

**Subject: Front Ending Report – Design and Construction of Palladium Drive
Widening and Realignment**

File Number: ACS2023-PRE-PS-0108

Report to Planning and Housing Committee on 16 August 2023

and Council 23 August 2023

**Submitted on August 4, 2023 by Derrick Moodie, Director, Planning Services,
Planning, Real Estate and Economic Development**

**Contact Person: Wendy Tse, Coordinator, Front Ending Agreement and
Brownfields Program (A)**

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Ward: Kanata North (4)

**Objet : Rapport d'entente préalable – Conception et réalisation de
l'élargissement et de la modification du tracé de la promenade Palladium**

Dossier : ACS2023-PRE-PS-0108

Rapport au Comité de la planification et du logement

le 16 août 2023

et au Conseil le 23 août 2023

**Soumis le 4 août 2023 par Derrick Moodie, Directeur, Services de la planification,
Direction générale de la planification, des biens immobiliers et du développement
économique**

**Personne ressource : Wendy Tse, Coordinatrice, Ententes préalables et
Programme de friches industrielles (i)**

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Quartier: Kanata-Nord (4)

REPORT RECOMMENDATIONS

That Planning and Housing Committee recommend Council:

1. Authorize the City and delegate authority to the General Manager, Planning, Real Estate and Economic Development Department, to enter into Front-Ending Agreements with the following developers, which provide for the repayment of the design and construction associated with the Palladium Drive Widening and Realignment from Huntmar Drive to N/S Arterial to a total upset limit of \$12,101,613 plus applicable taxes in accordance with the Front-Ending Agreement Principles and Policy set forth in Documents 2 and 3 and with the final form and content being to the satisfaction of the City Solicitor, and distributed as follows:
 - a. West Ottawa Land Holdings Ltd. and West Ottawa Land Holdings (2) Ltd. to an upset limit of \$10,302,877 plus applicable taxes; and
 - b. RioCan Holdings (TJV) Inc. and 1633272 Alberta ULC to an upset limit of \$1,798,736 plus applicable taxes.
2. Authorize the financial disbursement to reimburse the design and construction costs incurred by the above pursuant to the execution of the Front-Ending Agreements to an upset limit of \$12,101,613 plus applicable taxes inclusive of reimbursement for post period capacity and in accordance with the reimbursement schedule set out in said agreements.

RECOMMANDATIONS DU RAPPORT

Que le Comité de la planification et du logement recommande ce qui suit au Conseil :

1. Autoriser la Ville à conclure des ententes préalables avec les promoteurs suivants, et déléguer le pouvoir à cette fin au directeur général de Planification, Immobilier et Développement économique, entente qui prévoit le remboursement de la conception et de la réalisation de l'élargissement et de la modification du tracé de la promenade Palladium, entre la promenade Huntmar et l'artère nord-sud, jusqu'à concurrence de 12 101 613 \$, taxes applicables en sus, conformément aux principes et à la politique des ententes préalables énoncés dans les documents 2 et 3, et dont la forme et le contenu définitifs seront à la satisfaction de l'avocat général, remboursement qui sera ainsi réparti :

- a. **West Ottawa Land Holdings Ltd. et West Ottawa Land Holdings (2) Ltd., jusqu'à concurrence de 10 302 877 \$, taxes applicables en sus; et**
 - b. **RioCan Holdings (TJV) Inc. et 1633272 Alberta ULC, jusqu'à concurrence de 1 798 736 \$, taxes applicables en sus.**
- 2. Autoriser le décaissement nécessaire au remboursement des coûts de conception et de construction engagés par les promoteurs susmentionnés dans le cadre de l'exécution des ententes préalables, jusqu'à concurrence de 12 101 613 \$, taxes applicables en sus et comprenant le remboursement de la capacité postérieure à la période visée, et conformément au calendrier de remboursement desdites ententes.**

BACKGROUND

This report is a follow-up to the report that Council approved on October 11, 2017 pertaining to the scoping of a Front-Ending Agreement for the road works associated with the Campeau Drive Extension which included the Palladium Drive Realignment and Widening from Huntmar Drive to the North-South arterial ([ACS2017-PIE-PS-0097](#)). The previous report identified an upset limit of \$2,872,000 plus applicable taxes for the Palladium Drive works. This amount reflected the project costs identified in the 2016 Development Charges Background Study. The report also identified that this would not adequately cover the full cost of the project, and that the additional costs would be considered in future updates to the Development Charges Bylaw.

The project is in accordance with the amended Kanata West Concept Plan approved by Council in 2003. The design for the Palladium Drive realignment and widening from Highway 417 through to the Huntmar Drive/Campeau Drive intersection were advanced through the adjacent Plans of Subdivision associated with the Kanata West Business Park and the related subdivision agreements have been registered. The limits of this project and the developers' areas of responsibilities are shown in Document 1 – Location Map. The developers are West Ottawa Land Holdings Ltd. and West Ottawa Land Holdings (2) Ltd. (referred to as West Ottawa) and RioCan Holdings (TJV) Inc. and 1633272 Alberta ULC (referred to as RioCan).

The cost increase from the 2016 Background study and original report are largely due to increasing the scope of work from a two-lane road to a four-lane road, to address the rapid growth in the area and to minimize throw-away costs. The project scope was also expanded to include a sidewalk and cycle track on the north side of Campeau Drive/west side of Huntmar Drive around the 405 Huntmar Drive site and fencing along

the east side of Palladium Drive (between the Highway 417 interchange and the traffic roundabout at Palladium Drive and Campeau Drive). These scope changes were reflected in staff-approved plans and drawings. The construction has been completed, is in operational use and is undergoing final inspections and acceptance.

The developers, West Ottawa and RioCan, are now seeking repayment for the roadworks. Funding is available within existing Capital accounts to address these additional costs.

DISCUSSION

The Campeau Drive portion of the project file is identified in the 2013 Transportation Master Plan (TMP) as a Phase 1 project (between 2014 and 2019), and the Palladium Drive Realignment portion is identified as a Phase 2 project (between 2020-2025). However, the 2019 Development Charge By-law Background Study adjusted some project timelines and lists the Palladium Drive as a Phase 3 project (2026-2031). This report seeks to repay the developers in 2023 as the project is complete and the funds are available.

The majority of the roadworks (Campeau) was undertaken in 2016 and 2017, with the added sidewalk, cycle track and fencing completed this year, in 2023. As stated in the 2017 report, construction of the works had largely taken place. The report also noted that the development in the northwest quadrant of Kanata West drove the need to construct these projects in advance of the timelines identified in the 2013 Transportation Master Plan. The Palladium Drive segments are in operational use and are undergoing final inspections and acceptance.

Given the roadworks that were to be completed, it is acknowledged that the repayment amounts identified in the 2017 report were inadequate. Since that report, detailed costing has been reviewed.

It was noted in the 2017 report that the construction works had proceeded within the scope of servicing agreements and commence work notifications associated with the major subdivisions in this location, including the Taggart Business Park, Arcadia Residential Subdivision, Kanata Commons Commercial centre, and Tanger Retail Outlet, and as such, work proceeded as contemplated by these subdivision agreements but in advance of the required Front Ending Agreements. Allowing this work to proceed though servicing approvals tied to the subdivision agreement process allowed for timely installation of the road, watermains and services necessary to support growth in this

area – and in particular, advance the development of several major ‘Capital Investment Track’ projects, including the Taggart Business Park and associated developments, and allowed for timely installation of traffic safety improvements to facilitate traffic management associated with major events at the Canadian Tire Centre. However, the practical experience of advancing these projects through the subdivision process and in advance of supporting front ending agreements to clarify financial obligations did increase risk of cost uncertainty for both the City and the Front Ending proponents. Clarification has been provided to staff that where a front ending agreement is required, one must be signed by both parties before a Commence Work Notification is issued.

With respect to the costs invoiced by the developers, staff has exercised due diligence on the review of the developers’ submissions of actual expenses and have negotiated an upset limit of \$10,302,877 (plus applicable taxes) for West Ottawa, and \$1,798,736 (plus applicable taxes) for RioCan. Before repayments can be made, West Ottawa and RioCan must enter into Front Ending Agreements to the satisfaction of the General Manager of Planning, Real Estate and Economic Development. These agreements will substantiate the amounts of the repayments as well as the parameters of the work. Repayments will not occur until after final acceptance and assumption of each of these works in accordance with the Council-Approved Front-Ending Policy (Document 3).

Approval is sought to repay the developers for the work undertaken. Funds are available in existing capital accounts related to this project, with details outlined within the financial implications section below.

RURAL IMPLICATIONS

There are no rural implications associated with the report recommendations.

COMMENTS BY THE WARD COUNCILLOR(S)

The Councillor is aware of the application related to this report.

ADVISORY COMMITTEE(S) COMMENTS

N/A

LEGAL IMPLICATIONS

Appeals to Development Charges By-law 2019-156 have been filed by West Ottawa Land Holdings Ltd., West Ottawa Land Holdings (2) Ltd. and RioCan Holdings (TJV) Inc. In addition, an action in Superior Court has been commenced by West Ottawa Land

Holdings Ltd. and West Ottawa Land Holdings (2) Ltd. Should Council approve this report, in addition to the execution of the front-ending agreements, minutes of settlement will be signed that provide for the discontinuance of these items and mutual releases at the time of the payments of the amounts authorized by this report. The settlement contemplates that if the amounts outlined in this report are not paid by September 22, 2023, additional amounts for interest will be payable.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications associated with the report recommendations.

ASSET MANAGEMENT IMPLICATIONS

There are no Asset Management Implications resulting from this report.

FINANCIAL IMPLICATIONS

The upset limit for re-imbusement for the Palladium Drive Realignment and Widening (DC item 1.13144) is **\$12,101,613**, plus applicable taxes and broken down as follows:

	RioCan Management	West Ottawa Land Holdings Ltd.
Cost of work (construction and engineering)	\$1,747,533	\$7,702,877
Sidewalk	\$0	\$600,000
Carrying Costs	\$51,203	\$2,000,000
Sunk HST (on Cost of Work)	\$30,757	\$135,571
Sunk HST (Sidewalk)	\$0	\$10,560
Total (including taxes)	\$1,829,493	\$10,449,008

Payments will be made from existing available funds in capital accounts specifically created for this work (903196 Campeau Drive; 909181 FEA – Palladium Realignment). Repayment will be advanced from the timeline referenced in the 2019 Development Charge By-law Background Study, from 2026 to 2023. A portion of the post-period allocation of this project will be required to repay the developers in this case, which will

only be re-financed once the Transportation Master Plan is updated in 2025 and an amendment is made to the Development Charges Background Study and By-law in 2026. The total project cost represents a 95 per cent benefit to growth apportionment, in accordance with the Development Charge By-law Background Study.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

SUPPORTING DOCUMENTATION

Document 1 Location Map

Document 2 Front-Ending Agreement Principles

Document 3 Council-Approved Front-Ending Policy

CONCLUSION

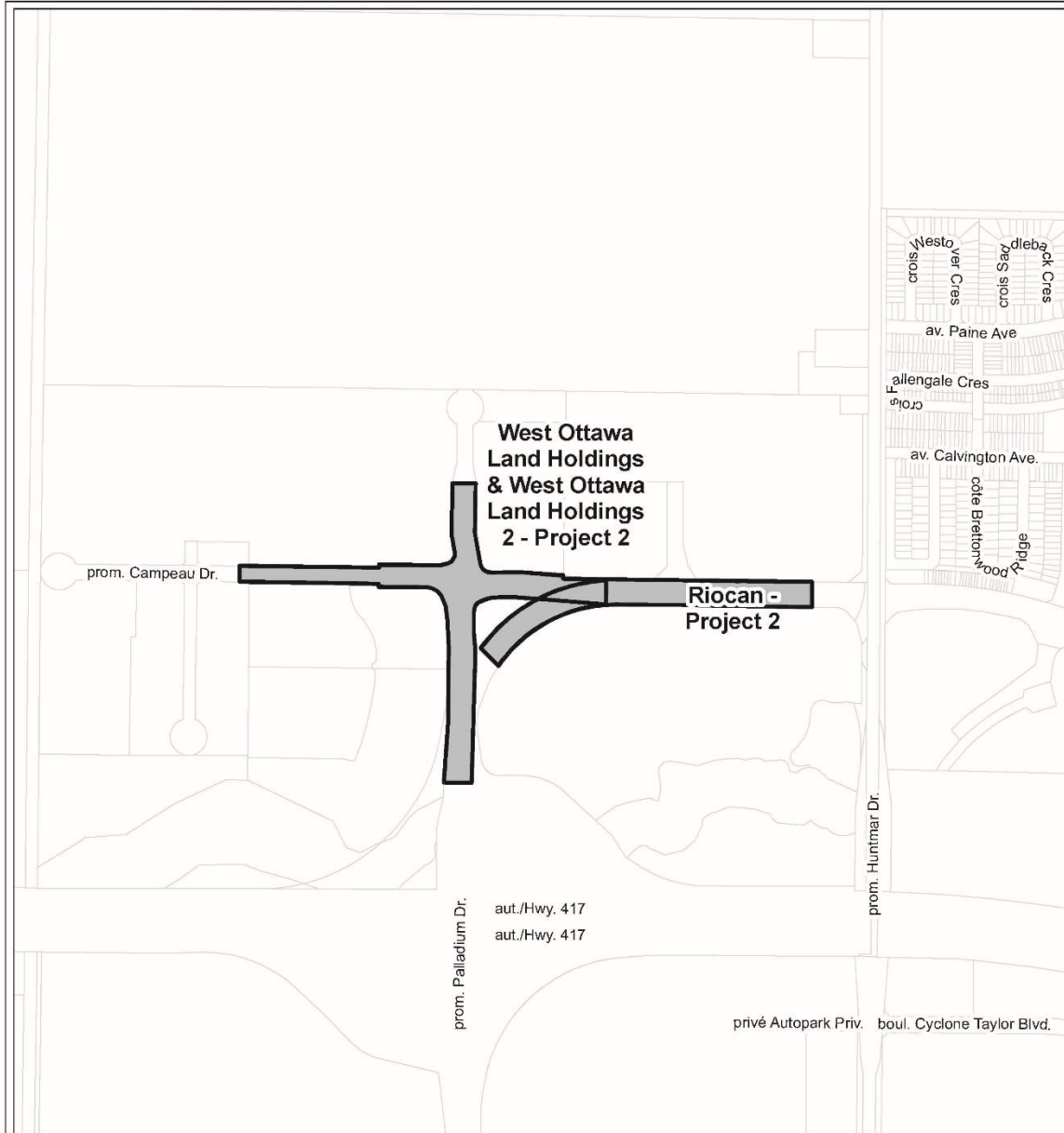
Staff recommend Council authorize the City and delegate authority to the General Manager, Planning, Real Estate and Economic Development, to enter into Front-Ending Agreements for the Palladium Drive Realignment and Widening with West Ottawa and RioCan to a total upset limit of \$12,101,613 (plus applicable taxes) apportioned as described in the report.



DISPOSITION

Legal Services will prepare the final form of the agreements in consultation with the Planning, Real Estate and Economic Development Department.

The City Treasurer will earmark funds for repayment as noted in this report.

Document 1 – Location Map



		LOCATION MAP / PLAN DE LOCALISATION FRONT ENDING AGREEMENT / ACCORD DE FINANCEMENT INITIAL	
ACS2017-PIE-PS-0097	17-1015-Y	<p>Project 2 Palladium Drive Realignment (DC Item 1.13144) Huntmar to N/S Arterial</p> <p>Projet 2 - Modification du tracé de la promenade Palladium (DC Hem 1.13144) de la promenade Huntmar à l'artère nord-sud</p>	
I:\CO\2017\Front\Campeau2			
<small>©Parcel data is owned by Teranet Enterprises Inc. and its suppliers. All rights reserved. May not be produced without permission. THIS IS NOT A PLAN OF SURVEY. ©Les données de parcelles appartenant à Teranet Enterprises Inc. et à ses fournisseurs. Tous droits réservés. Ne peut être reproduit sans autorisation. CE CI N'EST PAS UN PLAN D'ARPENTAGE</small>			
REVISION / RÉVISION - 2017 / 07 / 07		 <small>NOT TO SCALE</small>	

Document 2 – Front-Ending Principles

1. The cost for reimbursement of the Palladium Drive Widening and Realignment, including the construction of associated stormwater infrastructure to accommodate the Campeau Drive road drainage is set at an upset limit of **\$12,101,613** plus applicable taxes, and is to be apportioned to West Ottawa Land Holdings and West Ottawa Land Holdings 2 and RioCan Holdings (TJV) Inc. and 1633272 Alberta ULC. as described in this report.
2. The City will reimburse the subject Developers after the works have been granted approval by the City. Reimbursement shall occur in accordance with the terms of the Development Charge By-law and all works are completed to the satisfaction of the General Manager of Planning, Infrastructure and Economic Development. Refer to Front-Ending Policy clause 11 in Document 3 for documentation requirements.
3. The repayment of the construction costs shall be pursuant to the Council-approved Front-Ending Agreement Policy as referenced under Document 3-Council approved FEA policy.
4. The Developers as identified in this report will not be entitled to receive further indexing pursuant to conditions noted in Document 3- Council approved FEA policy, subject to Council's review of the indexing policy in future Development Charge studies.

Document 3 – June 25, 2009 Council-Approved Front-Ending Policy

Front-Ending Agreements are requested by developers who wish to have specific growth-related capital works in place in advance of the City's capital project plans for emplacement of these same works: developers agree to finance the works at the "front end" and recover their costs from the City at a later date. The following conditions must be met in order for the City to enter into a Front-Ending Agreement:

1. All Front-Ending Agreement with the City will be for growth-related capital works that have been included in a development charge study.
2. The contract for front-ended works shall be awarded by the front-ender in accordance with the City's purchasing policy of a competitive procurement process and subject to the review and satisfaction of the General Manager, Planning, Infrastructure and Economic Development Department. Where the front-ender does not award the work in accordance with the City's purchasing policy, they must demonstrate that competitive pricing has been obtained, through independent analysis of their engineer, to the satisfaction of the General Manager, Planning, Infrastructure and Economic Development Department. The contract for the work must be made available to the City to provide to the public.
3. Stormwater ponds and related sewer works that are 100 per cent development charge funded in the recommended by-laws will be paid back to the developer based on revenues as they are collected from the designated area. This means that at no time are the repayments to exceed the revenues received. Each Front-Ending Agreement will define the geographic area involved and a separate and specific deferred revenue account may be set up to keep track of the revenues collected and payments made. Crediting will also be allowed for the Front-Ending Agreements related to stormwater ponds. Indexing shall apply to the outstanding balance in accordance with the rate of indexation pursuant to the Development Charge By-laws.
4. For all other capital projects, a lump sum payment, both the development charge portion and the City portion, will be made to the developer in the year the project is identified in the City's 10-year capital plan at the time the Front-Ending Agreement is approved. Should growth occur earlier than forecasted, then repayment would be accelerated to reflect the revised timing the City would have budgeted for the project. If growth occurs more slowly than forecasted, then the City will have an additional one to three years (one to three years from the year the project was identified in the 10-year plan) to make repayments. Only in this

latter case will the City's portion of the payment be indexed beginning with the year the project was identified in the 10-year plan.

5. Given that the City will be assuming operating costs earlier than anticipated through the Front-Ending Agreement process; the City is not to pay any carrying costs to the developer.
6. All development charges payable by developers must be paid up front in accordance with the City's by-law. With the exception of the stormwater ponds and related sewer works, there will not be any crediting allowed as a result of entering into a Front-Ending Agreement. On December 8, 2004, City Council approved, "That staff be directed to work with the industry to develop the details of a credit policy to be incorporated into the Front-Ending Policy".
7. In the case where multiple Front-Ending Agreements are in force in the same area-specific Development Charge By-law, and the City has approved the front-ended works for development charge reimbursements, the front-enders will share in the distribution of development charge revenues on a pro-rata basis with other stormwater drainage projects. The pro-rated works shall be based on the balance of the outstanding amount owing on the date the repayment is due. Existing front-enders will be advised of new Front-Ending Agreements for stormwater works within the same benefiting area and area-specific Development Charge By-law.
8. The capital project upset limits for engineering, project management, and contingency shall be the established rates set in accordance with the City's Development Charge By-laws and accompanying background studies, as amended.
9. Land remuneration shall be subject to an appraisal by a professional land appraiser and the appraisal shall be conducted in accordance with the terms of reference as established in the City's Development Charge By-laws and accompanying background studies, as amended. The upset limit for land remuneration shall be the lesser of the appraised value and the upset limit in accordance with the City's Development Charge By-laws and accompanying background studies.
10. Indexing shall apply to the total project costs if the front-ended works have been delayed over a period of time; the front-ender provides justification for the delay, and with the written concurrence of the City.
11. Where a front-ender is eligible for development charge reimbursement, documentation is required to support the reimbursement in accordance with the

City's Purchasing Policy. The Front-Ending Agreement shall identify at which stage the documentation shall be required. The following documentation shall be forwarded to the City before payment is issued:

- a. An invoice summarizing the front-ended works, and separate cost items, if applicable, for land, construction costs, engineering fees, project management fees, contingency fees, and applicable taxes.
 - b. Payment Certificates, including the final certificate, signed by the developer's civil engineer.
 - c. All invoices supporting re-payment for the front-ended works.
 - d. Statutory Declaration.
 - e. Certificate of Substantial Performance.
 - f. Workplace Safety and Insurance Board Clearance Certificate (WSIB).
 - g. Certificate of Publication.
12. A report to Council is required to authorize staff to enter into a Front-Ending Agreement. The recommendation will include the financial commitment of the City, specify the funding source(s), the project timeline and where necessary, request that a specific deferred revenue account be established. The financial comment in the report will specify the timelines for the repayment, an operating budget impact and an estimate of the year in which the operating budget impact will begin. It should also indicate the year in which the project was originally identified in the City's 10-year capital plan. A capital project will be established upon Council approval to enter into a Front-Ending Agreement. The status of these projects will be provided to Council on a yearly basis.
13. No capital project identified outside of the Council-approved 10-year long-range capital plan, shown in the Development Charge Background Study is eligible to be front-ended unless another item(s) of comparable value, funding allocation, and timing is delayed. A capital project identified with a post-period deduction applied to the gross cost will only have the development charge portion reimbursed if front-ended over the term of the by-law. Indexing would not be applicable to the repayment of the post-period component of the project cost. If growth occurs more slowly than forecasted, then the City Treasurer will have the authority to add an additional three years, without interest, to the repayment of the post-period component of the front-ended project from development charges.