Report "A" – Executive Policy Committee – December 8, 2004

Item No. 7 Agreement for Fire Protection Services for H2ICE Bus Stored at 2535 Inkster Boulevard in the R.M. of Rosser
File GF-1

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 8, 2004, the Executive Policy Committee concurred in the administrative recommendation and submits the following to Council:

1. That Council amend its previous policy to allow the Fire Paramedic Service to provide fire protection services for the Canadian Transportation Fuel Cell Alliance facility located in the Rural Municipality of Rosser during the cold weather operation of the H2ICE Bus.

2. That the Chief Administrative Officer be authorized to approve the terms and conditions of the fire protection services agreement with the Canadian Transportation Fuel Cell Alliance.

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

Report "A" – Executive Policy Committee – December 8, 2004

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 8, 2004, the Executive Policy Committee concurred in the administrative recommendation and submitted the matter to Council.

ADMINISTRATIVE REPORT

RE: AGREEMENT FOR FIRE PROTECTION SERVICES FOR H2ICE BUS STORED AT 2535 INKSTER BOULEVARD IN THE R.M. OF ROSSER

FOR SUBMISSION TO: EXECUTIVE POLICY COMMITTEE

ORIGINAL REPORT SIGNED BY: Wes Shoemaker
Fire & Paramedic Chief

REPORT DATE: December 7, 2004

RECOMMENDATION(S):

1. That Council amend its previous policy to allow the Fire Paramedic Service to provide fire protection services for the Canadian Transportation Fuel Cell Alliance facility located in the Rural Municipality of Rosser during the cold weather operation of the H2ICE Bus.
2. That the Chief Administrative Officer be authorized to approve the terms and conditions of the fire protection services agreement with the Canadian Transportation Fuel Cell Alliance.
3. That the Proper Officers of the City be authorized to do all things necessary to effect the intent of the foregoing.

REPORT SUMMARY:

Key Issues:

On March 22, 2000 Council directed the Winnipeg Fire Paramedic Service (WFPS) not to provide service to communities outside City of Winnipeg boundaries.

The City of Winnipeg Transit Department has entered into an agreement with Canadian Transportation Fuel Cell Alliance for the sublease and operation of the H2ICE Bus for a cold weather demonstration in Winnipeg for the period January 3, 2005 to February 28, 2005. The bus will be stored at property located at 2535 Inkster Boulevard in the R.M. of Rosser

Canadian Transportation Fuel Cell Alliance has requested a formal agreement for fire protection services for the period December 15, 2004 to March 14, 2005.

Due to the nature of the bus that will be stored at 2535 Inkster Boulevard and its proximity to the City of Winnipeg boundary, the Winnipeg Fire Paramedic Service

resources would be dispatched to mitigate a major incident related to that property. This agreement would allow the Fire Paramedic Service to be compensated for the provision of standby fire protection.

The department's Fire Prevention Branch has reviewed the building and determined that it meets the applicable codes that would be expected if it were inside city limits.

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):

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 FPS estimates that this service can be provided with existing resources. Additional revenue would be received in the amount of the negotiated contract.

REASON FOR THE REPORT:

Council approval is required to enter into an agreement for fire protection services to a municipality outside City of Winnipeg boundaries.

HISTORY:

The City of Winnipeg Transit Department has entered into an agreement with Canadian Transportation Fuel Cell Alliance for the sublease and operation of the H2ICE Bus for a cold weather demonstration in Winnipeg for the period January 3, 2005 to February 28, 2005.

While contemplating storing the bus at the Winnipeg Transit facility it was determined that under safety and health regulations, all of their staff would have to be trained in the risk, safe handling and operation of hydrogen powered vehicles. As the logistical strain and cost of such training would be prohibitive for the period of time in question, it was determined that another storage facility was necessary. The only suitable storage facility available was located at 2535 Inkster Boulevard, in the R.M. of Rosser, which directly borders city limits.

Canadian Transportation Fuel Cell Alliance's insurance carrier requires a higher level of service than the R.M. of Rosser can provide, therefore, they have requested a formal agreement for fire protection services for a contract fee of $4,000.00 paid upon execution of the contract.

DISCUSSION:

A decision to enter into an agreement with Canadian Transportation Fuel Cell Alliance to provide fire protection services for the H2ICE Bus stored at 2535 Inkster Boulevard in the R.M. of Rosser would require an amendment to Council's previous direction that the WFPS not provide service to municipalities outside city boundaries.

The bus will be stored in the facility at 2535 Inkster Boulevard and delivered to city limits each morning by the Province of Manitoba. Winnipeg Transit will take over custody of the bus for refueling at Red River Community College and operation on a regular transit route.

The WFPS will be required to respond to an emergency while the bus is fuelling at Red River Community College as well as during regular operation, therefore, the department is obliged to educate its staff about the risks. Under the obligation of the Fire & Paramedic Chief to protect City of Winnipeg property from risk that originates outside the City, and due to the proximity of the storage facility to the City of Winnipeg boundary, WFPS resources would be dispatched to mitigate a major incident related to that property.

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH, AND CONCURRENCE BY:

Corporate Services Department, Legal Services Division
Winnipeg Transit Department

THIS REPORT SUBMITTED BY:

Department: Winnipeg Fire Paramedic Service

Prepared by: Michelle Weimer, C.I.M.
Executive Assistant to the Fire & Paramedic Chief

Approved:

"*original signed by*"

W. H. Shoemaker

Financial Impact Statement

Date: December 6, 2004

Project Name:

First Year of Program 2005

Agreement for Fire Protection Services for H2ICE Bus Stored at 2535 Inkster Boulevard in the R.M. of Rosser

	2005	2006	2007	2008	2009
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	4,000	-	-	-	-
Net Cost/(Benefit)	$ (4,000)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (4,000)	$ -	$ -	$ -	$ -

Additional Comments:

"*original signed by*"

Manager of Finance & Administration

An Agreement made effective the day of .

BETWEEN:

CANADIAN TRANSPORTATION FUEL CELL ALLIANCE,

(called "Alliance")

- and -

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THE CITY OF WINNIPEG

(called the "City")

WHEREAS The City has entered into an agreement with the Province of Manitoba for the sublease and operation of a Hydrogen Hybrid Internal Combustion Engine Bus (the "H2ICE Bus") for a cold weather demonstration;

AND WHEREAS ALLIANCE operates a facility just outside of the boundary of the City of Winnipeg in the R.M. of Rosser (the "Facility") where the H2ICE Bus will be stored and serviced;

AND WHEREAS ALLIANCE wishes to have increased fire protection services for the Facility;

AND WHEREAS the City has the capacity to provide fire protection services for the Facility;

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

THEREFORE, the parties hereto agree as follows:

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1.00 TERM

1.01 The term of this Agreement (the "Term") shall be for a period of three (3) months commencing December 16th, 2004 and expiring at 12:01 a.m. March 14th, 2005.

2.00 FIRE AND PARAMEDIC SERVICES

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

2.02 The City warrants that the fire protection services delivered to the 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 ALLIANCE related to all types of fires, including vehicle fires and grass fires which threaten property at the facility.

2.03 It is understood and agreed that the facility shall not be entitled to priority fire protection services but that it shall receive fire protection 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 facility to the Winnipeg Fire Paramedic Service Fire Communications Centre;

3.00 ALLIANCE OBLIGATIONS

3.01 ALLIANCE shall pay to the City consideration for fire protection services outside the City of Winnipeg, which shall consist of:

(a) a stand-by charge payable in advance on execution of this Agreement in the amount of $4,000.00; and

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

(c) any applicable GST.

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3.02 ALLIANCE hereby agrees with the City that the City shall be entitled to charge and ALLIANCE 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 ALLIANCE to the City when due and payable.

3.03 ALLIANCE shall be responsible for ensuring that the 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.

3.04 Alliance shall provide the City with manuals and documentation for responding to and mitigating emergency incidents related to the H2ICE Bus.

3.05 Alliance shall provide training to The City's employee's who will be responding to and mitigating emergency incidents related to the H2ICE Bus.

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 ALLIANCE and the City or between ALLIANCE 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.

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6.00 LIABILITY OF THE CITY

6.01 The City covenants and agrees to indemnify and save ALLIANCE 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 wilful 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 ALLIANCE.

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

7.00 SURVIVAL OF TERMS

7.01 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.

8.00 NO ASSIGNMENT OF AGREEMENT

8.01 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.

8.02 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.

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

9.00 ENTIRE AGREEMENT

9.01 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.

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10.00 INTERPRETATION

10.01 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.

11.00 AMENDMENTS

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

12.00 SEVERABILITY

12.01 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.

13.00 DISPUTE RESOLUTION

13.01 In the case of any dispute between ALLIANCE and the City under this Agreement, the parties may, with the consent of the City Solicitor, on behalf of the City, and ALLIANCE, 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.

13.02 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.

13.03 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.

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

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14.00 APPLICABLE LAW

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

15.00 WAIVER

15.01 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.

16.00 AGREEMENT TO PERFORM NECESSARY ACTS

16.01 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.

17.00 HEADINGS

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

18.00 NOTICES

18.01 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:

Wes H. Shoemaker
Fire & Paramedic Chief
City of Winnipeg Fire Paramedic Service
5th Floor 151 Princess Street
Winnipeg MB R3B 1L1

Fax: (204) 986-7920

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

Economic Innovation and Technology Council
Suite 900-259 Portage Avenue
Winnipeg, MB R3B 3P4
Attention: Gary Sandiford

Fax: (204) 948-2964

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18.03 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.

18.04 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.

IN WITNESS WHEREOF the parties hereto have executed this agreement in the manner appropriate to each, as of the day and year first above written.

THE CITY OF WINNIPEG

Per:_____
Mayor

Per:_____
City Clerk
We have authority to bind The City of Winnipeg

Signed, Sealed and Delivered in the presence of:	)	**CANADIAN TRANSPORTATION FUEL CELL ALLIANCE,**
_____	)	_____
Witness (if no corporate seal)	)	*(signature of authorized officer)*
_____	)	_____
Print name & address of witness)	)	*(Print name and Title)*
_____	)	_____
Witness (if no corporate seal)	)	*(signature of authorized officer)*
_____	)	_____
Print name & address of witness)	)	*(Print name and Title)*

We have authority to bind Canadian Transportation Fuel Cell Alliance

Approved as to details:	Certified as to form:
_____	_____
Chief of Fire and Paramedic Service	for City Solicitor/ Manager of Legal Services

File No. CT.4/2004(46)