Agenda – Council – February 22, 2018

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – January 30, 2018

Item No. 1 Request for Budget Increase for Jubilee Rapid Transit Station

STANDING COMMITTEE RECOMMENDATION:

On February 13, 2018, 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 an increase of $1,349,866 to the 2017 capital budget for Jubilee Rapid Transit Station be authorized to increase the previously approved 2013 capital project and that the Southwest Rapid Transit Corridor Reserve (Stage 1) fund this budget increase.

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

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – January 30, 2018

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

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ADMINISTRATIVE REPORT

Title: Request for Budget Increase for Jubilee Rapid Transit Station

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

AUTHORIZATION

Author	Department Head	CFO	CAO
L. Fisher	G. Ewankiw	M. Ruta	M. Ruta, acting for D. McNeil

EXECUTIVE SUMMARY

The terms and conditions of the construction of Jubilee Rapid Transit Station along Stage 1 of the Southwest Transitway were set out in a Strategic Economic Agreement (the "SEA") between the City and the developer, Gem Equities Ltd. ("GEM Equities"). The SEA provided that the City would contribute 43% of the construction costs of the station, while GEM Equities would contribute the remaining 57%, with no cap on project costs. GEM Equities was to pay all construction costs up-front and receive reimbursement from the City once the project was complete. The original estimated cost for the station was approximately $3.9 million, with the City's portion being $1.67 million.

GEM Equities claimed the total construction cost, excluding geothermal costs, to be shared was $8.8 million, which included $3.2 million in construction-related interest costs. The City's portion of this claim would have been $3.8 million. The City disputed whether certain developer costs should be included in the amount to be cost-shared by the parties. After arbitration, the total eligible construction cost of the station is estimated at $5.9 million. The City's portion of these costs is $2.5 million, including an estimated maximum for construction interest but not including geothermal costs or arbitration-related costs.

To date, the City has paid GEM Equities $1.667 million. The arbitrator determined further costs payable by the City to GEM Equities to be $648,866, plus interest as a construction cost and interest on the unpaid balance to be negotiated with GEM Equities (up to $285,000, including related arbitration costs). The arbitrator also ordered GEM Equities to pay damages of $20,000 to the City for advancing a claim for interest in excess of what would be considered reasonable. The decision of the arbitrator will result in the City paying approximately $1.2 million less than was claimed owing by GEM Equities. Geothermal costs (claimed by GEM Equities to be $636,973) still need to be negotiated outside as they were not part of the SEA, and have not been authorized by Council.

The City incurred arbitration related costs totaling $436,000, some of which are still under review as far as potential recovery from GEM Equities.

The Jubilee Rapid Transit Station capital budget must be increased by $1.350 million, for a total capital budget of $3.017 million, to enable the payout of the arbitration award as well as to accommodate other costs related to arbitration. There is sufficient funding in the Southwest Rapid Transit Corridor Reserve (Stage 1) to fund this budget increase. It should be noted, the City has financially benefitted from partnering with Gem Equities. Total costs of the project are significantly less compared to what the City would have paid to construct the station on its own.

RECOMMENDATIONS

1. That an increase of $1,349,866 to the 2017 capital budget for Jubilee Rapid Transit Station be authorized to increase the previously approved 2013 capital project and that the Southwest Rapid Transit Corridor Reserve (Stage 1) fund this budget increase.
2. That the Proper Officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Council approval is required to increase the capital budget of a project, as well as for the use of reserve funds.

IMPLICATIONS OF THE RECOMMENDATIONS

The Southwest Rapid Transit Corridor Reserve (Stage 1) currently has an available forecasted balance of $2.5 million. The request to fund the Jubilee Station will reduce this balance to $1.2 million which has been set aside in the event that it is required for property settlements for Stage 1 of the Southwest Transitway project.

HISTORY

On May 2, 2013, the City entered into a Strategic Economic Agreement (“SEA”) with Gem Equities for the construction of the Jubilee Rapid Transit Station. This agreement required Gem Equities to construct the Jubilee Rapid Transit Station and contribute 57% of the construction costs with the City’s contribution being 43% of the cost. The original estimated cost for the station was approximately $3.9 million, with the City’s portion being $1.667 million.

On October 24, 2012, Council approved the allocation of $1.667 million towards the construction of the Jubilee Rapid Transit Station. The primary funding source of the project is the Land Operating Reserve to apply proceeds related to the sale of a parcel of land along the corridor, with any remaining amounts up to the $1.667 million to be funded by the then Rapid Transit

Infrastructure Reserve (Stage 1). This reserve has since been renamed as the Southwest Rapid Transit Corridor Reserve.

In 2015, the surplus property was sold with net proceeds after Land Operating Reserve fees of $1.15 million. Therefore, the net funding required from the Southwest Rapid Transit Corridor Reserve up to the initial budget amount is $517,000.

Construction of the Jubilee Rapid Transit Station was delayed and commenced in October 2014, with substantial completion achieved in June 2015.

A comprehensive review of expenditures, along with proof of payment occurred, in October 2015 and the City determined which of the expenditures submitted by GEM Equities were payable pursuant to the terms and conditions of the SEA. Some of the costs disputed were related to construction interest, finance and lender fees, and site management and consulting fees charged by a company associated with GEM Equities.

In 2016, GEM Equities made a request for arbitration pursuant to the SEA with respect to unpaid costs that the City had disputed and the matter was referred to arbitration.

The claim by GEM Equities was based on a total construction cost to be shared of $8.8 million which included $3.2 million in construction-related interest costs, with the City's portion being $3.8 million. This claim would have required an additional contribution from the City of $2.1 million. GEM Equities' claim against the City was reduced by approximately $1.2 million through arbitration.

There were some outstanding costs that were not disputed by the City but remain unpaid. Until the arbitration is completed and additional budget can be approved, the undisputed costs of $372,314 have remained unpaid. Arbitration was substantially completed on June 16, 2017, awarding the following costs to be paid by the City to GEM Equities:

1.	43% of miscellaneous hard costs of $85,448	$ 36,743
2.	43% of Consulting Fees MEG of $123,359	$ 53,044
3.	43% of Site management fees MEG of $231,368	$ 99,488
4.	43% of finance and lender fees of $122,480	$ 52,667
5.	43% of legal fees of $80,488	$ 34,610
6.	100% of the balance due of the undisputed costs	$372,314
	TOTAL	$648,866

In addition to the above costs, interest as a construction cost of the developer was awarded at an amount to be negotiated between the City and GEM Equities or, if an agreement cannot be reached, determined by the arbitrator. The original amount of interest claimed as a part of the construction costs by the developer was $3.2 million. These interest amounts have not yet been negotiated. It is estimated that the interest amount and related arbitration costs will not exceed $285,000. As part of the award, GEM Equities is ordered to pay the City $20,000 in damages for advancing a claim for interest in excess of what would be considered reasonable.

During the construction of the project and arbitration process, Transit incurred consulting costs that were charged to an Innovative Transit capital project on an interim basis until the budget for Jubilee Rapid Transit Station could be increased to accommodate these costs. The full amount of the initial approved budget of $1.667 million was required to be paid to GEM Equities and therefore was not available to fund the consulting costs. These costs included consulting costs for engineering and accounting work of $131,000. In addition, the City incurred arbitration costs of an arbitrator and court reporter for $70,000 and external legal services costing $235,000, for a total of arbitration-related costs of $436,000. With these additional costs, the total cost for the station, in addition to the $1.667 million already paid to GEM Equities, is $1.350 million resulting in a total cost to the City of $3.017 million.

The request for additional budget for the project to cover these costs is summarized below.

Awarded costs per judgment, as shown above	$648,866
Allowance for undetermined interest and related arbitration costs, as a construction cost of the developer, and on the unpaid balance, up to	$285,000
Consulting costs related to arbitration	$436,000
Net of award to the City for damages	($ 20,000)
Total amount of budget increase	$1,349,866

FINANCIAL IMPACT

Financial Impact Statement

Date: December 21, 2017

Project Name:

Request for Budget Increase for Jubilee Rapid Transit Station

First Year of Program 2017

	2017	2018	2019	2020	2021
Capital					
Capital Expenditures Required	$ 1,349,866	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ 1,349,866	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	1,349,866	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ 1,349,866	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ 1,349,866				
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 required represent the amount of the additional budget required for the Jubilee Rapid Transit Station capital project as the result of higher than anticipated construction costs. The funding source for this over-expenditure will be the Southwest Rapid Transit Corridor Reserve (Stage 1) which has sufficient funding for this request.

original signed by

Laurie Fisher, CPA, CA
Manager of Finance and Administration

CONSULTATION

This Report has been prepared in consultation with:

- Legal Services (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

01-1 City Building – Connect and Expand our Sustainable Transportation and Infrastructure Networks

SUBMITTED BY

Department: Transit
Division: Finance and Administration
Prepared by: Patty Jamieson-Bell, Acting Manager of Finance and Administration
Date: December 21, 2017
File No: