



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Consent to Assignment of Agreement – Toronto
Community Housing Corporation (TCHC) Community
Energy Distribution Systems – Regent Park
Revitalization and Moss Park**

Date:	November 6, 2008
To:	Public Works and Infrastructure Committee
From:	General Manager, Transportation Services
Wards:	Ward 28, Toronto Centre-Rosedale
Reason for Confidential Information:	This report involves the security of property belonging to the City or one of its agencies, boards, and commissions.
Reference Number:	Pw08204.te.top

SUMMARY

The Toronto Community Housing Corporation is seeking Council’s consent to assign its existing Municipal Access Agreement (MAA) for a community energy system in the Regent Park Revitalization Project to a joint venture in which TCHC would be the majority partner.

The MAA contemplates the possibility of assignment of the Agreement at some point during the term and contains provisions for such action, subject to the consent of the City, which shall not be unreasonably withheld or delayed. The Assignee will be responsible to carry out all obligations under the MAA.

Presently, the MAA as approved by Council does not require the payment of any fee to the City in the nature of a land-based license or lease fee, provided that any revenues generated are wholly dedicated to the purposes and objects of the TCHC. The Assignee will therefore be subject to the City’s standard annual encroachment fees (\$14.73 per linear metre in 2008) to the extent of the interest in the system granted by the TCHC to its private sector partner as identified in Confidential Attachment 1.

RECOMMENDATIONS

Transportation Services recommends that City Council:

1. Consent to the Assignment of the Municipal Access Agreement (January 1, 2007) with Toronto Community Housing Corporation (TCHC) to the Joint Venture between TCHC and the party outlined in Confidential Attachment 1 to this report, on such terms and conditions as may be required by the General Manager, Transportation Services and the City Solicitor and in such form as required by the City Solicitor in order to protect the interests of the City;
2. Require that the consent granted in Recommendation No. 1 above be subject to the TCHC and the Assignee entering into an Assignment/Consent Agreement on terms and conditions satisfactory to the City Solicitor, including any amendments to the Municipal Access Agreement as may be required by the General Manager and the City Solicitor to address the calculation and payment of annual encroachment fees based on the amount of \$14.37 (2008 amount) per linear metre required as a result of the Assignment; and
3. Direct that Confidential Attachment 1 be released publicly upon the Toronto Community Housing Corporation finalizing its business arrangement with the joint venture partner and execution of the Assignment/Consent Agreement with the City of Toronto.

Financial Impact

The assignment of the MAA will not have any adverse financial impacts on the City. To the extent that the Assignee does not satisfy the provisions of the MAA related to the exemption of land-based license or lease fees, standard annual encroachment fees payable to the City may become applicable pursuant to the terms of the MAA.

DECISION HISTORY

City Council, at its meeting of September 25, 26 and 27, 2006, considered the matter “Regent Park Revitalization Project – Agreement with Toronto Community Housing Corporation for the Installation of Community Energy Distribution Piping in Various Public Streets (Ward 28, Toronto Centre-Rosedale), Clause No. 18 of Report No. 6 of the Works Committee. Council adopted this Clause, as amended, and in doing so authorized an Agreement with TCHC to enable the construction, installation, maintenance and operation of a community energy system, including hot and chilled water distribution piping and ancillary plant, and an electrical distribution system, in City of Toronto streets within the Regent Park Revitalization and Moss Park areas.

ISSUE BACKGROUND

Legal counsel for TCHC has requested, by fax transmittal dated November 3, 2008, the City’s consent of assignment of the Agreement by TCHC to a joint venture in which TCHC is the majority partner and has requested that the City deal with this matter as soon as possible in order to facilitate the closing of the transaction.

COMMENTS

The Municipal Access Agreement (MAA) between the City and TCHC became effective January 1, 2007. The terms and conditions set out in the Agreement establish the roles and responsibilities of the parties and protect the City's interests with respect to the work and installations in the public highways.

The MAA contains provisions respecting assignment of the Agreement, providing that TCHC shall not assign its rights under the Agreement without the consent of the City, which shall not be unreasonably withheld or delayed. The MAA stipulates that no assignment shall take effect until the Assignee to which the City's consent is given shall have entered the City's form of agreement directly with the City on terms and conditions satisfactory to the City Solicitor whereby, among other things, the Assignee covenants with the City to perform, observe and keep each and every covenant, proviso, condition and agreement in this Agreement on the part of the TCHC.

The TCHC notes that the community energy system will be fully operational by early 2009 before tenants move back into the completed Phase I buildings. Piping has been installed in Dundas Street East and certain public streets in the Phase I development. Full buildout is expected by 2016.

Payment of License Fees

The MAA stipulates that the City will not charge TCHC a fee in the nature of a land-based license or lease fee for the use of the public highways for the purpose of providing low cost thermal energy to Regent Park, provided that any revenues generated are wholly dedicated to the purposes and objects of the TCHC as a low cost housing provider. Where the TCHC, as in this case, retains an ownership interest in the system and continues to apply the revenues received by it to its purposes, the exemption would continue to apply to the extent of the TCHC's interest. The Assignee will be subject to the City's standard annual encroachment fees to the extent and in the proportion that the interest of the joint venture partner does not satisfy the requirements of the MAA in this regard. This annual fee is calculated on the basis of \$14.73 per linear metre in 2008, subject to annual increase based on the Consumer Price Index.

The identity of the joint venture partner and the proportionate ownership interests as provided by TCHC are contained in Confidential Attachment 1 to this report, which may be disclosed upon the completion of the transaction and execution of the required Assignment/Consent Agreement.

Legal Services has been consulted in the preparation of this report and concurs in its contents.

CONTACT

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SIGNATURE

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ATTACHMENTS

Confidential Attachment 1

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