

**Confidential Recommendations and Schedule “A” of
Confidential Attachment 1
– Made Public on August 17, 2010**

**Response to Applicant’s Request for Funds,
Proposed Remediation of the former Treatment Plant
Lands adjacent to Mystic Pointe Developments:
Manitoba Street, Grand Avenue and Legion Road**

Date:	July 5, 2010
To:	City Council
From:	City Solicitor

CONFIDENTIAL RECOMMENDATIONS

The City Solicitor recommends:

1. The dispute with Sunrise West Building Group Inc., relating to obligations in the 2003 Development Agreement in respect of remediation of the City's former treatment plant lands and a portion of Grand Avenue Park (the "Treatment Plant Lands"), be settled on the basis set out in Schedule "A".
2. The amount of \$314,000.00 identified in the 2003 Development Agreement as a required component of the cash-in-lieu of parkland dedication be deemed to be satisfied on the basis of this settlement.
3. The Council-approved 2010 Capital Budget for Parks, Forestry and Recreation be amended by adding a new project known as “Grand/Manitoba Site Remediation” with a project cost of \$1.745 million funded by settlement funds of \$0.045 million provided by Sunrise West Building Group Inc. and \$1.700 million from Parkland Acquisition – City Wide Land Acquisition Reserve Fund (XR2210) advanced from the 2011-2019 Capital Plan for Parks, Forestry and Recreation.

Schedule "A"

Outline of Settlement: City of Toronto and Sunrise West Building Group Inc. ("Sunrise"), relating to obligations in a 2003 Development Agreement in respect of remediation of the City's former treatment plant lands and a portion of Grand Avenue Park (the "Treatment Plant Lands")

- The parties will execute a settlement agreement on the basis of this settlement outline within three weeks after approval of the settlement outline by Council;
- Sunrise will provide the City with an immediate, non-refundable payment of \$45,000.00 within 3 days after execution of a settlement agreement. The City will use these funds to engage an environmental consultant for such measures as the City may require in order that the Treatment Plant Lands may be used as a public park under the regulations of the MOE;
- The City will make reasonable best efforts to complete the work required prior to December 31, 2010 in order to receive written acknowledgement from the MOE that section 21.1 of Ontario Regulation 153/04 (the "Transition Rule") applies to a Record of Site Condition for the Treatment Plant Lands, in accordance with Section 21.1(1)(d) of the Regulation (the "MOE Acknowledgment"). This work will include, but may not be limited to:
 - A Phase One Environmental Site Assessment (or an update of an existing Phase One Environmental Site Assessment provided by Sunrise) will be completed in accordance with the requirements of Schedule D of O.Reg. 153/04.
 - A Risk Assessment Pre-Submission Form ("PSF") (or an update of an existing PSF provided by Sunrise) will be completed and submitted to the MOE.
 - A Phase Two Environmental Site Assessment will be completed in accordance with the requirements of Schedule E of O.Reg. 153/04.
 - Upon receipt of MOE comments on the PSF, those comments will be incorporated into a Risk Assessment (an "RA") report prepared in accordance with Schedule C of O.Reg. 153/04; and
 - An RA report will be completed and submitted to the MOE before December 31, 2010.
- In the event that MOE Acknowledgment is not received by August 10, 2011 or in the event that a negative response is received, then the parties acknowledge that the City is not in a position to accept those portions of the Sunrise soils that do not meet the Table 3 residential/parkland standards published on July 27, 2009. In

such event, Sunrise (in accordance with such environmental law or regulation as may apply) will re-grade its site or will arrange for the removal of soils that do not meet the Table 3 residential/parkland standards published on July 27, 2009. The aforementioned re-grading or removal will be completed, weather permitting, by the earlier of November 10, 2011 or within three months after the receipt of a negative response from the MOE.

- Environ has prepared a soil management protocol to identify within its site soils that meet the Table 3 residential/parkland standards published on March 9, 2004, using protocols for sampling and analyses prescribed in Schedule E of O.Reg. 153/04 for soil to be brought to a Phase Two property. This protocol will be utilized subject to the City refining the protocol to its satisfaction, acting reasonably. The soil testing is at Sunrise's expense. Elements of the protocol include the provision of a reliance letter in this regard from Environ to the City, together with reliance letters from consultants previously engaged by Sunrise to perform Phases I and II environmental site assessment and a Globaltox PSF in connection with an RA. No soil movement onto the Treatment Plant Lands will take place without the consent of the City until the MOE Acknowledgement has been received or rejected, and soil movement onto the Treatment Plant Lands shall be in accordance with the protocol and at Sunrise's expense;
- Soils that meet the Table 3 residential/parkland standards published on March 9, 2004 will be moved by Sunrise at its expense onto the Treatment Plant Lands within 2 months after notice from the City that it has received the MOE Acknowledgement, weather permitting. The soil would either be piled on the Treatment Plant Lands in locations identified by the City or rough-graded across the Treatment Plant Lands to specifications established by the City;
- Sunrise's costs to test its soil on-site, to move Table 3 residential/parkland soil (described in standards published on March 9, 2004) onto the Treatment Plant Lands in the event that the MOE acknowledgment is provided and its contribution of \$45,000.00, together with such prior costs as Sunrise has incurred in connection with proposed remediation of the Treatment Plant Lands, will satisfy the Treatment Plant Lands remediation obligation set out in clauses 87 to 96 inclusive of the 2003 Development Agreement, save and except for such portions of a letter of credit as may be retained to satisfy remaining cash-in-lieu of parkland obligations;
- Sunrise will, at its expense, prior to September 20, 2010, remove from its site the stockpile of soil which does not meet the Table 3 residential/parkland standards published on March 9, 2004;
- The parties will, at the time when this settlement is accepted, provide a mutual release of all claims that may now or hereinafter exist as between them arising from the environmental remediation of the Treatment Plant Lands proposed in the 2003 Development Agreement, including such costs as Sunrise may incur to

address its soils in the event that MOE Acknowledgment is not received by August 10, 2011 or in the event that a negative response is received;

- The parties acknowledge that a letter of credit in the amount of \$900,000.00 is held by the City under the 2003 Development Agreement as security in relation to environmental remediation of the Treatment Plant Lands and the cash-in-lieu of parkland requirements. Upon execution of the settlement agreement and the payment of \$45,000.000 from Sunrise to the City referenced above, the City will arrange for the immediate reduction of the letter of credit by the amount of \$314,000.00. In addition, the City will conduct an expedited review of its outstanding requirements in relation to cash-in-lieu of parkland under the 2003 Development Agreement and reduce the letter of credit accordingly, such review to be completed within 90 days of the execution of the settlement agreement and in consultation with Sunrise.