Manitoba Public Insurance related to all types of fires, including but not limited to vehicle fires and grass fires which threaten Manitoba Public Insurance property at the Plessis Road facility.

2.03 It is understood and agreed that the Plessis 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) there shall be a viable water supply to contain any and all fires that may take place at the Plessis Road facility throughout the Term;
(b) all 911 calls made concerning the Plessis Road facility shall be directed to and handled by the City of Winnipeg 911 telephone

service;

(c) it shall deliver annual fire prevention inspection and awareness programs to Manitoba Public Insurance employees at the Plessis Road facility.

3.00 MANITOBA PUBLIC INSURANCE OBLIGATIONS

3.01 In consideration for the services outlined in this Agreement, Manitoba Public Insurance shall transfer ownership of a Rapid Response Vehicle with the specifications listed in the attached Schedule "A" to the City of Winnipeg (receipt of which is acknowledged by the City). Manitoba Public Insurance shall assign to the City all assignable warranties that it may have with respect to the Rapid Response Vehicle. Upon transfer of ownership and assignment of warranties, Manitoba Public Insurance shall have no further obligations related to the Rapid Response Vehicle.

3.02 It is acknowledged by the parties that the consideration listed in section 3.01 is in lieu of the usual consideration for fire services outside the City of Winnipeg, which consists of:

(a) yearly advance stand-by charges due annually in accordance with the following formula:

$$\frac{\text{Fire Paramedic Service Costs}}{\text{Wpg's Total Portioned Assessment x .8}} = \text{Stand-by Fee per \$1000 of building assessment of each participating Facility}$$

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.

3.03 Manitoba Public Insurance shall not be responsible for payment of any other expenses incurred by the City in the performance of this Agreement. No other charges, levies or fees of any kind shall be charged by the City to Manitoba Public Insurance for fire services pursuant to this Agreement throughout the Term of this Agreement, except Goods and Services Tax ("GST") as applicable.

3.04 Manitoba Public Insurance shall be responsible for ensuring that the Plessis 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.

3.05 Manitoba Public Insurance shall also pay the City's portion of the GST payable in connection with this Agreement. The City shall remit any GST rebates to Manitoba Public Insurance upon receipt of such rebates. The City of Winnipeg's GST registrant number is R121682967.

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 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 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 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 Manitoba Public Insurance and the City or between Manitoba Public Insurance 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 Manitoba Public Insurance 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 willful misconduct of any officer, employees or agents of Manitoba Public Insurance.

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

7.00 RENEWAL OF THE AGREEMENT

7.01 Manitoba Public Insurance 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. If the parties have not reached an agreement on the terms and conditions of the renewal agreement three (3) months prior to the end of the Term, all matters then outstanding may be referred to arbitration in accordance with section 14.00 hereof for final settlement.

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 (including the attached Schedule) 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.

11.02 Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the Agreement.

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 Manitoba Public Insurance and the City under this Agreement, the parties may, with the consent of the City Solicitor, on behalf of the City, and Manitoba Public Insurance, 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 jointly 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. The parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Manitoba and all courts competent to hear appeals therefrom.

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 Manitoba Public Insurance under this Agreement shall be in writing and shall be delivered or sent by facsimile transmission or registered mail, postage prepaid to:

Wayne Wedge
Vice President, Corporate Information Technology and CIO
Manitoba Public Insurance
P.O. Box 6300
912-234 Donald St.
Winnipeg, Manitoba R3C 4A4
Fax: (204) 942-1133

19.03 Any notice or communication sent by facsimile transmission shall be deemed to have been received on the day the transmission if it was sent during normal business hours. It 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.

for **THE MANITOBA PUBLIC INSURANCE CORPORATION**

Per: _____
Marilyn McLaren
President and CEO

Per:

_____
Wayne Wedge
Vice President, Corporate Information and Technology and CIO

for **THE CITY OF WINNIPEG**

Per:_____

Mayor

Per:

_____

City Clerk

Approved as to details:

_____

Chief of Fire and Paramedic Service

Certified as to form:

_____

for City Solicitor/Manager of
Legal Services