# EXECUTIVE POLICY COMMITTEE

## MOTIONS

Moved by Councillor Golden,
Seconded by Councillor Lazarenko,

**1092 -** WHEREAS millions of dollars of taxpayers money have been invested to maintain an NHL hockey franchise in Winnipeg;

AND WHEREAS the group known as Spirit of Manitoba have been charged with the responsibility to organize efforts to achieve the maintenance of NHL hockey in Winnipeg;

AND WHEREAS the best efforts of Spirit of Manitoba are facing potential shortfalls in requirements for success;

NOW THEREFORE BE IT RESOLVED that the City of Winnipeg shall use its best efforts to maintain any and all support raised in the community towards the effort to maintain NHL hockey in Winnipeg;

AND FURTHER BE IT RESOLVED that in the event the Spirit effort is stalled, the City of Winnipeg shall investigate options to transfer support to other parties who may satisfy Council of their ability to achieve the stated goals.

The motion was put.

Councillor Clement called for the yeas and nays, which were as follows:-

Yea: Councillors Duguid, Eadie, Golden, Lazarenko, O'Shaughnessy, Prystanski, Fraser, Her Worship Mayor Thompson and Councillor Angus. 9

Nay: Councillors Reese, Boychuk, Clement, Hyman, Murray, Silva, and Thomas 7

and the motion was declared carried.

Moved by Councillor Golden,
Seconded by Councillor Lazarenko,

**1093 -** WHEREAS on May 17, 1995, Council supported a motion to proceed with the construction of a new recreation facility with the proviso that the City seek methods to amortize the City's share of costs without support from the tax base;

AND WHEREAS the Spirit of Manitoba Business Plan has identified parking revenues from City-owned lands as their source of revenue;

NOW THEREFORE BE IT RESOLVED that

a) the City affirm the position that the subject facility be amortized on a user pay basis;

b) the City negotiate with Facility Co to determine $3 million revenue to the City for a 20 year term or until the City's share of facility construction costs are amortized on a user-pay basis;

c) the sources of user-pay income may include but not be limited to a share of

1) parking revenues
2) seat taxes
3) potential casino income
4) an arena zone levy.

With the concurrence of the seconder, and with the permission of Council, Councillor Golden amended item a) of the motion to read: "the City adopt the position that the subject facility try to be amortized on a user pay basis".

Moved by Councillor Duguid,
That the question be now put.

Carried.

**Executive Policy Committee - Motions (continued)**

The motion was put.

Councillor Lazarenko called for the yeas and nays, which were as follows:-

Yea: Councillors Reese, Clement, Eadie, Golden, Hyman, Lazarenko, O'Shaughnessy, Prystanski, Silva, Fraser, Her Worship Mayor Thompson and Councillor Angus. 12

Nay: Councillors Boychuk, Duguid, Murray, and Thomas 4

and the motion was declared carried.

Moved by Councillor Eadie,
Seconded by Councillor Fraser,

**1094 -** WHEREAS Council, at its meeting held on August 10, 1995 authorized the payment of a grant-in-lieu of taxes to Young United Church for taxes and accumulated penalties owing, brought about by a change in tax status on their property at 222 Furby Street; and,

WHEREAS St. James Presbyterian Church is in tax arrears going back to January 1, 1993 due to the change in tax status on their property located at 1911 Portage Avenue; and,

WHEREAS the small congregation of St. James Presbyterian Church is unable to raise the funds to pay the tax arrears and are seeking relief of same from the City,

THEREFORE BE IT RESOLVED that the Committee on Finance and Administration review the issue of outstanding taxes from St. James Presbyterian Church, and consider providing that church with a grant-in-lieu of outstanding taxes.

The Speaker ruled automatic referral to the Committee on Finance and Administration, in accordance with Rule 16.1 of the Procedure By-law.

Council here reverted to consider the order of business - "Report of the Executive Policy Committee dated August 9, 1995".

## REPORT OF THE

## EXECUTIVE POLICY COMMITTEE

## DATED AUGUST 9, 1995

On motion of Her Worship Mayor Thompson, the Report of the Executive Policy Committee, dated August 9, 1995, was considered.

Her Worship The Mayor and Councillors:

**Spirit of Manitoba Inc.'s Business Plan and Due Diligence Reports**
**File F-5.1 (Vol. 5)**

**1095 -** 1. The Executive Policy Committee has been advised that on August 8, 1995, at a Council Seminar, all Members of Council were provided an opportunity to consider Spirit of Manitoba Inc.'s Business Plan and Due Diligence Reports as presented by the four Due Diligence Sub-Committees.

The Executive Policy Committee submits the following resolution for the adoption of Council, namely:

THAT the Due Diligence Reports of the City's Auditors and Chairs of the Due Diligence Subcommittees be received as information;

THAT the business plan of Spirit dated August 8, 1995, (the "Business Plan") be approved subject to the following:

1. Except as provided in clause (2) hereof, the City shall not pay more than $1 million towards the project prior to the commencement of construction (said funding to be part of the City's contribution of $37 million and to include demolition costs);

2. The City will, upon receiving confirmation from Spirit that the option to purchase the team has been extended to August 31, 1995, and that the January 1, 1997 50% completion clause has been removed, release an additional $500,000 to the project prior to the commencement of construction (said funding to be part of the City's contribution of $37 million); and

3. The City's financial contribution and participation is conditional upon Montreal Trust having received on or before seven days after the targetted closing date of August 15, 1995, $50 million from the sale of limited partnership units and the sum of $30 million having been received for the Endowment Fund (including any forgiveness of Jets Private Sector Notes).

THAT the provisions of the Business Plan relating to parking arrangements are not accepted as shown and remain subject to negotiation and further report as set forth in Clause 1 of the Report of the Executive Policy Committee dated May 17, 1995;

THAT the City approve execution of the following documents, within the following parameters:

1. Headlease - already executed but possible amendments may be required to comply with the Business Plan including amendments to clauses 19.01 (a) and (c) (termination provisions) to provide for extensions to close the purchase transaction to August 31, 1995 and to commence construction no later than September 8, 1995;

2. Amendment of Sublease - to comply with the Business Plan and to ensure that the name of the Team shall include the word "Winnipeg";

3. Arena Development Agreement - between the City, Facility Co. and Spirit relating to the construction of the arena including specific provisions that:

**Report of the Executive Policy Committee dated August 9, 1995**

(a) the City's construction representative shall have the right to approve all plans and specifications including amendments thereto;

(b) no amendments will be approved that will increase the costs beyond the aggregate of the Maximum Price and the contingency amounts set forth in the Design Build Contract unless such change is approved by Council; and

(c) the City's construction representative shall approve all contractors' requests for payment made pursuant to the Design Build Contract;

4. The Funding Agreement, as attached, as may be amended, must ensure that the City will not be responsible for more than $37 million of its share of the project costs, subject to any amendments requested or approved by the City and for which the City agrees to pay;

5. Operational Subsidy Agreement - this will be an agreement between the City (as holder of the Endowment Fund) and Facility Co. providing for the payment of net income from the Endowment Fund to cover operating costs that Facility Co. will be responsible for under the Sublease, not to exceed the net income earned by the Endowment Fund. The City will have the right to deduct administrative expenses, including the cost of issuing tax receipts, from the Fund, or income from the Fund;

6. Agreement - between the City (as holder of the Endowment Fund) and Spirit relating to the guarantee of indebtedness incurred by Spirit to cover operating losses. The guarantee will be limited to the lesser of $30 million and 25% of the fair market value of the Jets if they are sold outside the City of Winnipeg, subject to the availability of monies in the Endowment Fund. As security for the giving of this guarantee, the City will have assigned to it all amounts payable to Spirit by the NHL as Spirit's share of fees paid to the NHL in respect of the transfer of existing franchises or the issue of new franchises. In addition, the City will have a first security interest against all of the assets of Spirit including, without limitation, the NHL franchise. (The formula for determining the fair market value of the team if they are sold outside the City of Winnipeg will be determined in the Agreement.)

7. Assumption Agreement re Jets private sector notes - this agreement will ensure that the Jets private sector notes (to the extent not forgiven) will be paid out of the Endowment Fund;

8. Revenue Sharing Agreement - between the City and Province relating to the sharing of base rent from the arena in accordance with the Business Plan and to be finalized in such manner as approved by the Board of Commissioners;

9. WEC Operations Agreement - this will be an agreement between WEC, Spirit and the City relating to the management of the old arena and stadium by Spirit in accordance with the Business Plan, providing specifically that

(a) the City will guarantee payments by WEC to Spirit to make up any shortfall between revenue and costs;

(b) WEC and the City reserve the right to close the old arena; and

(c) Spirit will use Select-a-Seat with respect to all events at all facilities owned or managed by it at Select-a-Seat's normal charges except the Jets games for which there will be no charge.

(d) that the Winnipeg Enterprises Corporation and the Spirit of Manitoba Inc. will enter into an amending agreement which provides for a transfer of employee's continuation of benefits on a full cost recovery basis.

THAT Clause 1 of the Report of the Executive Policy Committee dated July 26, 1995, as amended and adopted by Council on August 3, 1995, be further amended by

(a) deleting, from the first paragraph, the words "should the Jets purchase close as proposed on August 15th, 1995," and substituting "should the Jets purchase close as proposed on August 15th, 1995, or such later date, up to and including August 31, 1995, as may be agreed upon by Spirit and the current majority owners";

**Report of the Executive Policy Committee dated August 9, 1995**

(b) deleting clause (a) which reads as follows:

"to assist MEC Facilities Ltd. ("Facility Company") if so required, with funding the costs of constructing the entertainment Complex;"

THAT persons making donations to the Endowment Fund be required to sign a pledge form containing terms acceptable to the City Solicitor which, without limitation, may include

(a) an acknowledgement of having been invited by The City of Winnipeg to make a contribution to The City of Winnipeg in connection with the establishment of a fund to be held, administered and applied by the City to promote, by means determined by the City, the widest possible use of and access to an entertainment complex to be constructed for the City or for a corporation owned in whole or in part by the City or for such other similar purpose or use to be prescribed by the City;

(b) provision that the donation will not be released to the City until construction of the entertainment complex has substantially commenced and a tax ruling has been received; and

(c) in the event that a qualified tax ruling is received, confirmation that the donor assumes the risk of meeting that qualification.

THAT the Minister of Finance be requested to approve loans or guarantees of indebtedness given to Spirit pursuant to section 313 of the City of Winnipeg Act which provides as follows:

"Subject to the approval of the Minister of Finance, the city may, on such terms and conditions as the Minister of Finance may approve, make loans and grants for, and guarantee indebtedness incurred for, any community undertaking not otherwise authorized under this Act, and the Minister of Finance may refer any application for approval under this section to The Municipal Board for its advice and recommendation."

THAT the Province be requested to provide an undertaking that any legislation brought forward to limit its obligations with regard to the arena project, or any other issue related to the preservation of NHL Hockey including team losses, include the same protections for the City;

THAT appointment of the Chief Commissioner as Director and member of the Executive Committee of Spirit be approved and ratified;

THAT the Commissioner of Works and Operations, the Commissioner of Planning and Community Services and the Director of Corporate Finance of the City be appointed, on an interim basis, as Directors of Facility Co., such appointments to be reviewed after January 1, 1996;

THAT the Board of Commissioners be delegated authority, up to and including September 8, 1995, to negotiate such further documents or agreements, including amendments to the documents described in this resolution, as are necessary for the transactions described in the Business Plan to close and are consistent with resolutions of Council or are more beneficial to the interests of the City;

THAT the Due Diligence Team make a further final report to Council no later than 60 days following the closing of the transaction;

THAT in the event of inconsistency between the provisions of the Business Plan and this resolution, or a previous resolution of Council, the provisions of the resolution shall prevail.

THAT in the event of inconsistency between the provisions of this resolution and a previous resolution of Council, the provisions of this resolution shall prevail;

THAT notwithstanding the 1995 Schedule of Meetings adopted by Council on April 27, 1994 which includes an August vacation period, a Special Meeting of Council may be called during the period August 15 to 31, 1995 to consider any changes to the Business Plan that may have to be considered to facilitate a favourable ruling by Revenue Canada or respond to decisions of the NHL, provided that a minimum of 96 hours' notice is provided to all members of Council and all materials and documents necessary for consideration are distributed at least 48 hours in advance of the meeting.

**Report of the Executive Policy Committee dated August 9, 1995**

Moved by Her Worship Mayor Thompson,
Adoption of the clause.

The Speaker called the Deputy Speaker, Councillor Reese, to the Chair in order to participate in the debate, and after speaking, resumed the Chair.

Moved by Councillor Prystanski,
That the question now be put.
Carried.

The motion for the adoption of the clause was put.

The Speaker called for the yeas and nays, which were as follows:-

Yea: Councillors Clement, Eadie, Golden, Lazarenko, O'Shaughnessy, Prystanski, Silva, Fraser, Her Worship Mayor Thompson, and Councillor Angus 10

Nay: Councillors Reese, Boychuk, Duguid, Hyman, Murray, and Thomas 6

and the motion for the adoption of the clause was declared carried.

Council here reverted to the order of business - "Executive Policy Committee - Motions".

## EXECUTIVE POLICY COMMITTEE

## MOTIONS

Moved by Councillor Lazarenko,
Seconded by Councillor Hyman,
**1096 -** WHEREAS, in August and September 1994, a group of business interests representing the private sector in the City of Winnipeg organized themselves as the Manitoba Entertainment Complex Inc. (MEC) for the purpose of purchasing the Majority Owners' shares of the Winnipeg Jets by May 1, 1995 and constructing a new arena in Winnipeg;

AND WHEREAS, on October 14, 1994, City Council and subsequently the Province agreed to provide financial assistance to MEC to promote its project in the amount of $1.5M;

AND WHEREAS Council approved this assistance on the basis that MEC would make a final "go or no go" decision by May 1, 1995;

AND WHEREAS, on February 1, 1995, City Council adopted Principles and Guidelines to provide general direction to MEC and to be incorporated into proposals for a new arena;

AND WHEREAS, up to the end of April, the City undertook various approvals concerning MEC's chosen site at the Forks;

AND WHEREAS, on March 22, 1995, City Council requested MEC to present its full and comprehensive formal proposal and business plan by April 12 to permit public review and the exercise of due diligence;

AND WHEREAS MEC kept its considerations from the public until April 27, then failed to produce a viable business plan and subsequently announced on May 3 that it would no longer pursue its project;

**Executive Policy Committee - Motions (continued)**

AND WHEREAS, as a consequence of this failure, the City and the Province asked the Majority Owners to sell the team as soon as possible under the 1991 Agreement and the Jets retired their logo at a public assembly in the arena;

AND WHEREAS, as a consequence of the failure of public expectations, demonstrations occurred;

AND WHEREAS a subsequent attempt by MEC to purchase the team and to construct a new arena with the involvement of Mr. I. Asper, Q.C. led the Province to announce an increase in its contribution to the project from $10M to $37M, led to a public fundraising campaign which raised $13.5M in one week, led City Council on May 17 to approve conditional participation in principle in the amount of $37M plus related services and led the federal government to announce a contribution of $20M from Infrastructure and Pan Am Games funds already allocated to Manitoba;

AND WHEREAS these contributions were assembled on the basis that, without a local offer by noon of May 18, the team would be sold and also on the basis that the Majority Owners would make a final decision on whether the team would stay or be sold by the afternoon of May 18;

AND WHEREAS MEC did not present a local offer by noon May 18 and the Majority Owners made no final decision and, again, more public demonstrations occurred;

AND WHEREAS, in June, a the City's Chief Commissioner, the Secretary of the Province's Treasury Board and business people, some of whom were formerly associated with MEC, organized themselves as Spirit of Manitoba Incorporated (Spirit);

AND WHEREAS, by deposit of $10M on June16, Spirit agreed to acquire the Majority Owners' 64% interest in the Winnipeg Jets for a total payment of $32M by August 15, subject to the following conditions, among others:

a) Spirit must raise a total of approximately $80M of which approximately $60M had already been raised or pledged;

b) The National Hockey League must approve the transaction and

c) An acceptable tax ruling must be obtained from Revenue Canada;

AND WHEREAS, on June 30, the City provided $200,000 to Spirit to continue engineering and planning, detailed design, site preparation, material and other project costs necessary to maintain the schedule;

AND WHEREAS, on July 24, the Manitoba Securities Commission issued a Confidential Information Circular concerning the Initial Offering of Spirit of Manitoba Limited Partnership Units which identified thirteen substantial Risk Factors;

AND WHEREAS, on July 25, the NHL advised Spirit that it required for consideration for approval the following items, among others:

a firm purchase and sale agreement,

a firm and binding commitment to construct a new arena, including all necessary government approvals such as any tax or security rulings, coverage of cost overruns, completion of environmental reviews and the absence of pending litigation which would pose a risk to the project's success,

a firm and binding lease that guarantees the Jets all revenue streams and provides that the team would stay in Winnipeg for at least five years,

an endowment fund in place of at least $111M,

the presence of one or more personal or corporate guarantors who would be prepared to make up any shortfall or inadequacy in the endowment fund;

**Executive Policy Committee - Motions (continued)**

AND WHEREAS, on July 26, City Council refused Spirit's request that the City accept donations to an endowment fund for which receipts for income tax purposes would be issued subject to a Revenue Canada ruling;

AND WHEREAS, on August 3, at the urging of the Premier, City Council agreed to accept donations to the endowment fund subject to a Revenue Canada ruling;

AND WHEREAS, today, Spirit is substantially short of its fundraising objectives, no revenue Canada Ruling has been obtained and Spirit is seeking an extension of the closing deadline to August 31;

AND WHEREAS the Manitoba Evidence Act, Chapter E150, Part V, subsection 83(1) provides:

> Where the Lieutenant Governor in Council deems it expedient to cause inquiry to be made into and concerning any matter within the jurisdiction of the Legislature and connected with or affecting
>
> (a) the good government of the province or the conduct of any part of the public business thereof;
>
> (b) the conduct of any provincial institution or of any institution within the province receiving provincial aid;
>
> :
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> :
>
> (e) the affairs of any municipality, municipal district, or corporation, existing for any municipal purpose; or
>
> (f) any matter which, in his opinion, is of sufficient public importance to justify an inquiry;
>
> he may, if the inquiry is not otherwise regulated, appoint one or more commissioners to make the inquiry and to report thereon.

THEREFORE BE IT RESOLVED THAT, in view of the public concern shown and the amount of public funds involved, City Council ask the Minister of Finance to initiate an inquiry into all necessary aspects of the project to purchase the Majority Owners' shares of the Winnipeg Jets Hockey Club and to build a new arena by the appointment of (an) independent commissioner(s) in accordance with the Manitoba Evidence Act, in the public interest.

Automatic Referral to Executive Policy Committee in accordance with Rule 16.1 of the Procedure By-law.

Moved by Councillor Angus,
Seconded by Her Worship Mayor Thompson,

**1097 -** WHEREAS Council is desirous of having as much private sector involvement as possible;

THEREFORE BE IT RESOLVED that City Council encourage the current ownership group to work cooperatively with the Spirit of Manitoba by acquiring limited partnerships, obtaining board positions and working to preserve NHL Hockey in Winnipeg.

With the concurrence of the seconder, and with the permission of Council, Councillor Angus withdrew his motion.

**Executive Policy Committee - Motions (continued)**

Moved by Councillor Lazarenko,
Seconded by Councillor Angus,
**1098 -** WHEREAS City Council is desirous of getting out of the requirement to pay hockey team losses;

THEREFORE BE IT RESOLVED THAT, if the efforts of Spirit of Manitoba are not successful, Council ask outside legal counsel for advice concerning potential litigation on the basis of getting out of the 1991 Agreement.

Required to Stand as Notice of Motion in accordance with Rule 17.1 of the procedure By-law

Moved by Councillor Murray,
Seconded by Councillor Thomas,
**1099 -** BE IT RESOLVED that the City prepare an initial plan of the possibility of redeveloping the existing site at Polo Park;

AND BE IT FURTHER RESOLVED that the City immediately research potential options for earliest possible sale of the team to another market should the sale become necessary within the next year;

AND BE IT FURTHER RESOLVED that the City's Law Department clarify the City's legal position on the disbursements of revenue from the sale of the team.

Required to Stand as Notice of Motion in accordance with Rule 17.1 of the procedure By-law

Moved by Councillor Murray,
That the Rule be suspended to consider the motion at this time.

The motion to suspend the rule was put and declared Lost.

Moved by Councillor Murray,
Seconded by Councillor Thomas,
**1100 -** BE IT RESOLVED that appointments by the City of Winnipeg to the Board of Spirit of Manitoba and Facility Co. be citizens who are not members of the civic administration or City Council.

Required to Stand as Notice of Motion in accordance with Rule 17.1 of the procedure By-law

Moved by Councillor Murray,
Seconded by Councillor Thomas,
**1101 -** BE IT RESOLVED THAT this agreement be understood to require a commitment from the Province of Manitoba.

THAT any legislation brought forward to limit its obligations with regard to the arena project, or any other issue related to the preservation of NHL Hockey including team losses, include same protections for the City.

Required to Stand as Notice of Motion in accordance with Rule 17.1 of the procedure By-law