

Report to/Rapport au :

**Finance and Economic Development Committee
Comité des finances et du développement économique**

and Council / et au Conseil

**September 25, 2012
25 septembre 2012**

**Submitted by/Soumis par : M. Rick O'Connor, City Clerk and Solicitor/Greffier de
la Ville et chef du contentieux**

*Contact Person / Personne ressource: Carey Thomson,
Deputy City Solicitor/Chef Adjoint du Contentieux
613-580-2424 extension 21365 Carey.Thomson@ottawa.ca*

CITY WIDE / À L'ÉCHELLE DE LA VILLE

Ref N°: ACS2012-CMR-LEG-0002

**SUBJECT: LANSDOWNE PARTNERSHIP PLAN IMPLEMENTATION – FINAL
REPORT ON LEGAL AGREEMENTS**

**OBJET : MISE EN ŒUVRE DU PLAN DE PARTENARIAT LANSDOWNE –
RAPPORT FINAL SUR LES ACCORD JURIDIQUES**

REPORT RECOMMENDATIONS

That the Finance and Economic Development Committee recommend Council:

1. Approve amendments to the Lansdowne Partnership Plan Project Agreement, as contemplated by the updated LPP Project Agreement Framework, as follows:

(a) That the previously approved LPP Project Agreement Framework be amended to state that the City will agree to act reasonably, in accordance with pre-determined criteria, in deciding whether to permit a sale of either or both of the Canadian Football League team and/or the Ontario Hockey League team in exchange for a binding commitment by the Ottawa Sports and Entertainment Group (OSEG), or OSEG's successor, to extend its legal obligations to operate the teams for the first eight (8) years under the Lansdowne Partnership Plan instead of the current, first five (5) years, as described in this report;

(b) That the Project Agreement be amended to treat any cost overruns above the conditional guaranteed maximum price contract incurred by the members of OSEG for the City's portion of the Stadium Parking Garage as Additional Equity under the Closed System for the

Lansdowne Partnership Plan, as described in this report; and,

- (c) That the description of the formula for City Funding Equity in the previously approved LPP Project Agreement Framework be amended to read as follows, “the lesser of the Maximum City Cost or the actual cost borne by the City for the Stadium Improvements and City’s share of Cost of Parking less proceeds from the sale of air rights, less the amount that can be debentured from 75% of the realty taxes estimated from the project other than the residential component, less the amount that can be debentured from the avoided costs of \$3.8 million per year of the City by it not having to operate the Stadium” and that the Project Agreement be revised accordingly, as further described in this report.
- 2. Confirm that the priorities for the distribution of net cash flow between the City and OSEG in the Closed System under the LPP are as set out in the previously approved June 28, 2010 LPP Project Agreement Framework referenced in this report.
- 3. Approve the updated LPP Project Agreement Framework as described in this report and attached as Document 1 – “Overview of Structure and Content – Final LPP Project Agreements” as amended by the above recommendations.
- 4. Receive the final legal Agreements, as amended by the recommendations above and by the updated LPP Project Agreement Framework, as set out in Document 2 – “Listing of Final LPP Legal Agreements on file with the City Clerk and Solicitor”.

RECOMMANDATIONS DU RAPPORT

Le Comité des finances et du développement économique recommande au Conseil :

- 1. D’approuver les modifications à l’entente du Plan de partenariat du Parc Lansdowne, tel qu’il est envisagé dans l’accord-cadre du projet du plan de partenariat de Lansdowne, comme suit :
 - (a) Que l’accord-cadre du projet du plan de partenariat de Lansdowne déjà approuvé soit modifié pour qu’il soit précisé que la Ville conviendra d’agir raisonnablement, conformément aux critères établis, dans la décision de vendre ou non l’équipe de la Ligue canadienne de football et l’équipe de la Ligue de hockey de l’Ontario ou les deux en échange d’un engagement exécutoire de la part du Ottawa Sports and Entertainment Group (OSEG), ou de son successeur, qui prolongerait ainsi le devoir légal d’OSEG d’exploiter les équipes pendant les huit premières années du partenariat du parc Lansdowne plutôt que les cinq actuellement fixées, comme il est décrit dans le présent rapport;

- (b) Que l'accord du projet soit modifié de manière à ce que tout dépassement de coûts, par rapport aux coûts établis dans le contrat à coût maximum garanti conditionnel, encourus par les membres d'OSEG pour la partie assumée par la Ville du garage de stationnement du stade soit considéré comme capitaux propres supplémentaires dans le cadre du système fermé utilisé pour le plan de partenariat de Lansdowne, comme il est décrit dans le présent rapport;
 - (c) Que la description de la formule utilisée pour le calcul de la part du financement assumée par la Ville dans l'accord-cadre du plan de partenariat Lansdowne (PPL) approuvé récemment soit modifiée comme suit, « le moindre entre le coût maximal établi pour la Ville ou le coût effectivement supporté par la Ville pour les améliorations du stade et la part de la Ville des coûts du stationnement moins les produits de la vente des droits de la propriété du dessus, moins le montant qui peut être financé par des obligations jusqu'à 75 % des taxes foncières estimées du projet autre que celles liées à la partie résidentielle, moins le montant qui peut être financé sous forme d'obligations en éliminant les 3,8 millions que coûtaient la gestion du stade à la Ville ». Enfin, que l'entente du projet soit modifiée conformément à la nouvelle formule, comme il décrit plus en détail dans le présent rapport.
2. De confirmer que les priorités pour la répartition des flux de trésorerie nets entre la Ville et OSEG dans le cadre du système fermé du PPL sont les mêmes que celles établies dans l'«accord-cadre du PPL approuvée le 28 juin 2010, dont il est mention dans le présent rapport.
 3. D'Approuver et mettre à jour l'accord-cadre du PPL, comme il est décrit dans le présent rapport et qui est joint en tant que document 1 – *Overview of Structure and Content – Final LPP Project Agreements* » (Aperçu de la structure et du contenu – Accords définitifs du projet de PPL) tel que modifié par les recommandations ci-dessus.
 4. De recevoir les accords juridiques définitifs, avec les modifications apportées conformément aux recommandations susmentionnées et à l'accord-cadre du PPL mis à jour, présenté dans le document 2 – *Listing of Final LPP Legal Agreements on file with the City Clerk and Solicitor* (Liste des accords-cadres juridiques de PPL définitifs déposés auprès du greffier municipal et chef du contentieux).

EXECUTIVE SUMMARY

This is the final update on the legal Agreements for the Lansdowne Partnership Plan. As part of this update, staff is recommending two substantive amendments and one technical amendment to the finalized Project Agreement within the LPP Project Agreement Framework previously approved by Council.

The two substantive amendments have been negotiated to provide material benefits to the City if approved by Council. Briefly, the amendments provide for the following: (1) the City will receive the benefits of the provisions related to the sports teams for eight years (from five), in return for the City's agreement to be more flexible, within specific

criteria, with respect to a request from OSEG to sell either or both sports teams; and, (2) the ability of the members of OSEG to treat any cost overruns for the City's portion of the Stadium Parking Garage above the conditional Guaranteed Maximum Price contract as Additional Equity.

OSEG has agreed, subject to approval, to assume the risk of any cost overruns for the City's portion of the Stadium Parking Garage under the conditional Guaranteed Maximum Price contract on the Stadium Parking Garage provided it is treated as Additional Equity under the Closed System in accordance with the Waterfall. Thus, the City would not be exposed to any additional costs for this work after the conditional Guaranteed Price Contract was awarded. OSEG would be taking the risk for any cost overruns.

The technical amendment being brought forward is required to rectify the inadvertent error in the description of the formula for the calculation of the City's Funding Equity for the LPP in the Project Agreement approved by Council as part of the June 28, 2010 report and which was discovered during the course of legal challenges to the LPP.

The recommended confirmation of the priorities for the distribution of net cash flow between the City and OSEG in the Closed System under the LPP is intended to clarify that what was set out in the previously approved LPP Project Agreement Framework prevailed over an inadvertent mistake in a slide in a PowerPoint presentation to Council.

It is important to note that, although it is necessary for Council to consider the recommended amendments and approve the updated LPP Project Agreement Framework on the finalized legal Agreements before the legal close of the LPP, approval of this report does not constitute authorization to proceed to the legal close of the LPP.

This report and the finalized legal Agreements on file with the City Clerk and Solicitor simply identify the content of all of the finalized legal Agreements within the updated LPP Project Agreement Framework should Council wish to move to the legal close of the LPP. In order to actually authorize the legal close of the LPP Council will need to approve the companion *Lansdowne Partnership Plan – Authorization to Proceed with Legal Close and Implementation* report (Ref N°: ACS2012-PAI-INF-0010), which addresses all of the conditions Council approved in the 2010 Agreement Framework related to the Lansdowne Partnership Plan.

SOMMAIRE

Cette mise à jour est la dernière concernant les accords juridiques pour le Plan de partenariat du parc Lansdowne. Dans le cadre de cette mise à jour, le personnel recommande deux modifications quant au fond et une modification technique de l'entente finalisée du projet en vertu de l'accord-cadre du plan de partenariat Lansdowne approuvé précédemment par le Conseil.

Les deux modifications quant au fond ont été négociées afin de fournir à la Ville des avantages matériels, si elles sont approuvées par le Conseil. En bref, les modifications stipulent ce qui suit : 1) la Ville bénéficiera des avantages des dispositions liées aux équipes de sport pendant huit ans (plutôt que cinq), en acceptant de conclure un accord plus flexible, assorti de critères précis, relativement notamment à la demande d'OSEG de vendre une équipe ou les deux; et 2) à la capacité des membres d'OSEG de traiter tout dépassement de coût au-delà de ceux prévus au contrat à coût maximum garanti conditionnel pour la partie assumée par la Ville du garage de stationnement du stade comme capitaux propres supplémentaires.

OSEG a convenu sous réserve d'approbation, d'assumer le risque de tout dépassement de coûts supérieur à ceux prévus au contrat à coût maximum garanti conditionnel pour la part assumée par la Ville du garage de stationnement du stade, pour autant que ce dépassement soit considéré comme capitaux propres supplémentaires en vertu du système fermé, conformément au principe des paiements en cascade. Ainsi, la Ville ne court pas le risque d'avoir à assumer des coûts supplémentaires pour ces travaux après l'octroi du contrat à coût maximum garanti conditionnel. C'est plutôt OSEG qui assumerait le risque de tout dépassement de coûts.

La modification technique proposée est nécessaire afin de corriger une erreur commise par inadvertance dans la description de la formule de calcul de la part de financement assumée de la Ville pour le PPL comprise dans l'accord de projet approuvé par le Conseil dans le cadre du rapport du 28 juin 2010, erreur qui a été découverte pendant les contestations judiciaires du PPL.

La confirmation recommandée des priorités en vue de l'affectation des flux de trésorerie nets entre la Ville et l'OSEG dans le système fermé en vertu du PPL vise à clarifier que ce qui avait été établi dans l'entente-cadre du projet du PPL déjà approuvée prévalait sur une faute commise par inadvertance dans une diapositive de la présentation PowerPoint faite au Conseil.

Il est important de souligner que, même s'il est nécessaire pour le Conseil de prendre en considération les modifications recommandées et d'approuver l'accord-cadre du projet de PPL mis à jour relativement aux accords juridiques avant l'officialisation juridique du PPL, l'approbation du présent rapport ne constitue pas une autorisation d'aller de l'avant avec l'officialisation juridique du PPL.

Le présent rapport et les accords juridiques finalisés déposés auprès du greffier et chef du contentieux ne font que décrire le contenu de tous les accords juridiques finalisés intégrés à l'accord-cadre du projet de plan de partenariat de Lansdowne mis à jour, si le Conseil décidait d'aller de l'avant avec l'officialisation juridique du PPL. Afin d'autoriser l'officialisation juridique du PPL, le Conseil devra approuver le rapport annexe *Lansdowne Partnership Plan – Authorization to Proceed with Legal Close and Implementation* report (Ref N°: ACS2012–PAI–INF–0010) (Autorisation de procéder à l'officialisation juridique et rapport d'implantation), qui aborde toutes les conditions du Conseil approuvées dans l'accord-cadre de 2010 relativement au Plan de partenariat du parc Lansdowne.

BACKGROUND

On June 28, 2010, City Council approved the *Lansdowne Partnership Plan and Implementation* report (Ref N°: ACS2010-CMR-REP-0034) authorizing staff to proceed with Stage 2 (design development phase) of the revitalization of Lansdowne Park and directing staff to proceed with the implementation of the Lansdowne Partnership Plan (LPP) by initiating the required planning approval processes.

As part of that report, City Council approved the LPP Project Agreement Framework and authorized the City Manager to negotiate and execute the legal Agreements summarized in the LPP Project Agreement Framework (Document 18 of the original report) on behalf of the City. During that meeting, the City Manager committed to report back to Council on the finalized legal Agreements before Council's final consideration of whether or not to proceed with the Partnership and move to legal close. All of the material legal and business terms between the City and the OSEG members for the legal Agreements needed for the legal close of the LPP have been completed.

Since the June 28, 2010 report, City Council has received and approved two subsequent *Lansdowne Partnership Plan Implementation Status Update* reports on August 25, 2011 (ACS2010-CMR-REP-0027) and February 22, 2012 (ACS2012-CMR-REP-0004).

Further, staff can advise that there are no legal impediments to Council proceeding with legal close. The legal challenges to the LPP are largely over and have been resolved in favour of the City.

Specifically, on April 30, 2012, the Court of Appeal for Ontario unanimously upheld the Superior Court of Justice trial decision of Mr. Justice Hackland dated July 28, 2011, and dismissed the Friends of Lansdowne Inc.'s appeal challenging his decision. Justice Hackland's earlier ruling found Council's approval of the Lansdowne Partnership Plan to be legal. The Friends of Lansdowne Inc. did not seek leave to appeal the Court of Appeal's decision to the Supreme Court of Canada and the time period for doing so has expired.

On August 28, 2012, the Court of Appeal for Ontario dismissed the application of the Lansdowne Park Conservancy for leave to appeal the decision of the Divisional Court of Ontario. In March 2012, the Divisional Court had unanimously dismissed the Conservancy's legal challenge against the City for its approval of the LPP as an abuse of process.

DISCUSSION

As indicated above, this report provides the final negotiated legal Agreements for the Lansdowne Partnership Plan for City Council's consideration. Included in this report are recommendations for two substantive amendments and one technical amendment for the finalized Project Agreement within the LPP Project Agreement Framework

previously approved by Council as well as a status update on the finalized legal Agreements.

The two substantive amendments arose during the course of the negotiations between OSEG and the City after June 28, 2010 for the purpose of documenting in final form the material business terms of the legal Agreements within the Council-approved LPP Project Agreement Framework.

If approved, the two amendments will provide material benefits to the City as described in this report. The technical amendment rectifies the inadvertent error in the formula for the calculation of the City's Funding Equity for the LPP in the Council-approved Project Agreement which was discovered during the course of the legal challenges by the Friends of Lansdowne Inc.

The recommended amendments are detailed below.

Recommendation 1 (a) -- Enhanced Commitment by OSEG for Sports Teams in first eight years

As originally approved in the Project Agreement, the provisions with respect to the Canadian Football League (CFL) and the Ontario Hockey League (OHL) sports teams stated that the Ottawa Sports and Entertainment Group (OSEG) was required to operate these teams for the first five years of the Stadium Lease under the LPP. The CFL team and OHL team could only be sold by the CFL partnership and OHL partnership respectively with the City's approval, in its sole and absolute discretion. It is important to note that should the team be sold, all the pertinent obligations with respect to the operation of the franchise are assumed by the new owners (e.g. cannot move the team out of the City, City's Deemed Equity moves up in the Waterfall to Funding Equity level if team ceases operations without City's consent as noted below, etc). Any sale proceeds would be captured by the Closed System, referred to as the Waterfall. That is, the distribution of net cash flow between the City and OSEG under the Lansdowne Partnership Plan in accordance with established priorities known as Steps.

In the event that either the CFL team or the OHL team ceased to operate without the consent of the City for any reason whatsoever in the thirty year period (other than the CFL or the OHL ceasing to operate), then the City's Deemed Equity, determined on a cumulative basis and at the City's option, would be deemed to be Funding Equity for the purposes of the priority of Waterfall payments in respect of return on Funding Equity (the Second Waterfall Step) but not for return of Funding Equity (the Fourth Waterfall Step) regardless of whether the teams are owned by OSEG or have been sold to new ownership.

During the negotiations to finalize the legal Agreements, OSEG sought more flexibility from the City with respect to a sale of either or both of the sports teams. OSEG requested that, in place of the City's current right to act in its sole and absolute discretion, it agree to not unreasonably withhold its approval to a proposed sale and to act in accordance with pre-determined criteria. City staff proposed that OSEG must agree to extend the legal requirement for the operation of the sports teams from five years to eight years, in return for the City agreeing to provide more flexibility to OSEG.

The phrase, whereby one's consent or approval is "not unreasonably withheld" is a legal term that generally means that a party may "refuse its consent if it has a genuine reason for refusing" (Alberta Court of Appeal, 2002). The pre-determined criteria would be similar to the criteria in the original LPP Project Agreement Framework approved by Council in June 2010 for other OSEG dispositions and would also be applicable in an arbitration. The City is to consider the following:

- The financial capacity of the acquirer/its principal(s);
- The location of the acquirer/its principal(s);
- The reputation of the acquirer/its principal(s);
- Evidence of having secured, or the ability to secure, experience/knowledge in the operation of the team being sold; and
- The history of litigation/disputes with the City by the acquirer/its principal(s).

Staff is recommending this amendment as a material benefit and enhancement to the City. Specifically, the City gets the benefit of the obligation to operate the sports teams extended from five, to eight years, at no cost to the City. This benefit would be provided in return for the City agreeing to be more flexible and to act reasonably (based principally on the previously approved Council criteria applicable to other OSEG dispositions) in considering a proposed sale of either or both of the sports teams. The requirement to act reasonably would replace the City's current right to act in its sole and absolute discretion.

Recommendation 1 (b) -- Additional Equity for cost overruns above Conditional Guaranteed Maximum Price Contract for City portion of Stadium Parking Garage

The purpose of this section is to provide an overview of the tendering process for the construction of the stadium/arena and parking garage at Lansdowne and the rationale for City staff recommending that the members of OSEG have the ability to treat any cost overruns for the City's portion of the Stadium Parking Garage above the conditional guaranteed maximum price contract as Additional Equity under the Closed System. A more detailed discussion of the background of the tendering process and the timelines for the work is set out in the companion *Lansdowne Partnership Plan – Authorization to Proceed with Legal Close and Implementation* report (Ref N°: ACS2012–PAI–INF–0010).

The Stadium Parking Garage will contain 1,370 parking spaces of which the City will be paying for 640 of the Stadium parking spaces. The initial tenders for the Stadium and the Stadium Parking Garage came in higher than the initial budget. This unanticipated development led to a revised tendering process overseen by the Fairness Commissioner and the City's Chief Procurement Officer where pre-qualified bidders were asked to consider certain value engineering measures in an effort to reduce the costs.

The revised tendering process took approximately eight additional weeks. The City received three bids, of which Pomerleau Inc. was determined to be the successful

proponent. This additional time prevented the parties from adjusting the original design plans for the Stadium Parking Garage to have new detailed specifications set out while maintaining the completion schedule for the Lansdowne Partnership Plan. As a result, the parties would not be able to use the same kind of fixed price contract for the Stadium Parking Garage as was being used for the Stadium Construction, since the successful proponent in the tendering process, Pomerleau Inc., would not have the same level of detail and certainty provided to it as under the Stadium Construction Contract.

Under a fixed price contract the proponent is contractually bound to complete all of the work provided for in the contract specifications for the fixed price quoted and it is not subject to any conditions. Thus, the owner is provided with certainty on the cost of construction.

Instead, negotiations with Pomerleau Inc. have resulted in the conditional award of a Guaranteed Maximum Upset Price contract, with conditions, for the Stadium Parking Garage. Such a contract provides for a maximum upset price for the work subject to certain specified conditions which, if they occur, will permit a corresponding adjustment to the price. The conditions pertain to various construction matters that cannot be finalized due to time constraints, but which could potentially create upward pressure on the upset price if they materialize. This is in contrast to the cost certainty provided to an owner under a fixed price contract.

Moreover, OSEG has agreed, subject to approval, to assume the risk of any cost overruns for the City's portion of the Stadium Parking Garage under the conditional Guaranteed Maximum Price contract with Pomerleau Inc. on the Stadium Parking Garage provided it is treated as Additional Equity under the Closed System in accordance with the Waterfall. Thus, the City would not be exposed to any additional costs for this work after the conditional Guaranteed Price Contract was awarded. OSEG would be taking the risk for any cost overruns.

In light of the above circumstances, it is being recommended as a fair and appropriate consideration that any cost overruns being covered by OSEG for the City's portion of the Stadium Parking Garage be treated as Additional Equity and that OSEG be able to recover it through the Closed System as a payment pursuant to Step 3 of the Waterfall. Step 3 of the Waterfall means that OSEG would get its Additional Equity after payment of the lifecycle reserve for the stadium component and the City's portion of the parking garage and after payment of an 8% return on any City Funding Equity and OSEG's Equity. The benefit to OSEG is that payment of its Additional Equity is accelerated under the Waterfall whereas payment of its regular Equity is amortized over a twenty-seven year period.

Consequently, the City would get the benefit of cost certainty to it as under a fixed price contract for the construction even though OSEG was taking the risk of potential cost overruns under the conditional Guaranteed Maximum Price contract.

Recommendation 1 (c) -- Technical Amendment to Project Agreement for City's Funding Equity in the LPP

During the course of the litigation brought by the Friends of Lansdowne Inc. against the City, it was discovered that there was an inadvertent error in the description of a material business term in the Project Agreement within the LPP Project Agreement Framework pertaining to the City's Funding Equity which Council approved on June 28, 2010. Although the error was found by the Court to be an inadvertent omission that did not negatively affect Council's approval of the LPP, and Council has subsequently been informed about the error, there is a requirement to formally correct the record.

As Members of Council may recall, the error was due to an inadvertent omission in the description of the formula used to calculate the value of the City's Funding Equity as set out in the LPP Project Agreement Framework.

Simply put, the correct formula is, and always was intended by the City and OSEG to be, the following. Total City project costs less proceeds from the sale of air rights, less the amount that can be debentured from 75% of the realty taxes estimated from the project other than the residential component, less the amount that can be debentured from the avoided costs of \$3.8 million per year of the City by it not having to operate the Stadium. It was the underlined portion of the formula that was omitted from the Framework.

The technical amendment to correct the above noted omission adds the missing component to the formula in Document 18 of the June 28, 2010 *Lansdowne Partnership Plan Implementation* report in order to rectify the description of the calculation of the City's Funding Equity.

It is important to observe that despite the above noted omission, the correct value for the City's Funding Equity was presented to Council on June 28, 2010 when it approved the LPP. This was specifically noted in Justice Hackland's decision which dismissed the legal challenge against the City by the Friends of Lansdowne Inc. opposing the LPP. At paragraph 59, the Court found as follows:

[59] The formula actually used to arrive at the value of the funding equity, expressed as \$13.469 million in the PwC report presented at City Council, was as follows:

Total City project costs [\$129,300,000] less proceeds from the sale of air rights [\$10,247,833], less the amount that can be debentured from 75% of the realty taxes estimated from the project other than the residential component [\$42,952,034], less the amount that can be debentured from the avoided costs of \$3.8 million per year [\$62,631,403], to equal \$13,468,730.

Adoption of the amendment related to the formula for City Funding Equity, and the related definition for Deemed Debenture Financing in the Project Agreement corrects the formal record and fulfills the City's undertaking to the Court. Consequently, the

updated LPP Project Agreement Framework and the Project Agreement will reflect the following:

“The City will receive a credit for “City Funding Equity”, being:

- the lesser of the City’s \$129.3 million maximum cost of the stadium component and associated parking or the actual costs to the City of the stadium component including associated parking (in each case excluding certain costs referred to above and described in the Project Agreement); less
- the maximum amount of debenture financing available to the City for the project, as determined on July 31, 2012, based on the amount of debt that could be supported by seventy-five percent of the municipal portion of anticipated tax revenue to be generated by the project components other than the residential component and \$3.8 million annually, being the agreed upon amount for the expenses that would otherwise be payable by the City in respect of the stadium during the 30 year operating term of the Stadium Lease, if the stadium was not improved and the Stadium Lease not entered into as contemplated as part of the project; and
- the net amount received by the City as a result of the sale of the residential air rights, being \$7.7 million.”

Recommendation 2 – Confirm the priorities for the distribution of net cash flow in the Closed System under the LPP

The purpose of this section is to have Council confirm that the priorities for the distribution of net cash flow between the City and OSEG in the Closed System under the LPP are as set out in the LPP Project Agreement Framework which was previously approved by Council on June 28, 2010. This issue arises as a result of the now resolved litigation by the Friends of Lansdowne Inc. against the City and an alleged ambiguity that was asserted to have occurred.

Specifically, it was alleged by the Friends that it was unclear what Council had approved as the priorities in the Closed System since a slide in a PwC PowerPoint presentation to Council in June of 2010 had switched the third and fourth priorities or Steps in the Waterfall from that which was shown in the LPP Project Agreement Framework which was then approved by Council. The inaccuracy in the slide was inadvertent and did not affect the ultimately successful resolution of the litigation in favour of the City. However, confirmation of the priorities is being recommended to fulfill an undertaking given to the Court during the litigation by the City’s legal counsel. The priorities, being the Six Steps in the Waterfall, which were previously approved by Council in the LPP Project Agreement Framework and for which confirmation is now being sought are as follows:

- “The net cash flow (as will be defined by the parties) will be distributed as follows:
 - first, payments on account of the reserve for the stadium component and the City’s portion of the parking structure, on a cumulative, but not compounded basis

- second, to each of OSEG and the City, a return on OSEG's Equity and on the City's Funding Equity at 8% per annum, on a cumulative, but not compounded basis; if there is sufficient net cash flow to make only a portion of such payment, proportionate payments will be made to each party
- third, return to OSEG of its Additional Equity
- fourth, following the third anniversary of the commencement of the operating term of the Retail Lease, the return of OSEG's minimum Equity, amounts paid in connection with the completion guarantee and the City's Funding Equity as follows (if there is sufficient net cash flow to make only a portion of such payment, proportionate payments will be made to each party):
 - in respect of OSEG's minimum Equity and amounts paid in connection with the completion guarantee, on a "straight-line amortized" basis over a period of 27 years
 - in respect of the City's Funding Equity, on a "straight-line amortized" basis over a period of 27 years
- fifth, a return on the City's Deemed Equity at 8% per annum, on a cumulative, but not compounded basis
- sixth, any remaining balance will be shared equally by the parties"

In conclusion, the recommended confirmation is intended to clarify that what was set out in the previously approved LPP Project Agreement Framework was correct and prevailed over the inadvertent mistake in the slide in the PowerPoint presentation to Council.

Recommendation 3 – Approval of the updated LPP Project Agreement Framework

The purpose of this section of the report is to have Council approve the updated LPP Project Agreement Framework. This is set out in Document 1 – "Overview of Structure and Content – final LPP Project Agreements" of this report. It is an elaboration of the previously approved LPP Project Agreement Framework and highlights the material business and legal terms for the finalized legal Agreements listed in Document 2 – "Listing of Final LPP Legal Agreements on File with the City Clerk and Solicitor". The material business and legal terms needing specific Council approval are set out in Recommendations 1(a), (b) and (c) of this report.

As noted below in this report, the tiers for the final legal Agreements have evolved from three to four but the Tier 1 legal Agreements are still those that are considered most important for the LPP. The Tier 2, 3 and 4 legal Agreements are complementary, but subordinate, to the Tier 1 legal Agreements. In addition, Document 1 contains an index to highlight those legal Agreements which are currently completed and those legal Agreements which will be completed on or about October 12, 2012 (i.e. all of the legal Agreements needed by the parties for the legal close of the LPP) as well as those legal Agreements which will be completed after the legal close of the LPP. The legal Agreements to be completed after the legal close of the LPP pertain principally to matters that cannot be finalized at this stage of the LPP (e.g. Agreement to manage the Stadium Parking Garage post-construction).

This recommendation is consistent with, and an elaboration upon, the previously approved Recommendation 17 in the June, 2010 Council Report. Approval of this recommendation will allow Council to receive all of the finalized legal Agreements noted in Document 2 of this report as further described in the following section of this report pertaining to Recommendation 4.

Recommendation 4 -- Receipt of the finalized legal Agreements within the updated LPP Project Agreement Framework

As noted earlier, the *Lansdowne Partnership Plan and Implementation* report (Ref N°: ACS2010-CMR-REP-0034) approved by City Council on June 28, 2010 authorized staff to proceed with Stage 2 (design development phase) of the revitalization of Lansdowne Park and proceed with the implementation of the Lansdowne Partnership Plan through the initiation of the required planning approval processes.

In that report, Council approved the LPP Project Agreement Framework and authorized the City Manager to negotiate and execute, on behalf of the City, the legal Agreements identified and summarized in the LPP Project Agreement Framework. At that Council meeting, the City Manager committed to reporting back to Council on the finalized legal Agreements once they had been completed for Council's information prior to making the decision of whether or not to proceed with legal close.

The finalized legal Agreements were filed with the Office of the City Clerk and Solicitor on September 25, 2012, subject to Council approval of the three amendments. Therefore, all of the material legal and business terms between the City and the OSEG members for the legal Agreements needed for the legal close of the LPP have been documented in final form such that it is appropriate for the City Manager, through this report, to advise Committee and Council accordingly.

Document 1 to this report is the overview of the structure and content of the finalized legal Agreements. It highlights the material legal and business terms for these Agreements. In the previously approved LPP Project Agreement Framework there were three tiers of Agreements, ranked in order of the importance of the Agreement, which has now been expanded into four tiers as set out in Document 1.

The finalized legal Agreements within the updated LPP Project Agreement Framework are reflective of the fundamental principles of the Closed System between the City and OSEG. In effect, all of the financial revenues and outputs (e.g. expenses) are captured within the System such that all revenues or expenses between the City and OSEG for each of the components of the LPP are accounted for, namely: (1) the Stadium/Arena, (2) the parking garage, (3) the retail development, and, (4) the sports teams. The Closed System will commence on legal close of the LPP (i.e. on or about October 12, 2012) and expire on December 31, 2044.

There is a clearly outlined Six-Step process, or distribution, for how net cash flow coming out of the Closed System is dispersed and shared between the City and OSEG in order to provide transparency and accountability.

There are also a series of effective and enforceable legal remedies in favour of the City to ensure OSEG's compliance with its obligations under the various final LPP Project Agreements. For example, there are the cross-default provisions in certain legal Agreements (i.e. Project Agreement, Stadium Lease and Retail Lease) that provide that a default under one such legal Agreement, if not remedied or cured, will constitute a default under the other such legal Agreements. The result would put OSEG's Minimum Equity Requirement of \$30M in the LPP at risk of being forfeited plus all of the additional equity OSEG may put in (e.g. additional equity to finance the construction of the retail development, etc.).

The principles of pre-determined and specified net cash flow return and distribution, accountability and transparency, combined with effective and enforceable legal remedies, are enshrined in the Tier 1 legal Agreements and these legal Agreements are inter-related or connected to each other.

Consequently, the material legal and business terms set out in Document 1 of this report for the information of Committee and Council are tools that are necessary to flesh out the overarching principles in, or for, each of the finalized legal Agreements. Furthermore, the provisions or principles set out in Document 1 refine, clarify or augment the Framework as originally approved in a manner that is legally and financially consistent with the previous Council approvals for the LPP. In effect, they are the final step in the legal process and provide Council with the basis upon which it can authorize the City to proceed to the legal close of the LPP, as part of the consideration of the Lansdowne Partnership Plan – Authorization to Proceed with Legal Close and Implementation report (ACS2012-PAI-INF-0010).

Again, Council approval of this report adopts the three amendments proposed and the updated LPP Project Agreement Framework. The finalized legal Agreements do not become legally operative between the City and OSEG unless Council provides such separate approval, currently Recommendation 5 in the companion Lansdowne Partnership Plan – Authorization to Proceed with Legal Close and Implementation report (ACS2012-PAI-INF-0010).

Should any Member of Council or the public wish to refer to any particular legal Agreement referenced in this report, it should be noted that they are listed in Document 2 – “Listing of Final LPP Legal Agreements on File with the City Clerk and Solicitor” to this report and are on file with the Office of the City Clerk and Solicitor. In the event of any discrepancy or contradiction between the overview of a particular legal Agreement as set out in this report or Document 1 and the Agreement itself which is on file with the City Clerk and Solicitor, the terms and conditions of the actual legal Agreement will prevail.

Naming Rights Provisions under the LPP

Staff wish to highlight the extent of the naming rights provisions in favour of the City and OSEG under the Lansdowne Partnership Plan.

The City shall have the naming rights in respect of the Urban Park which includes the Aberdeen Pavilion, Aberdeen Square, Horticulture Building, West Court, East Court, Skating Court, Great Porch, Great Lawn, The Hill, The Water Plaza, Civic Gardens, Heirloom Orchard, Children's Garden, South Berm/Block K interface and the Farmers' Market.

OSEG shall have naming rights in respect of the retail and stadium components, subject to compliance with the City's policies and by-laws and applicable laws. Any name is subject to the City's approval, acting reasonably. There is no obligation for OSEG to use the name "Lansdowne" provided that gateway signage on the site will bear the name "Lansdowne". Those parts of the stadium known as Frank Clair Stadium or the Civic Centre (but not a part of Frank Clair Stadium or the Civic Centre) will not include alcohol or the name of an alcoholic product or the name of a manufacturer or distributor of alcoholic products.

Any proceeds from the naming rights are distributed according to the Waterfall under the Closed System between the City and OSEG as set out in the Project Agreement.

RURAL IMPLICATIONS

The Ottawa Farmers' Market has been successfully relocated to Brewer Park for the 2012 and 2013 seasons. Work is nearing completion to fulfill Council's direction with respect to Lansdowne becoming the permanent home of the OFM. A draft of the recommended formal agreement between the City and the OFM will be brought forward to Council for consideration and approval prior to the commissioning of the redeveloped Lansdowne.

CONSULTATION

As this report constitutes the final update to Council on the legal Agreements for the Lansdowne Partnership Plan it largely summarizes the finalized legal Agreements needed for the legal close of the LPP as well as setting out the updated LPP Project Agreement Framework. Therefore, no public consultation was required prior to its publication.

COMMENTS BY THE WARD COUNCILLOR(S)

Councillor Chernushenko is a member of the Lansdowne Design Review Panel. He has been apprised of the specific recommendations contained in this report.

LEGAL IMPLICATIONS

As the two legal challenges to the LPP are largely over and have been resolved in favour of the City, there are no significant impediments to receiving the information in this report and approving the recommendations. As of the date of the release of this report, there are no further or other litigation pending against the City challenging the legality of the Lansdowne Partnership Plan.

Borden Ladner Gervais LLP, the external lawyers for the City throughout the progress of the LPP, has reviewed the legal agreements finalized to date and have confirmed for the City that they are: (i) in accordance with the June 2010 and the present Council dispositions of this matter; and (ii) in accordance with the correspondence and discussions between the City, OSEG and others and the instructions provided to BLG as a result thereof. They are recommended for execution by the City and delivery to the OSEG members should Council authorize in a separate report to proceed to legal close of the LPP.

RISK MANAGEMENT IMPLICATIONS

There are risk implications and these are being managed by the appropriate staff.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

ACCESSIBILITY IMPACTS

The Lansdowne urban park has been designed in consultation with an accessibility consultant to ensure the project meets the goals set out in the November 2010 report to Council. The project team is advancing implementation of an accessibility strategy developed by Betty Dion Enterprises Ltd. (BDEL).

The approved accessibility strategy identifies elements that are important to achieving universal accessibility standards in both site design and buildings. The strategy includes a compliance review process for the detailed design development and the construction phase as well as having an accessibility consultant working with the design teams to incorporate accessibility features into the detailed design work that has occurred to date. This project is designed to comply with the Ontario Building Code and in accordance with the City's Accessibility Guidelines for Built Environment.

Examples of specific accessibility features planned for this facility include, but are not limited to:

- Barrier-free path of travel to entrances of building and within the urban park;
- Automatic doors;
- Signage available in symbol form and way-finding signage that is accessible;
- Wide and easy-to-approach washroom doors;
- Barrier-free sink at accessible heights with low mounted mirrors;
- Accessible toilet heights throughout the facility;

- Accessible interior building environment features;
- Elevator dimensions that allow for the turning radius for mobility device and buttons and emergency controls that are mounted at accessible height;
- Ramps and pathways built to accessible standards; and,
- Accessible parking that will be in accordance with the City of Ottawa's By-law.

BDEL continues to be engaged with the on-going review of progress drawings for the stadium, parking garage and urban park to ensure they meet the accessibility targets identified.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

TERM OF COUNCIL PRIORITIES

The Lansdowne Partnership Plan and revitalization initiative relate to the following:

Sustainable, Healthy and Active City

- Objective 3 – Expand the amount of City-owned green space in Ottawa
- Objective 6 – require walking transit and cycling oriented communities and employment centers

Planning and Growth Management

- Objective 1 – Manage growth and create sustainable communities by:
 - Becoming leading edge in community and urban design
 - Ensuring that new growth is integrated seamlessly with established communities
 - Ensuring that new community facilities are built in tandem with new development.

SUPPORTING DOCUMENTATION

[Document 1:](#) Overview of Structure and Content – final LPP Project Agreements

[Document 2:](#) Listing of final LPP Legal Agreements on file with the City Clerk and Solicitor

DISPOSITION

Subject to Committee and Council approval, staff will implement the recommendations as outlined in the report.