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MEETING OF THE AUTHORITY #6/07
July 27, 2007

The Authority Meeting #6/07, was held in the South Theatre, Black Creek Pioneer Village, on Friday, July 27, 2007. The Chair Gerri Lynn O’Connor, called the meeting to order at 10:07 a.m.

PRESENT
Paul Ainslie Member
Maria Augimeri Vice Chair
Bryan Bertie Member
Laurie Bruce Member
Gay Cowbourne Member
Rob Ford Member
Lois Griffin Member
Suzan Hall Member
Jack Heath Member
Peter Milczyn Member
Ron Moeser Member
Gerri Lynn O’Connor Chair
Linda Pabst Member
John Parker Member
Anthony Perruzza Member
Maja Prentice Member
Richard Whitehead Member

ABSENT
Eve Adams Member
David Barrow Member
Glenn De Baeremaeker Member
Bill Fisch Member
Grant Gibson Member
Colleen Jordan Member
Bonnie Littley Member
Glenn Mason Member
Gino Rosati Member
John Sprovieri Member
Alissa Sugar Member
RES.#A157/07 - MINUTES

Moved by: Maja Prentice
Seconded by: Gay Cowbourne

THAT the Minutes of Meeting #5/07, held on June 22, 2007, be approved.

CARRIED

PRESENTATIONS

(a) A presentation by Beverley Thorpe, Project Manager, CTC Region, in regard to item 7.3 - Administrative Arrangements, TRCA/TRSPA.

RES.#A158/07 - PRESENTATIONS

Moved by: Richard Whitehead
Seconded by: Maja Prentice

THAT above-noted presentation (a) be heard and received.

CARRIED

CORRESPONDENCE

(a) A letter dated June 26, 2007 from the Ontario Municipal Board in regard to members remuneration.

RES.#A159/07 - CORRESPONDENCE

Moved by: Paul Ainslie
Seconded by: Gay Cowbourne

THAT above-noted correspondence (a) be received.

CARRIED
Toronto and Region Conservation Authority has made an application to the Ontario Municipal Board under Section 37 of the Conservation Authorities Act, R.S.O. 1990, c. C. 27, as amended, for an Order to approve an increase in the Chair's honorarium and members' per diem by 1.63% effective January 1, 2007 and to receive approval for members participating in meetings by conference call when members are unable to attend in person to meet quorum requirements to receive 50% of the regular per diem.

OMB File No. E070007

BEFORE:

M. HUBBARD
CHAIR

Monday, the 25th
day of June, 2007

THE BOARD having received a request from the Toronto and Region Conservation Authority to:
- increase the Chair's honorarium and member's per diem by 1.63% effective January 1, 2007;
- and, to receive approval for members participating in meetings by conference call when members are unable to attend in person to meet quorum requirements to receive 50% of the regular per diem;

THE BOARD ORDERS an increase in the Chair's honorarium and member's per diem by 1.63% effective January 1, 2007 and that members participating in meetings by conference call when members are unable to attend in person to meet quorum requirements receive 50% of the regular per diem.
SECTION I - ITEMS FOR AUTHORITY ACTION

RES.#A160/07 - DON VALLEY BRICK WORKS LEASE AMENDMENT
Lease Agreement of Part of 550 Bayview Avenue to Evergreen Environmental Foundation for Restoration and Operation of the Industrial Building Portion. Amendment to resolution approving entering into a lease with Evergreen Environmental Foundation for the restoration and operation of the industrial pad portion of the Don Valley Brick Works.

Moved by: Suzan Hall
Seconded by: Gay Cowbourne

THAT Resolution #A171/06 approved at Authority Meeting #6/06 held on July 28, 2006, be amended by:

1) deleting reference to "$3 million" in paragraph 2 and substituting "$7.5 million" such that paragraph 2 reads as follows:

THAT, if formally requested by Evergreen, and subject to negotiation of a satisfactory agreement with the City of Toronto, TRCA consider a joint and several loan guarantee for Evergreen not to exceed $7.5 million to a financial institution acceptable to TRCA and the City of Toronto and subject to terms and conditions satisfactory to TRCA and solicitors;

2) deleting reference to "dated June, 2006" in paragraph 3 such that paragraph 3 reads as follows:

THAT the Evergreen Master Plan for the restoration and adaptive re-use of the heritage and cultural resources of the Toronto Don Valley Brick Works be approved;

AND FURTHER THAT authorized Toronto and Region Conservation Authority (TRCA) officials be directed to take such action as is necessary to give effect to the foregoing including the execution and signing of documents, and report back if there are any outstanding issues or concerns.

RECORDED VOTE
Paul Ainslie Yea
Maria Augimeri Yea
Bryan Bertie Yea
Laurie Bruce Yea
Gay Cowbourne Yea
Rob Ford Nay
Lois Griffin Yea
Suzan Hall Yea
Jack Heath Nay
Peter Milczyn Yea
Ron Moeser Yea

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RECORDED VOTE Cont'd
Gerri Lynn O'Connor Yea
Linda Pabst Yea
John Parker Yea
Anthony Perruzza Yea
Maja Prentice Yea
Richard Whitehead Yea

THE MOTION WAS CARRIED

BACKGROUND
At Authority Meeting #9/04, held on October 29, 2004, Resolution #A293/04 was approved as follows:

THAT the Toronto and Region Conservation Authority (TRCA) enter into a Memorandum of Understanding (MOU) with the Evergreen Environmental Foundation (Evergreen) and the City of Toronto (the City) to enable the adaptive re-use of the heritage and cultural resources of the Toronto Don Valley Brick Works (Brick Works);

THAT staff be authorized to enter into negotiations with the City of Toronto and the Evergreen Environmental Foundation to formulate a lease of 21 years less a day on terms and conditions as set out in the Memorandum of Understanding and satisfactory to TRCA staff and solicitor;

THAT staff work collaboratively with Evergreen and the City by recognizing the Brick Works project as an important priority for third party funding to be raised by Evergreen to complete the project;

THAT staff work with the City and Evergreen to devise the appropriate trail connection from the Brick Works to the Don Valley trail system and links to Todmorden Mills;

AND FURTHER THAT staff be directed and authorized to take the necessary action to give effect to the foregoing including the signing of documents on behalf of TRCA.

At Authority Meeting #6/06, held on July 28, 2006, Resolution #A171/06 was approved as follows:

THAT the Toronto and Region Conservation Authority (TRCA) enter into a lease with Evergreen for the "leased premises", being the portion of the Don Valley Brick Works which includes the industrial buildings and parking areas at the southern end of the site at 550 Bayview Avenue, subject to the following:

1) the lease be on terms and conditions satisfactory to TRCA staff and solicitors;

2) the lease be subject to approval by the City of Toronto;
THAT, if formally requested by Evergreen, and subject to negotiation of a satisfactory agreement with the City of Toronto, TRCA consider a joint and several loan guarantee for Evergreen not to exceed $3 million to a financial institution acceptable to TRCA and the City of Toronto and subject to terms and conditions satisfactory to TRCA and solicitors;

THAT the Evergreen Master Plan for the restoration and adaptive re-use of the heritage and cultural resources of the Toronto Don Valley Brick Works dated June, 2006, be approved;

THAT said lease be subject to obtaining approval of the Minister of Natural Resources in accordance with Section 21(2) of the Conservation Authorities Act, R.S.O. 1990, C.27, as amended, and Section 42 of the Expropriations Act, R.S.O.1990, E.26;

AND FURTHER THAT appropriate TRCA officials be authorized and directed to take all necessary action to implement the lease including the signing and execution of documents.

In September of 2003, the City of Toronto designated Evergreen as the preferred proponent following a call for proposals to adaptively re-use the designated heritage and cultural features of the Don Valley Brick Works (Brick Works). TRCA staff cooperated with the city in reviewing proposals and worked with the city staff steering committee to prepare the Memorandum of Understanding (MOU) which was approved by the Authority in 2004.

The Brick Works site was acquired by TRCA by expropriation in 1987. The attached drawing (Attachment 1) illustrates the site and its buildings. The site is under management agreement with the City of Toronto. Staff has confirmed with our solicitor that the proposed lease of the premises, upon receipt of the necessary Minister's approval, would be allowed under the expropriation.

Evergreen is a charitable, non-profit organization that has been active in environmental programs in Toronto for some time. Evergreen has developed a capital fundraising strategy and a vision of an exciting Toronto destination on the themes of community, culture and urban ecology. Evergreen proposes to convert the large shed building into a native plant nursery and a garden centre. In addition, there will be demonstration gardens, including a children's teaching garden, market space, community space for meetings and public programming, food outlets, an amphitheatre for outdoor performing arts and office space for the Evergreen national headquarters. Partnering primarily with other like minded and community based organizations, the balance of the buildings on site would be used for heritage and cultural community uses respecting the themes of youth and leadership, visual arts and music, health and wellness, food and nutrition, and ecological and heritage interpretation. To ensure that all programming and tenant use of the site is consistent with the vision and themes, all sub-tenants will be required to conform to a "charter" of themes and prescribed uses.
RATIONALE
Since the signing of the MOU in 2004 and the 2006 resolution agreeing to enter into a lease, staff has worked with City of Toronto staff to negotiate terms and conditions of the proposed lease. The City of Toronto, TRCA and Evergreen will be signatories to the lease with the city continuing in its role of managing the lease as well as the balance of the Brick Works site.

The major change to the proposed lease from that contemplated at the time of resolution #A171/06 relates to project financing.

Project Financing
In 2006, staff advised the Authority that the estimated total project capital cost would be $38 million. Over the past year, Evergreen's plan has been modified to be more sensitive to heritage site features and to be designed to meet higher "green" or Leadership in Energy and Environmental Design (LEED) standards. The comparable cost today which includes a 20% contingency is $42 million.

In 2006, the federal government announced funding of $15 million for the project and Evergreen has confirmed a revised contribution of $20 million from the Government of Canada. Evergreen has confirmed that $10 million in funding commitment from the province has also been approved. Evergreen has secured funding or pledges of $7 million toward a fund raising target of $25 million. Total funding required for the project is now $55 million, of which Evergreen has commitments totalling $37 million. Of the total cost of $55 million, $42 million will be for capital restoration and improvements and $13 million will be for programs and an endowment for future needs.

Evergreen has advised that provincial and federal funding will be paid in arrears. Evergreen has indicated that it must secure interim financing in an amount estimated by Evergreen at approximately $18.4 million from a private lending institution. To obtain the loan, it will be necessary for Evergreen to secure a loan guarantee from the City of Toronto and TRCA. This is to resolve cash flow issues during the period of construction.

Staff advised the Authority of this requirement in 2006 and the Authority approved a joint and several loan guarantee with the city of $3 million. This requirement has now increased to $7.5 million.

City Council will consider a recommendation from city staff for the revised loan guarantee at its meeting to be held July 16/17, 2007. TRCA staff recommend that the Authority approve an amended loan guarantee of $7.5 million on terms and conditions satisfactory to TRCA staff and solicitor, one of which would be that the City of Toronto approve of the loan guarantee.
The risk is that if the Evergreen project were to fail to proceed after the $7.5 million was advanced, the city and TRCA would be asked to assume the loan obligations of Evergreen to the lending institution up to $7.5 million. As the project proceeds, the risk diminishes as the asset value of the restored site grows. While the city and TRCA might have to pay out the funds, without the project, the city and TRCA will face restoration and improvement costs to deal with the deteriorating buildings which could exceed the value of the loan guarantee. While some restoration has been completed, many of the Brick Works buildings are in generally poor condition so the city and TRCA must invest in the site. Evergreen assumes the bulk of the financial risk. Further, the city and TRCA have received from the Province of Ontario a commitment to enable the city and TRCA to access the balance of the province's $10 million in funding for the project.

**Evergreen's Master Plan**

The master plan is identified in the lease and is a conceptual plan for the restoration and re-use of the leased premises. The plan details Evergreen's proposed use of each building and the new construction planned for the site. Evergreen, under the terms of the lease, will be responsible for all maintenance and restoration of the buildings.

The area of the site known as the quarry, including features such as the Weston Quarry Garden, will not be part of the lease and will continue to be managed and maintained by the city. Evergreen will be granted a non-exclusive licence for the use of the quarry which will entitle them to the same use of the quarry as the public.

TRCA approved the master plan dated June, 2006, at Authority Meeting #6/06, held on July 28, 2006. The master plan continues to evolve and improve as Evergreen, the city and TRCA work through proposals for the site. As a result TRCA staff need to be able to approve changes to the 2006 plan. Staff will present to the Authority the amended master plan in the fall of 2007.

**Evergreen's Business Plan and Operational Model**

Evergreen has completed a business plan for the site as a self-financing enterprise demonstrating environmental, social and economic sustainability. It is to be a year round destination for discovery and learning about nature and culture that will change the way we think about the city, the environment and our health.

Evergreen has partners including Outward Bound, YMCA, the Gardiner Museum of Ceramic Arts, Jamie Kennedy Kitchens, Foodshare Toronto, the Merchants of Green Coffee and the University of Toronto Health Knowledge Lab. Evergreen will have its national headquarters on site as well as a native plant nursery and demonstration gardens.

The business plan is being updated. It will be a condition of the lease and the loan guarantee that the business plan be acceptable to the city and TRCA in terms of viability and the ability of Evergreen to repay any interim financing.

**Community Involvement**

The Don Valley Brick Works Advisory Committee has been an advocate for the Brick Works restoration for many years. The committee supports the project albeit with some reservations and with the hope that Evergreen will raise their sights to include a global perspective.
Evergreen has consulted a variety of stakeholders over the last four years and this consultation has extensively shaped the project. Evergreen has coordinated stewardship events on site and interpretive tours. The master plan contains an extensive list of community engagement activities.

Flood Management and Evacuation Plan
Evergreen is required as a condition precedent to the lease to have approved by TRCA a flood management and evacuation plan. This leased premises flood on a regular basis and building restoration plans take into account the fact that the leased premises will be flooded to various depths. All electrical and other critical systems are to be constructed above the maximum flood levels. Evergreen and any of its sub-tenants will be required to acknowledge the potential for flooding of the site and to indemnify and release TRCA and the City of Toronto. In the event of conditions likely to lead to flooding, TRCA will notify Evergreen and the site will be closed and evacuated. Evergreen will also be required under the lease to provide liability insurance naming TRCA and the City as additional insureds.

TRCA Regulatory Requirements
As the Brick Works site is regulated by TRCA, all development of new structures on site, or redevelopment proposals will require a permit from TRCA under Ontario Regulation 166/06. Proposals with working drawings will need to be reviewed to determine implications to hazard planning and the conveyance of flood waters within the Brick Works site and valleyland.

Natural Heritage
Evergreen has retained a consultant to prepare a Natural Heritage Impact Study and Enhancement Strategy. The study will assess the potential impacts of Evergreen at the Brick Works and make recommendations on the management of any impacts. Going a step further, the study will provide direction on how the natural heritage of the Brick Works property could be enhanced. Staff of City of Toronto Parks, Forestry and Recreation Division, and TRCA are represented on the project steering committee. The study’s findings will satisfy the natural heritage-related regulatory requirements of the City of Toronto Planning Division as well as the management and operational needs of Parks, Forestry and Recreation. The study was completed in July, 2006.

The Brick Works park will remain under the management of the city and TRCA. Thus, the funding and decision-making related to the findings of the Natural Heritage Impact Study and Enhancement Strategy will remain the responsibility of the city and TRCA. Nevertheless, Evergreen is eager to assist with the stewardship of the remainder of the site, including the Weston Quarry Garden over the long-term. These lands are subject to an agreement with the W. Garfield Weston Foundation and the lease will have to be consistent and in compliance with the terms of this agreement. Evergreen will mobilize its staff, volunteer and fundraising resources in support of the work of the city, TRCA and their community partners.
Environmental Remediation
The City of Toronto and TRCA remain responsible for abatement of the historic contamination on site. The city is completing work to remove asbestos roofs and other historic contaminants from the buildings at an estimated cost of $840,000. Evergreen has agreed to be responsible for the disposal of the asbestos roofs at a cost estimated to be $270,000. The removal of designated substances from the site must be complete in order for Evergreen to secure a building permit through the City of Toronto Building Department.

To date, the city has completed a Designated Substance Survey and Phase I Environmental Site Assessment (ESA). The Phase II ESA was completed in July, 2006, and enabled city staff to undertake a Site Specific Risk Assessment.

As noted in the summary of city comments attached as Attachment 2, there are a number of changes to the lease relating to environmental issues. The provisions in the draft lease reflect the advice of the city environmental legal staff.

Planning Approvals
The site is zoned as parkland “G” in the Borough of East York Zoning By-law 6752. The zoning permits the following uses:

- Uses incidental and contributory to the operations of the City of Toronto and Toronto and Region Conservation Authority;
- Public Recreational Uses; and
- Accessory Uses.

A Preliminary Project Review (PPR) application was submitted to the Building Department on May 15, 2006. The PPR report was completed on June 7, 2006. The review determined that a majority of the uses proposed in the Evergreen Master Plan are educational and recreational in nature, and, as such, can be defined as Public Recreational Uses. In the opinion of City of Toronto Building Department officials, three of Evergreen's proposed uses will require additional approvals: the proposed retail nursery, restaurant and administration space (for Evergreen and its non-profit partners). These required approvals were sought from the Committee of Adjustment through a Minor Variance application filed by TRCA as owner of the site and Evergreen as agent for the owner.

TRCA staff, city staff and the Don Valley Brick Works Advisory Committee are of the opinion that a procedural path that involves the Committee of Adjustment was appropriate because:

- the uses in question are subordinate to, and supportive of, the proposed main public recreational uses, in terms of the floor area, the on-site public experience and the long-term sustainability of the proposed facilities;
- Evergreen's facilities will contribute to the operations (i.e. educational programming) of the city and TRCA;
- the uses in question can be found in other city parks, including High Park, Edwards Gardens and the Toronto Islands, as well as at city/TRCA-operated cultural assets, including the Toronto Zoo and Black Creek Pioneer Village;
- Evergreen, in partnership with the city and TRCA, has managed a thorough community consultation process in support of the development in the Evergreen Master Plan (over 700 members of the community have been consulted); and
City Council and TRCA will have substantively endorsed the project by entering into this lease with Evergreen.

On June 20, 2007, the Committee of Adjustment approved the application. The Committee of Adjustment decision has been appealed to the Ontario Municipal Board (OMB) by one individual acting on his own behalf. TRCA and city staff are in discussions with Evergreen regarding the appeal. Further direction from the TRCA Executive Committee may be required.

In addition to TRCA regulatory requirements, there are a number of planning-related permits/approvals required as conditions precedent to Evergreen obtaining a building permit:
- Toronto Preservation Board (the buildings and site are designated);
- Ontario Heritage Trust (provincial heritage easement agreement);
- Ontario Ministry of the Environment (a Record of Site Condition); and
- City of Toronto Planning Department (Site Plan Control).

**Transportation and Site Access**
The city is responsible for providing a signalized intersection at the entrance of the site on Bayview Ave at the appropriate time. The city and TRCA are to share responsibility to make appropriate connections to the existing trail system in the Don Valley.

**Other Terms and Conditions**
Attachment 2 is the list of major terms and conditions which will be recommended to the City of Toronto Council on July 16/17, 2007. This is included for the information of the members as it summarizes the major terms and conditions of the proposed lease which have changed since this matter was considered by the Authority in 2006.

**DETAILS OF WORK TO BE DONE**
Staff and TRCA's solicitor, together with the city staff/legal team, will finalize the lease for signing. TRCA staff will submit the necessary applications to the province for approval.

Staff has submitted to the Authority a separate report which recommends entering into a Heritage Conservation Easement Agreement with the Ontario Heritage Trust. This easement is necessary to facilitate the flow of provincial funds to the project.

**SUMMARY AND CONCLUSIONS**
Staff recommend amending the resolution of July 28, 2006, approving the lease subject to the required terms and conditions. The current draft lease is the result of extensive and exhaustive negotiation with Evergreen and has been reviewed by TRCA's solicitors, Gardiner Roberts LLP, as well as a team of city legal, parks, culture and real estate advisers.

Staff has assessed the risks of the lease. If Evergreen were to fail, the city and TRCA would inherit a partially improved site with limited capital and no programming obligations. The support of the Province of Ontario and the Government of Canada for the project further mitigate potential risk. Without the project, the city and TRCA will be faced with finding significant capital and operating funds to restore and secure the site.
In summary, after a further year of negotiations and planning, the amended lease with Evergreen represents the best available opportunity for TRCA and the city to fulfill their heritage and cultural objectives for the Brick Works. For TRCA, the Evergreen proposal is consistent with The Living City vision and will help advance many of our sustainability objectives. The city and the Toronto region will have a vibrant renewed heritage attraction for public recreation, learning and enjoyment.

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Date: June 21, 2007
Attachments: 2
APPENDIX “A”
Revised Terms and Conditions
Leasing of Don Valley Brick Works Site
550 Bayview Avenue, Toronto

(1) New Name of Tenant:

Evergreen (formerly Environmental Foundation), a not-for-profit charitable corporation incorporated under the Corporations Act (Canada) and registered under the Income Tax Act (Canada).

(2) Description of Leased Premises:

Approximately twelve (12) acres comprising the southerly portion of the approximately 40.7 acre site formerly occupied by the Don Valley Brick Works (the “Site”) located on the west side of Bayview Avenue, just north of the Bloor Street Bridge, being the lands shown more or less as Parts 1-10 inclusive on Reference Plan 66R-66R-22918 in the Land Registry Office for the Land Titles Division of Toronto (No. 66) together with the existing buildings and structures thereon. Under memorandum of understanding between the Parties contained in Clause 2 of Report 6 of the Economic Development and Parks Committee adopted by City Council meeting held on September 28, 29, 30 and October 1, 2004 (the “2004 MOU”) the Leased Premises are limited to the horizontal land strata from the surface of the ground up and, with the exception of any necessary building foundations and landscaping in accordance with: (i) a perpetual heritage easement agreement to be provided by Toronto and Region Conservation Authority (“TRCA”) to Ontario Heritage Trust (formerly the Ontario Heritage Foundation); (ii) a risk assessment or risk assessment plan accepted by the Ministry of Environment (Ontario) and any record of site condition filed or submitted for filing on the Ministry of Environment’s Environmental Site Registry to be provided by the City and TRCA; (iii) any certificate of property use issued by the Ministry of Environment; and (iv) Evergreen’s Master Plan and related plans and specifications for Evergreen’s proposed project as approved of by Ontario Heritage Trust, TRCA and the City, the Leased Premises do not include the subsurface or ground water (the ”Retained Lands”).

(3) Commencement Date:

May 1, 2008, subject to extension by agreement of all Parties to a date not later than December 31, 2008.
TRCA and City’s $7.5 Million Capital Loan Guarantee:

The Tenant has expressed concern with respect to its operating cash flow during construction which will be constrained and, secondly, its capital cash flow since the timing for its pledges and the flow of recently announced Federal and Provincial funding to the Tenant will not correspond directly with the Tenant’s spending on construction. The Tenant has said that it may require a joint and several TRCA and City loan guarantee of up to $7,500,000 (inclusive of all interest, costs and charges) (the “Loan Guarantee”) on an interim financing line of credit facility arrangement of approximately $18.4 Million (“Loan Agreement(s)” that it is currently negotiating with institutional or private lenders (“Lenders”) to be acceptable to TRCA and the City in order for the Tenant to meet its cash flow requirements for Project construction purposes. The intent of this Loan Guarantee is to provide bridge financing between Evergreen’s receipt of various funds raised from its private and public donors as well as the Federal and Provincial governments and progress payments required by various contractors, firms and suppliers during the course of completing various stages of the Project.

Therefore, in connection with and to facilitate completion of the Tenant's construction work, Evergreen is requesting TRCA and the City to jointly and severally issue a Loan Guarantee(s) of up to $7,500,000 in the aggregate (inclusive of all interest, costs and charges) on a Loan Agreement of approximately $18,400,000 that Evergreen is currently negotiating with its proposed Lenders and to enter into an agreement with the Tenant and its approved Lenders in respect thereof (the “Lender Agreement(s)”).

Accordingly, the issuance, form and substance of any Loan Guarantee and Lender Agreement will be subject to the concurrence and approval of TRCA and the terms and conditions thereof are to be satisfactory to the Deputy City Manager and Chief Financial Officer in consultation with the General Manager of Economic Development, Culture and Tourism, all in form acceptable to the City Solicitor and in accordance with the following:

(a) up to the maximum amount of seven million five hundred thousand dollars ($7,500,000.00) in the aggregate (inclusive of all interest payable by the Tenant and costs and charges under the Loan Agreement);

(b) the Lender(s) is/are to be acceptable to TRCA and the City;

(c) the Loan Agreement(s) are paid in full, and the Loan Guarantee(s) and Lender Agreement(s) expire by no later than the earlier of the end of four years commencing on the Commencement Date of the Lease or on earlier termination or payout of the loan in question;

(d) unless otherwise agreed to in writing by TRCA and the City in their sole discretion, if judgment is obtained on the Loan Guarantee(s), the Lenders rights of enforcement are to be restricted so that no Personal Property Security Act filing shall be made against TRCA and/or the City and the Lenders shall not register its judgment in any Sheriff’s office;

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(e) TRCA and the City will be provided with copies of the relevant Loan Guarantee(s), Lender Agreement(s) and Loan Agreement(s), and all other pertinent documents, as well as any demands and enforcement notices issued to borrowers/guarantors;

(f) the Loan Guarantee(s) and Lender Agreement(s) will be subject to set off against any amounts that TRCA or the City may have to pay to remove any liens or any deficiency in the Flood Reserve Funds referred to in Section 7;

(g) the Tenant shall provide in a timely manner to TRCA and the City for approval and there shall be deposited with and held by the City and TRCA or as they may direct, all such documentation and written information as TRCA and the Deputy City Manager and Chief Financial Officer in their sole discretion, consider necessary or desirable to assess the form and substance of the Loan Guarantee(s) and Lender Agreement(s) and related documentation as well as to protect the rights and interests of TRCA and the City in the event of default by the Tenant and/or as security to the City and TRCA for the payment and performance of the obligations of the Tenant under the Lease, and TRCA and the City in their unfettered discretion shall have approved of both the form and substance of the same and the priority of registration of all relevant security, to the extent applicable. A non-exhaustive description of the foregoing documentation and information includes: (i) the Tenant's financial statements (including audited statement, if required); (ii) the Tenant’s business plan and master plan; (iii) all Tenant insurance policies to be taken out and maintained by it under the Lease; (iv) the Loan Agreement(s), the proposed Loan Guarantee(s) and Lender Agreement(s): (v) an irrevocable $500,000 letter of credit facility or similar $500,000 LOC/Cash Security as described in Section 5 below to be provided by the Tenant for the purposes of funding any debt service deficiencies associated with the Loan Guarantee and as security for an uncured Tenant default under the Lease, including Project completion and/or any possible construction liens attaching to the Project; and, (vi) subject to any such prior security as required under any Loan Agreement as approved of by the Deputy City Manager and Chief Financial Officer in consultation with TRCA, the following security to be granted by the Tenant in favour of TRCA and the City as security for the performance of the Tenant’s obligations under the Lease including Project completion and repayment of any Loan Guarantee: (i) a general assignment of all agreements affecting the Project; (ii) a collateral leasehold charge of the Tenant’s interest in the Leased Premises; (iii) a collateral security interest agreement in all property of the Tenant located on the Leased Premises; (iv) a subordination/priority and/or forbearance agreement with any approved Lender(s) of the Tenant; and (v) an assignment of any remaining Project funding on Tenant default, all to the extent considered reasonably practicable in the circumstances;

(h) at the option of TRCA and the City to be exercised in their individual discretion, both TRCA and the City will have entered into a pari passu agreement on terms and conditions acceptable to them and in form acceptable to their legal counsel; and
(i) the Loan Guarantee(s) and Lender Agreement(s) and all related documentation shall be on terms and conditions entirely acceptable to TRCA and the City and in form acceptable to their legal counsel.

(5) Construction Lien Concerns:

Typically, the Tenant should provide security to ensure that its obligations to the contractor will be fulfilled, otherwise, the general contractor, if unpaid, could lien the Leased Premises and the City and TRCA may be at risk for the unpaid amount. There is a real concern with respect to possible construction liens attaching to the Leased Premises because: (i) it is not possible to quantify this risk since the Tenant’s construction and payment schedules and financing commitments with its Lenders remain to be determined; and (ii) because the Tenant has confirmed that it can only provide security against this risk to TRCA and the City under the Lease in the form of an irrevocable letter of credit or similar security acceptable to the Deputy City Manager and Chief Financial Officer (for example, possibly a segregated cash capital fund in the amount of $500,000 to be applied upon demand by the City and TRCA during the Lease Term if there is an uncured default by the Tenant on terms and conditions acceptable to TRCA and the City, including its replenishment and the unencumbered access and control thereof by TRCA and the City, if required (the “$500,000 LOC/Cash Security”). The Tenant’s obligation to maintain this fund will end upon the later of Project completion or expiration of the $7.5 Million joint and several Loan Guarantee(s) described in Section 5 above and the expiration of all relevant lien periods and to there being no liens outstanding.

(6) Environmental

(1) The definition of “Contamination” shall mean the presence of contaminants at levels that contravene applicable Environmental Laws or at levels which exceed or are inconsistent with the levels described in the Heritage Easement Agreement to be entered into between TRCA and Ontario Heritage Trust in respect of the Leased Premises, the Master Plan, the Risk Management Plan or the Record of Site Condition.

The City will at its expense submit for filing for a record of site condition on the Environmental Site Registry maintained by the Ministry of the Environment (Ontario) on or before a date to be mutually agreed upon between the General Manager in consultation with the Chief Corporate Officer, and TRCA and the Tenant. Except as permitted under the Environmental Protection Act (Ontario), R.S.O. 1990, c. E.19, the Tenant will not use the Leased Premises until such time as a satisfactory record of site condition has been filed and TRCA and the City have received such assurances regarding amendments from the Ministry of Environment (Ontario) as TRCA and the General Manager in consultation with the Chief Corporate Officer consider necessary or desirable in the circumstances.
The Tenant accepts and agrees to be solely responsible for the satisfactory remediation of all existing and elevated levels of dust and any related Ministry of Labour (Ontario) concerns or requirements.

Under the 2004 MOU approved by Council, the Tenant was not to assume responsibility for existing contamination of the Leased Premises. Accordingly, while the Tenant and its Permitted Occupants will be required to release the City and TRCA in this regard, the Lease will not contain any “indemnity” by the Tenant or its Permitted Occupants in favour of the City or TRCA for any losses or damages suffered by any third party at the Leased Premises due to historical contamination, regardless of whether such third party came on to the Property as a result of the Tenant’s activities. Further TRCA and the City are to remediate the existing buildings on the Leased Premises by removing the asbestos roofs and other historical contamination found within these buildings at an estimated cost of approximately eight hundred and forty thousand dollars ($840,000.00). The Tenant has agreed to be responsible for disposal of the existing asbestos roofs at an estimated cost of approximately two hundred and seventy thousand dollars ($270,000.00).

(2) Under the 2004 MOU approved by Council, TRCA and the City are also responsible to ensure that the Retained Lands comply with Ontario Regulation 153/04 under the Environmental Protection Act (Ontario) for the Tenant’s uses. Accordingly, the City and TRCA will provide a Record of Site Condition (“RSC”) for the Retained Lands based on a Risk Assessment (“RA”) accepted by the Ministry of the Environment and will pay all costs associated with the implementation of risk management measures in accordance with such RA and Risk Management Plan (“RMP”), except that the Tenant shall pay the disposal costs of any soil where:

(a) the Tenant elects to excavate or requests the City to remove the soil; and

(b) removal of such soil from the Retained Lands would not have been required to permit the use of the Retained Lands for parkland.

(3) Once the RSC is filed or submitted for filing on the Environmental Site Registry, the Tenant will not require the City or TRCA to perform any additional remediation of the historical contamination except as provided in the RMP or as ordered by the Ministry of the Environment (Ontario). The Tenant will release TRCA and the City from all losses that the Tenant, TRCA or the City may incur, including economic loss, direct or indirect, relating to or arising from or associated with the historical contaminants and the condition of these lands as described in the RSC or caused by any breach of Clause 6 hereof or any non-compliance with any Environmental Law by the Tenant or its Permitted Occupants or invitees. The Tenant will also require that the same release be included in all subleases and occupancy agreements that the Tenant may enter into for the Leased Premises.
(4) During the term of the Lease and upon its termination or expiration, the Tenant will remediate any contamination it or its Permitted Occupants as defined in the Lease, in the reasonable opinion of the General Manager, have caused or allowed to the Leased Premises and the remaining Brick Works site, including the Retained Lands and the Weston Quarry Garden lands, to the extent required by all applicable laws, and the RA and RMP, as amended.

(5) Subject to any obligation contained in the Risk Assessment or Risk Management Plan or any Certificate of Property Use, no digging or excavation of any part of the Retained Lands will be permitted without the prior written approval of the City and TRCA, acting reasonably, whether or not such digging or excavation is contemplated in the Master Plan or the Lease.

(6) Once the RSC is filed or submitted for filing in the Environmental Site Registry, if additional contamination is discovered in, on or about the Retained Lands or any part which the Ministry of the Environment orders the City, TRCA and/or the Tenant to investigate, manage or remediate in compliance with then current environmental legislation and regulations:

(a) TRCA and the City will use their commercially reasonable efforts to comply with such requirements, up to a cumulative aggregate sum of five hundred thousand dollars ($500,000.00) inclusive of soil testing, excavation and related work, which sum shall be CPI adjusted on an annual basis from the Commencement Date.

(b) If the cumulative aggregate cost of such requirements is more than five hundred thousand dollars ($500,000.00), as adjusted,

(i) The Tenant will have the option to pay the additional costs of complying with such requirements that are reasonably attributable to the occupancy of the affected area by the Tenant or its permitted occupants as defined in the Lease, i.e., those costs that the City and TRCA would not be required to pay if the affected area were excluded from the Leased Premises. If so, the City and TRCA shall pay the remaining costs and shall comply with the regulatory requirement;

(ii) If the Tenant does not agree to pay the additional costs as set out in clause (b)(i) above:

(1) the Parties will endeavour to negotiate the terms and conditions of a mutually satisfactory cost-sharing agreement to deal with such excess costs, in form acceptable to the City Solicitor; or

(2) if the Parties, acting reasonably, do not wish to enter into any such cost-sharing agreement, then:
(a) the City and TRCA may isolate the contaminated area or areas in question and may delete such portion(s) from the Lease, for the period of time required to comply with the Order;

(b) If the Order requires remediation of the entire Leased Premises, the area deleted from the Lease may be the entire Leased Premises, and the Lease will be suspended for the period of time required to comply with the Order;

(c) If the Order permits the City and TRCA a choice of options for compliance, including an option of non-use or limited use, the Tenant will not require the City and TRCA to select an option that requires unlimited use or a more expensive option;

(d) The Tenant will have an option of terminating the entire Lease if it demonstrates to the satisfaction of the General Manager and TRCA, acting reasonably, that isolation and deletion of any such contaminated area would materially and negatively affect an integral area of the Tenant's operation;

(e) If all or part of the Leased Premises are deleted from the Lease under this clause, or if the Tenant terminates the Lease under this clause, each Party will be released from all obligations to the other arising after such deletion or termination and for all related liabilities including economic loss, mutatis mutandis. The Tenant will have the reasonable right to remove its fixtures and chattels from the Leased Premises if not in default; and

(f) The Tenant will require that an acknowledgement to the foregoing effect and the same release in favour of TRCA and the City be included in all permitted subleases and other occupancy agreements that the Tenant may enter into for the Leased Premises.
(7) the Tenant, in its use and occupation of the Leased Premises and its activities thereon whether directly or through its Permitted Occupants, will fully comply with all applicable Environmental Laws of the Ministry of Environment and the Environmental Protection Act (Ontario), and any other Authority for the protection of the environment. The Tenant covenants that, during the Term, no hazardous substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere in, on, under or about the Leased Premises or Remaining Site Lands, other than in accordance with applicable Environmental Laws and the provisions of this Agreement. Without limiting the foregoing, the Tenant covenants that any Permitted Occupant, including approved sub-tenants, licensees or invitees, will comply with the provisions of Clause 6 hereof and all applicable Environmental Laws regulating the use, generation, storage, transportation and disposal of hazardous substances in, on, under or about the Remaining Site Lands or any part thereof. The foregoing will not relieve TRCA or the City of their respective environmental obligations hereunder.

(8) The Tenant will obtain and comply at its sole expense, with the terms of all licences, certificates of approval, permits and other approvals required by Environmental Laws, and the Lease for the conduct of its business at or from the Leased Premises, and will require any Permitted Occupant to do the same.

(9) The Tenant will not authorize, cause or permit a Contamination in, on, under or from the Site including the Leased Premises, the Weston Quarry Garden Lands and the Remaining Site Lands. Where such a discharge referred to herein does occur, the Tenant will immediately report the occurrence of the Discharge to all Authorities to whom notification is required under Environmental Laws in the circumstances, and to the City. The Tenant will then immediately stop and clean up the Discharge to bring the Leased Premises and any other affected area, into compliance with Environmental Laws, will repair any damage to the Leased Premises or Remaining Site Lands caused by such Discharge and will provide the City and TRCA with a certificate from the Tenant’s duly qualified consulting engineer confirming such compliance. If the Tenant fails or refuses to promptly clean up a Discharge referred to herein, and to restore the Leased Premises and any other area of Remaining Site Lands affected by the Discharge, the City may elect in writing to carry out the whole or any part of the clean up and restoration at the Tenant’s expense.

(10) The Tenant will permit the City to perform an audit by a qualified professional of the Tenant’s Discharges of Contaminants into the Leased Premises or Remaining Site Lands in, on, under or from the Leased Premises at any time(s) during the Term on ten Business Days Notice to the Tenant provided that a representative of the Tenant may at all times (but without obligation) accompany the City’s personnel.
(11) The Tenant will fully comply with all orders of an Authority which may be directed to the Tenant and which relate to the Leased Premises or the Weston Quarry Garden Lands or any part thereof and shall bear the expense of such orders provided that, in the reasonable opinion of the General Manager, the contamination which is the subject of the order can be reasonably considered to have been caused or permitted by the Tenant or its Permitted Occupants or its/their invitees or operations or activities or lack of care and attention. The foregoing will not relieve TRCA or the City of their respective environmental obligations hereunder.

(12) Should an order of an Authority be issued to the City requiring the City to do anything in relation to a Discharge of Contaminants caused or permitted by the Tenant and relating to the Tenant’s use of the Leased Premises or Weston Quarry Garden Lands, the Tenant will at its own expense, on receipt of written Notice from the City, comply with the order at the Tenant’s expense including preparing and submitting the required plans and meet all related requirements and the Tenant shall carry out all such clean up plans under the direction of the Authority. If the Tenant fails or refuses to promptly and fully carry out an order referred to in this Environmental Section 6, or if, in the City’s reasonable opinion, the Tenant is not competent to carry out the order, the City may elect in writing to carry out the whole or any part of the order at the Tenant’s expense.

(13) Except in an emergency where no notice is required, TRCA and/or the City may, on a minimum of 24 hours prior written Notice, inspect the Leased Premises and the Tenant’s records relating to its handling of Contaminants to determine whether the Tenant is fully complying with all Environmental Laws and its environmental obligations under this Agreement. Where TRCA and/or the City reasonably considers it necessary, the inspection may be performed in whole or in part by experts, and may include sampling, monitoring, and other tests, provided that all intrusive testing shall be carried out in the presence of a representative of the Tenant. If TRCA and/or the City’s inspection discloses a breach of an Environmental Law, or a fact situation which could reasonably be anticipated to result in a breach of an Environmental Law, TRCA and/or the City will have the right to take whatever steps are reasonably required to rectify such breach, or prevent such breach from occurring, as the case may be.

(14) Where TRCA and/or the City have carried out an order referred to in Environmental subsection 6.12 hereof or has cleaned up or made restoration as a result of a Discharge referred to in Environmental subsection 6.9 hereof, or has otherwise incurred any expense or damage relating to a Discharge of Contaminants caused by the Tenant, and/or arising from the Tenant’s use of the Leased Premises, the Tenant will indemnify TRCA and/or the City as the case may be for all costs incurred by TRCA and/or by the City with respect to any of the foregoing.
The Tenant shall, at its sole cost and expense, at the expiration of the Term, or such earlier termination of this Agreement, remove all Tenant’s Contamination in accordance with all Applicable Laws of any Authority and repair any damage to the Site, including the Leased Premises, the Weston Quarry Garden Lands and the Remaining Site Lands caused by the existence and/or the removal of any Tenant’s Contamination. TRCA, the City and the Tenant shall mutually agree, acting reasonably, with respect to the management and control of any consultants responsible for remediation. All reports and other materials of scientists, engineers or other environmental consultants of the Tenant and related to the Leased Premises shall be addressed to the Tenant, TRCA and the City and TRCA and the City shall be entitled to rely on such materials for all purposes. The Tenant further undertakes to plan and permit any of its remediation measures and processes to be integrated with any construction processes to be undertaken by TRCA and/or the City. The Parties will mutually agree with respect to the co-ordination and scheduling of such work and the allocation of costs therefore (whether by way of direct payment or reimbursement) if any of TRCA and/or the City’s remediation work is undertaken by the Tenant, it being agreed that any remediation obligations of TRCA and/or the City in respect of Remaining Site Lands shall be without prejudice to its/their rights, if any, to pursue those Persons responsible for such contamination.

Tenant acknowledges that it has reviewed and is fully familiar with and accepts the Risk Management Plan. The Tenant agrees during the Term, at its own expense, to implement and adhere to or cause the implementation and adherence to of all its terms and provisions, including the risk control and management measures and other protocols described or contemplated therein. If any Certificate of Property Use is subsequently issued by the Ministry of the Environment (Ontario), the Tenant also covenants and agrees to comply during the Term, at its expense, with those provisions of the Environmental Protection Act (Ontario) and O.Reg 153/04 governing property use and to provide the City and TRCA with such evidence of compliance therewith as they may reasonably require forthwith upon request.

The Tenant further acknowledges that this Risk Management Plan is to be reviewed and assessed by the Ministry of Environment (Ontario) and that as a condition of its final approval by the Ministry of the Environment (Ontario), the Risk Management Plan may and shall include such further or other terms and or risk management control measures as may be required by the Ministry of the Environment (Ontario) in its discretion, all of which the Tenant hereby accepts and which the Tenant similarly covenants and agrees to implement and adhere to or cause the implementation and adherence to at its own expense during the Term.
(18) As per the Risk Management Plan, the Tenant covenants and agrees that at all times during the Term, it shall strictly and timely comply with and cause compliance with the following provisions of the Risk Management Plan as amended and any Certificate of Property Use issued by the Ministry of the Environment (Ontario): (a) there is to be nil tree planting except in accordance with the Risk Management Plan and the Heritage Easement Agreement; and (b) the Tenant must cap the Leased Premises with a hard concrete or asphalt surface or with one (1) metre (3 feet) soft surface of clean fill to the satisfaction of the Chief Corporate Officer except in accordance with the Risk Management Plan and the Heritage Easement Agreement.

(19) The Tenant shall ensure at its expense during the Term that all construction or other Work (i.e., designs/architects/contractors/engineers) and operations at the Leased Premises, whether by it or of any Permitted Occupant or its/their Authorized Members, comply with the Risk Management Plan and any Certificate of Property Use issued by the Ministry of the Environment (Ontario), and the Tenant will provide the City and TRCA with such evidence of compliance therewith as they may reasonably require forthwith upon request.

(20) The Tenant acknowledges that as per the Risk Management Plan, the City or TRCA may be required to annually or bi-annually monitor the ground water and sub-surface of the Remaining Site Lands to ensure the site conditions of the Leased Premises remain consistent with the Risk Management Plan and, if not, that the City or TRCA may be required or determine it appropriate and are hereby granted full and complete permission to implement or otherwise put in place at no expense to the Tenant certain other engineered controls as may be required or determined desirable by the Ministry of the Environment (Ontario) to rectify sub-surface anomalies and ensure that Leased Premises’ sub-surface conditions remain consistent with the Risk Management Plan and the Heritage Easement Agreement as aforesaid. However, if there is anything done or omitted to be done by the Tenant, its Authorized Members or Permitted Occupants, including members of the public, which the Chief Corporate Office reasonably determines to have caused such inconsistency, then, the Tenant shall be responsible to forthwith rectify same at its expense. Without limiting the generality of the foregoing, and as required by the approved Risk Management Plan and the Heritage Easement Agreement, the City will conduct groundwater monitoring as required by the Risk Management Plan, semi-annually for three years. Sample results will be evaluated using the PSSs (Property Specific Standards) developed for the Site. Should concentrations exceed the PSSs for two or more samples, then a remedial option evaluation should be conducted. Sampling may be discontinued if permitted by groundwater quality trends and with the agreement of the Ministry of the Environment (Ontario).
(21) Except in an emergency in which case no Notice is required, the Tenant hereby allows and grants the City and TRCA and its/their Authorized Members full access to the Leased Premises or any part at all times during the Term during normal business hours and at any other time on twenty-four (24) hours Notice (on foot, with vehicles, supplies or equipment) to inspect, monitor and ascertain compliance with the Risk Management Plan and any issued Certificate of Property Use and other issued requirements of the Ministry of the Environment (Ontario) in respect of the Leased Premises or any part. If access is denied or interfered with, then, TRCA and/or the City shall have the right without compensation or further notice, in their sole discretion at any time and from time to time, to suspend such activities at the Leased Premises and to isolate such area(s) in questions that requires, in the reasonable discretion of the Chief Corporate Officer, suspension or isolation until a satisfactory correction of the condition complained about has been made.

(7) Maintenance and Repair:

The Tenant will build and retrofit all buildings and other improvements to flood-proofing TRCA regulatory standards. Since the Leased Premises are in a flood plain, the Tenant's all-risk insurance coverage may exclude flood coverage if unavailable at commercially reasonable rates. If so, the Tenant's obligation to repair and maintain under the Lease and to leave the Leased Premises in good order and condition will necessarily exclude damage due to an uninsured catastrophic flood. In regard to the Tenant's maintenance and repair obligations, however, the Lease will require the Tenant to have reserved and set aside on or before substantial completion of the Project and to continue to reserve and maintain at all times during the Term, a segregated fund from its operating funds in a CPI indexed amount of two hundred and fifty thousand dollars ($250,000.00) (the “Flood Reserve Funds”) to be applied for clean-up and remediation of the Leased Premises or any part in the event of a flooding event during the Term on terms and conditions acceptable to TRCA and the City, including its replenishment and the unencumbered access and control thereof by TRCA and the City, if required.

(8) Pre-Conditions to Lease Commencement in favour of City and TRCA:

On or before May 1, 2008, the Tenant will submit to TRCA and the City for approval, its construction plans and specifications, pre-tender cost estimates and a detailed construction schedule and shall demonstrate it has fulfilled all the preconditions necessary to obtain a building permit.

On or before May 1, 2008, the Tenant will have entered into a construction contract and all necessary agreements with the architect and architect's consultants for the project and a general and specific assignment of the benefit of such agreements, as continuing collateral security, all in form and substance satisfactory to the City and TRCA.
On or before May 1, 2008, the Tenant will have entered into a binding offer of interim financing with its Lenders acceptable to TRCA and the City in an amount not greater than eighteen million dollars ($18,000,000) and on terms and conditions entirely satisfactory to TRCA and the City and unless waived by TRCA and the City, providing for an assignment of such financing on Tenant default to TRCA and the City upon request and for a subordination/forbearance and priority agreement to be entered into between the Parties and such Lender, in a form acceptable to the City Solicitor and legal counsel for TRCA.

On or before May 1, 2007, the Tenant will have entered into a binding offer of finance and contribution agreement with the Province of Ontario in the principal amount of not less than ten million dollars ($10,000,000) and with the Federal Government of Canada in the principal amount of up to twenty million dollars ($20,000,000) on terms and conditions entirely acceptable to TRCA and the City in their unfettered discretion. In this regard, both Ontario Heritage Trust and Infrastructure Canada are to provide TRCA and the City with executed original comfort letters in respect of their respective funding contribution agreement with the Tenant on terms and conditions satisfactory to TRCA and the City.

On or before May 1, 2008, the Tenant will provide TRCA and the Deputy City Manager and Chief Financial Officer of the City with evidence of the Tenant's receipt of a further amount of capital fundraising for its Project equal to the greater of: (i) twelve million dollars ($12,000,000.00) or (ii) a sum equal to the amount of the actual “hard” construction costs for the Project as certified to the City and TRCA by a duly qualified cost consultant appointed by the City plus twenty (20%) thereof, all on terms and conditions entirely acceptable to TRCA and the Deputy City Manager and Chief Financial Officer of the City, in a form acceptable to the City Solicitor and legal counsel for TRCA.

On or before its application for a building permit in respect of the Project, the Tenant will submit a hoarding and construction access plan to the City and TRCA for their approval by them in their capacity as Parties to the Lease.

On or before the Commencement Date, the Tenant's architect shall have provided TRCA and the City with satisfactory written evidence of the Tenant's receipt of all necessary approvals from all authorities required to construct and complete the Project, including all requisite building permits.

There shall be no material default under the interim licence or permit arrangement which the Tenant has requested the Parks, Forestry and Recreation Department to issue for its limited use and occupancy of certain parts of the Leased Premises prior to the Commencement Date and any other obligation of the Tenant to the City or TRCA in respect of the Site or any part, including any heritage easement agreement.

(9) Other:

Such further revisions and other Lease terms and conditions as may be satisfactory to the Deputy City Manager and Chief Financial Officer, in consultation with TRCA, all in a form satisfactory to the City Solicitor.
RES.#A161/07 - HERITAGE CONSERVATION EASEMENT
Don Valley Brick Works - Ontario Heritage Trust. Recommends approval to enter into a heritage conservation easement agreement with Ontario Heritage Trust to facilitate adaptive restoration and reuse of the Don Valley Brick Works through a lease with Evergreen.

Moved by: Gay Cowbourne
Seconded by: Ron Moeser

WHEREAS Toronto and Region Conservation Authority (TRCA) is in receipt of a request from Ontario Heritage Trust (OHT) of a requirement that TRCA enter into a heritage conservation easement agreement for the property known as the "industrial pad" portion of the Don Valley Brick Works, City of Toronto, as a condition of the Ontario heritage Trust providing funding for Evergreen, a non-profit organization selected by the City of Toronto to complete the adaptive restoration and reuse of the Don Valley Brick Works (Brick Works) industrial buildings;

AND WHEREAS it is in the opinion of TRCA that it is in the best interest of TRCA in furthering its objectives, as set out in Section 20 of the Conversation Authorities Act, to cooperate with the Ontario Heritage Trust in this instance;

THEREFORE LET IT BE RESOLVED THAT a permanent easement containing a total of 4.9 hectares (12 acres), more or less, be granted to Ontario Heritage Trust for the purpose of preserving the heritage character of the cultural heritage resources and known and potential archaeological resources through the protection and conservation of the cultural heritage features;

THAT consideration is to be the nominal sum of $2.00, and the mutual covenants and restrictions as set forth in the Heritage Conservation Easement Agreement;

THAT the granting of this easement is subject to the approval of the Minister of Natural Resources in accordance with Section 21(2) of the Conservation Authorities Act, R.S.O. 1990, Chapter C.27 as amended, and section 42 of the Expropriations Act, section E26;

THAT the granting of this easement is subject to designated representatives of the City of Toronto approving the terms and conditions of the Heritage Conservation Easement Agreement;

THAT the granting of this easement is subject to Evergreen assuming the obligations of the Heritage Conservation Easement Agreement during the term of its lease with TRCA and the City of Toronto for the Don Valley Brick Works; failure to perform will be a default of the lease;

AND FURTHER THAT the appropriate TRCA officials be authorized and directed to take whatever action may be required to give effect thereto, including the obtaining of necessary approvals and the execution of any documents.

CARRIED
BACKGROUND
In September of 2003, the City of Toronto designated Evergreen as the preferred proponent following a call for proposals to adaptively re-use the designated heritage and cultural features of the Don Valley Brick Works. TRCA staff cooperated with the city in reviewing proposals and worked with the city staff steering committee to prepare a Memorandum of Understanding (MOU) with Evergreen which was signed in 2004. In 2006, the Authority approved Resolution #A171/06 at meeting #6/06, held on July 28, 2006, which gave staff direction to negotiate and enter into a lease with Evergreen and to seek the necessary approvals of such a lease.

The Brick Works site was acquired by TRCA by expropriation in 1987. The site is under management agreement with the City of Toronto. Staff has confirmed with our solicitor that upon receipt of the necessary Minister's approval, the easement would be permitted under the expropriation.

Evergreen is a charitable, non-profit organization that has been active in environmental programs in Toronto for some time. Evergreen has developed a capital fundraising strategy and a vision of an exciting Toronto destination on the themes of community, culture and urban ecology. Evergreen proposes to convert the large shed building into a native plant nursery and a garden centre. In addition, there will be demonstration gardens, including a children's teaching garden, market space, community space for meetings and public programming, food outlets, an amphitheatre for outdoor performing arts and office space for the Evergreen national headquarters. Partnering primarily with other like minded and community based organizations, the balance of the buildings on site would be used for heritage and cultural community uses respecting the themes of youth and leadership, visual arts and music, health and wellness, food and nutrition, and ecological and heritage interpretation. To ensure that all programming and tenant use of the site is consistent with the vision and themes, all sub-tenants will be required to conform to a "charter" of themes and prescribed uses.

Since the signing of the MOU in 2004 and the 2006 resolution agreeing to enter into a lease, staff has worked with City of Toronto staff to negotiate terms and conditions of the proposed lease. The City of Toronto, TRCA and Evergreen will be signatories to the lease with the city continuing in its role of managing the lease as well as the balance of the Brick Works site.

Evergreen has secured from the Province of Ontario a commitment of $10 million as a grant for the Brick Works project. The grant is being delivered through the Ontario Heritage Trust. OHT has required as a condition of the grant that TRCA enter into a heritage conservation easement agreement to facilitate the grant to Evergreen.

RATIONALE
The key terms and conditions of the proposed Heritage Conservation Easement Agreement are summarized as follows:
1. The easement applies only to the 12 acre industrial pad portion of the Brick Works site which is the subject of the lease to Evergreen.
2. The easement is perpetual. Under the terms of the lease, Evergreen will assume the easement obligations of TRCA during the term of the lease. If a future tenant does not assume the obligations of the easement agreement, under the management agreement with the City of Toronto, the city would assume the obligations.
3. OHT has agreed by letter and resolution of its board that in the event Evergreen defaults on its agreements and fails to complete the project, OHT will redirect all or part of the funds from the unspent portion of the $10 million provincial grant to the City of Toronto for use in conserving the cultural heritage features of the property, consistent with the intent of the original grant agreement between OHT and Evergreen.

4. The heritage features to be conserved by TRCA under the terms of the easement agreement are described in schedules to the agreement. Provision is made for a "baseline documentation report" which determines the condition of the cultural heritage features and it is that condition that must be preserved by TRCA.

5. TRCA agrees to enter into a separate conservation heritage agreement for that part of the Brick Works site known as the north quarry wall which is listed as an Area of Natural and Scientific Interest (ANSI); such agreement to be in a form and on terms and conditions acceptable to TRCA and the city.

6. OHT has rights to inspect the site and to require that the owner maintain and repair cultural heritage features. If the owner fails to act, the OHT can proceed with repairs and charge the cost to the owner.

7. TRCA and the city as manager of the property, have rights to make emergency repairs and when making routine repairs to do so with OHT approval. Throughout the agreement there is a requirement that OHT act "reasonably" in dealing with changes to the cultural heritage features.

8. OHT acknowledges and agrees that the site is located in a flood area and is subject to regular flood events and may be subject to catastrophic flooding from time to time and consequently is at greater risk of damage or destruction. OHT releases TRCA and the city from any responsibility for damage due to flooding.

9. TRCA is required to maintain insurance on the site in the amount of $5 million general liability and property insurance to full value of the cultural heritage resources to the extent reasonably available. Under the terms of the TRCA/city management agreement, the city is responsible for insurance on the site and under the terms of the lease, Evergreen assumes this obligation.

10. OHT is allowed to place a plaque on the site and TRCA is required to ensure public access to the site.

11. Rebuilding by TRCA in the event of damage or destruction under the easements is limited to insurance proceeds received.

12. The easement is to be compatible with any environmental clean up obligations of TRCA and the City pertaining to the site.

DETAILS OF WORK TO BE DONE
Staff of the city and TRCA have been working with staff of OHT for several months to draft the heritage conservation easement document. Evergreen has been a party to these discussions to ensure that they are aware of and accept the obligations which will be transferred to Evergreen under the terms of the lease. As of July 17, 2007, OHT had yet to confirm acceptance of the latest version of the easement.
Staff is seeking direction to enter into the easement agreement subject to the conditions described. Time is of the essence as signing of the lease with Evergreen and the entering into of the easement agreement must occur concurrently. If the lease is not signed, TRCA will not enter into the easement agreement.

Report prepared by: Jim Dillane, extension 6292
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Date: July 17, 2007

RES.#A162/07 - ADMINISTRATIVE ARRANGEMENTS
Toronto and Region Conservation Authority - Toronto and Region Source Protection Authority. Authorization for Toronto and Region Conservation Authority to conduct daily planning and business of the Toronto and Region Source Protection Authority.

Moved by: Richard Whitehead
Seconded by: Maja Prentice

WHEREAS the Clean Water Act, 2006, “the Act”, establishes a source protection area as the area over which a conservation authority has jurisdiction under the Conservation Authorities Act and directs the conservation authority to exercise and perform the powers and duties of a source protection authority, as further set out in the Act and regulations;

THEREFORE LET IT BE RESOLVED THAT Toronto and Region Conservation Authority (TRCA) enter into a letter of agreement with the Toronto and Region Source Protection Authority (TRSPA) to enable TRCA to carry out the day-to-day planning and business of the TRSPA both in its capacity as a source protection authority and as the lead source protection authority for the CTC Region;

THAT staff be authorized to take direction from the TRSPA in matters relating to the business of the TRSPA;

AND FURTHER THAT appropriate TRCA officials be authorized and directed to take all necessary action to implement the letter of agreement.

BACKGROUND
To ensure an effective and efficient business model for the day to day business of the TRSPA, recognizing the TRSPA has the same membership of the TRCA, it is in the best interests of the TRSPA and TRCA to enter into an agreement whereby the day to day business of the TRSPA will be accomplished in accordance with the policies and procedures of the TRCA, utilizing the established corporate financial and business infrastructure of the TRCA and staff resources of the TRCA, augmented as necessary to support the Source Water Protection Committee.
Opinion received from Conservation Ontario's legal advisor (Attachment 3), recommends that there be a formal written agreement in place between the Conservation Authority and the Source Protection Authority with respect to the use of its assets or the employment of staff for Source Protection Authority business.

Report prepared by: Beverley Thorpe, extension 5577
Emails: bthorpe@trca.on.ca
For Information contact: Beverley Thorpe, extension 5577
Emails: bthorpe@trca.on.ca
Date: July 06, 2007
Attachments: 3
Source Protection Planning: The Road Ahead

Lead Source Protection Authority

Source Protection Committee
*Lead SPA to establish no later than mid-Nov 2007*

Annual monitoring

Management & Implementation
{Municipal Lead}

Source Protection Plan*
Submit within 5 years of chair appointment

Working Groups

Terms of Reference*
Submit to SPA within 12 months of chair appointment

Assessment Report*
Submit to SPA within 12 months after approval of ToR

* MOE Approval
IMMEDIATE ACTIONS REQUIRED

- Convene the TRSPA to undertake source protection responsibilities:
  - establish chair, vice-chair and signing officers & administrative rules;
  - authorize staff to Undertake next steps;
  - approval in principle of Memorandum of Agreement amongst 3 source protection authorities in the CTC.

- TRSPA approve nominees and recommended candidate for chair of CTC SPC:
  - send no later than Aug. 3, 2007 to Minister of Environment for approval.

- TRSPA endorse proposed composition of SPC and call for applicants:
  - staff to consult with municipalities, consider other comments received. CAO's of CVC, TRCA & CLOCA with Chair of TRCA and Chair of TRCA Watershed Advisory Board finalize composition and formally advise clerks of municipalities (no later than Sept.3, 2007) & set deadline to receive list of municipal representatives; and publish general notice on final composition;
  - advertisement for applicants for sectoral and general members to SPC in newspaper July 28, 2007 closing September 28, 2007;
  - staff consult with sectoral organizations to assist in identifying candidates for sectoral members.

- Target date for TRSPA to approve appointments to CTC SPC is October 26, 2007
June 25, 2007

Conservation Ontario
Box 11, 120 Bayview Parkway
Newmarket, ON L3Y 4W3

Attention: Charlie Worte

Dear Sir:

Re: Relationship Between Conservation Authorities and Source Protection Authorities
Our File No. 74325

Further to our meeting of June 19, and your letter of June 20, I have again reviewed the Clean Water Act ("CWA"), the regulations thereunder and the Conservation Authorities Act ("CA") in view of our conversation and the questions contained in your letter of June 20, and have the following comments as a result of that further review.

A. General Comments

Generally speaking, the relationship between Conservation Authorities and Source Protection Authorities is not clearly defined in the CWA. Although the CA specifies, in subsection 3(4) that every Conservation Authority is a body corporate, there is no such provision in the CWA with respect to Source Protection Authorities, and therefore whereas the Conservation Authority will be a body corporate, a Source Protection Authority will simply be a "person", such as a body corporate (in most cases, a Conservation Authority), upon whom obligations are imposed by the CWA. The CWA, however, does not appear to impose on Conservation Authorities or Source Protection Authorities the kind of duties which would carry with them a high degree of risk of liability for damages. As well, the CWA has specific provisions in it, specifically in Section 98, to limit the potential liability of Source Protection Authorities and Source Protection Committees. There are not comparable limits of liability for Conservation Authorities in either the CWA or the CA.

B. Relationship Between Conservation Authorities and Source Protection Authorities

(1) Practical Considerations

With respect to the specific issue of the relationship between Conservation Authorities and Source Protection Authorities, I would reiterate my previous comments to you that, from a practical standpoint, most Source Protection Authorities in the province (those which will have
the same membership as the relevant Conservation Authority) will essentially be Conservation Authorities carrying on the additional duties imposed upon them by the CWA and the regulations thereunder. This follows from Section 2(1) of the CWA. With respect to those Source Protection Authorities which will comprise Conservation Authorities with additional members resulting from the increased jurisdictional authority consequent upon the addition of municipalities not governed by a Conservation Authority, that type of Source Protection Authority can again be viewed from a practical standpoint as a Conservation Authority with additional members added appointed as a Source Protection Authority with the duties specified in the CWA. Again, in each case this is a view of the relationship between the Conservation Authority and the Source Protection Authority which is a practical, operational view.

B. Legal Position

From a legal standpoint, the Source Protection Authority will be a decision making body separate from the Conservation Authority and having duties, rights and responsibilities distinct from those of the Conservation Authority. Therefore, the deliberations and decisions of the Source Protection Authority must be kept separate from the Conservation Authority and the Conservation Authority must not at any time assume any of the responsibilities of the Source Protection Authority under the CWA or the regulations thereunder. While it may seem difficult to separate the two, any duties to be carried out by a Source Protection Authority under the CWA would have to be dealt with only by a Source Protection Authority (whether comprising only members of a Conservation Authority or members of a Conservation Authority and additional members as a result of increased jurisdiction) at a meeting which has been convened, and for which notice has been given, and which has specifically stated to be, a meeting of a Source Protection Authority and only the business of the Source Protection Authority should be dealt with at such meeting. Accurate minutes of such a meeting would have to be kept and any direction to staff of a Conservation Authority resulting from decisions taken at such meeting would have to be clearly communicated as being directions requested by the Source Protection Authority to the Conservation Authority and then carried out by the staff of the Conservation Authority essentially on the basis that the Conservation Authority staff are acting on behalf of the Conservation Authority, which is itself acting as agent or contractor of the Source Protection Authority in carrying out duties requested by the Source Protection Authority. (There may be other ways of conceiving of the relationship of the Conservation Authority staff to the Source Protection Authority, but this seems to me to be the most logical)

I would suggest that it would be rather impractical as well as difficult and costly to have Conservation Authority staff transferred by the Conservation Authority and directly employed by the Source Protection Authority, or to have assets of the Conservation Authority transferred to the Source Protection Authority for the limited purposes of the CWA. Rather, I would suggest that a formal written agreement (in the nature of a subcontracting or agency arrangement) should be in place between the Source Protection Authority and the Conservation Authority with respect to the use of assets or the employment of staff for Source Protection Authority business. It should be kept in mind that the resources of the Source Protection Authority will be very limited, and therefore in the event of litigation, wherein it could be anticipated that the Conservation Authority as such would be sued as well as the Source Protection Authority, it would be the assets of the Conservation Authority which would be at risk, and the staff of the Conservation Authority
Authority upon whom a Plaintiff would seek to impose liability. Therefore, the liability insurer of the Conservation Authority would need to be consulted with respect to the possibility of liability, and would need to confirm that the policy in place for the Conservation Authority covers the staff, directors and officers, and the body corporate, with respect to the additional obligations imposed upon the Conservation Authority by the CWA, as Conservation Authority per se, and as Source Protection Authority per se. Similarly, if the Conservation Authority carries out duties or supplies services to a Source Protection Committee, there should be a contractual arrangement in place to protect the staff and assets of the Conservation Authority in the event of a claim being made against it for anything arising out of those duties or services, and the insurance policy of the Conservation Authority would have to clearly cover any liability that Authority might have as a result of carrying out contracted duties.

If the foregoing is not entirely clear, I would like to again reiterate that a Source Protection Authority is at law distinct from a Conservation Authority and therefore the decisions and deliberations of a Source Protection Authority must be kept quite separate from a Conservation Authority. This is notwithstanding the fact that from a practical standpoint, the Source Protection Authority is essentially in most cases the Conservation Authority sitting, deliberating and decision making in a different legal capacity only. The Source Protection Authorities which will comprise Conservation Authority members as well as additional members are not significantly different in that regard, although for insurance purposes the insurer may wish to have a separate policy for such a Source Protection Authority given the different make up of membership and the different jurisdictional authority of such a Source Protection Authority.

C. Statutory Limitation of Liability

As indicated above, there is an attempt in the CWA to limit the potential liability of bodies such as Source Protection Authorities or Source Protection Committees. Section 98 of the CWA specifies that no cause of action arises as a direct or indirect result of "anything done or not done by a Source Protection Committee, Source Protection Authority ... in accordance with Part I, II, or III," of the CWA. Section 98(2) states that

"no costs, compensations or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person in connection with anything referred to in Section 98(1) (a) (b) (c) and (d)."

Section 98(3) provides that

"no proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, that is directly or indirectly based on or related to anything referred to in clause 98(1) (a) (b) (c) or (d) may be brought or maintained against any person", and "person" includes, but is not limited to, "Source Protection Authorities, Source Protection Committees and their employees and agents".
Section 99 provides for immunity from action for various persons including employees or agents of Source Protection Authorities, and specifically states in Section 99(2) that

"no action or other proceeding shall be instituted against a person referred to in subsection (1) of any act done in good faith in the execution or intended execution of any power or duty to which this section applies or for any alleged neglect or default in the execution in good faith of that power or duty."

This limitation of liability should be brought to the attention of the insurers of the Conservation Authorities and Source Protection Authorities, as it will be relevant to their determination of the risks that must be insured against.

D. Structuring the Relationships to Avoid Liability

You will note, from the foregoing, that Conservation Authorities per se are not protected in Sections 98 or 99, but rather Source Protection Committees and Source Protection Authorities are protected, as well as the employees or agents of Source Protection Authorities. As indicated above, I would think it unlikely that the employees of a Conservation Authority will become employees of a Source Protection Authority or Source Protection Committee or that assets of a Conservation Authority would be transferred to a Source Protection Authority or Source Protection Committee. However, a Conservation Authority employee, or more likely a Conservation Authority itself, could be an agent of a Source Protection Authority or Source Protection Committee, particularly if there was a contract of agency or contract for services between the Conservation Authority and the Source Protection Authority, and I would therefore recommend that such an agreement be in place in an attempt to clothe the Conservation Authorities and their employees with the type of protection that is contained in Sections 98 and 99 of the CWA. Such agreements would be tailored to the specific relationship in issue, so, for example, a lead Source Protection Authority might have a more comprehensive agreement than other Authorities in the relevant Source Protection Region. Such an agreement would provide, among other things, that the Source Protection Authorities and Source Protection Committees would save harmless and indemnify the staff and the Conservation Authority with respect to any claims brought against the Conservation Authority or staff in the course of carrying out duties for the Source Protection Committees or Source Protection Authorities, as the case may be.

With respect to the role and status of Conservation Authority staff in supporting the Source Protection Committees and Source Protection Authorities, I would suggest that it would be in order for Conservation Authorities to protect themselves and their staff in other ways also with respect to work carried out by Conservation Authority staff for any Source Protection Committees or Source Protection Authorities. Again, being cognizant of the fact that the Source Protection Committees and Source Protection Authorities will have limited resources, the Conservation Authority will wish to consult with their own insurer to make sure that the Conservation Authority and its staff is covered under the general liability and errors and omissions policy of the Conservation Authority with respect to the additional duties imposed upon the Conservation Authority by the CWA, or with respect to any duties carried out by the Conservation Authority on behalf of or at the request of the Source Protection Committees or Source Protection Authorities. As well, the Conservation Authority will have to make sure that it
is clear when a Conservation Authority staff person is carrying out duties on behalf of a Source Protection Authorities or Source Protection Committees, and whether this is done by having the staff person docket or track their hours worked, or document instructions received, or by having the Source Protection Authorities or Source Protection Committees provide written instructions to such staff directly or through the Conservation Authority, or in some other manner, will have to be determined in the course of having the work carried out or prior to that work being effected. However, Conservation Authority staff will have to (to the extent that it is practicable) be cognizant of when they are acting for the Conservation Authority only, when they are acting for an Source Protection Committee or Source Protection Authority directly, or when they are carrying out work on behalf of the Conservation Authority as contracting party or agent of an Source Protection Committee or Source Protection Authority.

With respect to the issue of the Source Protection Committees specifically, those Committees will be significantly different from Conservation Authorities or Source Protection Authorities, in that the membership of the Source Protection Committees will have one-third of the members representing the interests of municipalities, one-third of the members representing the interests of agricultural, commercial and industrial sectors, and one-third of the members reflecting the interests of the general public. Those Committees should, I would suggest, notwithstanding the protection contained in Sections 98 and 99 of the CWA, obtain their own directors and officers and liability insurance policies. This is notwithstanding the fact that the Source Protection Committees are primarily responsible only for preparing the terms of reference for the preparation of an assessment report and source protection plan. The Source Protection Committees are not significantly involved in the carrying out or enforcement of such plan. The approval of the Source Protection Plan is the jurisdiction of the Ministry of the Environment under the CWA and I would suggest that the primary responsibility for the contents of that plan therefore rests with the Minister. However, it is at least conceivable that a claim could be made against a Source Protection Committee, and it is reasonable for the members of such a committee to require insurance to be in place to protect them from loss.

E. Issues for Discussion with the Insurer

(1) The Conservation Authority will need to ensure that its liability and directors' and officers' insurance policy will cover the Authority for the duties it carries out under the CWA either directly, or as agent of or contractor to the Source Protection Authority or Source Protection Committee, or in its other legal guise as Source Protection Authority per se.

(2) For those Conservation Authorities that will have additional jurisdictional authority and additional members in their guise as Source Protection Authorities, the insurer will need to be asked if the existing insurance coverage of the Conservation Authority can be expanded to cover the additional duties and authority and the additional members, or if a new policy is needed. The actions of the Conservation Authority will have to be insured against, as indicated in (1) above, whether those actions are seen as the actions of the Conservation Authority per se, or as agent or contractor to the Source Protection Authority or Source Protection Committee, or in its guise as Source Protection Authority per se.
(3) For Source Protection Committees, it will have to be determined what type of coverage is available and recommended.

(4) The issue of the statutory protection against liability will need to be drawn to the insurer's attention, in order to have the risks insured against properly assessed.

(5) If there are subcontracting or agency agreements entered between Conservation Authorities and Source Protection Authorities, or between Conservation Authorities and Source Protection Committees, and those agreements call for the Source Protection Authorities or Source Protection Committees, as the case may be, to save harmless and indemnify the Conservation Authorities, then the insurance of the Source Protection Authorities and Source Protection Committees should fund any liability of such bodies to the Conservation Authorities, and the policy should be reviewed in order to ensure that it does that.

(6) I am not certain what type of policy or resolution is in place at present for Conservation Authorities to indemnify their members. For ordinary corporations, it is commonly the case that the bylaws of the corporation will require the corporation to indemnify directors and officers in the event that litigation is brought against the directors and officers personally for actions taken by them in pursuance of their duties to the corporation. If such a bylaw is not in place (the theory is), then in the event of such litigation, indemnification of the directors and officers by the corporation is not legally required, but only at the discretion of the corporation, and therefore as there is no obligation on the corporation to indemnify the directors, the directors' and officers' insurance policy will not pay the costs of indemnification. I would suggest that Conservation Authorities, Source Protection Authorities and Source Protection Committees should have some type of absolute requirement, whether that is in the form of a bylaw or otherwise, to indemnify the members of the Authority or Committee, as the case may be, in order to ensure that the members' (directors and officers) insurance is effective to protect the members in the event of litigation against them personally. This issue may also require discussion with the insurers.

I hope that the foregoing comments are of assistant and should you wish to have clarification on any of the matters contained in this letter, or any other issues addressed, or have any questions, comments, or require elaboration of any point, please let me know.

Yours very truly,

WATEROUS, HOLDEN, AMEY, HITCHON LLP
Per: [Signature]

Brian G. Finnigan
E-mail - bfinnigan@waterousholden.com
BGF/amc
RES.#A163/07 - CITY OF TORONTO COST CONTAINMENT REQUEST
Response to a request from the City of Toronto for Toronto and Region Conservation Authority to participate in the city's cost containment exercise.

Moved by: Ron Moeser
Seconded by: Jack Heath

THAT WHEREAS the City Manager, City of Toronto, has requested that Toronto and Region Conservation Authority (TRCA) assist the city in dealing with its cost containment requirements and report back to the city by July 31, 2007;

AND WHEREAS TRCA has already significantly constrained its 2007 budget while still meeting the needs of all of its municipal funding partners pursuant to the requirements of the Conservation Authorities Act;

THEREFORE LET IT BE RESOLVED THAT the Chief Administrative Officer advise the City Manager, City of Toronto, that TRCA will continue to work with city staff to assist the city in dealing with its cost containment program and that TRCA staff will report to the city on possible actions to be taken based on a report and staff recommendations to the TRCA Business Excellence Advisory Board and Authority in September, 2007.

CARRIED

RATIONALE
Staff is in receipt of an e-mail from Ms. Shirley Hoy, City Manager, City of Toronto (Attachment 1), requesting that TRCA report to the city on actions which may be taken to assist the City of Toronto in containing 2007 and 2008 expenditures.

By way of background, the members should be aware that TRCA is a separate legal entity, a "body corporate under the Conservation Authorities Act", and while TRCA is listed as one of the city's "Agencies Boards and Commissions", it is closer to being like GO Transit. Having said that, TRCA cooperates closely with the city at a number of levels and is fully integrated into the city's annual budget process.

TRCA's 2007 operating budget is $35.9 million of which the participating municipalities fund $10.3 million or about one third. Of the municipal share, the City of Toronto funds about 67% or $6.8 million. The city's share is about 19% of the operating budget. Of this amount, the city chooses to fund TRCA about 50% from water revenues. That is, half of the $6.8 million or $3.4 million is property tax supported.

TRCA's levy of the City of Toronto, $6.8 million, represents 0.09% of the total city operating budget of $7.8 billion. The share of the levy on the property tax base, about $3.4 million is about 0.11% of the portion of the city's budget funded by property taxes ($3.221 billion).
TRCA has worked aggressively with the city and its other municipal partners to increase its non-tax revenues and reduce dependence on property taxes. In the case of the city, the levy as a percentage of total operating expenditures has decreased from 25.5% in 1995 to 19% in 2007. Considering only the property tax supported portion of the city levy, the percentage drops to 9.5%.

The Toronto City Manager and Finance staff have not given TRCA a "target amount" for cost containment. If we were to assume some sort of prorata share of the $100 million cost containment target, TRCA would have to reduce the $6.8 million levy by $7,200.

The City Managers instructions refer to capital projects which are growth related or have significant future operating cost implications being deferred. All of TRCA's erosion projects and most other works are state of good repair projects with minimal future operating costs. If anything, some erosion projects will save money by reducing the need for future maintenance of deteriorating infrastructure. TRCA is engaged in projects for Toronto Waterfront Revitalization Corporation (TWRC) which will have future operating impacts: notably Port Union Waterfront Improvement Project, Mimico Waterfront Linear Park and Tommy Thompson Park. TRCA will consult with the city on the issue of continuing these projects.

As a regional partnership, the city's funding of TRCA is matched with that of the regions of Peel, York and Durham, the Town of Mono and the Township of Adjala-Tosorontio. Just as the city funds GO Transit, TRCA receives funds to carry out its natural heritage and The Living City mandate. To engage in cost constraint is difficult without consultation with TRCA's other municipal partners. TRCA is currently responding to increased work loads and indeed is being encouraged by the regions to do more not less. Accordingly, it is difficult to consider across the board measures such as a hiring freeze, cancellation of printing and elimination of discretionary spending for which the city contributes 19%.

Because the request is from the city, if constraints were imposed it would seem logical to look to the one major TRCA facility located in the city, Black Creek Pioneer Village (BCPV). BCPV receives about 20% of the Toronto levy. The members are well aware that BCPV is only now building its revenue base having completed extensive capital works, ie. the Event Pavilion, and introducing new weekend event programming. Reductions to BCPV would have revenue implications since education bookings, events and programming is already in place for the balance of 2007. There would also be significant new costs associated with lay-offs that would more than offset any short term savings and defer any real savings to future years.

In summary, given the nature of TRCA's partnership with its participating municipalities, and the relatively minimal share of any City cost constraint guideline, staff recommend that we advise the City Manager that while we are prepared to work with the City Finance staff, it is in the best interest of TRCA to do so through TRCA's Business Excellence Advisory Board.

For Information contact: Jim Dillane, extension 6292
Emails: jdillane@trca.on.ca
Date: July 26, 2007
Attachments: 1
The following message is being sent to the heads of all Agencies, Boards and Commissions on behalf of Toronto City Manager Shirley Hoy.

The Mayor has asked that all Divisions and ABC's immediately implement cost containment measures with the goal of reducing operating and capital costs for the remainder of 2007. The purpose of the measures is to use the savings achieved toward reducing the 2008 operating budget shortfall.

These cost containment measures are necessary because the City:

1. does not have the diverse sources of revenue required to fund city services
2. continues to be forced to divert the money needed for municipal services to pay the cost of provincially mandated programs
3. has depleted reserve funds and exhausted all other one-time revenue sources to pay for the ongoing operating costs of delivering core municipal services.

The target for savings from cost containment measures between now and the end of 2007 has been set at $100 million.

Cost containment strategies

To achieve the savings target, I am requesting all Divisions and ABC's to take the following actions, effectively immediately:

1. A hiring freeze within all areas of the corporation. The only exceptions to the hiring freeze will be for positions where there are:
   a. legislated requirements for staffing ratios
   b. health and safety requirements; or,
   c. 100% funding for the position from other orders of government or external agencies
2. Service level adjustments that save operating budget dollars by reducing service levels (hours of service, etc); but not the elimination of entire services.

3. Elimination of discretionary spending; including, but not limited to, all business travel, conferences, consulting contracts, purchases of equipment, furniture, supplies, etc.

4. Cancellation of all advertising and production of print materials with significant circulation unless such materials are critically required for the delivery of services. Consultation with the Director of Strategic Communications should take place prior to the placement of any advertising or production of materials during this period.

Deferral of any 2007 new or enhanced services and any capital projects where contracts have not yet been awarded related to service improvement and growth capital projects that will have future operating budget impacts.

Please note that any exemptions to the above must be approved by the appropriate Deputy City Manager or me as the case may be.

Administration

Please submit the service level adjustments to be undertaken within your area by July 31, 2007 to Josie LaVita (jlavita@toronto.ca), Director of Financial Planning.

The cost containment measures outlined may continue into 2008. Division Heads and ABC's will be advised if any changes to the containment measures will take place. To ensure consistency in our approach to managing containment measures, wherever possible, Division Heads and ABC's are requested to defer any reports that contain financial implications.

Finally, given the need to address what could be a significant budget shortfall in 2008, I am asking Division Heads and ABC's to develop a list of potential service cuts for 2008 (including continuation of 2007 savings initiatives) which will be reviewed through the service planning and core service review process.

While the cost-containment measures outlined will be difficult for residents and will require significant communication to ensure changes to the availability of services are well understood, the actions are necessary to mitigate against what could be much more severe service reductions in the future.

I fully recognize that these necessary actions have significant service impacts. But the financial circumstances of the City are severe, and therefore your support and cooperation is very much appreciated.

Shirley Hoy

cc. Members of Council
RES.#A164/07

HEARING REPORT
Application #393/06/TOR to permit development within a Regulated Area of the Humber River
Laura Estario, 120 Hadrian Avenue, City of Toronto (Etobicoke York Community Council Area). David Frattaroli, agent for the owner, Ms. Laura Estario, has applied to the Toronto and Region Conservation Authority (TRCA), under Ontario Regulation 166/06, to permit the development of a one storey addition to the rear of the existing dwelling, a one storey garage addition to the south side of the dwelling and a wood deck above the existing rear patio.

(Executive Res.#B66/07)

Moved by: Linda Pabst
Seconded by: Suzan Hall

THAT item 8.1 - Hearing Report, contained in Executive Committee Minutes #5/07, held on July 6, 2007, be received. CARRIED

RES.#A165/07 -

GREENLANDS ACQUISITION PROJECT FOR 2006-2010
Flood Plain and Conservation Component, Duffins Creek Watershed
Dan and Mona Farquharson, CFN 39364. Acquisition of a partial taking, located on the east side of Concession 3, north of Webb Road, Township of Uxbridge, Regional Municipality of Durham, under the "Greenlands Acquisition Project for 2006-2010", Flood Plain and Conservation Component, Duffins Creek watershed.

(Executive Res.#B69/07)

Moved by: Lois Griffin
Seconded by: Maja Prentice

THAT 1.56 hectares (3.85 acres), more or less, consisting of an irregular shaped parcel of vacant land, said land being Part of Lots 8 and 9, Concession 3, Township of Uxbridge, in the Regional Municipality of Durham, further being described as being Part 2 on Plan 40R-24885, situated on the east side of Concession 3, north of Webb Road, be purchased from Dan and Mona Farquharson;

THAT the purchase price be $2.00;

THAT Toronto and Region Conservation Authority (TRCA) receive conveyance of the land required free from encumbrance, subject to existing service easements;

THAT Gardiner Roberts LLP, Barristers and Solicitors, be instructed to complete the transaction at the earliest possible date. All reasonable expenses incurred incidental to the closing for land transfer tax, legal costs and disbursements are to be paid;
AND FURTHER THAT the appropriate TRCA officials be authorized and directed to take the necessary action to finalize the transaction including execution and signing of all necessary documentation.  

CARRIED

RES.#A166/07 - TENDER OPENING COMMITTEE
Mimico Waterfront Linear Park Project, City of Toronto
Tender RSD07-09 for Supply and Delivery of 3 to 5 Tonne Armour Stone.
Award of Tender RSD07-09 for the supply and delivery of approximately 6,000 tonnes of 3 to 5 tonne armour stone to the Mimico Waterfront Linear Park Project, City of Toronto.  
(Executive Res.#B70/07)

Moved by: Lois Griffin
Seconded by: Maja Prentice

THAT Tender RSD07-09 for the supply and delivery of approximately 6,000 tonnes of 3 to 5 tonne armour stone to the Mimico Waterfront Linear Park Project, City of Toronto, for the total unit price of $45.94 per tonne plus applicable taxes be awarded to P.D. Brooks Haulage and Construction, it being the lowest bid that meets Toronto and Region Conservation Authority (TRCA) specifications.  

CARRIED

RES.#A167/07 - TENDER OPENING COMMITTEE
Tender RSD07-11 for the Supply of Rental Rates for Operated Heavy Construction Equipment and Dump Trucks. Award of Contact RSD07-11 for the supply of operated heavy construction equipment and dump trucks.  
(Executive Res.#B71/07)

Moved by: Lois Griffin
Seconded by: Maja Prentice

THAT Toronto and Region Conservation Authority (TRCA) utilize, as required, the services of Sartor & Susin Limited for the supply of operated heavy construction equipment and dump trucks for the period August 1, 2007 to July 31, 2008, it being the proposal that bests meets TRCA’s requirements at the lowest overall cost;

AND FURTHER THAT staff be authorized to use the next lowest tender if the need arises.  

CARRIED
SECTION II - ITEMS FOR AUTHORITY INFORMATION

RES.#A168/07 -  SECTION II - ITEMS FOR AUTHORITY INFORMATION

Moved by: Linda Pabst
Seconded by: Suzan Hall

THAT Ontario Regulation 166/06 items 8.5.1 - 8.5.89, inclusive, contained in Section II of Executive Committee Minutes #5/07, held on July 6, 2007, be received.

CARRIED

_________________________________________

RES.#A169/07 -  SECTION II - ITEMS FOR AUTHORITY INFORMATION

Moved by: Linda Pabst
Seconded by: Gay Cowbourne

THAT Section II items 9.2 - 9.3, contained in Executive Committee Minutes #5/07, held on July 6, 2007, be received.

CARRIED

Section II Items 9.2 & 9.3
ECO-INDUSTRIAL PARK- ETOBICOKE AND MIMICO WATERSHEDS
(Executive Res.#B77/07)
TENDER OPENING COMMITTEE
(Executive Res.#B78/07)

_________________________________________

SECTION IV - ITEMS FOR THE INFORMATION OF THE BOARD

RES.#A170/07 -  SECTION IV - ITEMS FOR THE INFORMATION OF THE BOARD

Moved by: Jack Heath
Seconded by: Maja Prentice

THAT Section IV items 9.4 and 9.5, inclusive, contained in Executive Committee Minutes #5/07, held on July 6, 2007, be received.

CARRIED

Section II Items 9.4 & 9.5
LOWEST BID NOT ACCEPTED
(Executive Res.#B79/07)
LOWEST BID NOT ACCEPTED
(Executive Res.#B80/07)
RES.#A171/07 - CONSERVATION AUTHORITIES ACT AMENDMENT  
(Executive Res.#B81/07)

Moved by: Jack Heath  
Seconded by: Maja Prentice

THAT Section IV item 9.6 - Conservation Authorities Act Amendment, contained in Executive Committee Minutes #5/07, held on July 6, 2007, be received.

AMENDMENT  
RES.#A172/07

Moved by: Jack Heath  
Seconded by: Maja Prentice

THAT the following be inserted after the main motion:

AND FURTHER THAT staff report back in September on possible changes to the meeting schedule to address conflicts with the City of Toronto meeting schedule.

THE AMENDMENT WAS CARRIED

THE MAIN MOTION, AS AMENDED, WAS CARRIED

THE RESULTANT MOTION READS AS FOLLOWS:

THAT Section IV item 9.6 - Conservation Authorities Act Amendment, contained in Executive Committee Minutes #5/07, held on July 6, 2007, be received;

AND FURTHER THAT staff report back in September on possible changes to the meeting schedule to address conflicts with the City of Toronto meeting schedule.

________________________________________

TERMINATION

ON MOTION, the meeting terminated at 12:20 p.m., on Friday, July 27, 2007.

________________________________________

Gerri Lynn O'Connor  
Chair

Brian Denney  
Secretary-Treasurer

/ks