Minute No. 321
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – April 9, 2018

Item No. 10 Land Exchange Agreement and Declaration of Surplus Land for the Southwest Rapid Transitway – Stage I Project

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 "CN to Acquire from CITY – Parcel A, Plan 38827" on Misc. Plan 15075/1, attached hereto as Schedule "A", 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 Project that is in accordance with the terms and conditions set out in Schedule "B", at a cost to the City of $86,726 plus G.S.T. and ancillary costs, 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 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.

6. That the Chief Administrative Officer be authorized to amend the cost identified in Recommendation No. 2 which is subject to the square footage confirmed by the final survey.

7. 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 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 April 17, 2018, 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 April 9, 2018, 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 I Project and Declaration of Surplus City Property

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

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	M. Ruta	D. McNeil

EXECUTIVE SUMMARY

The City requires land from CN to complete an outstanding acquisition related to the Southwest Rapid Transitway – Stage I Project ("Project"). Through negotiations, CN identified a desire to complete a land exchange wherein the City would acquire land needed for the Project. The land exchange also facilitates an unresolved land exchange from a previous major capital project.

The land exchange will result in a cost of $86,726 to the City, as the City will be acquiring more land than it sells. The land to be sold to CN was internally circulated and no civic need was identified. The Ward Councillor has been consulted.

The transaction was initiated prior to the implementation of the Real Estate Transaction Management Framework.

RECOMMENDATIONS

1. That the City-owned lands identified as "CN to Acquire from CITY – Parcel A, Plan 38827" on Misc. Plan 15075/1, attached hereto as Schedule "A", 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 Project that is in accordance with the terms and conditions set out in Schedule "B", at a cost to the City of $86,726 plus G.S.T. and ancillary costs, 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 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.

6. That the Chief Administrative Officer be authorized to amend the cost identified in Recommendation No. 2 which is subject to the square footage confirmed by the final survey.

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

On November 19, 2008, Council considered and approved the Planning, Property and Development Department's ("Department") report requesting the authorization to negotiate the acquisition of all land interests for the Southwest Rapid Transitway – Stage I Project (the "Project"). Council also delegated the authority to the Director of Planning, Property and Development to approve the terms and conditions, including the purchase price, of all real property transactions for the Project, where the purchase price is less than $750,000.

As per section 3.1.i of the Organizational By-law, City Council approval is required for land exchange transactions and to declare land surplus.

IMPLICATIONS OF THE RECOMMENDATIONS

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

Transit has advised there is adequate funding for the land exchange available in the Capital Budget, Account # 442-181000-420755-42980000EX-Property.

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

In accordance with the Real Estate Transaction Management Framework, the Department is not obligated to complete an Environmental Site Assessment on the acquisition since it is related to a major capital project. Most of the proposed acquisition lies within the City's road network and will be legally opened as a right-of-way at a later date.

HISTORY/DISCUSSION

On October 22, 2008, Council approved the Southwest Rapid Transit Corridor – Stage I capital project. The Project extends from the Jubilee Avenue Overpass to Queen Elizabeth Way at a budgeted cost of $138,000,000.

On November 19, 2008, Council considered and approved the Planning, Property and Development Department's ("Department") report requesting the authorization to negotiate the acquisition of all land interests for the Project. Council also delegated the authority to the Director of Planning, Property and Development to approve the terms and conditions, including the purchase price, of all real property transactions for the Project, where the purchase price is less than $750,000.

On December 17, 2008, Council approved an expropriation for the Project which consisted of 11 property holdings. The City also required portions of CN land for the Project but the City does not have the authority to expropriate from a railroad company. As a result, negotiations commenced to acquire CN's land.

Much of the CN property required for the Project, and the alignment itself, was identified within an agreement with CN that dates back to 1994 ("1994 Agreement"). The City's option to purchase CN property in the 1994 Agreement was exercised prior to the commencement of the Project but, due to design changes, additional CN property was required.

The City and CN worked collaboratively through the design and construction period for the Project to arrive at a mutually acceptable transit corridor but the City has not acquired all of the CN land required for the Project.

During negotiations, CN identified that four separate transactions should occur. The transactions were defined as:

- Queen Elizabeth Way (QEW) Exchange;
- Donald-Main Lands;
- Osborne Lands; and
- Fort Rouge Yard Lands.

This report pertains to the QEW Exchange. The Osborne Lands acquisition was recently approved through the delegated authority of the Director of Planning, Property and Development; negotiations continue on the Donald-Main and Fort Rouge Yard Lands.

The particulars of the QEW Exchange are as follows:

- The City has identified two properties required for the transit corridor – Parcels N & P, Plan 38827;
- Parcels N & P were externally appraised at a value of $20 per square foot based on the highest and best use being a corridor use;
- CN initially agreed to sell the land but later identified the opportunity for a land exchange;

- CN proposed that the City transfer Parcel A Plan 38827 to CN in exchange for Parcels E, F & J, Plan 38827;
- Parcels A, E, F & J appear to be an unresolved land exchange from a previous major capital project (Main Street/Norwood Bridges Project);
- the City requires Parcels E, F & J to legally open the Queen Elizabeth Way right-of-way, while CN requires Parcel A to re-establish its rail corridor that was relocated;
- Parcels A, E, F & J were not appraised, but given their proximity to Parcels N & P an appraisal was not deemed to be necessary;
- Furthermore, the difference in size between Parcel A and Parcels E, F & J is less than 100 square feet;
- Parcel A was circulated to City Departments and no civic need was identified;
- The Ward Councillor was consulted;
- The City's land is valued at $243,892 (Parcel A);
- CN's land is valued at $330,618 (Parcels E, F, J, N & P);
- CN will be paid $86,726, representing the difference in price between the land areas;
- The purchase price is subject to final survey confirmation and will be adjusted by $20.00 per square foot if the City's land or CN's land is found to be different than the area identified in Schedule "A";
- An Environmental Site Assessment will not be completed.

It is acknowledged that the QEW Exchange was initiated prior to the implementation of the Real Estate Transaction Management Framework (RETMF) and portions of the transaction may be non-compliant during the Independent Fairness Commissioner (IFC) review. Items of potential non-compliance could include:

- Discussion on appraiser selection, form of the appraisal used, use of an external or internal appraiser, etc.
- Use of standardized appraisal engagement letter or review memo
- No appraisal on a portion of the transaction
- The transaction was not included in the tracking database.

Recognizing that the QEW Exchange will be one of the first land exchanges reviewed by the IFC, additional areas of non-compliance could be identified. The lack of an appraisal on Parcels A, E, F & J may be notable but, as discussed, the parcels are virtually identical in size and an appraisal was completed on the adjacent property.

FINANCIAL IMPACT

Financial Impact Statement

Date: January 24, 2018

Project Name:

First Year of Program **2018**

Proposed Land Exchange Agreement between the City of Winnipeg ("City") and Canadian National Railway Company ("CN") for the Southwest Rapid Transitway - Stage I Project and Declaration of Surplus City Property

	2018	2019	2020	2021	2022
Capital					
Capital Expenditures Required	$ 89,545	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	89,545	-	-	-	-
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	2,819	-	-	-	-
Net Cost/(Benefit)	$ (2,819)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(2,819)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures consist of the $86,726 to be paid to CN to complete the land exchange + short-term financing charges and corporate admin fees of $2,819. The latter amount is offset by an equal recovery in the current budget of the Transit Department.

"Original signed by"
Tanis Yanchishyn
Manager of Finance (Campus)

CONSULTATION

This Report has been prepared in consultation with:

Legal Services (as to legal issues)
Transit
Public Works

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 and Land Development
Prepared by: Gord Chappell, Administrator
Date: February 8, 2018
File No: 7616/4

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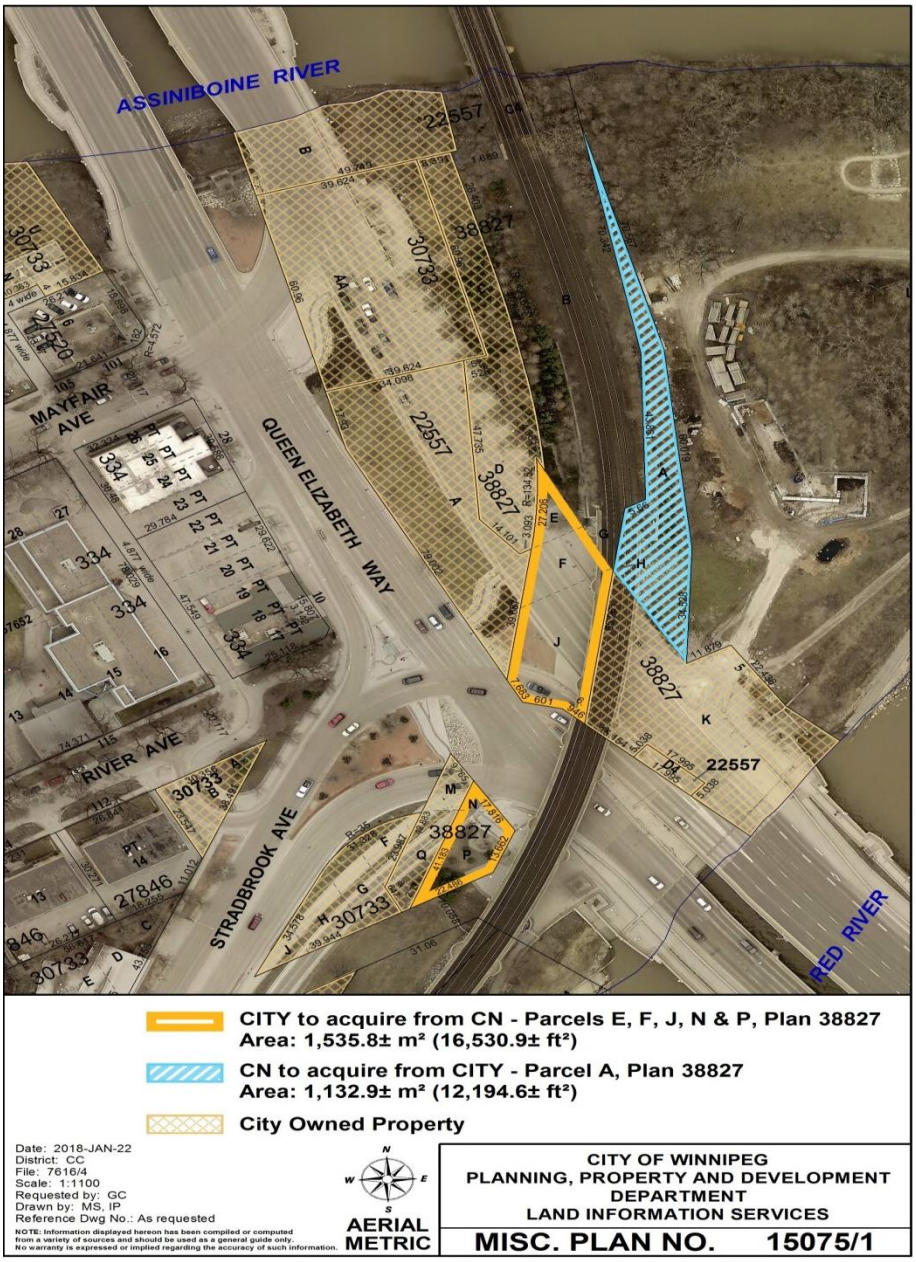
Attachments:

Schedule "A" – Misc. Plan 15075/1
Schedule "B" – Terms and Conditions

Schedule “A”



Schedule “B”

Parties:	The City of Winnipeg Canadian National Railway Company
Purchase Price:	$86,726 plus G.S.T.
Lands to be Exchanged:	Misc. Plan 15075/1 attached as Schedule “A”.
Closing Date:	The Date of Closing, Possession and Adjustments shall be sixty (60) days following the date of final approval by the City of Winnipeg’s Council, or its delegated authority, or such other date as mutually agreed to and approved by the City’s Chief Administrative Officer.
Other Terms:	The purchase price payable is based upon the price of $20.00 per square foot of land area. To the extent that a final survey confirms the area of CN's Land or the City's Land to be more or less than set out in Misc. Plan 15075/1, the final purchase price shall be adjusted based on the per square foot price.