Agenda – Council – March 23, 2023

Report – Executive Policy Committee – March 13, 2023

Item No. 12 Proactive Settlement of a Potential Claim against 5174245 Manitoba Ltd. (a corporation operating as Tartan Towing)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 13, 2023, the Executive Policy Committee submitted the following to Council:

1. That the recommendation of the Winnipeg Public Service not be concurred in.

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DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 13, 2023, the Executive Policy Committee submitted to Council that the recommendation of the Winnipeg Public Service not be concurred in.

Daniel Tamer submitted a communication in opposition to the matter.

David Grant submitted a communication with respect to the matter.

ADMINISTRATIVE REPORT

Title: Proactive Settlement of a Potential Claim against 5174245 Manitoba Ltd. (a corporation operating as Tartan Towing)

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
K. Bomback	D. Brown	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

On November 4, 2022, the City sent a demand letter to Tartan Towing seeking reimbursement and damages incurred by the City as a result of matters arising from a contractual dispute involving three tenders, as set out below. On December 8, 2022, the City and Tartan negotiated a settlement in the amount of $446,250.40, subject to Council approval (the "Settlement").

RECOMMENDATIONS

1. That Council approve a payment from Tartan in the amount of $446,250.40 in full and final settlement of the potential Claim on the following terms:

    A. Tartan will pay the City $15,000.00 per month, to start, and will promise to repay the $446,250.40 within 2 years.

2. That the CAO execute a Release and Minutes of Settlement on behalf of the City of Winnipeg.

3. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Approval of this settlement needs to be approved by Council as it exceeds $250,000, as specified in section 4(13)(a) of the City's Organization By-law.

IMPLICATIONS OF THE RECOMMENDATIONS

If Council does not approve the Settlement, the City can sue Tartan Towing. A Tolling Agreement has been entered into between the City and Tartan, extending the limitation period which permits the City to file a Claim should approval of this Settlement not be granted.

If this matter proceeds to trial, the City would have to invest financial and/or human resources to initiate a litigation proceeding and would need to both prove its losses and that Tartan caused the losses.

Tartan provides the City with ongoing towing services and the Public Service wishes to maintain a working relationship.

HISTORY/DISCUSSION

The City issued the following Bid Opportunities for the Provision of Courtesy Towing of Vehicles.

1. 922-2016: Provision of Courtesy Towing of Vehicles – awarded to Tartan on December 13, 2016
2. 1023-2018: Provision of Courtesy Towing of Vehicles – awarded to Tartan on January 29, 2019
3. 717-2020: Provision of Courtesy Towing of Vehicles – awarded to Tartan on January 5, 2021

5174245 Manitoba Ltd., operating as Tartan Towing ("Tartan"), made a bid submission in relation to each Bid Opportunity, and Public Works approved engaging Tartan as the successful contractor each time (the "Contracts"). As a condition of the Contracts, Tartan was to be paid on a per-tow basis, and Tartan, its employees, and/or its subcontractors were required to track each tow by utilizing the City's TowMobile application ("TowMobile").

Between 2016 and January 2022, the City paid Tartan in accordance with the terms of the Contracts upon receipt of these tow reports.

In early January 2022, Public Works conducted an in-depth review of courtesy tows performed under 717-2020 during the Residential Parking Ban ("RPB") declared on December 29, 2021 (the "December Event"). This review was triggered as a result of the Public Service's first-time RPB usage of Automated License Plate Recognition technology. Although, historically, discrepancies between ticketing and towing had been identified on account of operational differences, what was discovered at this time was a comparably significant and unreasonable discrepancy between the number of parking tickets issued and the number of courtesy tows reported via TowMobile.

As a result of the discrepancy identified via the December Event, Public Works investigated the TowMobile data for the entire period of the Contracts. The investigation revealed that a significant number of reported tows since 2016 were invalid and not reported in accordance with the terms of the Contracts. This translated to an overpayment by the City to Tartan in the amount of $1,115,626.00 over a six-year period. Since the investigation, the City has introduced additional measures to ensure accurate processing of tow reports.

On November 4, 2022, the City sent a demand letter to Tartan. Subsequently, the parties engaged in settlement negotiations which led to the proposed settlement being recommended herein.

Subsequent Events

Following discovery of the over-reporting, Tartan Towing dismissed some of the drivers involved, while others were given a warning that they too would be dismissed if they were found to be continuing such behaviour. Other drivers involved had already left working for Tartan Towing by the time the over-reporting was discovered, given that there was a six-year timeline involved.

Tartan has issued a strong warning, to all current and future operators, of consequences as a result of any misuse or false reporting using the app in the future.

Tartan provides all drivers and owner operators step by step training on the proper use of the TowMobile App. The training includes an explanation of the process and a hands-on demonstration of the required steps to complete reporting. Tartan is also open to any further training methods that may be available and recommended to it by the City, and would implement any such methods immediately.

Any future over-reporting will not be tolerated by Tartan and anyone deliberately causing over-reporting to take place will be dealt with accordingly, i.e. in the form of suspension/dismissal, as has already been the case.

Tartan continues to engage directly with the Public Works Department to ensure continued management of reported tows made through the TowMobile App. There is a working system in place now between the City and Tartan, wherein a report of tows is sent by Tartan to the City (the Public Works Department). The City then reviews that report and advises Tartan which, if any, reported tows are disputed.

The City has implemented an in-depth review procedure which is undertaken following each event where courtesy tows are performed. The review includes analyzing TowMobile App data for each reported tow against various criteria to confirm its validity.

Disputed tows are factored into what payment is now issued by the City to Tartan. If a driver says that a tow did take place, where the tow is disputed, then there is a mechanism in place for a meeting to be arranged with that driver to discuss the circumstances surrounding any disputed tow.

This constitutes a system of checks and balances on both sides.

Requested Changes

At a Reports Briefing on January 20, 2023, an earlier draft of this administrative report was reviewed by members of the Executive Policy Committee and the following revisions were requested:

- Public Service to request Tartan identify the sub-contractors in question and determine if there is a mechanism for the City to ensure those sub-contractors are not utilized in the future.

- Public Service to determine what steps Tartan has taken on their end to ensure sub-contractors are acting in good faith and not submitting false claims.

- The Public Service should, either through this report or a subsequent separate report, advise what steps the department has implemented to ensure this issue does not repeat itself.

FINANCIAL IMPACT

Financial Impact Statement **Date:** January 13, 2023

Project Name: **First Year of Program** **2023**

	2023	2024	2025	2026	2027
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	446,250	-	-	-	-
Net Cost/(Benefit)	$ (446,250)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (446,250)	$ -	$ -	$ -	$ -

Additional Comments: Based on a repayment schedule of $15,000.00 per month and assuming payments commence in February 2023, the City would anticipate cash inflows of $165,000.00 in 2023, $180,000.00 in 2024 and $101,250.40 in 2025.

As the critical event is signing of the settlement agreement, the City would set-up an account receivable at the time of signing in the amount of $446,250.40, which would be reduced as payments are received. There is no interest being charged on Tartan's outstanding balance to the City.

J. Ruby, 2023-01-16
J. Ruby, CPA, CA
Manager of Finance & Administration

CONSULTATION

This Report has been prepared in consultation with:

- The Public Works Department

OURWINNIPEG POLICY ALIGNMENT

Not Applicable.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Not Applicable.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Not Applicable.

SUBMITTED BY

Department: Legal Services Department
Prepared by: K. Bomback
Date: February 7, 2023
File No: CL.1/ 2022 (60)