Minutes – Executive Policy Committee – February 12, 2014

Minute No. 155
Report – Standing Policy Committee on Infrastructure Renewal and Public Works – February 4, 2014

Item No. 7 **Front Ending Agreement for the Twinning of Keewatin Street and Dr. Jose Rizal Way**
(Point Douglas Ward)
File DASZ 15/2012

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the following to Council:

1. That the details of the draft Front Ending Agreement (Appendix "A") with Terrascape Developments Ltd. for the twinning of Dr. Jose Rizal Way and Keewatin Street be received as information and the proposed terms be approved.

2. That pursuant to the Council approved terms for the Development Agreement under File DASZ 15/2012, additional capital budget funding in the amount of $765,000 be included in the 2015 budget process for inclusion in the 2017 Capital Forecast to facilitate the twinning of Dr. Jose Rizal Way and Keewatin Street.

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

Minutes – Executive Policy Committee – February 12, 2014

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – February 4, 2014

DECISION MAKING HISTORY:

Moved by Deputy Mayor Swandel,

That the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On February 4, 2014, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: ***Front Ending Agreement for the Twinning of Keewatin Street and Dr. Jose Rizal Way - File DASZ 15/2012***

Critical Path: **Standing Policy Committee on Infrastructure Renewal and Public Works - Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	B. Thorgrimson	M. Ruta	D. Joshi A/CAO

RECOMMENDATIONS

1. That the details of the draft Front Ending Agreement (Appendix "A") with Terrascape Developments Ltd for the twinning of Dr. Jose Rizal Way and Keewatin Street be received as information and the proposed terms be approved by Council.

2. That pursuant to the Council approved terms for the Development Agreement under File DASZ 15/2012, additional capital budget funding in the amount of $765,000 be included in the 2015 budget process for inclusion in the 2017 Capital Forecast to facilitate the twinning of Dr. Jose Rizal Way and Keewatin Street.

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

Pursuant to Section 53(1) of The City of Winnipeg Charter, Council approval for the funding of this project is required. The terms of the front ending agreement must also be approved by Council.

IMPLICATIONS OF THE RECOMMENDATIONS

The Public Works Department's 2017 "Developer Payback – Various Locations" capital forecast will increase from $7 million to $7.765 million. The $7.765 million is comprised of $6.06 million in construction cost (2013 dollars), $304,000 in construction inflation, $1.248 million in accrued interest, and $153,000 in City overheads.

The Public Works Department is required to allocate capital funding for the twinning of Dr. Jose Rizal Way and Keewatin Street pursuant to Council's approved terms for the proposed Development Agreement under File DASZ 15/2012 that require the Developer to construct and front end finance the twinning.

The Developer, Terrascape Developments Inc. (Terrascape), intends to finance (i.e. "front-end") the full cost of the works and, under the Front-Ending Agreement, the City will be obligated to reimburse Terrascape the costs incurred to do the work plus interest.

HISTORY

On December 12, 2012, Council concurred in the recommendation of the Standing Policy Committee on Property and Development, as amended by the Executive Policy Committee, and approved a Subdivision and Rezoning generally located north of Old Commonwealth Avenue between Dr. Jose Rizal Way and King Edward Street under File DASZ 15/2012. The subject lands have been rezoned to a variety of zoning districts consistent with the Council approved precinct plan for the area and the policies of Our Winnipeg and Complete Communities. The development will be called "Waterford Green".

Council's approval of the Subdivision and Rezoning included the requirements for the Developer to enter into both a Zoning Agreement and Development Agreement with the City. The Development Agreement included the following clause added by the Lord Selkirk/West Kildonan Community Committee, subsequently amended by both the Standing Policy Committee on Property and Development and the Executive Policy Committee, namely:

59. The Developer shall finance and construct to substantial completion by the fall of 2014, the twinning of Keewatin Street and Dr. Jose Rizal Way, from Inkster Boulevard to the intersection north of Jefferson Avenue, as determined by and to the satisfaction of the Director of Public Works. The City's share of the cost of this work shall be as determined in a Front-Ending Agreement supplementary to the Development Agreement and the City shall reimburse the Developer for its share of the cost such that there is no net cost to the Developer for this additional work, all as determined by the Director of Public Works in accordance with the terms and conditions of the Front-Ending Agreement. The Chief Administrative Officer and the Chief Financial Officer shall be delegated the authority to negotiate the terms and conditions of the Front-Ending Agreement and report back to Council.

The Public Works Department has produced a high level construction cost estimate to twin Keewatin Street and Dr. Jose Rizal Way, from Inkster Boulevard to the intersection north of Jefferson Avenue. The estimated cost, in 2013 dollars, is $6,060,000. After including inflation of 5% to reflect the timing of the planned works (i.e. from spring to autumn of 2014), the estimated cost is $6,364,000. Total accrued interest to the assumed repayment date of December 31, 2017 of $1,248,000 brings the total estimated developer payback amount to $7,612,000 (see Table 1 below). The addition of City of Winnipeg internal charges (i.e. short-term financing overheads) of $153,000 results in a total estimated capital budget requirement in 2017 of $7,765,000.

Table 1

FINANCING COSTS PROJECTION - PROPOSED KEEWATIN STREET TWINNING

	2014	2015	2016	2017	Total
Interest	189,000	335,000	354,000	370,000	1,248,000
Principal	6,364,000				6,364,000
	6,553,000	335,000	354,000	370,000	**7,612,000**

Assumptions

1) Total Estimated Cost of Keewatin Street Twinning as per Public Works - Engineering Division 7,612,000

- First draw on loan amount assumed to occur on April 1, 2014 & be repaid to Terrascape's lender on December 31, 2017.
- Second draw on loan amount assumed to occur on August 1, 2014 & be repaid to Terrascape's lender on December 31, 2017.

Balance Owing as at December 31, 2014	6,553,000
Balance Owing as at December 31, 2015	6,888,000
Balance Owing as at December 31, 2016	7,242,000
Balance Owing as at December 31, 2017	7,612,000

2) Estimated Interest Rate to be Charged on the Loan to Terrascape 5.00%

- Interest assumed to be compounded monthly beginning in April 2014.
- Accrued interest assumed to be repaid to Terrascape's lender on December 31, 2017.

3) Costs in 2014 include a 5% inflation factor on the costs projected in 2013 dollars.

FINANCIAL IMPACT

Financial Impact Statement

Date: January 20, 2014

Project Name:

Front Ending Agreement for the Twinning of Keewatin Street and Dr. Jose Rizal Way - File DASZ 15/2012

First Year of Program **2017**

	2017	2018	2019	2020	2021
Capital					
Capital Expenditures Required	$ 7,765,000	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	7,000,000	-	-	-	-
Additional Capital Budget Required	$ 765,000	$ -	$ -	$ -	$ -
Funding Sources:					
Cash-to-Capital	$ 765,000	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ 765,000	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ 765,000				
Total Additional Cash-to-Capital Required	$ 765,000				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	153,000	-	-	-	-
Net Cost/(Benefit)	$ (153,000)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(153,000)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures consist of the estimated developer payback amount of $7.612 million (i.e. principal of $6.364 million + accrued interest of $1.248 million) + City overheads of $0.153 million. The latter amount represents 2% short-term financing charges and will be offset by recoveries in the current budget of the Corporate Finance Department. For the purposes of this analysis, it is assumed that financing for the capital budget will be cash-to-capital.

A review would be beneficial for developer payback agreements with respect to the timing of reporting of assets and liabilities as well as authorizations and financing for budget purposes.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Public Works Department
Legal Services Department (as to legal issues)
Corporate Finance Department
Terrascape Developments Inc.

SUBMITTED BY

Department: Planning, Property and Development
Division: Land Development, Geomatics and Land Information Systems
Prepared by: Marc Pittet
Date: January 22, 2014

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Appendix "A"

FRONT- ENDING AGREEMENT TO TWIN DR. JOSE RIZAL WAY AND KEEWATIN STREET FROM INKSTER BOULEVARD TO WATER RIDGE PATH

THIS AGREEMENT dated this ___ day of _____ 2014

BETWEEN:

TERRASCAPE DEVELOPMENTS INC.
(Hereinafter called the "Developer)

OF THE FIRST PART

- and –

THE CITY OF WINNIPEG
(Hereinafter called the "City")

OF THE SECOND PART

RECITALS

A. WHEREAS the Developer has made application to the City under File DASZ 15/2012 to subdivide and rezone certain land generally located south of Jefferson Avenue between Dr. Jose Rizal Way and King Edward Avenue;

B. AND WHEREAS City Council approved the Developer's proposed plan of subdivision under File DASZ 15/2012 on December 12, 2012 subject to certain conditions;

C. AND WHEREAS it was a condition of approval that the Developer shall finance and construct the twinning of Dr. Jose Rizal Way/ Keewatin Street from Inkster Boulevard to Water Ridge Path as determined by and to the satisfaction of the Director of Public Works;

D. AND WHEREAS it was also a condition of approval that the cost of twinning Dr. Jose Rizal Way/ Keewatin Street shall be at no net cost to the Developer and shall be reimbursed by the City with interest.

E. AND WHEREAS the Developer's share and the City's share to construct the said twinning within the planned area of Development Application DASZ 15/2012 shall be determined in accordance with the provisions of this agreement;

F. AND WHEREAS the City has agreed to reimburse the Developer by no later than December 31st, 2018, the City's share of the Developer payments for the said twinning of Dr. Jose Rizal Way/ Keewatin Street which include without limitation engineering design and supervision fees, material testing, construction and traffic control costs and bank interest costs;

G. AND WHEREAS the Developer now wishes to proceed with the development of its Plan of Subdivision and the said twinning of Dr. Jose Rizal Way/ Keewatin Street;

NOW THEREFORE in consideration of the covenants contained herein and such further consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1. **"Agreement"** means this Front-Ending Agreement, including the Recitals and Schedules.

1.2. "**Bank"** means The Assiniboine Credit Union Limited or such other lending institution acceptable to the City and the Developer.

1.3. **"City"** means The City of Winnipeg.

1.4. **"City Solicitor"** means the individual appointed to the position of Director of Legal Services and City Solicitor for the City, from time to time, or the person designated by such individual to carry out the duties contained herein.

1.5. **"Consulting Engineer"** means Stantec Consulting Ltd. or such other engineering consulting firm acceptable to the City and Developer.

1.6. **"Contractor"** means the construction contractor or contractors the Developer selects to construct the Transportation Infrastructure.

1.7. **"Cost of Borrowing"** means the interest cost incurred by the Developer in borrowing funds from the Bank to cover Costs in Place. This cost is to be calculated daily on the daily closing balance of the loan, at the Interest Rate.

1.8. **"Cost Schedule"** mean the estimated Costs in Place, as shown on the attached **Schedule "A"** to this Agreement.

1.9. **"Costs in Place"** means the costs actually incurred by the Developer, including cost overruns, to be jointly approved by the Developer and the City, and fees charged by the Consulting Engineer for services rendered, in connection with the construction of the Transportation Infrastructure as certified for payment by the Consulting Engineer.

1.10. **"Developer"** means Terrascape Developments Inc., a corporation registered and carrying on business in the Province of Manitoba.

1.11. **"Developer Payments"** means the payment by the Developer of the invoices for Costs in Place and the Cost of Borrowing.

1.12. **"Director of Public Works"** means the individual appointed to the position of Director of Public Works for the City, from time to time, or the person designated by such individual to carry out the duties under this Agreement.

1.13. **"Interest Rate"** means a floating rate of interest equal to the prime lending rate the Bank charges its customers.

1.14. **"Plan of Subdivision"** means the Developer's proposed plan of subdivision under File DASZ 15/2012.

1.15. **"Transportation Infrastructure"** means the twinning of Dr. Jose Rizal Way/ Keewatin Street from Inkster Boulevard to Water Ridge Path, the first intersection north of Jefferson Avenue as generally illustrated in Schedule 'B" General Layout Plan of Transportation Infrastructure and including, but not necessarily limited to the following:

I. Roadway pavement and related works;
II. Active Transportation Pathway;
III. Portland cement concrete sidewalk;
IV. Street lighting;
V. Boulevard landscaping;
VI. Modifications to existing intersections;
VII. Drainage and lighting; and
VIII. All related works.

2. OBLIGATIONS OF THE DEVELOPER

2.1 The City shall approve the engagement of the Consulting Engineer by the Developer and the scope of work to be done by the Consulting Engineer for the design of the Transportation Infrastructure and administration of contracts between the Developer and the Contractor. Any changes to the scope of the work being done by the Consulting Engineer and the corresponding change to its fees relating to the Transportation Infrastructure are not binding on the City unless jointly agreed upon in writing by the Developer and the City.

2.2 Once the design and the plans and specifications for the construction of the Transportation Infrastructure have been finalized by the Consulting Engineer and released for construction by the Director of Public Works, the Developer shall call for tenders for the work associated with the Transportation Infrastructure.

2.3 All bids received by the Developer in response to the tender call shall be evaluated by the Consulting Engineer. The Developer shall send to the Director of Public Works a written

recommendation of the bids it wishes to accept for the work required to construct the Transportation Infrastructure.

2.4 Upon acceptance of the above-noted recommendation by the Director of Public Works, the Developer shall enter into a construction contract with such Contractor for the construction of the Transportation Infrastructure.

2.5 The Developer and the Consulting Engineer shall ensure that the Transportation Infrastructure is constructed in strict accordance with the design and the plans and specifications finalized by the Consulting Engineer and approved by the Director of Public Works.

2.6 The Developer shall front-end the cost of construction of the Transportation Infrastructure including any cost overruns as jointly agreed upon in writing by the Developer and the City. Payment of the invoices or progress payments for the cost of construction of the Transportation Infrastructure shall only be made by the Developer following receipt of the Consulting Engineer's written certification of the invoices or progress payments.

2.7 The Developer's payment of all invoices and progress payments shall be made in accordance with the provisions of *The Builders' Liens Act*.

2.8 The target date for substantial performance of construction of the Transportation Infrastructure is October 31, 2014.

3. OBLIGATIONS AND ENTITLEMENTS OF THE CITY

3.1 The City agrees to reimburse the Developer for the Developer Payments by no later than December 31st, 2018. It is understood and agreed that the City may make payments prior to December 31st, 2018, without penalty, upon providing to the Bank at least forty-eight (48) hours, notice which payments shall firstly be applied to accrued interest and then to principal if applicable.

4. LOAN AND ASSIGNMENT

4.1 The City acknowledges that the Developer intends to borrow funds in the approximate amount of $6,364,000 (Six Million, and Three-Hundred and Sixty-Four Thousand Dollars) from the Bank to cover the cost of construction of the Transportation Infrastructure including any cost overruns jointly agreed to by the Developer and the City.

4.2 The City and the Developer agree that the interest rate to be charged on the loan from the Bank to cover the cost of construction of the Transportation Infrastructure including any cost overruns jointly agreed to by the Developer and the City, and the terms of repayment of the loan shall be at a rate and upon terms of repayment acceptable to the City and the Developer.

4.3 The City acknowledges that the Developer intends to transfer and assign to the Bank the Developer's right and entitlement to receive the City's share of the Developer Payments. The City hereby consents to any such assignments and agrees to honour same.

5. GENERAL

5.1 Notices and communications, including demands and certificates, made in connection with this Agreement must be in writing and delivered to the parties at the following addresses:

a) **To the City:**

The City of Winnipeg
Legal Services Department
3rd Floor, 185 King Street
Winnipeg, MB R3B 1J1

Attention: City Solicitor
Fax: (204) 947-9115

b) **To the Developer:**

Terrascape Developments Limited
C/o Lombard North Group Ltd
287 Tache Avenue
Winnipeg, MB R2H 2A1

Attention: Mr. David Palubeski, President
Fax: (204) 947-5696

5.2 For the purposes of this Agreement, any communication that is required to be in writing includes any electronic communications, and the parties hereto hereby waive their right to contest whether electronic communications constitute written notice and communication. The parties further agree that copies of any electronic communication will be admissible in any legal, administrative or other proceedings as conclusive evidence as to the content of the communication to the same extent as an original document in non-electronic form. The parties hereby acknowledge and agree that they cannot ensure confidentiality when non-secure electronic communications are used, as they may be intercepted by third parties, to which each party accepts the risk of any consequences arising from loss occurred in connection with the use of electronic communications.

5.3 When the notices and demands are made in connection with this Agreement are sent by:

a) mail, they are deemed to be received on the third (3rd) day after posting; and

b) by fax or electronic communication, they are deemed to be received at 9:00 a.m. on the business day following the day on which they were successfully faxed or sent.

5.4 Any party may change its address for service by written notice to the other party.

5.5 Either party may waive any breach by the other of any provision contained in this Agreement or default in the observance or performance of any covenant or condition required to be observed or performed by the other under the terms of this Agreement, provided that no such waiver shall be binding upon such party unless given in writing, and no such waiver shall extend or be taken to affect any subsequent breach or default or affect the right of the waiving party.

5.6 The Recitals and Schedules attached hereto shall form part of this Agreement.

5.7 This Agreement shall be governed by and interpreted according to the laws of the Province of Manitoba.

5.8 This Agreement may not be varied unless same is evidenced in writing signed by both of the parties hereto.

5.9 Time shall be of the essence hereof.

5.10 The parties acknowledge that this Agreement contains the entire terms, conditions and warranties agreed to by the parties.

5.11 If any paragraph, subparagraph, clause or phrase of this Agreement is, for any reason, held to be invalid by the decision of any Court of competent jurisdiction, then the invalid portion shall be severed and the portion hereof that is declared invalid shall not affect the validity of the remainder hereof.

5.12 This Agreement constitutes and expresses the whole arrangement between the parties hereto. It is understood and agreed that there are no covenants, warranties, guarantees, promises or agreements (verbal or otherwise) between the parties other than those contained herein.

5.13 This Agreement shall be binding upon and enure to the benefit of the parties thereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

TERRASCAPE DEVELOPMENTS INC.

Per: _____
Name *(print):*
Title *(print):*

_____
WITNESS (signature)

(affix corporate seal**)**

_____
Name *(print)*

Per:_____
Name *(print):*
Title *(print):*

_____
Address *(print)*

THE CITY OF WINNIPEG

Per: _____
Mayor

Per: _____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
for Director of Legal Services and City Solicitor

APPROVED AS TO DETAILS:

_____
Director of Planning, Property and Development

APPROVED AS TO DETAILS:

_____
Director of Public Works

Schedule "A"

Cost Schedule for City Share of Works to Twin Keewatin Street and Dr. Jose Rizal Way (DJRW) from Inkster Boulevard to Water Ridge Path

Description of the Work:

All work is to be carried out to the Standards and Specifications required by, and to the satisfaction of the Director of Public Works.

- Pavement construction of the two west traffic lanes and center median on Keewatin Street from Inkster Boulevard to Old Commonwealth Path;
- Pavement construction of the two west traffic lanes and center median on Dr. Jose Rizal Way from Old Commonwealth Path to Water Ridge Path;
- Boulevard sodding and tree planting as required;
- Active Transportation Pathway where required;
- Portland cement sidewalk along the east boulevard where required;
- Utility adjustments, street lighting, drainage and related works as required;
- Intersection modifications at Keewatin Street and Inkster Garden Drive;
- Utility adjustments, street lighting, drainage and related works as required;
- City's share of Traffic Signals to be determined by Public Works;
- Engineering Services and Material Testing; and
- All related works, as required.

Estimated Cost	**$6,364,000**

General Layout Plan of Transportation Infrastructure

