**Minutes – Executive Policy Committee – November 12, 2019**

**Report – Standing Policy Committee on Finance – November 8, 2019**

**Item No. 1 Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass and Provincial Project Contribution Agreement Update**

STANDING COMMITTEE RECOMMENDATION:

On November 8, 2019, the Standing Policy Committee on Finance concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the update on the risks related to the funding commitments in the Provincial Contribution Agreement be received as information.

**Minutes – Executive Policy Committee – November 12, 2019**

**Report – Standing Policy Committee on Finance – November 8, 2019**

DECISION MAKING HISTORY:

Moved by Councillor Gillingham,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Carried

Moved by Councillor Gillingham,

That the recommendation of the Standing Policy Committee on Finance be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On November 8, 2019, the Standing Policy Committee on Finance concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

# ADMINISTRATIVE REPORT

**Title:** Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass and Provincial Project Contribution Agreement Update

**Critical Path:** Standing Policy Committee on Finance – Executive Policy Committee – Council

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| L. Fisher | G. Ewankiw | P. Olafson,<br>Interim CFO | M. Ruta,<br>Interim CAO |

## EXECUTIVE SUMMARY

The City currently has separate executed Project Contribution Agreements ("Contribution Agreements") with each of the Province of Manitoba, and the Federal Government for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass project (SWRT). The terms and contribution formulas in each agreement are different based on negotiations with each funding partner.

On October 3, 2019, the City and the Province executed an amending agreement ("Amending Agreement") which updated the terms to reflect updated project cost estimates and dates. The Contribution Agreement that was in place with the Province required certain administrative amendments to reflect revised project scope and budget as a result of cost savings realized through the Public Private Partnership (P3) process. Additional terms that were amended include the acceleration of the substantial completion payment to the City by the Province and changing the project close out date to March, 2021 (from April 1, 2023). However, as some project costs may not be known by that time, the Amending Agreement provides for the option to extend this close out date, where the Province must act reasonably. The Amending Agreement allows for a single arbitrator to make determination if there is a disagreement on 'acting reasonably'.

Despite reaching the Amending Agreement terms, there continues to be an ongoing disagreement with the Province on the interpretation of the funding formula as outlined in the original Contribution Agreement (these clauses were not changed in the Amending Agreement). The Province's interpretation could result in an overall project funding shortfall of up to $23 million. The City would be responsible for assuming the funding of any project shortfall. Discussions with the Province are ongoing and the City will continue to work towards an amenable outcome.

As a result, there remains uncertainty on how much total funding the Province intends to ultimately contribute to the project.

This uncertainty could require the City to secure additional long term debt to fund the shortfall required to cover the overall project costs.

Appendix A outlines the projected use, repayment and potential shortfall of the authorized borrowing authority amounts.

## RECOMMENDATIONS

1. That the update on the risks related to the funding commitments in the Provincial Contribution Agreement be received as information.

## REASON FOR THE REPORT

The interpretation of the funding formula defines the contribution amount the Province would make to the project. The Province's interpretation, which differs from the City's, would result in the City assuming the funding differential which could be up to $23 million. This would result in the City requiring more long term debt than previously authorized in order to carry the shortfall.

This report is intended to inform Council about the risk the City is facing in this regard.

## IMPLICATIONS OF THE RECOMMENDATIONS

This report provides an update on the risks related to the funding commitments in the Provincial Contribution Agreement and is for information only.

The Public Service will submit a subsequent report requesting additional operating budget or borrowing authority if needed, depending on the resolution of the outstanding items.

## HISTORY/DISCUSSION

Substantial completion of the SWRT project was achieved October 1, 2019 and the City made the substantial completion payment on October 8th. In accordance with its contract with Project Co., payments were received from both the Provincial and Federal governments in accordance with the terms of the agreements for substantial completion.

Unlike the Federal Government, the Province's total project contribution amount is paid on milestone dates into the future. The next milestone payment date is April 1, 2020. Council has approved $143 million in bridge financing and $40.05 million in long term borrowing authority. To date, $31 million of the bridge financing has been drawn to cover the payment of upfront costs leaving $112 million remaining in available balance. This bridge financing amount will be used to fund project costs as they are incurred and will be repaid as funding from the Province of Manitoba is received.

Project Budget and Funding

The project budget originally adopted by Council prior to bids being received was $587.3 million. This estimate included a contingency of $69 million. Upon receipt of bids and an award of the project, Council amended the project budget to $467.3 million, which included a contingency of $69 million, for savings of $120 million. The Council approved contingency of $69 million has been reviewed and, given the current status of the project, is now estimated to be $22 million for a revised total project cost estimate of $420.9 million.

The revised anticipated project costs by funding source and contributor are reflected in Table 1.

Table 1 –
Project Funding

| **Funding Source** (in million of $'s) | **Adopted Budget [1]** | **Amended Budget [2]** | **Revised Projection [3]** |
|---|---|---|---|
| Public Private Partnership | 220.8 | 137.2 | 137.2 |
| External Debt | - | 40.1 | 16.8 |
| SW Rapid Transit Corridor Reserve | 4.2 | 4.2 | 4.2 |
| CN Rail | - | 5.6 | 5.6 |
| Total City Funding | 225.0 | 187.0 | 163.8 |
| Provincial Grant | 225.0 | 187.0 | 163.8 |
| Federal Grant | 137.2 | 93.3 | 93.3 |
| | **$ 587.20** | **$ 467.30** | **$ 420.90** |

[1] Adopted by Council, June 25, 2014 with subsequent adjustments (see "History")
[2] Adopted by Council, December 13, 2016 (2017 Capital Budget)
[3] Based on revised contingency projection of $22 million

To date, the City has received $114.1 million in funding from the Province of Manitoba and $91.2 million from the Federal Government in accordance with the terms of the agreements.

Status of Agreement Discussions

The Contribution Agreement required certain administrative amendments to reflect revised project scope and budget as a result of cost savings realized through the P3 process. The City and Province have agreed to the terms of an Amending Agreement.

The amended terms include:

- Updating project cost estimates
- Advancing the substantial completion payment date forward to match the actual October 1st 2019 date.
- Accommodating the Province's request to accelerate the project close out date to March 2021 from April 1, 2023. As some project costs may not be known by that time, the Amending Agreement provides for the option to extend this close out date, where the Province must act reasonably. If there is a disagreement on what 'acting reasonably' is then the Amending Agreement allows for a single arbitrator to make that determination.
- Amending the application of the interest clause to tie specifically to payment timing for approved claims.

However, there continues to be disagreement on the interpretation of the funding formula which defines the funding amounts each party is responsible for as described in the Contribution Agreement. Under the terms of the Contribution Agreement with the Province, the City and Province share 50/50 in projects costs after applying the Federal funding amount. The

Province's position is the funding formula should be consistent with the Federal Agreement in that they would are only share funding of eligible costs, although the terms of the two agreements are different.

The difference between the Provincial interpretation and the City's could result in as much as a $23 million difference in overall project funding.

In the absence of receiving this amount from the Province, the City would need to cover the shortfall through long term debt. Under this scenario, the Public Service may need to request an increase to the borrowing authority limit for long term debt that has been approved for this project. Should this be required, a separate report would be tabled for Council approval.

Appendix A outlines the projected use, repayment and potential shortfall of the authorized borrowing authority amounts.

Next Steps

The City is committed to continuing discussions with the Province in an effort to secure the project funding that was planned for as part of the capital budget approval and included in the Contribution Agreement.

The outcome of the funding formula discussions will determine if additional external debt above the existing authorized borrowing amount is required. The Public Service will submit a subsequent report requesting additional borrowing authority if needed.

History

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.

On February 9, 2015, PPP Canada reduced its funding contribution to $137.3 million, changing the overall project costs from $590 million to $587.3 million.

On March 23, 2015, Council approved $31 million of bridge financing.

Based on the original project budget of $587 million, Provincial funding of $225 million was originally announced in 2014 and the details regarding the timing and method of this funding were agreed upon on July 9, 2015. The funding was divided into three payments comprised of $18 million provided prior to substantial completion, $95 million at substantial completion, and $112 million post construction.

On July 15, 2015, Council approved additional borrowing authority of up to $112 million for bridge financing to ensure sufficient funds are available at substantial completion to make required payments to the P3 Proponent. This additional borrowing authority is part of the agreement with the Province of Manitoba to bridge the Province's financial contribution to the project. The interest costs associated with the additional borrowing authority were to be fully funded by the Province of Manitoba.

On March 22, 2016, Council approved an additional $16.5 million of long-term debt in replacement of Public Private Partnership debt.
On May 12, 2016, the City and Province of Manitoba signed the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project Contribution Agreement.

On December 13, 2016, Council approved the revised project budget of $467 million and additional external borrowing authority of $23.550 million for the 2016 Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass capital project in replacement of $23.550 million of debt previously approved as part of the Public Private Partnership.

This added authority made the external borrowing amount equal to $16.5 million plus $23.550 million for a total of $40.050 million in 2016 with all related debt and finance charges to be repaid from the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Payment Reserve. A portion of this external debt is to be utilized to fund the City's portion of the $69 million contingency.

On January 19, 2017, the City and Federal Government executed the project Federal Funding Agreement.

On December 14, 2017, P3 Canada and the City of Winnipeg executed an amendment to the existing P3 Canada/ City of Winnipeg Southwest Rapid Transit Stage 2 & Pembina Hwy Underpass project- Project Contribution Agreement. P3 Canada increased its funding contribution to $93.3 million.

On March 7, 2019, the City received a letter from the Minister of Municipal Relations confirming the Province's 2019 Municipal Infrastructure Basket funding which included $96.1 million for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass project.

On October 1, 2019, the Southwest Rapid Transit Stage 2 & Pembina Hwy Underpass project achieved Substantial Completion.

On October 3, 2019, the City and the Province executed an amendment to the Project Contribution Agreement.

**FINANCIAL IMPACT**

# Financial Impact Statement **Date:** October 31, 2019

## Project Name:

**SOUTHWEST RAPID TRANSITWAY (STAGE 2) AND PEMBINA HIGHWAY UNDERPASS AND PROVINCIAL PROJECT CONTRIBUTION AGREEMENT UPDATE**

**COMMENTS:**

There are no financial implications to receiving this report as information.

However, the risk items outlined in the report could have a financial impact depending on how they are resolved. A separate report will be brought forward, if needed, to address any resulting budget or borrowing authority requirements.

**Original Signed by:**
Laurie Fisher, CPA, CA
Manager of Finance & Administration

## CONSULTATION

This Report has been prepared in consultation with:

n/a

## OURWINNIPEG POLICY ALIGNMENT

n/a

## WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

n/a

## SUBMITTED BY

Department: Transit
Division: Finance and Administration/Asset Management
Prepared by: Laurie Fisher, Manager of Finance & Administration
Scott Payne, Manager, Asset Management Office
Paul Olafson, Interim Chief Financial Officer
Date: October 31, 2019

Attachments:

Appendix A - Summary of Authorized Borrowing Authority and Projected Activity