

5. ORLÉANS TOWN CENTRE PARTNERSHIP INC. – RELEASE OF CASH PERFORMANCE SECURITIES
- ORLÉANS TOWN CENTRE PARTNERSHIP INC. – DÉBLOCAGE DES GARANTIES D'EXÉCUTION EN ARGENT

### COMMITTEE RECOMMENDATIONS AS AMENDED

That Council:

1. Authorize staff to release the \$1,500,000 performance security to Orléans Town Centre Partnership Arts Centre Inc. upon execution of a Site Plan Agreement between the City, Orléans Town Centre Partnership Office Inc. and the developer as it relates to the property at 243 Centrum Boulevard, Orléans Town Centre as described in the report; and
2. Authorize staff to exercise the City's right under the Orléans Town Centre Partnership Funding Agreement, Schedule 4, Section 1.2.4, as amended on 7 July 2010 to release to the City the Seniors/Mixed-Use performance security in the amount of \$1,000,000 to the One-Time and Unforeseen account.

### RECOMMANDATIONS MODIFIÉES DU COMITÉ

Que le Conseil :

1. autorise le personnel à débloquer la garantie d'exécution de 1 500 000 \$ d'Orléans Town Centre Partnership Arts Centre Inc. à la signature d'une entente de réglementation du plan d'implantation entre la Ville, l'Orléans Town Centre Partnership Office Inc. et le promoteur, pour ce qui concerne la propriété située au 243, boulevard Centrum, Centre-ville d'Orléans, tel que le décrit le rapport; et
2. autorise le personnel à exercer le droit de la Ville aux termes de l'entente de financement du Partenariat du Centre-ville d'Orléans, annexe 4, section 1.2.4, modifiée le 7 juillet 2010, afin de débloquer la garantie d'exécution d'un montant de 1 000 000 \$ liée aux logements pour aînés et aux utilisations polyvalentes et de la faire passer au compte des événements ponctuels et imprévus.

DOCUMENTATION

1. Nancy Schepers, Deputy City Manager report dated 26 February 2013 (ACS2013-PAI-REP-0009) / Rapport du Greffier municipal et chef des contentieux daté du 26 février 2013 (ACS2013- PAI-REP-0009).
2. Extract of Draft Minute 5 March 2013 / Extrait de l'ébauche du procès-verbal, le 5 mars 2013.

Report to/Rapport au :

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

and Council / et au Conseil

February 26, 2013

26 février 2013

Submitted by/Soumis par : Nancy Schepers, Deputy City Manager/Directrice  
municipale adjointe, Planning and Infrastructure / Urbanisme et Infrastructure

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ORLÉANS (1)

Ref N°: ACS2013-PAI-REP-0009

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**SUBJECT: ORLÉANS TOWN CENTRE PARTNERSHIP INC. – RELEASE OF  
CASH PERFORMANCE SECURITIES**

**OBJET : ORLÉANS TOWN CENTRE PARTNERSHIP INC. – DÉBLOCAGE  
DES GARANTIES D'EXÉCUTION EN ARGENT**

**REPORT RECOMMENDATIONS**

That the Finance and Economic Development Committee recommend Council:

1. Authorize staff to release the \$1,500,000 performance security to Orléans Town Centre Partnership Arts Centre Inc. upon execution of a Site Plan Agreement between the City, Orléans Town Centre Partnership Office Inc. and the developer as it relates to the property at 243 Centrum Boulevard, Orléans Town Centre as described in the report; and
2. Authorize staff to exercise the City's right under the Orléans Town Centre Partnership Funding Agreement, Schedule 4, Section 1.2.4, as amended on 7 July 2010 to release to the City the Seniors/Mixed-Use performance security in the amount of \$1,000,000 to the General Revenue account as described in the report.

### RECOMMANDATIONS DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil :

1. d'autoriser le personnel à débloquer la garantie d'exécution de 1 500 000 \$ d'Orléans Town Centre Partnership Arts Centre Inc. à la signature d'une entente de réglementation du plan d'implantation entre la Ville, l'Orléans Town Centre Partnership Office Inc. et le promoteur, pour ce qui concerne la propriété située au 243, boulevard Centrum, Centre-ville d'Orléans, tel que le décrit le rapport; et
2. d'autoriser le personnel à exercer le droit de la Ville aux termes de l'entente de financement du Partenariat du Centre-ville d'Orléans, annexe 4, section 1.2.4, modifiée le 7 juillet 2010, afin de débloquer la garantie d'exécution d'un montant de 1 000 000 \$ liée aux logements pour aînés et aux utilisations polyvalentes et de la faire passer au compte des recettes générales, tel que le décrit le rapport.

### BACKGROUND

On 1 May 2007, the City entered into Partnership Agreements with the Orléans Town Centre Partnership - OTCP Arts Centre G.P. Inc. (OTCP) which, as the private sector partner, agreed to design, build, finance, own and maintain the Shenkman Arts Centre; to construct certain additional public infrastructure (i.e., roads, servicing, parks); and to deliver other private sector development within the Orléans Town Centre, including a hotel or office building, and a seniors / mixed-use development. The hotel or office building and seniors / mixed-use developments were to be delivered by 5 November 2010, extended to 5 November 2012 by Council authority.

The Partnership Agreements allow the City to hold-back a total of \$2,500,000 of OTCP's construction budget for the now completed Shenkman Arts Centre. The funds are intended to function as a performance security should OTCP fail to deliver the private sector development(s) by the required delivery date. This is based on a \$1,500,000 performance security for delivery of a hotel or office building, and \$1,000,000 performance security for construction of a seniors / mixed-use development.

Citing challenging market conditions, OTCP requested the City amend the Partnership Agreements to permit a two-year extension to its delivery dates, as well as a reduction to the building area of the mixed-uses it must deliver. On 9 December 2009, Council considered report # ACS2009-CMR-REP-0056 to amend certain conditions of the Partnership Agreements and provided two additional years to OTCP to deliver a completed foundation for each of the hotel or office, and the seniors / mixed-use developments. The P3 agreement(s) were amended on 7 July 2010 to extend the delivery date from 5 November 2010 to 5 November 2012.

## DISCUSSION

The amended Partnership Agreements commit OTCP to deliver a hotel or an office building, as well as a combined seniors / mixed-use development by 5 November 2012. The agreement(s) allow the City to hold-back \$2,500,000 of OTCP's Arts Centre construction budget should they fail to deliver the private sector development(s). The \$2,500,000 cash collateral performance security continues to be held in City General Ledger account #200309.

Failure to construct the foundation of the hotel or office building by the 5 November 2012 delivery date would give the City authority to penalize OTCP by cashing \$1,500,000 in securities. Similarly, failure to construct the foundation of a 140-unit seniors' condominium and to receive Site Plan Approval for a 100-unit retirement residence and associated mixed-use development by 5 November 2012, would permit the City to cash \$1,000,000 in securities.

### Current status of Hotel:

Site Plan Approval has been granted for the development of a hotel, and a conditional building permit has been issued to allow work to begin on the footings and foundation. A full building permit can be issued once a Site Plan Agreement has been executed, and it is anticipated that this will occur imminently.

The condition for release of the \$1,500,000 performance security to OTCP as the P3 partner is that a satisfactory certificate of completion for the foundation of a hotel or office building must be submitted to the City by 5 November 2012. On November 29, 2012, the developer's architect provided the City with the certificate of completion confirming that the foundation was complete. While the deliverable date was missed, staff is satisfied that the intent of completing this deliverable was met by OTCP as required by the Partnership Agreement, and that the developer is proceeding in good faith to advance construction of the hotel in accordance with all applicable Planning approvals.

Staff recommends that the \$1,500,000 performance security be released to OTCP once the Hotel Site Plan Agreement has been executed.

### Current status of Seniors / Mixed-Use Development:

OTCP has not advanced development of its obligation to construct the seniors / mixed-use development. Further, OTCP has not consulted with Planning staff regarding potential development for the site, nor has it requested an extension to the delivery date set in the amended Partnership Agreements.

The deadline to complete construction of a foundation was missed on 5 November 2012. Staff recommends the City retain the \$1,000,000 cash collateral performance security for failure to deliver this obligation.

### RURAL IMPLICATIONS

There are no rural implications associated with this report.

### CONSULTATION

Development Review Services Branch confirms that the developer of the hotel continues to advance its construction on the foundation and to finalize registration of the Site Plan Agreement.

Legal Services Branch anticipates that the hotel Site Plan Agreement will soon be signed by the parties, being OTCP Office Inc., the Hotel Developer, and the City.

Planning and Infrastructure Approvals confirms that OTCP has not consulted with staff on proposed development plans for the seniors / mixed-Use development blocks that were to have been under construction prior to 5 November 2012.

Staff advised OTCP in October 2012 of their intention to recommend the City cash its \$1,000,000 performance security for failure to deliver the seniors / mixed-use development. As of this date there has been no response from OTCP.

### COMMENTS BY THE WARD COUNCILLOR(S)

Councillor Monette is aware of the report.

### LEGAL IMPLICATIONS

The site plan agreement has been finalized and is currently with the developer of the hotel and OTCP Office Inc. for execution. Legal Services anticipates the return for signature by the City by mid-March 2013. No funds related to the hotel construction shall be returned to OTCP Arts Centre Inc. until the site plan agreement is signed by the City, OTCP Office Inc. and the hotel developer. Legal Services will advise the Real Estate Partnerships and Development Office when this has occurred. Based on the foregoing, there are no legal impediments to implementing the recommendations of this report.

### RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

As detailed in the report above.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

TECHNOLOGY IMPLICATIONS

There are no technical implications associated with this report.

TERM OF COUNCIL PRIORITIES

The recommendations of this report supports City Council's strategic priority of Financial Responsibility (FS) to practice prudent fiscal management and its objective FS2 to maintain and enhance the City's financial position.

DISPOSITION

Upon execution of the Hotel Site Plan Agreement, Real Estate Partnerships and Development Office (REPDO) staff will advise Finance Department of the approval to release the \$1,500,000 hotel securities in accordance with the provisions of the Partnership Agreement.

REPDO will initiate and advise Finance Department of the approval to release the \$1,000,000 seniors / mixed-use securities to the City General Revenue account.