

**Agreement with Waterfront Toronto (TWRC) Subsidiary
for the Installation of District Energy System Plant in
Various Public Streets – West Don Lands, East Bayfront
and Other Waterfront Development**

Date:	June 11, 2008
To:	Public Works and Infrastructure Committee
From:	General Manager, Transportation Services
Wards:	Toronto Centre-Rosedale, Ward 28
Reference Number:	Pw08101te.top.doc

SUMMARY

This report seeks Council approval to enter into an Agreement with Waterfront Toronto (Toronto Waterfront Revitalization Corporation, TWRC) subsidiary, “Waterfront Thermal Energy Corporation”, to permit the installation and maintenance of a community energy system (district heating and cooling) within various existing and future public streets to serve the West Don Lands, East Bayfront and other Waterfront lands, pursuant to the terms and conditions negotiated to address the City’s interests.

RECOMMENDATION

Transportation Services recommends that:

1. City Council approve entering into an Agreement with Toronto Waterfront Revitalization Corporation (TWRC) or, at the option of TWRC, Waterfront Thermal Energy Corporation (the “Utility”), a subsidiary of TWRC, to authorize the construction, installation, maintenance and operation of a district energy system, including hot and chilled water distribution piping and ancillary plant in City of Toronto streets within the TWRC’s Designated Waterfront Area, generally under the terms and conditions set out in this report and such other terms and conditions as may be satisfactory to the City Solicitor and General Manager, Transportation Services.

Financial Impact

Entering into the proposed Agreement will not result in financial costs to the City. The applicant will be responsible for any costs incurred by the City due to construction, installation, maintenance and operation of its plant within the City streets in accordance with the City's usual permitting process.

COMMENTS

Waterfront Toronto is a joint venture of the City of Toronto, the Province of Ontario and the Government of Canada. Its mandate is to undertake a comprehensive revitalization of some 2,000 acres comprising the Designated Waterfront Area, transforming the Toronto waterfront for the use and enjoyment of the people of Toronto and Canada.

The West Don Lands (WDL), an 80-acre site runs from Parliament Street in the west to the Don River in the east and from King Street East down to the rail corridor, is the first new precinct being developed as part of the waterfront revitalization program. The WDL will ultimately encompass:

- 5,800 residential units, including 1,200 units of affordable rental housing;
- 700,000 square feet of commercial space;
- 23 acres of parks and public spaces;
- a new transit line within a five-minute walk of all residences;
- pedestrian and cycling connection; and
- an elementary school, a recreation centre, and childcare centres.

The development process commenced last year with demolition of existing structures and site preparation and is expected to span some 10-15 years in total. First occupancy is scheduled for later this year.

The East Bayfront (EBF), a 60-acre site that runs from Jarvis Street in the west to Parliament Street in the east and from Lakeshore Boulevard in the north down to the water's edge, will be the second new precinct to be developed. The EBF will ultimately encompass:

- 6,300 residential units, including 1,300 affordable rental units;
- 1.4 million square feet of employment space;
- 600,000 square feet of cultural and retail space, including restaurants, art galleries, shops and cafes;
- a regional tourism draw generating seven million visits per year;
- 13 acres of parks and public spaces, including a water's edge promenade;
- a new light rapid transit line along Queens Quay Boulevard; and
- a school, a community centre and two childcare centres.

Full build-out of the precinct is expected to take approximately 15 years, with initial occupancies scheduled for 2010.

Waterfront Toronto is committed to developing the WDL and EBF precincts as sustainable communities, in which overall energy consumption is reduced and renewable energy sources are utilized, wherever practical. Among the strategies for achieving these goals is developing a high efficiency district energy system to provide both heating and cooling to the buildings.

As part of the West Don Lands, East Bayfront and other waterfront development initiatives being undertaken by Waterfront Toronto (TWRC), the Corporation has requested permission to install, maintain and operate a district energy system partially within existing and future public highways to serve the redeveloped areas.

A Central Energy Plant within the area is to be designed to provide the energy supply for the WDL and EBF developments through high efficiency condensing hot water boilers and water-cooled chillers. Hot and chilled water will be distributed via underground thermal distribution loops, generally located within public road rights-of-way. Each building or small group of buildings will have its own Energy Transfer Station (ETS), which will include branch piping, heat exchangers for cooling, space heating and domestic hot water heating, and energy meters and controls.

The agreement contemplates that it may be necessary for the Utility to deploy an interim heating and cooling generation facility. This would depend on the timing of occupancy of the buildings and completion of a permanent plant. A location under review is under the overpass ramps of Eastern Avenue. Should this be necessary the Agreement provisions would also be applicable to this facility.

Summary of Key Terms

The Agreement proposed for the Waterfront community energy system structures located within the public highway includes a number of common provisions that establish the roles and responsibilities of each party regarding work in the public highway and protection of the City's interests.

1. The term granted by the City for access to the public highways is twenty years with a ten year renewal at the option of the Utility provided the Agreement remains in good standing.
2. The City would not charge the Utility a fee in the nature of a land-based licence or lease fee for the use of the public highways for the purpose of providing low cost thermal energy to the Waterfront lands, provided that TWRC maintains an ownership, financial or other interest in the Utility and any net financial or pecuniary benefits generated are wholly dedicated to the purposes and objects of the Waterfront revitalization. Waterfront Toronto has advised that any net revenues from the energy system would be applied so as to reduce the requirement for the Corporation to seek funds from government sources,

- including the City of Toronto, for its redevelopment and operating plans. This is consistent with the principles set out in the report, “Governance Structure for Toronto Waterfront Revitalization”, approved by City Council in 2004 whereby access to public funds is to be made available on an incremental basis to facilitate, among other things, the tri-government approved West Don Lands revitalization plan.
3. The Agreement contemplates that the TWRC may assign its interest in all or part of the Utility or district energy System at some point during the term. If the TWRC or Affiliate receives compensation for such interest or assignment, the fee exemption provision would continue to apply for the relevant portion of the Term for which TWRC or any Affiliate receives the financial benefit, and such benefit in turn continues to be used for the purposes and objects of the TWRC, or upon winding up of TWRC pursuant to the TWRC Act, any other bona fide public purpose. Upon the sale of the Utility to an entity that is not affiliated with TWRC, and at such time as the net revenues are not used for waterfront initiatives, , the Utility shall pay to the City the lesser of an annual licence fee equal to a per metre fee of \$14.73 (2008 rate), to be increased in each year by the amount of increase in the annual Consumer Price Index or the fee then paid by a similar utility.
The Utility would be responsible for any applicable taxes, levies, charges, etc., that may be imposed now or in the future in connection with the system or its use.
 4. All work done by the Utility within the public highway is subject to the City’s standard requirements for persons doing construction or otherwise occupying the public highway (i.e., submission of permit applications, pre-approval of plans, issuance of permits, provision of security, warranty of temporary restoration, submission of as-built drawings, etc.). All works are to be done to the satisfaction of the General Manager in accordance with City policies.
 5. The Utility shall, prior to construction, post financial security in the form of cash or a letter of credit sufficient to secure payment of the estimated total cost of the repair and restoration of the public highways. All or part of the required security for the system may also be dealt with pursuant to the overall infrastructure provisions of any Subdivision or other Agreement with the City in respect of the development.
 6. The Utility will participate in joint planning and co-ordinating processes to reduce disruption and damage to the public highways and at all times will provide or be a member of a “locate” service.
 7. The Utility shall pay all required permit and construction fees, including but not limited to the cost of permanent restoration carried out by the City, and acknowledges and agrees that the City is currently undertaking a study to identify any unrecovered costs, including pavement degradation and work around costs incurred by the City as a result of the activities of persons doing construction

- within the public highways and that the City intends in future to impose a standard fee on all utilities to recover such costs on a going forward basis. The Utility has agreed to pay the City's additional reasonable work-around costs related to the repair, maintenance or construction of City facilities due to the presence of the Utility's plant.
8. The City shall have the right to have the Utility install additional pipes or conduits on behalf of the City at the same time portions of the system are installed and shall be responsible only for the incremental costs. Any such installations would be the property of the City and would not be considered part of the System.
 9. Any future relocation of the Utility's plant that may be required for a bona fide municipal purpose is subject to a sliding scale of cost allocation. The City would pay for relocations in the first five years after the issuance of a permit, with the Utility thereafter assuming an increasing share of the cost over time. By the fifteenth year, 100 percent of the cost of relocation would be the responsibility of the Utility.
 10. Insurance, including general liability Insurance in the amount of \$10 million per occurrence and environmental impairment liability insurance in the amount of \$5 million per occurrence, is required in a form and amount satisfactory to the City.
 11. The Utility shall indemnify and save harmless the City with respect to any claims or losses incurred as a result of the construction, operation and maintenance of the system and the use of the public highways, except in the event of damage or injury due to the gross negligence or wilful misconduct of the City. The City shall not be liable for any damage to the system however caused where the company has failed to provide "as-built drawings" or accurate locate information as requested.
 12. The Agreement shall contain commercial provisions satisfactory to the City Solicitor and the General Manager, including requiring the City's consent for assigning the agreement, default and termination and related remedies. With respect to assignment, the TWRC may assign any or all interest of the Utility, its business or assets subject to either the consent of the City or on notice to the City (i.e. in the case of a permitted lender, an assignment under the *Toronto Waterfront Regeneration Trust Act*, or to an affiliate or a person purchasing all or materially all of the assets of the utility) and the third party assignee having first entered into an assumption agreement directly with the City and satisfactory to the City Solicitor. Such assignment would require the assignee to abide by the terms and conditions of the Agreement.
 13. The consent granted by the City for the use and occupation of the public highways applies to the designated waterfront area as defined in the TWRC Act, is non-exclusive, applies on an as-is basis and does not convey a property interest in the public highways.

The City Solicitor has participated directly in the negotiations and has reviewed this report.

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SIGNATURE

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