Minute No. 105
Report – Executive Policy Committee – January 20, 2016

Item No. 10 CN Rail Cost Apportionment and Capital Budget Amendment – Plessis Road Twinning and Grade Separation at CN Rail, & Southwest Transitway (Stage 2) and Pembina Highway Underpass

COUNCIL DECISION:

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

1. That a cost-sharing arrangement be approved for CN Rail to pay the City $5,600,000.00 in 2016 as their cost apportionment for the Pembina Highway Underpass reconstruction as part of the "Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass" capital project.

2. That a cost-sharing arrangement be approved for CN Rail to pay the City $7,500,000.00 in 2016 as their cost apportionment for the "Plessis Road Twinning and Grade Separation at CN Rail" capital project.

3. That an increase of $10,500,000 be approved to the Plessis Road Twinning and Grade Separation at CN Rail Capital Budget (ID#1803000112) funded by $7,500,000 from Recommendation 2. above and a capital budget transfer of $3,000,000 from Ness Avenue Culvert (Sturgeon Creek) (ID#1805001514).

4. That the Chief Administrative Officer be delegated authority to approve contract over-expenditures exceeding $5,000,000 associated with the Plessis Road Twinning and Grade Separation at CN Rail capital project providing monies are available within the applicable capital budget as approved by Council.

5. That the City enter into funding agreements with CN Rail with respect to payment of the cost-sharing amounts referenced in Recommendations 1. and 2. including CN Rail's written consent for the City to construct an at-grade pedestrian/active transportation crossing at the Plaza Drive Station on the Southwest Rapid Transit Corridor, and the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of such funding agreements 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.

Report – Executive Policy Committee – January 20, 2016

COUNCIL DECISION (continued):

6. That the City enter into such amending agreements to any existing agreements with CN Rail as may be required to implement the foregoing, and the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of such amending agreements in accordance with this report and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor.

7. That the Winnipeg Public Service be directed to create a process to have cost certainty incorporated in future negotiations regarding rail to prevent the potential predicament the Councillor from Transcona rightfully has concerns about should future plans with rail rationalization impact future discussions with the rail industry.

8. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – January 20, 2016

DECISION MAKING HISTORY:

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

In amendment,
Moved by Councillor Wyatt,
Seconded by Councillor Eadie,

WHEREAS the Plessis Road Underpass twinning and grade separation and the Pembina Highway/Southwest BRT Underpass is subject to the Canadian Transportation Agency cost apportionment for grade separations;

AND WHEREAS in the past, it has been recognized that said cost apportionment, per a rail authority, was based on 15% of the costs related to the construction of a grade separation, when the project has been initiated by the local roads authority, and that in the event an agreement cannot be arrived at between the railroad authority and the local road authority, a mediation process exists as well as an arbitration process through the Canadian Transportation Agency;

AND WHEREAS the report named "Report of the Executive Policy Committee, January 20 2016, Item No.10. CN Rail Cost Apportionment & Capital Budget Amendment-Plessis Road Twinning and Grade Separation at CN Rail at Southwest TransitWay (Stage 2) and Pembina Highway Underpass" is a title which is neither transparent nor descriptive of the report, where, in its Executive Summary Discussion of said report, alludes to an agreement where the City will grant repayment of CN grade separation costs for both said projects in the event the rail corridors are relocated, between now and 2035;

AND WHEREAS the costs associated with said repayments are not minor in nature, as indicated on page 5 of the Executive Summary Discussion, final paragraph, that "Should the City determine that the rail lines be relocated such that there is no physical rail crossing in service: (i)At Pembina Highway before 2035, the City will reimburse CN $280,000 for every year before 2035 that the rail crossing is physically closed; and that (ii)At Plessis Road before 2035, the City will reimburse CN $375,000 for every year before 2035 that the rail crossing is physically closed";

AND WHEREAS the Report Recommendations do not outline any said repayments required to CN in the event of railway relocation;

Report – Executive Policy Committee – January 20, 2016

DECISION MAKING HISTORY (continued):

AND WHEREAS the recommendations in question, grant delegated authority to the Chief Administrative Officer of the City of Winnipeg to "negotiate and approve the conditions of such funding agreements in accordance with this report…" (As stated in clause # 5 of the recommendation of the report)and the "The CAO be authorized to negotiate and approve the terms and conditions of such amending agreement…" (As found in clause # 6 of the recommendations of the report), therefore failing to inform Council of the implications of this delegated authority in said recommendations and title;

AND WHEREAS the adoption of a policy by the City of Winnipeg to repay any railway authority for their traditional and legal costs associated for grade separations, will directly act as a disincentive for the City to relocate rail lines within the City of Winnipeg in the future;

THEREFORE BE IT RESOLVED that "Report of the Executive Policy Committee, January 20 2016, Item No.10. CN Rail Cost Apportionment & Capital Budget Amendment-Plessis Road Twinning and Grade Separation at CN Rail at Southwest TransitWay (Stage 2) and Pembina Highway Underpass" be amended so that the recommendations 1 through to 7 and "A" through "G" as stated in the body of the report remove any and all delegated authority to the CAO or any other administrator of the City of Winnipeg in order to ensure be no agreement can be signed with CN Rail or any other rail authority, that involved said repayments of their costs associated with grade separations.;

AND BE IT FURTHER RESOLVED that Winnipeg City Council request the Public Service, in the future of any requests for delegated authorities of any officer or staff member of the City of Winnipeg, be required to recommend and explicitly outline in any recommendation to Council, what that authority will mean in terms of the powers being granted for said authority, with the full powers of authority being outlined within any future report.

Report – Executive Policy Committee – January 20, 2016

DECISION MAKING HISTORY (continued):

In amendment,
Moved by His Worship Mayor Bowman,
Seconded by Councillor Morantz,

THEREFORE BE IT RESOLVED THAT Item 10 of the Report of the Executive Policy Committee dated January 20, 2016 be amended so that the Winnipeg Public Service be directed to create a process to have cost certainty incorporated in future negotiations regarding rail to prevent the potential predicament the Councillor from Transcona rightfully has concerns about should future plans with rail rationalization impact future discussions with the rail industry.

The motion to amend moved by His Worship Mayor Bowman and Councillor Morantz was put.

Councillor Wyatt called for the yeas and nays, which were as follows:

Yea: His Worship Mayor Bowman, Councillors Allard, Browaty, Dobson, Eadie, Gerbasi, Gillingham, Gilroy, Lukes, Mayes, Morantz, Orlikow, Pagtakhan, Schreyer, Wyatt and Sharma. 16

and the motion to amend the item was declared carried.

The motion moved by Councillors Wyatt and Eadie was put.

Councillor Wyatt called for the yeas and nays, which were as follows:

Yea: Councillors Dobson, Eadie, Schreyer and Wyatt. 4

Nay: His Worship Mayor Bowman, Councillors Allard, Browaty, Gerbasi, Gillingham, Gilroy, Lukes, Mayes, Morantz, Orlikow, Pagtakhan and Sharma 12

and the motion was declared lost

The motion for the adoption of the item, as amended by the motion Moved by His Worship Mayor Bowman and Seconded by Councillor Morantz, was put.

The Speaker called for the yeas and nays, which were as follows:

Report – Executive Policy Committee – January 20, 2016

DECISION MAKING HISTORY (continued):

Yea: His Worship Mayor Bowman, Councillors Allard, Browaty, Gerbasi, Gillingham, Gilroy, Lukes, Mayes, Morantz, Orlikow, Pagtakhan and Sharma 12

Nay: Councillors Dobson, Eadie, Schreyer and Wyatt 4

And the motion for adoption of the item, as amended by the motion moved by His Worship Mayor Bowman and Councillor Morantz was declared carried.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 20, 2016, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: CN RAIL COST APPORTIONMENT AND CAPITAL BUDGET AMENDMENT– PLESSIS ROAD TWINNING AND GRADE SEPARATION AT CN RAIL & SOUTHWEST TRANSITWAY (STAGE 2) AND PEMBINA HIGHWAY UNDERPASS

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Neirinck, P. Eng.	L. Deane, P. Eng. D. Wardrop, P. Eng.	M. Ruta	D. McNeil CAO

RECOMMENDATIONS

A. That Council approve a cost-sharing arrangement for CN Rail to pay the City $5,600,000.00 in 2016 as their cost apportionment for the Pembina Highway Underpass reconstruction as part of the “Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass” capital project.

B. That Council approve a cost-sharing arrangement for CN Rail to pay the City $7,500,000.00 in 2016 as their cost apportionment for the “Plessis Road Twinning and Grade Separation at CN Rail” capital project.

C. That Council approve an increase of $10,500,000 to the Plessis Road Twinning and Grade Separation at CN Rail Capital Budget (ID#1803000112) funded by $7,500,000 from Recommendation 1.B. above and a capital budget transfer of $3,000,000 from Ness Avenue Culvert (Sturgeon Creek) (ID#1805001514).

D. That the Chief Administrative Officer be delegated authority to approve contract over-expenditures exceeding $5,000,000 associated with the Plessis Road Twinning and Grade Separation at CN Rail capital project providing monies are available within the applicable capital budget as approved by Council.

E. That the City enter into funding agreements with CN Rail with respect to payment of the cost-sharing amounts referenced in Recommendations A. and B. including CN Rail’s written consent for the City to construct an at-grade pedestrian/active transportation crossing at the Plaza Drive Station on the Southwest Rapid Transit Corridor, and the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of such funding agreements 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.

F. That the City enter into such amending agreements to any existing agreements with CN Rail as may be required to implement the foregoing, and the Chief Administrative Officer be authorized to negotiate and approve the terms and conditions of such amending agreements in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services.

G. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Council approval is required to approve cost-sharing arrangements, enter into legal agreements and amend capital project budgets.

EXECUTIVE SUMMARY / DISCUSSION

No increase to the "Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass" capital project is being requested as none is required. The funding derived under this cost-sharing arrangement with CN Rail represents a new source of funding for the project.

A budget increase of $10,500,000 to the Plessis Road Twinning and Grade Separation at CN Rail capital project is required due to additional construction costs related to delays in construction of the temporary railway detour; additional costs associated with the relocation of Oil Authority pipelines; and associated consulting fees. The Plessis Road Twinning and Grade Separation at CN Rail – Financial Status Report No.11 for Period Ending June 30, 2015, tabled at the September 17, 2015 meeting of the Standing Policy Committee on Finance, identified an $8,400,000 increased budget requirement with an identified risk for an additional $3,000,000 to cover additional consulting and oil authority fees. The current budget increase requirement of $10,500,000 is not expected to be exceeded.

CN Rail cost apportionment is limited to the basic grade separation portion of a project. A basic grade separation is defined as that portion of the work that is required to provide present day needs at the time of construction or reconstruction of the grade separation. That is, CN Rail is not required to pay for enhancements or for project work being undertaken outside of the grade separation area.

Cost apportionment between the City and CN Rail for construction or reconstruction of basic grade separations is to be negotiated between the two parties. Guidelines for apportionment of costs are available from the Canada Transportation Agency ("CTA") to assist as a starting point in the negotiations. Under the Canadian Transportation Act, the CTA is responsible for making binding cost apportionment decisions where the parties involved cannot reach agreement; a process that takes a minimum of 6 months and up to several years to complete. Where parties have difficulty reaching a settlement, the CTA offers non-binding mediation services to assist the parties in reaching a settlement. These mediation services were used to negotiate these cost-sharing arrangements.

The cost-sharing arrangements are also subject to executive approval from CN Rail, which was provided to the City on January 8, 2016. The City and CN Rail have agreed that these cost-sharing arrangements will not set a precedent for negotiations of future projects.

The cost apportionment monetary amounts are usually negotiated to be paid upon construction completion but are being advanced with Plessis Underpass payment in 2016 and the Pembina Underpass payment in 2016, which payment is conditional upon the Financial Close of the "Southwest Rapid Transit Way (Stage 2) and Pembina Highway Underpass" Project. Plessis Underpass is expected to be complete in September 2016 and the SWRTC/Pembina Underpass is expected to reach substantial completion by late 2019. Should the City determine that the rail lines be relocated such that there is no physical rail crossing in service: (i) at Pembina Highway before 2035, the City will reimburse CN $280,000 for every year before 2035 that the rail

crossing is physically closed; and (ii) at Plessis Road before 2035, the City will reimburse CN $375,000 for every year before 2035 that the rail crossing is physically closed.

In addition to the monetary payment, CN Rail would agree to consent to the City constructing an at-grade pedestrian/active transportation crossing at the Plaza Drive Station on the Southwest Rapid Transit Corridor, in lieu of a grade separated crossing, as part of these cost-sharing arrangements.

As the Pembina Highway Underpass is part of a P3 project, defining actual capital costs of construction would be difficult within that procurement format. An early lump sum settlement that will be paid after Financial Close of that project is beneficial to both the City and CN Rail. In addition, the determination of an at-grade pedestrian/active transportation crossing at Plaza Station is time sensitive to the Proponents currently bidding on that Project as if affects their designs and financial costing.

Should the settlement not be accepted by either party, both projects would proceed separately to the CTA adjudication process. As noted that process will take a minimum of 6 months to complete and could take several years. The CTA decision would be binding to both parties and there is no guarantee they will rule in favor of either party.

IMPLICATIONS OF THE RECOMMENDATIONS

The lump sum payments to be made by CN Rail will be utilized to cover expenditures on those projects.

A total budget requirement for Plessis Road Twinning and Grade Separation at CN Rail capital project is now projected to be $87,500,000 with a $10,500,000 capital budget increase funded as noted in Recommendation 1.C.

HISTORY

The 2012 Capital Budget adopted on December 13, 2011 included $77,000,000 for the Plessis Road Underpass. Initial negotiations directly between the City and CN Rail failed to reach an agreement on cost apportionment funding amounts to be paid to the City by CN Rail.
On June 25, 2014, Council approved the report submitted by the Transit Department entitled Capital Integration Project – Southwest Transitway (Stage 2) and Pembina Highway Underpass in which:

- A 2014 capital project was approved in the amount of $590 million, subject to confirmation of federal and provincial funding.
- The Project was authorized to proceed based on a Design-Build-Finance-(Operate)-Maintain (DBF(O)M) Public-Private Partnership delivery model.
- The Chief Administrative Officer was authorized to approve, issue and award the Request for Qualifications and the Request for Proposals for the Project.

On June 1, 2015 the City and CN Rail agreed to enter into confidential non-binding mediation with the CTA for the Plessis Underpass project. An initial mediation session occurred on June 18, 2015. After the initial meeting it was agreed it was beneficial to both parties to negotiate the Plessis Underpass and the Pembina Highway Underpass cost apportionment concurrently. Subsequent mediation sessions occurred on September 14, 2015 and October 21, 2015.

FINANCIAL IMPACT

Financial Impact Statement

Date: November 13, 2015

Project Name: **First Year of Program** **2015**

CN RAIL COST APPORTIONMENT AND CAPITAL BUDGET AMENDMENT– PLESSIS ROAD TWINNING AND GRADE SEPARATION AT CN RAIL & SOUTHWEST TRANSITWAY (STAGE 2) AND PEMBINA HIGHWAY UNDERPASS

	2015	2016	2017	2018	2019
Capital					
Capital Expenditures Required	$ 10,500,000	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	3,000,000	-	-	-	-
Additional Capital Budget Required	$ 7,500,000	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - CN Rail Cost-Sharing Agreement	7,500,000	-	-	-	-
Total Funding	$ 7,500,000	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ 7,500,000				
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: A Capital Budget increase of $10,500,000 is required for the Plessis Road Twinning and Grade Separation at CN Rail (Public Works Capital Project #1803000112) which will be funded by the $7,500,000 cost-sharing agreement for the Plessis Road grade separation project that the City will enter into with CN Rail, upon approval of this report, and a transfer of capital budget surplus of $3,000,000 from the Ness Avenue Culvert (Sturgeon Creek) project (Public Works Capital Project #1805001514).

No increase to the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass capital project is being requested and none is required. The Funding derived under this cost-sharing arrangement with CN Rail represents a new source of funding for the project and it will be considered in context of the other funding sources and agreements for this capital project.

"Original Signed by D. Stewart, CA"
D. Stewart, CA
Manager of Finance & Administration

CONSULTATION

In preparing this Report there was consultation with:
Winnipeg Transit
Legal Services as to Legal issues

OURWINNIPEG POLICY ALIGNMENT

Not applicable.

SUBMITTED BY

Department: Public Works
Division: Engineering
Prepared by: B. Neirinck, P. Eng.
Date: January 12, 2016