Minute No. 136
Report – Executive Policy Committee – January 26, 2015

Item No. 1 Amendment to Council Decision – "Approval of Funding Participation - Winnipeg Convention Centre Expansion Project"

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That in response to the request made by The Convention Centre Corporation ("WCCC"), attached hereto as Schedule "A", and subject to Recommendation 2 hereof, the July 18, 2012 Council decision "Approval of Funding Participation – Winnipeg Convention Expansion Project" be amended by deleting Recommendation VI.C.

2. That the City and the WCCC enter into an agreement whereby the WCCC agrees to transfer to the City the $3.75 million liquidated damages amount to be paid by Stuart Olson Dominion Construction Ltd. ("SODCL") to the WCCC as consideration for the WCCC releasing SODCL from its obligation to construct a hotel development at the property located at 220 Carlton Street (the "Site").

3. That a grant be authorized in the amount of $3.75 million to CentreVenture Development Corporation ("CentreVenture"), which grant shall be payable within 30 days following the City's receipt of the $3.75 million liquidated damages amount pursuant to Recommendation 2 and shall be subject to the following conditions:

    (i) That 100% of the grant monies be used to repay a portion of the $6.6 million line of credit increase granted to CentreVenture Development Corporation ("CentreVenture") to acquire the Site, which line of credit increase was guaranteed by the City pursuant to the Council decisions of December 12, 2012 "Loan Guarantee Increase – CentreVenture Development Corporation" and December 11, 2013 "Extension of Loan Guarantee Increase – CentreVenture Development Corporation;

    (ii) That CentreVenture and/or CCC Properties Inc. (CCC) undertake a public bid process with respect to future development of the Site;

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COUNCIL DECISION (continued):

(iii) That CentreVenture and/or CCC include the following terms and conditions in its development agreement with any future purchaser and/or developer of the Site, to the satisfaction of the Chief Administrative Officer:

(a) specification of building(s) to be constructed on the Site;
(b) a construction start date of one year from closing, failing which, title to the Site reverts back to CentreVenture and/or CCC;
(c) a construction completion date of two years from closing, failing which, title to the Site reverts back to CentreVenture and/or CCC;
(d) a minimum non-refundable deposit of $250,000.

4. That the Winnipeg Public Service request CentreVenture to report back to the Executive Policy Committee in 120 days with an update on development plans for the Site.

5. That the City enter into, and the Chief Administrative Officer be delegated the authority to negotiate and finalize the terms of, all necessary agreements between the City, the WCCC, and CentreVenture required to implement any matters contained herein.

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

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DECISION MAKING HISTORY:

Moved by His Worship Mayor Bowman,
That the recommendation of the Executive Policy Committee be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 26, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, with the following amendments:

- That Recommendations 3.(ii) be deleted and replaced with the following:

  "3.(ii) That CentreVenture and/or CCC Properties Inc. (CCC) undertake a public bid process with respect to future development of the Site."

- That Recommendations 3.(iii), 3.(iii)(b), and 3.(iii)(c) be amended by adding the following "and/or CCC" after the words "CentreVenture"

and submitted the matter to Council.

On January 21, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

Further on January 21, 2015, the Executive Policy Committee received from David Sanders a communication dated January 21, 2015, with respect to an Amendment to Council Decision – "Approval of Funding Participation - Winnipeg Convention Centre Expansion Project".

ADMINISTRATIVE REPORT

Title: **Amendment to Council Decision – "Approval of Funding Participation - Winnipeg Convention Centre Expansion Project"**

Critical Path: **Executive Policy Committee – Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
K. Boryskavich	M. Ruta	M. Ruta	D.Joshi A/CAO

RECOMMENDATIONS

1. That in response to the request made by The Convention Centre Corporation ("WCCC") attached hereto as Schedule "A", and subject to Recommendation 2 hereof, Council amend its July 18, 2012 decision "Approval of Funding Participation – Winnipeg Convention Expansion Project" by deleting Recommendation VI.C.

2. That the City and the WCCC enter into an agreement whereby the WCCC agrees to transfer to the City the $3.75 million liquidated damages amount to be paid by Stuart Olsen Construction Ltd. ("SODCL") to the WCCC as consideration for the WCCC releasing SODCL from its obligation to construct a hotel development at the property located at 220 Carlton Street (the "Site").

3. That Council authorize a grant in the amount of $3.75 million to CentreVenture Development Corporation ("CentreVenture"), which grant shall be payable within 30 days following the City's receipt of the $3.75 million liquidated damages amount pursuant to Recommendation 2 and shall be subject to the following conditions:

   (i) that 100% of the grant monies be used to repay a portion of the $6.6 million line of credit increase granted to CentreVenture Development Corporation ("CentreVenture") to acquire the Site, which line of credit increase was guaranteed by the City pursuant to the Council decisions of December 12, 2012 "Loan Guarantee Increase – CentreVenture Development Corporation" and December 11, 2013 "Extension of Loan Guarantee Increase – CentreVenture Development Corporation;

(ii) that in the event CentreVenture is unable to conclude a development agreement for the Site within six months following the date of Council approval, CentreVenture undertake a public bid process with respect to future development of the Site;

(iii) that CentreVenture include the following terms and conditions in its development agreement with any future purchaser and/or developer of the Site, to the satisfaction of the Chief Administrative Officer:

(a) specification of building(s) to be constructed on the Site;
(b) a construction start date of one year from closing, failing which, title to the Site reverts back to CentreVenture;
(c) a construction completion date of two years from closing, failing which, title to the Site reverts back to CentreVenture;
(d) a minimum non-refundable deposit of $250,000.

4. That the Public Service request CentreVenture to report back to the Executive Policy Committee in 120 days with an update on development plans for the Site.

5. That the City enter into, and the Chief Administrative Officer be delegated the authority to negotiate and finalize the terms of, all necessary agreements between the City, the WCCC, and CentreVenture required to implement any matters contained herein.

6. 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

Council approval is required to amend the terms of a previous Council decision. In addition, Council approval is required to provide a grant to CentreVenture and for the City to enter into all necessary agreements to implement the recommendations of this report.

HISTORY

- On July 11, 2012 Council approved the City's funding participation in the Winnipeg Convention Centre Expansion Project by way of: (i) a $51 million grant to the WCC; and (ii) a $33 million loan guarantee in favour of the WCCC (see Council minutes attached as Schedule "B" for further detail).

- The $33 million loan was to be repaid by: (i) the WCCC servicing $17 million of the loan from the annual operating income of the expanded facility; and (ii) the City providing an annual grant to the WCCC of incremental municipal property and business taxes and the Province providing an annual grant to the WCCC of incremental provincial education taxes and levies

generated by an adjacent property development, to service the net present value of the remaining $16 million of the loan.

- In addition, the City's loan guarantee was provided on the condition that the guaranteed maximum price contract between the WCCC and the successful proponent contain a provision requiring the proponent to service the annual debt payments related to the portion of the loan to be repaid by the municipal and provincial incremental tax grant until such time as such incremental tax grant commenced.

- The foregoing Council requirement was included in the City's funding agreement with the WCCC, by placing an obligation on the WCCC to holdback $16 million out of payments to be made by the WCCC to the successful proponent under the guaranteed maximum price contract until 30 days following substantial completion of the adjacent property development.

- The RFP issued by the WCCC provided that preferential consideration would be given to bids that included the construction of a hotel development adjacent to the expanded Convention Centre project site. The RFP was awarded by the WCCC to SODCL, on the basis of a bid that did include such a proposal for construction of an adjacent hotel development.

- During contract negotiations, SODCL and the WCCC (i) reached agreement on the $16 million holdback requirement; and (ii) confirmed the site of the adjacent hotel development as the Site. These items were documented in a letter of intent, and were to be included in the construction contract between SODCL and WCCC. While the terms of the construction contract have been negotiated, it has not as yet been executed by the parties.

- As part of their bid, SODCL partnered with Matthews Southwest (an American hotel developer) ("MSW") with respect to the adjacent hotel development. SODCL / MSW attempted to acquire three adjacent properties, including the Site, for the purposes of the hotel development but were unable to conclude an acceptable purchase of any of the three properties.

- CentreVenture was approached for assistance in negotiating with the ownership group of the Site. CentreVenture and MSW entered into a non-binding Memorandum of Understanding setting out each party's proposed rights and obligations with respect to the purchase whereby CentreVenture would enter into a purchase and sale agreement with the ownership group of the Site (the "Ownership Group") to purchase the Site. The MOU contemplated that MSW would construct a hotel on the a portion of the Site and CentreVenture would retain a portion of the Site for future development. CentreVenture entered into a letter of intent with the Ownership Group committing to the purchase of the Site and ultimately concluded the purchase; however, MSW subsequently withdrew from the non-binding Memorandum of Understanding.

- In order to finance the acquisition of strategic properties in the downtown, CentreVenture requested a $6.6 million increase to their line of credit (from $13 million to $19.6 million), to be guaranteed by the City. On December 12, 2012, Council approved CentreVenture's request (see Council minutes attached as Schedule "C") for further detail).

- The City's loan guarantee was conditional on: (i) CentreVenture repaying the $6.6 million line of credit increase no later than December 12, 2013; and (ii) all proceeds of the sale of the Site being utilized to repay the $6.6 million line of credit increase.

- Following a further request from CentreVenture, on December 11, 2013, Council approved an extension to the $6.6 million line of credit increase and loan guarantee until the earlier of the full repayment of the loan or September 30, 2016 (see Council minutes attached as Schedule "D" for further detail).

IMPLICATIONS OF THE RECOMMENDATIONS

- SODCL has advised the WCCC that they are not in a position to proceed with an adjacent hotel development on the Site that would meet the needs of the WCCC as set forth in its business plan and has requested that the WCCC release it from its obligation to construct such a hotel development and eliminate the $16 million holdback requirement.

- The WCCC has reached a conditional settlement agreement with SODCL whereby the WCCC would release SODCL from its obligation to construct the hotel development and eliminate the $16 million holdback requirement, in exchange for payment of liquidated damages by SODCL in the amount of $3.75 million to be paid on or prior to the payment of the last statutory holdback by WCCC under the construction project (approximately April / May 2016).

- This settlement is conditional on Council amending its July 11, 2012 decision to remove the requirement for the proponent to service annual debt payments on the $16 million loan until such time as the incremental tax grant commences and on the City amending its funding agreement with the WCCC to eliminate the $16 million holdback requirement.

- The settlement agreement also provides that upon satisfactory resolution of the foregoing matters, the WCCC and SODCL will execute the construction contract within seven days.

- The WCCC Board of Directors approved the conditional settlement on January 14, 2015 and has submitted a request to the City for Council to facilitate the settlement (see Schedule "A" for further details).

- The Public Service supports the WCCC's request in order to facilitate the ongoing development of the Convention Centre expansion and related developments for the enhancement of the downtown, SHED and city economy overall**.**

- CentreVenture has requested that if the settlement agreement is approved, the $3.75 million liquidated damages to be paid by SODCL to the WCCC be advanced to CentreVenture to be applied against the outstanding acquisition-related costs that CentreVenture incurred as a result of its acquisition of the Site.

- The Public Service supports CentreVenture's request subject to certain conditions, including the condition that 100% of such monies be applied to pay down the line of credit increase guaranteed by the City (given that the line of credit increase is non-revolving, a payment of $3.75 million would reduce the liabilities of CentreVenture and the City from $6.6 million to $2.85 million. It is anticipated that the combination of the $3.75 million liquidated damages amount plus the fair market value of the Site (representing total proceeds of the future disposition of the Site) will cover the repayment of the line of credit increase plus carrying costs incurred by CentreVenture. The $3.75 million liquidated damages monies would flow from the WCCC to the City, and would be provided to CentreVenture by way of a grant.

- As a result of SODCL's request to be released from its obligation to construct the adjacent hotel development on the Site, CentreVenture has been actively working to realize development on the Site in order to ensure construction of a hotel which will generate incremental taxes and increased revenues for the WCCC in accordance with their business plan.

- CentreVenture is currently working with credible developers on a proposed development on the Site, and will report back to Council within 120 days further details.

- The Public Service recommends that proposed grant to CentreVenture be subject to the following additional conditions: (i) that in the event CentreVenture does not conclude a development agreement for the Site within six months following the date of Council approval, CentreVenture must undertake a public bid process with respect to development of the Site; and (ii) that CentreVenture incorporate the following criteria into any development agreement with a future purchaser / developer of the Site:

    - specification of building(s) to be constructed on the Site
    - construction start date of one year from closing, failing which, title to the Site reverts back to CentreVenture
    - construction completion date of two years from closing, failing which, title the Site reverts back to CentreVenture
    - a minimum non-refundable deposit of $250,000.

- Given that completion of a development on the Site would not occur until after the Convention Centre expansion was completed, if Council were to adopt Recommendation 1 of this report to remove the requirement for SODCL to service annual debt payments on the $16 million loan until such time as the incremental tax grant commences, a funding gap will be created whereby the WCCC will need to service the loan during this time period (in effect, the obligations of SODCL are being transferred to the WCCC, which impacts the City as guarantor of the WCCC's $33 million loan).

- In the event that the WCCC is unable to fully or partially service the debt payments during the time period between commencement of such debt payments and commencement of the incremental tax grant, further alternatives would need to be explored including the possibility of bridge financing under the Destination Marketing Fund Reserve. Any such decision would require a further report to Council.

FINANCIAL IMPACT

Financial Impact Statement

Date: January 15, 2015

Project Name:

Amendment to Council Decision – "Approval of Funding Participation - Winnipeg Convention Centre Expansion Project"

COMMENTS:

There are no direct financial implications associated with the recommendations contained in this report. The City's financial risk will be reduced by granting the $3.75 million liquidated damages amount to CentreVenture to be used to reduce the latter's line of credit balance, which is guaranteed by the City. The City is, however, exposed to additional financial risk with the WCCC assuming responsibility for debt servicing of the $33 million loan amount, also guaranteed by the City. As noted in the body of the report, should WCCC be unable to fully or partially service the debt payments during the time period between commencement of such debt payments and commencement of the incremental tax grant, further alternatives would need to be explored including the possibility of bridge financing under the Destination Marketing Fund Reserve. Any such decision would require a further report to Council.

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"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services

Corporate Finance

Planning, Property & Development

Office of the CAO

CentreVenture Development Corporation

The Convention Centre Corporation

Stuart Olsen Construction Ltd.

Province of Manitoba

SUBMITTED BY

Department: Legal Services / Corporate Finance
Prepared by: K. Boryskavich
Date: January 16, 2015
File No.


Schedule A.pdf


Schedule B.pdf


Schedule C.pdf


Schedule D.pdf