Minute No. 240
Report "A" – Executive Policy Committee – March 18, 2015

Item No. 5 **Fort Rouge Yards Brownfield Development Project – Loan Guarantee Update on the report recommendations approved by Council on October 19, 2011 (Fort Rouge-East Fort Garry Ward)**

COUNCIL DECISION:

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

1. That the City enter into an Indemnity Agreement with First National Financial LP (First National), whereby First National will provide security to the City for the $10,000,000 loan guarantee to be granted by the City to the Federation of Canadian Municipalities (FCM) in support of mortgage financing to be provided by FCM to Gem Equities Ltd. in respect of the Fort Rouge Yards development.

2. That the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of the Indemnity Agreement in accordance with this report, and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

3. 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 by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 18, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Update on the report recommendations approved by Council on October 19, 2011 regarding approval of a loan guarantee for the Fort Rouge Yards**

Critical Path: **Executive Policy Committee (EPC), Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
Mike Ruta	Mike Ruta	Mike Ruta	M. Jack A/CAO

RECOMMENDATIONS

1. That the City enter into an Indemnity Agreement with First National Financial LP (First National), whereby First National will provide security to the City for the $10,000,000 loan guarantee to be granted by the City to the Federation of Canadian Municipalities (FCM) in support of mortgage financing to be provided by FCM to Gem Equities Ltd. in respect of the Fort Rouge Yards development.
2. That the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of the Indemnity Agreement in accordance with this report, and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.
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

Council approval is required for the City to enter into an Indemnity Agreement.

IMPLICATIONS OF THE RECOMMENDATIONS

The Chief Financial Officer (CFO) has completed his due diligence review of the Fort Rouge Yards project proposal and requested preparation of an Indemnity Agreement between the City and First National to fully secure the loan guarantee to Gem Equities Inc. (Developer) authorized by Council on October 19, 2011.

HISTORY/DISCUSSION

- On October 19, 2011 Council approved a loan guarantee for the development of the Fort Rouge Yards in the amount of up to $10,000,000 subject to:

    1. Completion of due diligence of the project proposal to the satisfaction of the CFO.
    2. The Developer providing evidence of adequate insurance for the redevelopment project.
    3. A signed letter of commitment between the Federation of Canadian Municipalities (FCM) and the Developer acceptable to the City.
    4. Completion of a development agreement and a strategic economic agreement (SEA) satisfactory to the City.

- On October 27, 2010, the City of Winnipeg received an application from Lexington Investment Corp. on behalf of the Developer for the development of the Yards at Fort Rouge.
- On December 15, 2010 Council: (i) endorsed in principle two planning documents for the Yards at Fort Rouge, namely “The Yards at Fort Rouge Area Master Plan” and “Operationalizing The Yards at Fort Rouge Area Master Plan”; and (ii) approved the rezoning of DASZ 33/10 for the development of the Yards of Fort Rouge from an “M2” General Manufacturing District to an “RMU PDO 1 – The Yards at Fort Rouge” Residential Mixed Use District.
- In addition to the standard development agreement and zoning agreement requirements, the rezoning approval also required the Developer to enter into a SEA with the City to include “cost and lands associated with the development of the new Jubilee Rapid Transit Station”, as well as remediation and geo-thermal costs.
- In accordance with the December 15, 2010 Council approval, a SEA was formally executed between the City and the Developer effective as of May 2, 2013. Construction of the Jubilee Rapid Transit Station is currently underway.
- The Developer has satisfactorily complied with items 2 through 4 above relating to Council’s October 19, 2011 approval. However, the original commitment letter with respect to the FCM loan and the corresponding City loan guarantee among FCM, the City and the Developer dated August 2, 2012 has expired and is presently being amended by FCM for further review and signature by the parties. Schedule B, forming part of the commitment letter includes a statement that indemnities from the Developer and the personal guarantor shall take effect if the City’s loan guarantee is called upon supported by such additional security as the City may require, acting reasonably in good faith. The loan guarantee has yet to be executed by the City.

To complete the requirement for due diligence to the satisfaction of the CFO as noted in item 1 above, the CFO reviewed financial information pertinent to the delegation made to him. In order to provide sufficient security for the City’s loan guarantee, it was agreed, subject to Council

approval, that First National would provide an indemnification to the City in the form of an indemnity agreement that includes the following terms:

- With reference to a future loan agreement between FCM and the Developer, in the event of default and upon written notice from the City that the loan guarantee has been called upon, First National shall pay the City or FCM such amount as required pursuant to the Guarantee to a maximum amount of the City's obligations;
- The City's obligations are the lesser of the amount of the related loans and $10 million plus interest from the date and any cost incurred by FCM in enforcing the loan guarantee.
- The City will appoint First National to exercise the rights of the City to remedy any default by the Developer or the personal guarantor.

From a document provided by the National Bank – "First National Financial Corporation is an originator, underwriter and servicer of mainly prime single-family and multi-unit residential mortgages, as well as commercial mortgages. First National is Canada's largest non-bank originator and underwriter of mortgages with over $75 billion in mortgages under administration." First National's parent company is listed on the Toronto Stock Exchange; in November, 2014 First National and its consolidated parent company were confirmed at a BBB rating from DBRS Ratings Limited; the consolidated parent company closed trading on February 19, 2015 at $21.91 per share; First National had net income at the end of December 31, 2013 of $243 million.

Although there are risks associated with any loan guarantee approved by Council, the risk of providing a loan guarantee relating to the Fort Rouge Yards development has been significantly reduced by the indemnification agreement signed by First National. The CFO considers the delegation to conduct a due diligence review to now be satisfactorily complete.

FINANCIAL IMPACT

Financial Impact Statement **Date:** February 26, 2015

Project Name: Update on the report recommendations approved by Council on October 19, 2011 regarding approval of a loan guarantee for the Fort Rouge Yards

COMMENTS:

Subject to Council approval, an indemnification agreement has been signed by First National which significantly reduces the risk associated with the loan guarantee approved by Council in respect of the Fort Rouge Yards development.

(Original signed by R. Hodges)
Ramona Hodges
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

In preparing this report there was consultation with:

Legal Services
Property Planning and Development

SUBMITTED BY

Department: Corporate Finance
Division: CFO Office
Prepared by: Mike Ruta
Date: March 5, 2015
File No.