

Clause embodied in Report No. 1 of the Economic Development and Parks Committee, as adopted by the Council of the City of Toronto at its meeting held on February 13, 14 and 15, 2002.

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**Agreement with O&Y Properties Inc.
for the Restoration, Development and Operation
of the John Street Roundhouse Pursuant to
the Request for Proposals (RFP) 9155-00-7365
(Ward 20 Trinity-Spadina)**

(City Council on February 13, 14 and 15, 2002, adopted this Clause, without amendment.)

The Economic Development and Parks Committee recommends the adoption of the following report (January 14, 2002) from the Commissioner of Economic Development, Culture and Tourism:

Purpose:

The purpose of this report is to inform Council on the results of the negotiations with O&Y Properties Inc., and their partners and to seek authority to negotiate and enter into the appropriate lease and development agreements in keeping with the terms established in the Terms Sheet contained in Attachment No. 1.

Financial Implications and Impact Statement:

Acceptance of this proposal will realize the restoration and redevelopment of this property, including its environmental clean up at no cost to the City. The City will also receive a prepayment of lease payments in the amount of \$2.125 million towards an initial development phase of a rail heritage museum in addition to obtaining newly generated property tax revenue on 75,000 square feet of commercial space.

The Acting Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) the proposal by O&Y Properties Inc., Tenen Developing and Producing Inc. and Headline Media Group, whose terms are more particularly described and contained in the Term Sheet, Attachment No. 1, be approved;

- (2) the Commissioner of Economic Development Culture and Tourism be authorized to negotiate and enter into the appropriate lease and agreements required to implement the Term Sheet to the satisfaction of the Commissioner of Corporate Services, the City Solicitor and the City Treasurer; and
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

For almost two decades the City of Toronto has been trying to preserve the history of the railway lands. The City has been focused on the Roundhouse as one of the best remaining examples of industrial architecture from the era of big steam. It has been a repeated objective of the former City of Toronto that “future uses of the Roundhouse include an operating railway museum at no cost to the City” and defined operating railway museum to mean “...an active museum occupying a significant portion of the Roundhouse building, the major component of which is the regular movement of locomotives and rolling stock into and out of the Roundhouse by means of a fully operational turntable.”

The adopted policies of the Official Plan provide that Council should encourage other levels of government to take steps to support the museum and that Council would not take any action which would negatively affect the creation of an operating heritage railway museum or the long-term viable reuse and preservation of the Roundhouse and associated heritage elements. The pertinent Open Space and Parkland policies of the Official Plan and provisions of the Zoning By-law have now been amended to expand the range of commercial uses to include those envisioned by the O&Y proposal.

The property at 222 Bremner Boulevard – the John Street Roundhouse and its associated heritage structures – was designated by City Council under Part IV of the Ontario Heritage Act (By-law No. 385-96) in 1996 and most of the major structures have been listed on the City of Toronto’s Inventory of Heritage Properties since 1985. On the recommendation of the Historic Sites and Monuments Board of Canada, the Federal Government designated the John Street Roundhouse a National Historic Site in 1990.

At its meeting held on July 6, 7 and 8, 1999, Council directed the Commissioner of Economic Development, Culture and Tourism and other appropriate staff to conduct a comprehensive business assessment of the Roundhouse, including a full review and report of all funds required and available funding opportunities. (Administration Committee Clause No. 1 of Report No. 1).

Furthermore Council’s action in Clause No. 3 of Report No. 9 of The Economic Development and Parks Committee (October 2000) directed that the Commissioner of Economic Development, Culture and Tourism be requested to submit a report on the results of the RFP; potential governance structures for the rail museum and what measures can be undertaken to implement the rail museum as soon as possible.

On July 24, 25 and 26, 2001, Council gave authority to the Commissioner of Economic Development, Culture and Tourism to negotiate an appropriate agreement with O&Y Properties Inc., and its partners Headline Media and Tennen Developing and Producing Ltd. This consortium was designated the Preferred Proponent pursuant a Request for Proposal (No. 9155-00-7365 John Street Roundhouse).

Comments:

Results of Negotiations with O&Y Properties Inc.

Over the last six months, staff from Economic Development, Culture and Tourism; Real Estate; Planning; Legal and Finance have been negotiating with O&Y Properties Inc. with a view to establishing the terms of a potential lease with the proponent that represents a fair market value to the City while achieving the objective of restoring the roundhouse and developing a railway museum to the extent possible. From the negotiations, it has become apparent that there is limited commercial viability in restoring the Roundhouse and little interest by the proponent in developing and operating a railway museum. The final terms being put forward are all that can be achieved with the proponent under the circumstances, and staff feel further negotiation to secure additional benefits is likely to prove fruitless. A summary of the key terms reached with O&Y is presented below:

Summary of the Heads of Agreement:

- The City would lease the building to O&Y for a 60-year term.
- O&Y would restore the building, remediate the environmental contamination and bring the building to a base building standard (ready for further tenant improvements) at an estimated cost of \$14.5 million.
- O&Y prepays 60 years of rent which totals \$2.125 million upon substantial completion of the building improvements to be used towards an initial phase of a phased rail heritage museum.
- O&Y would restore and reinstate the turntable to operating condition.
- O&Y would pay for the City to move the City's steam locomotive, the 6213, to Roundhouse Park.
- Bays 12, 13 and 14 of the Roundhouse and the Machine Shop are reserved for museum purposes in addition to the turntable area.
- O&Y seek permission for a licence to install a media pylon sign. It proposes to share 50 percent of the net advertising revenue with the Museum. Also offers a minimum annual guarantee of \$80,000.00 in addition to dedicating up to 10 percent of its display time to the Museum at a nominal cost.
- O&Y may reassign the lease after construction is complete.

- The rent under the lease currently in place with Steam Whistle Brewery would continue to flow to the City.

Rent and Term of Lease:

O&Y have indicated, based on their estimate of acquisition, remediation and development costs, that they require a 60-year term in order to achieve their required return on investment, and that the capitalized value of the rent they are willing to pay for this term is \$2.625 million, less \$500,000.00 in exchange for restoring the turntable to an operational state.

Given the unique nature of the building, the state of repair, environmental concerns and the improvements necessary - staff have obtained an internal assessment, and external appraisal and a further overall independent review of the business deal by Arthur Andersen, Attachment No. 2. All similarly conclude that \$2.625 million is within the range of fair market value for the lease of the building.

The negotiations between O&Y and the staff team representing Finance, Real Estate, Planning, Culture and Legal have been extensive and complicated particularly as there are no real precedents or comparable projects. In order to obtain additional comfort that this is a reasonable deal for the City, the consulting firm of Arthur Andersen was retained to independently review and assess the value of the business deal to the City in light of current market dynamics. They also evaluated, on a confidential basis, O&Y's internal business plan and determined that O&Y only stands to make a modest internal rate of return on this project.

Arthur Anderson Assessment:

The assessment by Arthur Anderson points out that the proposal will realize the restoration and redevelopment of a significant heritage building, including its environmental clean up, at no cost to the City. The City will receive the lease payments up front to assist with the museum component and the museum will benefit from 50 percent of the revenue generated by the proposed advertising pylon. Finally, the City will receive annual property tax revenue from a formerly non-tax generating building. In consideration of all of these factors, Arthur Anderson has concluded that the deal is a reasonable one for the City. The Arthur Anderson report is Attachment No. 2, Confidential.

Based on the assessment of staff and on the strength of the assessment by Arthur Andersen it is recommended that the proposal by O&Y Properties Inc., Tennen Developing and Producing Inc. and Headline Media Group whose terms are more particularly described and contained in the Term Sheet, Attachment No. 1, be approved. It is further recommended that the Commissioner of Economic Development, Culture and Tourism be authorized to negotiate and enter into the appropriate lease and agreements required to implement the Term Sheet to the satisfaction of the Commissioner of Corporate Services, the City Solicitor and the Treasurer.

Limitations on Building Value:

Aside from the adaptive re-use of the Steam Whistle Brewery in one-third of the building which was demolished and subsequently reconstructed pursuant to the Convention Centre construction, the Roundhouse has stood in basic disrepair and has been mostly unproductive for more than a decade.

The building has a number of limitations that make it less attractive for commercial re-use. As the building is a National Historic site there are very limited changes that can be made to the structure. The structure itself is curved and has peculiar access and sits amidst a public park. There is an existing “Option to Purchase” in favour of Hydro for a transformer station, which complicates the surrounding property. There is no parking available on site to the lessee and there is significant environmental abatement and extensive capital improvements required making what is essentially an unheated and contaminated industrial shed – into a functional building.

Although the building is in a good location and is a unique and interesting structure with wonderful views, the practical issues outlined above have a negative impact on its value and make the facility a challenge to develop.

Pylon signage:

In earlier stages of the negotiations, O&Y was adamant that any agreement be pre-conditioned on approvals being in place for O&Y to erect and operate an electronic billboard on the property for the length of the lease term as a key term of their business offer. They argued that this was integral to their financial pro-forma (and to a lesser extent their tenant). Staff had two concerns. The first was whether or not Council would even grant such an approval. And the second concern was on the modest share of the economic value that was being offered the City (in light of experience at the National Trade Centre where operators in the market place typically provide guaranteed revenue in the range of \$150,000.00 - \$200,000.00 per annum to erect such a sign in prime locations).

As a result of further negotiations, O&Y have now agreed to remove the sign as a pre-condition to the deal and are now offering to split the net proceeds equally with the Museum with a guaranteed minimum annual revenue of \$80,000.00 to assist in any operating costs.

Compatibility of Tenant Use:

The pedestrian activity generated by the sports broadcast facility and their associated events, all located between the city’s two major stadiums, will be a positive attribute for this area and for the museum. Further, it should be noted that the tenant will not need to install broadcast dishes etc., on the Roundhouse.

Museum:

O&Y is not proposing a traditional “static display” rail heritage museum. This deal restores the Turntable, reserves and abates three bays in the Roundhouse for the museum and reserves the Machine Shop for future expansion. This is a creative approach and appropriate given that the City has no additional funds available to contribute to the museum. This proposal achieves the primary objective of finding a private sector partner to rehabilitate the balance of this National Historic Site and adaptively re-use this strategically located and important but underutilized building. The expectation of developing and operating an “Operating Rail Museum” at this point in time at no cost to the City appears unrealistic. The concept of developing a living museum that creatively uses and links rolling stock to be the museum that spills out into the turntable

forecourt has considerable interpretive merit for the site. Staff will report further on the options and opportunities for additional sources of support to utilize the Turntable, the three bays in the Roundhouse and the Machine Shop for the museum component after the agreements have been concluded with O&Y.

Discussions have been initiated with Hydro One and Toronto Hydro (who have an option to purchase the lands immediately to the west of the Roundhouse fronting on Rees Street for use as a transformer station). Both Hydro One and Toronto Hydro have a new appreciation for the importance of conserving this historical site as well as understanding the many urban design objectives contained in the Part II Official Plan and the Waterfront Culture and Heritage Infrastructure Plan. They have indicated their willingness to work co-operatively with the City to find an appropriate alternative site that would avoid the demolition of a portion of the Roundhouse structure known as the machine shop.

Conclusions:

The John Street Roundhouse is an important heritage building that is in need of restoration and re-use. The proposal from O & Y Properties will achieve this result with a reasonable return to the City.

Contact Name:

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January 14, 2002
John Street Roundhouse
Olympia & York/Tenen/Headline Proposal

Term Sheet

(1) Parties:

- The City of Toronto (the "City").
- A single purpose Ontario corporation (the "Tenant"), the shares of which will be owned, directly or indirectly, by O&Y Properties Inc. ("O&Y"), Headline Media Group Inc. ("Headline") and Tenen Developing and Producing Ltd. ("Tenen").
- O&Y, Headline and Tenen (the "Indemnifiers"), as joint and several indemnifiers of the Tenant's obligations to the City.

(2) Premises:

- The John Street Roundhouse, being the lands and buildings outlined on Schedule A (the "Premises"), being the whole building (to one foot beyond the building walls) other than the machine shop. Services (water, storm and sanitary sewers, steam, hydro and gas) which are available to the boundary of the

Roundhouse Park lands are as set out on Schedule B. The Tenant will also have certain rights for pedestrian access, service vehicle access, signage and parkland access referred to herein. In order to ensure proper access to and the proper functioning of the Premises for their intended purpose, the City agrees to consult with the Tenant regarding the landscaping of and any improvements to the parkland surrounding the Premises.

(3) Nature of Transaction:

- Long term fully net project lease (the “Project Lease”) with customary commercial terms including remedies for default and typical leasehold mortgage protections, such as notice of default to the mortgagee, the opportunity to cure and, in the case of non-curable default by the Tenant, the right to obtain a new lease on the same terms and conditions.

(4) Project Lease Term:

- 60 years. In the event that the City proposes to lease all or any part of the Premises after the expiration of the Project Lease to an arm’s length third party, the Tenant shall have a one-time right of first opportunity to lease the same provided that if the Tenant when presented with such first opportunity waives the same but the City does not lease the premises on terms not more favourable to the third party, the Tenant’s right of first opportunity shall continue.

(5) Rent:

- The rent shall be \$2,125,000.00, for permitted GFA of approximately 75,000 square feet i.e., excluding the machine shop, the proposed rail museum and the brew pub areas. The rent shall be subject to adjustment to reflect any change in permitted GFA after the final determination thereof and the rental shall be determined by multiplying the final GFA by a rate of \$35.00 per square foot of GFA and then deducting from such amount the sum of \$500,000.00.
- Any permitted GFA to be used beyond 80,000 square feet would be subject to approval by the City and at then prevailing market rental rates (except for the Machine Shop which is subject to the terms of Section 13).

(6) Prepayment of Rent:

- The rent shall be prepaid in full upon the earlier of (i) being the target date for completion of the Tenant’s premises and (ii) the actual date of occupancy of the Premises by the Tenant or its sub-tenants, provided, however, that the target date for completion may be extended up to a maximum of nine months.

(7) Tenant’s Construction Obligations:

- Upgrade of base building (except Steam Whistle portion) as detailed in Schedule C1 (including the Rail Museum portion to an unfinished state as detailed in Schedule C2).

- Historic and architectural restoration, as detailed in Schedules C1 and C2.
- Put structurally restored moveable/operational turntable in place, with rail cars presently in the Roundhouse to be relocated to the Rail Museum (particulars as detailed in Schedule C3, including as to the moveable/operational aspects of such restoration).
- Restoration architect, reasonably acceptable to the City, to be retained (as a consulting architect) by the Tenant.
- Construction performance security (being a performance bond from Aecon) in amount of projected costs as per schedules, reducible as work is completed.
- Tenant to pay for the City's actual cost, to a maximum amount of up to \$90,000.00, of moving Steam Locomotive No. 6213 from Exhibition Place to the Rail Museum but the City is to undertake the move.

(8) Sub-tenancies:

- Head lease of Steam Whistle Brew Pub Lease (net rent flow-through to the City). On expiry of Steam Whistle Brew Pub Lease the City may determine to make space available to Rail Museum (either for nominal rent or with net rent flow-through to the City), and if not, the Tenant has first right to sublet at market rate for comparable space with net rent flow-through to the City but otherwise, space shall be available to the City for own use or to be sublet by it with net rent flow-through to the City.
- Sublease to Headline or other subtenant of premises acceptable to the City, acting reasonably, on such terms and conditions as may be agreed to by the Tenant provided they are not inconsistent with the terms hereof.
- Sublease of Rail Museum portion to "not-for-profit" corporation for the length of Project Lease term, less one day at net rental in an amount which amortizes over the first 10 years of the sublease term any base building cost referenced in Schedule C2 to a maximum of \$300,000.00 (i.e., \$30,000.00 per year), with interest thereon at 7 percent per annum and after amortization of such building cost (to a maximum of \$300,000.00) the net rental shall be nominal.

(9) Licences:

- Non-exclusive licence for pedestrian and service vehicular access as shown on Schedule A.
- Periodic exclusive licence for permitted ancillary uses for Headline in the area in front of Headline's premises, as shown on Schedule A, at market rates.

(10) Western Portion:

- The City may at a later date enter into a separate third party transaction for all or a portion of that part of the Roundhouse site that is to the west and south of the Premises, the proceeds from which may assist with the Rail Museum. The City shall not be fettered in the type of transaction or use provided that the use shall not be offensive and shall be generally compatible with the use of the Premises and uses in the area and the layout shall not impair the normal operations of the Premises.

(11) Rail Museum:

- Rail Museum area sublet by the Tenant to “not-for-profit” corporation.
- Tenant shall, as requested, provide advice and assist such corporation in the development of effective merchandising and amenities program; provided however that the Tenant shall not be obliged to provide financial assistance or incur any expenses in so assisting such corporation.
- Expansion rights for Rail Museum into Brew Pub space on expiry of Project Lease with net rent flow-through, if any, to the City (as above).

(12) Signage:

- Subject to obtaining municipal approvals, identification signage for tenants plus a licence for a pylon sign for advertising (the “Pylon”) in each case of a type, size and location as agreed to.
- The City as site owner to work co-operatively to obtain approval to identification signage and Pylon (without prejudice to the City’s responsibility as a planning authority and policies with respect to signage).
- With respect to the Pylon sign, the licence shall be for 20 years with two 20-year renewals at Tenant’s option. For the first 20 years that the Pylon sign is utilized by the Tenant the City shall receive the greater of: (i) 50 percent share of the net revenue (being revenue after deducting all direct third party operating expenses and the amortization of capital costs incurred by the Tenant) from the sale of Pylon advertising; and (ii) \$80,000.00 per annum (with such portion of such \$80,000.00 per annum amount to be applied as is necessary to amortize the \$300,000.00 Rail Museum portion base building cost plus interest referred to in Section 8 over a 10-year period and the balance to be used, to the extent necessary, for the ongoing operation and upkeep of the Rail Museum) plus 10 percent usage rights for public service announcements at Tenant’s cost for same but with no usage charge. Rates for renewal terms to be at then market terms.

- The City shall retain the right to name the project and will locate a sign for the same on the Coal Sanding Tower (which does not form part of the Premises). Notwithstanding the City's right to name the project, the Tenant and/or its sub-tenants shall have the right to put their name(s) and/or signage on the building subject to the approval of the City acting reasonably (and such other heritage and other approvals and by-law compliance as may be required).

(13) Machine Shop:

- The Tenant shall have the right of first refusal to lease the machine shop for as long as it is available to lease on the same terms and (i.e., it is subject to the Hydro option and subject to the "western portion" transaction referred to in Section 9) conditions as are contained in any offer to lease therefor to the City by any arm's length third party.

(14) Staging/Loading:

- The Tenant and sub-tenants of the Tenant shall be entitled to non-exclusive use of the area (shown outlined on Schedule A) south of the Premises for a service staging area and for loading access during the term of the Project Lease.

(15) Communications Equipment:

- All external communications and similar equipment (dishes, antennae, etc.) to be located off-site. The City agrees to work with, and use its reasonable efforts to assist, the Tenant to find suitable alternate locations for such equipment, at no cost to the City.

(16) Environmental:

- The Tenant will be fully responsible for all remediation costs for the base building upgrade as detailed in Schedule B.
- The City will provide any existing environmental reports in its possession and reimburse the Tenant from the rent for one-half of the costs of additional environmental consultants to the extent necessary (such consulting reports to be provided to the City and such reimbursement not to exceed \$50,000.00) so that the Tenant can ascertain the soil/environmental condition of the lands.

(17) Assignment:

- The Tenant will have the right to assign its interest, in part or in whole, in the Project Lease or undergo a change in control and the Indemnifiers shall also be entitled to be replaced, in each case once the Premises have been restored and are in operation and the rent has been prepaid (but not before) with the consent of the City, not to be unreasonably withheld having regard to the experience, reputation and creditworthiness of the proposed assignee or indemnifier, as the case may be, and the intended use of the Premises.

- The Tenant will advise the City in advance as to any proposed assignment or proposed replacement indemnifier and will provide to the City any information (other than confidential information) in its possession regarding the proposed assignee or indemnifier, as the case may be. In considering a proposed assignee or indemnifier, the City will have regard to the experience, reputation and credit-worthiness of the proposed assignee or indemnifier, as the case may be, and the intended use of the Premises.
- Notwithstanding the foregoing, the Tenant shall be entitled to assign its interest in the Project Lease to an affiliate without the consent of the City provided that they remain affiliates.

(18) Preconditions:

- To proceeding with this transaction:
 - Rezoning (including OPA) and all other necessary permissions for commercial uses (other than s.41 approval) to be approved by Council by February 2002.
 - Tenant to be satisfied with remediation costs (after receiving test results).
 - Tenant to be satisfied with the nature, capacity and location of the services (water, storm and sanitary servers, steam, hydro and gas) which are available to the Roundhouse Park lands.
 - Board approval of this transaction and the terms and conditions herein by the Tenant and each of the Indemnifiers.
 - All necessary municipal and regulatory approvals (including under the Heritage Act if necessary) required for occupancy.

NOTE: Schedules A, B, C1, C2, C3, are available through the Culture Division of the Economic Development, Culture and Tourism Department.

(A copy of Attachment No. 2, a confidential communication dated January 7, 2002 from Mr. Ronald P. Bidulka, Arthur Anderson, LLP, forwarding an assessment of the O&Y Proposal for the John Street Roundhouse, was forwarded to all Members of Council with the January 21 and January 25, 2002 agenda of the Economic Development and Parks Committee, a copy thereof is on file in the office of the City Clerk.)

The following persons appeared before the Economic Development and Parks Committee in connection with the foregoing matter:

- Ms. Jane Beecroft, CHP Heritage Centre; and
- Mr. David Garon, President, Toronto Railway Historical Committee.

(City Council at its meeting on February 13, 14 and 15, 2002, had before it, during consideration of the foregoing Clause, a confidential communication (January 7, 2002) from Mr. Ronald P. Bidulka, Arthur Andersen LLP, addressed to Mr. Glen Garwood, Project Leader, Cultural Affairs, Economic Development, Culture and Tourism, such communication to remain confidential in its entirety, in accordance with the provisions of the Municipal Act, given that it concerns matters related to the security of property of the municipality.)