



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Agreement with the Toronto Port Authority on current litigation and other matters

Date:	November 23, 2009
To:	City Council
From:	City Solicitor and City Manager
Wards:	All
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege, deals with litigation and is also about a proposed or pending land acquisition by the City or one of its agencies, boards and commissions
Reference Number:	

SUMMARY

The purpose of this report is to seek City Council's authority to enter into an agreement with the Toronto Port Authority (the "TPA") to settle certain disputes that are the subject of litigation between the City and the TPA and to secure approximately 18 acres of land on the Ashbridges Bay site for TTC purposes.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations contained in Confidential Attachment 1;
2. The confidential instructions adopted by City Council be released at the discretion of the City Solicitor; and
3. The balance of the confidential attachment remain confidential as it contains information subject to solicitor/client and litigation privilege.

Staff report on Agreement with Toronto Port Authority on current litigation and other matters

FINANCIAL IMPACT

The relevant financial information is addressed in the confidential attachment.

DECISION HISTORY

At its meeting of June 24-26, 2003, City Council adopted a report implementing a settlement with the TPA relating to certain litigation at that time concerning land ownership and compensation. The settlement terms were set out in executed Minutes of Settlement and a Structured Settlement Agreement, along with other documentation (collectively the “2003 Settlement Agreement”). Under the 2003 Settlement Agreement, the TPA agreed to dismiss its claim to over 600 acres of land in the port lands. The 2003 Settlement Agreement provided for the City to make certain capital and operating payments to the TPA for a period that will end in December 2012. Under the 2003 Settlement Agreement, the City is to pay the TPA the following capital payments:

- (i) a payment of \$3 million per year, for the six year period commencing January 1, 2003 and ending December 31, 2008; and
- (ii) a capital payment of \$1,700,000.00, for the four year period commencing January 1, 2009 and ending December 2012. These payments are to be made in semi-annual instalments on the first day of January and the first day of July in each year.

At its meeting of December 14 and 16, 2005, City Council amended a recommendation of the Policy and Finance Committee to, amongst other things, advise the TPA that the City would be withholding from the City payments the amounts claimed by the City for payments in lieu of taxes. As a result, the City has withheld payments to the TPA under the 2003 Settlement Agreement since the beginning of 2006.

ISSUE BACKGROUND

- (i) Current Litigation – The 2008 Court Action

In June of 2009, the City was served with a claim by the Toronto Port Authority relating to payment of Harbour User Fees and certain operating and capital payments under the 2003 Settlement Agreement (the “2008 Court Action”). Since 2000, the TPA has invoiced the City’s Parks, Forestry and Recreation Division for Harbour User Fees fixed by the TPA and charged pursuant to the *Canada Marine Act*. The charges are in relation to the City’s five ferry boats, although one, The Trillium, is generally used as a charter boat. The TPA issued invoices to the City purporting to charge \$10.00 per scheduled crossing for the four ferry vessels and \$7.50 per passenger capacity per year for the Trillium. The City refused to pay the charges on the basis that the fees charged were unreasonable and discriminatory. The City noted that the rates charged were not

consistent with rates charged to commercial tour boat operators wherein the charge was based on a total per passenger capacity of the boat. The annual invoices issued to the City were for approximately \$400,000.00. The total amount claimed by the TPA against the City in the litigation for Harbour User Fees is in excess of \$3 million, plus interest.

As noted above, beginning in 2006, the City stopped making payments under the 2003 Settlement Agreement. The payments which have not been made by the City are set out below:

<u>Date Payment Due</u>	<u>Type of Payment</u>	<u>Amount</u>
January 1, 2006	Capital Payment	\$1,500,000
July 1, 2006	Capital Payment	\$1,500,000
July 15, 2006	Operating and Capital Payment	\$1,000,000
January 1, 2007	Capital Payment	\$1,500,000
July 1, 2007	Capital Payment	\$1,500,000
January 1, 2008	Capital Payment	\$1,500,000
July 1, 2008	Capital Payment	\$1,500,000
January 1, 2009	Capital Payment	\$ 850,000
July 1, 2009	Capital Payment	\$ 850,000
	TOTAL:	<u>\$11,700,000.00</u>

(ii) Secure Portion of Ashbridges Bay site for TTC Purposes

Earlier this year, the Toronto Transit Commission (the “TTC”) requested that City staff enter into discussions with the TPA to secure a portion of the Ashbridge’s Bay site for TTC purposes. The area in issue is approximately 18 acres which is owned by the TPA but subject to a long term agreement with the City for its sewage treatment facility. The TTC has been considering the use of this site and certain others for an LRV (Light Rail Vehicle) facility. A final decision on the location of the TTC facility will be made by the TTC in the coming months.

COMMENTS

The attached confidential report comments on the 2008 Court Action and the land purchase and seeks instructions on these issues.

CONTACT

Diana W. Dimmer, Director of Litigation, Tel: (416)392-7229; Fax: (416)392-1199, Email: ddimmer@toronto.ca

Elaine Baxter-Trahair, Director District Transportation Services, Tel: (416)397-4083, Fax: (416)392-8805, Email: ebaxter@toronto.ca

Joe Farag, Director, Special Projects, Office of the Deputy City Manager and Chief Financial Officer, Tel: (416)392-8108; Fax: (416)397-4465, Email: jfarag@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

Joseph P. Pennachetti
City Manager

ATTACHMENTS

1. Confidential Report