Minute No. 464
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 5, 2016

Item No. 11 Land Exchange Agreement – Canadian National Railway Company for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development Committee and adopted the following:

1. That the City-owned lands identified as "City to Sell to CN (Parcel 1)" on Misc. Plan 14760/7 and "Subject Property" on Misc. Plan 14759/3 be declared surplus to the needs of the City.

2. That, subject to the approval of Recommendation 1, a land exchange between the City and CN for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project ("Project") that is in accordance with the terms and conditions set out in Schedule "A" as shown on the attached Misc. Plans which requires a maximum payment of $1,931,897 plus G.S.T. to CN, be approved.

3. That the City enter into, execute and deliver a Land Exchange Agreement with CN for the Project that is in accordance with Recommendation 2.

4. That the City enter into, execute and deliver such other ancillary agreements determined necessary by the Director of Legal Services and City Solicitor to implement the intent of the foregoing.

5. That the In-Camera report (Minute No. 269) from June 6, 2006 approved by the Standing Policy Committee on Property and Development be rescinded.

6. That the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of the Land Exchange Agreement and any ancillary agreements in accordance with this report and such other terms and conditions determined necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

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

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 5, 2016

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 6, 2016, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Proposed Land Exchange Agreement between the City of Winnipeg ("City") and Canadian National Railway Company ("CN") for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development
Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
G. Chappell	J. Kiernan	D. McNeil o/b M. Ruta	D. McNeil

RECOMMENDATIONS

1. That the City-owned lands identified as "City to Sell to CN (Parcel 1)" on Misc. Plan 14760/7 and "Subject Property" on Misc. Plan 14759/3 be declared surplus to the needs of the City.

2. That, subject to the approval of Recommendation 1, a land exchange between the City and CN for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project ("Project") that is in accordance with the terms and conditions set out in Schedule "A" as shown on the attached Misc. Plans which requires a maximum payment of $1,931,897 plus G.S.T. to CN, be approved.

3. That the City enter into, execute and deliver a Land Exchange Agreement with CN for the Project that is in accordance with Recommendation 2.

4. That the City enter into, execute and deliver such other ancillary agreements determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

5. That the In-Camera report (Minute No. 269) from June 6, 2006 approved by the Standing Policy Committee on Property and Development be rescinded.

6. That the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of the Land Exchange Agreement and any ancillary agreements in accordance with this report and such other terms and conditions determined necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

7. 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

City Council approval is required for land exchange transactions and to declare land surplus.

EXECUTIVE SUMMARY

The Director of Planning, Property and Development Department was authorized to negotiate land acquisitions for the Project in June 2014. The Department and CN determined in November 2014 that a land exchange was necessary. The Public Service engaged an independent appraiser to value the lands associated with the exchange and received appraisals by July 2015. The City and CN have relied upon a collaborative approach to negotiate the land exchange, with both parties in agreement of the valuation which falls within the City's market value range and is a supported value.

The CN property represents a key acquisition for the Project and a Consent to Enter to Construct agreement has also been secured to allow construction to commence. Due to the greater amount of land exchanged by CN, the City will pay CN $286,897 plus G.S.T.

CN includes vehicle/storage buildings and materials within the land to be exchanged. The City will pay to CN, a maximum price of $1,645,000 to have the buildings reconstructed at a new location, which may also include building and material relocation. These costs are eligible for funding through P3 Canada.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory or human resources implications associated with this report.

Transit has advised there is adequate funding for the acquisition available in the Capital Budget, Account # 442-181000-420755-4230010514-Property.

The City is a G.S.T. registrant and will self-assess G.S.T. on the acquisition price.

HISTORY/DISCUSSION

On June 25, 2014, Council approved Winnipeg Transit's report titled "Capital Integration Project – Southwest Transitway (Stage 2) and Pembina Highway Underpass". The Director of Planning, Property and Development was also authorized to negotiate the acquisition of land required for this project.

As the City cannot expropriate from CN, the Planning, Property & Development Department ("Department") entered into negotiations with CN in November 2014 for the acquisition of a portion of their property required for the Project. In order to maintain operation of CN facilities, it was determined that a land exchange with CN would be required.

The City engaged an independent appraiser to complete two appraisals on the lands identified in Schedule "A" (specifically Misc. Plans 14760/7 & 14759/3), and received both appraisals by July 2015. Based on the appraiser's analysis, the appraisal of the lands shown on Misc. Plan 14760/7 was largely valued on an industrial basis, while the appraisal of the lands shown on Misc. Plan 14759/3 was valued on a commercial basis.

Under the terms of the land exchange agreement, detailed in Schedule "A", the City will acquire more land than it provides to CN, which results in a payment to CN of $286,897 plus G.S.T. All lands to be acquired by the City from CN are required for the Project.

To date, the City and CN have relied upon a collaborative approach to negotiate the land exchange, with both parties in agreement of the valuation. The CN property represents a key acquisition for the Project.

The construction of the Transitway through the CN property requires the demolition of two vehicle/storage buildings and the relocation of a trailer and various materials. CN intends to relocate the demolished buildings to an alternate location, but has not yet identified the actual costs for relocation. However, CN has provided an order of magnitude which represents the maximum cost of the reconstruction of the buildings and possible relocation of buildings and materials. The City will pay the actual cost of replacement buildings (and relocation costs) up to a maximum $1,645,000. The reconstruction/relocation cost by CN was an expected project cost.

The Public Service and CN attempted to find alternate solutions to the demolition and reconstruction of the buildings, but ultimately, the buildings needed to be located elsewhere.

The cost of the building demolition, relocation and reconstruction is considered to be a Project construction cost, and as such, P3 Canada will fund the expense as an eligible cost. The land cost associated with the land exchange agreement (i.e. $286,897) is not an eligible funding cost through P3 Canada.

It is noted that the proposed land exchange with a proposed in-camera land sale from June 6, 2006 (Minute No. 269), which was approved by the Standing Policy Committee on Property and Development but was never concluded. Approving the proposed land exchange detailed within this report requires the proposed in-camera sale from June 6, 2006 to be rescinded.

Although negotiations for the CN property commenced in November 2014, the expropriated properties required for the Project were not confirmed by Council until January 27, 2016. Furthermore, the CN land exchange is a highly complex transaction which requires relocation of CN Groups, rail lines and rail crossings; the latter two items fall under the regulatory oversight of the Canadian Transportation Agency and are not part of the recommendations of this report.

In addition, any dealings with CN which relate to the Southwest Rapid Transit Corridor are subject to a 1994 Agreement between the City and CN. The Agreement identified where the City could acquire or lease land to construct a transitway within the CN holdings and the City has relied upon this Agreement for Stage 1 and Stage 2 of the Corridor. The City requires several Plans of Survey to finalize the Stage 1 transaction with CN which should occur in 2017. Delays in finalization of the Stage 1 transaction occurred due to changes in the alignment.

In order to proceed with Stage 2 prior to the submission of this report, CN and the City executed a Consent to Enter to Construct Agreement, which enabled the City to enter upon the CN lands. City Council delegated the authority to the Chief Administrative Officer to enter into Enter to Construct Agreements on June 25, 2014, subject to certain conditions identified in the associated administrative report. In instances where the City cannot expropriate land from the owner, an Enter to Construct Agreement is a useful tool to allow negotiations to continue while maintaining project or funding timelines.

Stage 2 not only required an Enter to Construct Agreement with CN, but also with three other entities whose lands cannot be expropriated by the City and where Council or its delegated authority has not already approved the acquisition. As a result, the Public Service has executed Enter to Construct Agreements with the University of Manitoba (easement), Her Majesty the Queen (acquisition) and Manitoba Housing and Renewal Corporation (acquisition). The Public Service will continue to negotiate with these land owners; although the latter three easements/acquisitions do not form part of the transitway and are considered to be non-essential surface works (e.g. Active Transportation Path).

FINANCIAL IMPACT

Financial Impact Statement

Date: June 20, 2016

Project Name:

First Year of Program **2016**

Proposed Land Exchange Agreement between the City of Winnipeg ("City") and Canadian National Railway Company ("CNR") for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass

	2016	2017	2018	2019	2020
Capital					
Capital Expenditures Required	$ 1,916,897	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	1,916,897	-	-	-	-
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	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures include the payment of $286,897 to CNR as part of the land exchange + $1,630,000 for the relocation and/or reconstruction of CNR buildings & materials. This latter amount represents a maximum cost to be paid by the City. Short-term financing charges and corporate admin fees that would otherwise apply to this project have been waived by Council.

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

CONSULTATION

Legal Services as to legal issues.

Transit Department

OURWINNIPEG POLICY ALIGNMENT

Under section 1-1b of OurWinnipeg the following policies apply:

- Create a safe, efficient and equitable transportation system for people, goods and services.
- Create a transportation system that supports active, accessible and healthy lifestyle options.

Section 3-2b of the Complete Communities Direction Strategy identifies Rapid Transit Corridors as a "special, fourth type of corridor" that follow rapid transit lines and are characterized by nodal development at stations. The following policies apply:

- Promote corridors as a link between neighbourhood, community and regional scale centres.
- Ensure multi-modal connectivity.

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate
Prepared by: Gordon Chappell, Senior Negotiator
Date: June 27, 2016
File No.: 9070/40

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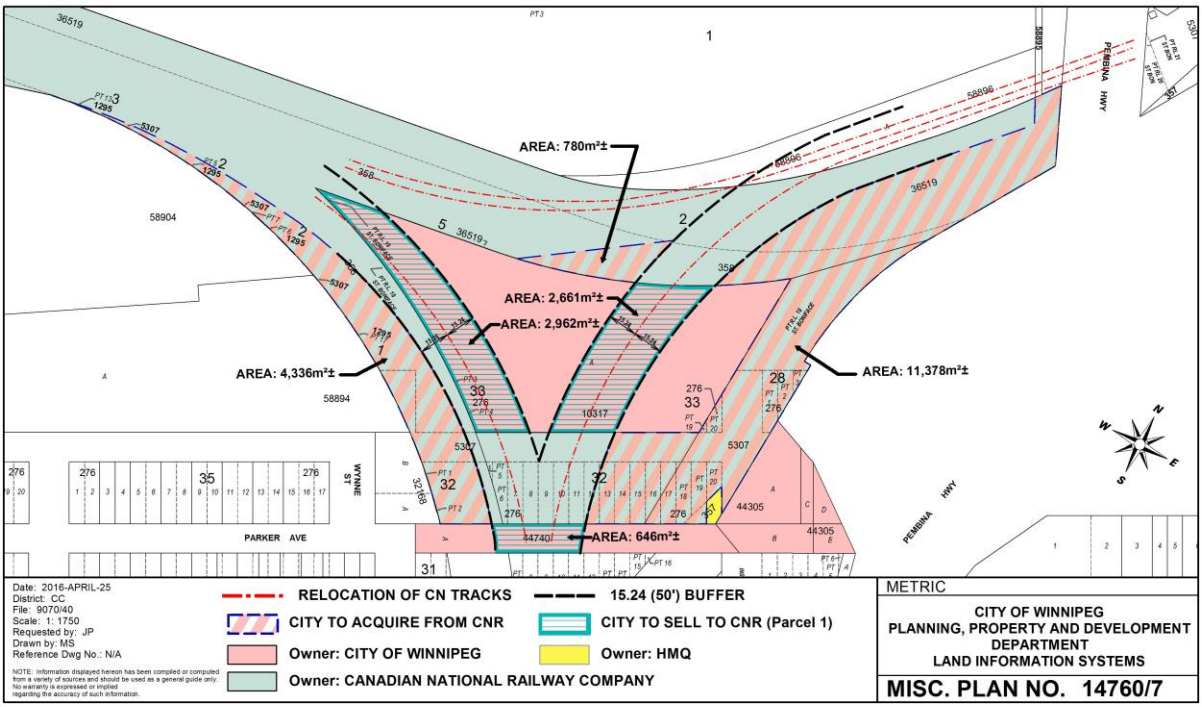
Appendix

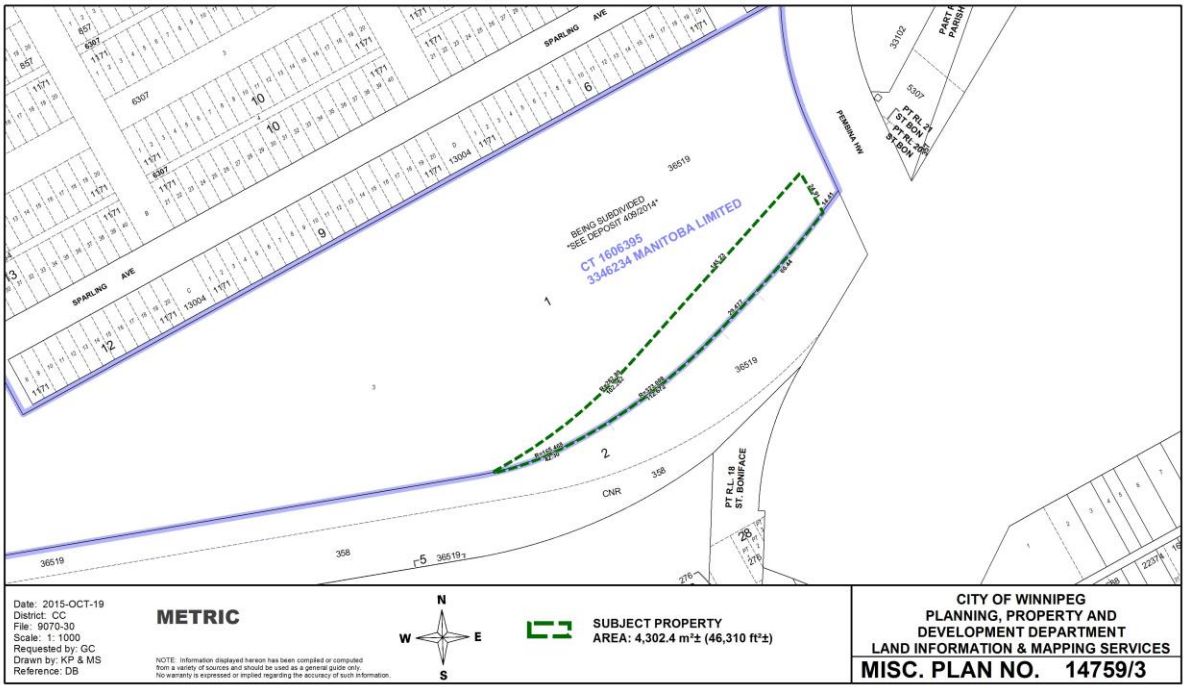
Schedule "A" – Terms & Conditions

Schedule "B" – Misc. Plan 14760/7 & 14759/3

SCHEDULE "A"

Parties:	The City of Winnipeg Canadian National Railway Company
Purchase Price:	$286,897 plus G.S.T.
Lands to be Exchanged:	Misc. Plans 14760/7 & 14759/3 collectively attached as Schedule "B".
Closing Date:	60 days after the completion of subdivision and rezoning (if necessary) or such other date as mutually agreed to.
Other Terms:	City to pay a maximum price of $1,645,000 for costs related to the demolition and reconstruction of buildings on site, and building and materials relocation costs.


AREA: 780m²±
AREA: 2,661m²±
AREA: 2,962m²±
AREA: 4,336m²±
AREA: 11,378m²±
AREA: 646m²±
PEMBINA HWY
PARKER AVE
WYNNE ST
Date: 2016-APRIL-25
District: CC
File: 9070/40
Scale: 1: 1750
Requested by: JP
Drawn by: MS
Reference Dwg No.: N/A
NOTE: Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
RELOCATION OF CN TRACKS
15.24 (50') BUFFER
CITY TO ACQUIRE FROM CNR
CITY TO SELL TO CNR (Parcel 1)
Owner: CITY OF WINNIPEG
Owner: HMQ
Owner: CANADIAN NATIONAL RAILWAY COMPANY
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 14760/7


SPARLING AVE
PEMBINA HWY
BEING SUBDIVIDED "SEE DEPOSIT 409/2014"
CT 1606395
3346234 MANITOBA LIMITED
CNR
PT RL 18 ST BONIFACE
Date: 2015-OCT-19
District: CC
File: 9070-30
Scale: 1: 1000
Requested by: GC
Drawn by: KP & MS
Reference: DB
METRIC
NOTE: Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
SUBJECT PROPERTY
AREA: 4,302.4 m²± (46,310 ft²±)
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14759/3