



**STAFF REPORT
ACTION REQUIRED**

Rail Siding and Cost Sharing Agreement: City of Toronto and Toronto Port Lands Company

Date:	April 24, 2013
To:	Public Works and Infrastructure Committee
From:	General Manager, Toronto Water
Wards:	All
Reference Number:	P:\2013\Cluster B\TW\pw13010

SUMMARY

Toronto Water is seeking approval to enter into a ten (10) year rail siding use and cost sharing agreement between the City and the Toronto Port Lands Company (TPLC) for the use of a rail siding owned by the TPLC which services the Ashbridges Bay Wastewater Treatment Plant (ABTP). The rail siding is used by Toronto Water to deliver goods including process chemicals to the ABTP for daily use in its operations.

Toronto Water will continue, as per past practice, to be responsible for operating and maintaining the rail line within the boundary of the ABTP site. Under this agreement, Toronto Water will pay one third of the costs reasonably incurred by TPLC to maintain in a state of good repair the rail line on TPLC land to the west of the ABTP.

RECOMMENDATIONS

The General Manager of Toronto Water recommends that:

1. City Council authorize the General Manager of Toronto Water to negotiate, enter into and execute a rail siding use and cost sharing agreement, including any renewals, extensions, amendments, revisions or assignments of such agreement, with City of Toronto Economic Development Corporation (c.o.b. Toronto Port Lands Company) or any of its successors or assigns on such terms and conditions as may be acceptable to the General Manager, Toronto Water, and all in a form acceptable to the City Solicitor.

Financial Impact

Toronto Water has sufficient funds in its current 2013 Operating Budget for the Ashbridges Bay Treatment Plant under WW1004 to fund its share of costs incurred during 2012 in the amount of \$44,443.74 (inclusive of HST) and an estimated cost of \$216,011.55 (inclusive of HST) for maintenance work to be performed in 2013. Estimated costs for 2014 and beyond will be included in future year Toronto Water Operating and Capital Budgets.

DECISION HISTORY

On September 5, 1951, the Toronto Harbour Commissioners and the Corporation of the City of Toronto entered into an agreement in respect to the construction, maintenance and operation of the rail siding in the port lands area.

On June 13, 1955, the Toronto Harbour Commissioners and The Municipality of Metropolitan Toronto entered into an agreement in respect to the construction, maintenance and operation of the rail siding in the port lands area.

On May 7, 1978, the Toronto Harbour Commissioners and The Municipality of Metropolitan Toronto entered into an agreement in respect to the construction, maintenance and operation of the rail siding in the port lands area which consolidated the prior agreements into one agreement.

By agreement dated July 1, 1980, the Toronto Harbour Commissioners, the Canadian National Railway Company (CNR), Canadian Pacific Limited (CP) and The Toronto Terminals Railway Company (TTR), agreed that TTR would rehabilitate, maintain and extend the rail siding on the Toronto Harbour Commissioners lands.

By agreement dated January 22, 1992, and amended by agreements dated June 16, 1992, September 15, 1992, June 10, 1993, June 17, 1993, December 17, 1993 and June 29, 1994, the Toronto Harbour Commissioners sold various lands, comprising TEDCO's port lands rail siding, to the City of Toronto Economic Development Corporation (TEDCO) in its role of being responsible for the over-all operation of port railway areas and to support rail operations in the port area.

The City, TEDCO and Toronto Port Authority (TPA) entered into an agreement (the Structured Settlement Agreement) dated the 26th day of June, 2003, and under Section 4.5 of the Structured Settlement Agreement, TEDCO and TPA are required to enter into a cost-sharing agreement providing for the payment by TPA to TEDCO of the reasonable costs to TEDCO of providing rail service for the benefit of leased lands owned by TEDCO pursuant to a ground lease dated January 1, 2003, TPA's Marine Terminal Lands and the Atlas Crane Lands.

TEDCO now carries on business as the Toronto Port Lands Company (TPLC).

ISSUE BACKGROUND

Toronto Water has been receiving goods including process chemicals for the wastewater treatment process at ABTP by rail since at least the early 1940s. It is an effective and economical mode of transporting such goods.

CNR owns and operates the main rail line running east-west through the City. TPLC owns and is responsible for maintaining the rail siding running from the CNR main line and servicing ABTP as well as the Port Lands area south of Lakeshore Road and west of Leslie Street. The City is solely responsible for all costs associated with maintaining the rail siding on ABTP lands.

CNR requires, as a condition of any carriage of goods on the TPLC rail siding (including the delivery of goods to ABTP), regular inspection, maintenance and repair of the TPLC rail siding.

Since July 1, 1980, TTR, a corporation owned by CNR and CP, was responsible for the rehabilitation and maintenance of, and construction of any extensions to, the rail siding now owned by TPLC. At its convenience and without default on the part of TPLC, TTR terminated this agreement on 6 months' notice, effective February 1, 2012. TTR proposed to enter into a new rail maintenance agreement with TPLC, however, only on commercially unreasonable terms and conditions. These terms and conditions were unacceptable to TPLC and Toronto Water. As a result, carriage of goods by rail on the TPLC rail siding (and deliveries to ABTP) were halted until TPLC could secure the services of an alternate rail maintenance provider.

To meet CNR's condition for the carriage of any goods on the TPLC rail siding, TPLC retained the services of PNR Railworks on July 1, 2012, to carry out inspection, maintenance and repair of the rail siding. Consequently, as a condition of the City using TPLC's rail siding, TPLC requires that the City share and pay a portion of the costs for inspection, maintenance and repair of the TPLC rail siding.

Since at least 1951, the former Corporation of the City of Toronto and The Municipality of Metropolitan Toronto have had cost sharing agreements with the Toronto Harbour Commissioners in respect to this rail siding. TPLC acquired the rail siding through various agreements in the period of 1992 to 1994. In June of 2003, the City, Toronto Port Authority (TPA) and Toronto Economic Development Corporation (TEDCO) entered into a cost-sharing agreement providing for the payment by TPA to TEDCO of the reasonable costs to TEDCO of providing rail service to TPA.

COMMENTS

As noted above, the City has had various cost sharing agreements in respect to use of the rail siding now owned by TPLC dating back at least 62 years. Toronto Water is seeking the authority to enter into a new rail siding and cost sharing agreement for the use of TPLC's rail siding servicing ABTP and the authority to renew, extend, amend and/or

revise the agreement as may be necessary to reflect any necessary changes in the future and to facilitate and maintain continuous rail service to ABTP.

Given the necessity of maintaining continued rail delivery of process chemicals to ABTP, Toronto Water is proposing that the City enter into a ten-year agreement with TPLC retroactive to July 1, 2012, which reflects the date upon which TPLC incurred inspection, maintenance and repair costs to allow the carriage of goods on the TPLC rail siding to resume.

Under the agreement, it is proposed that the City will be responsible for one third of all direct costs related to third party maintenance, repair and insurance reasonably incurred by TPLC with respect to the rail siding. The City will also be responsible for all costs to operate, maintain and keep in a state of good repair the portion of the rail siding within the property boundaries of ABTP. The ABTP rail siding is predominantly used for the delivery of chemicals used daily in the wastewater treatment process.

TPLC will be responsible to operate, maintain and keep in a state of good repair the TPLC rail siding from the CNR mail line to ABTP property line, as well as other portions of the TPLC rail siding, to ensure safe and reliable rail delivery service. Under the proposed agreement, the City will be responsible for a one-third (33.33%) share of all direct costs for third party maintenance, repair, replacement and insurance reasonably incurred by TPLC in meeting its obligations in respect to the TPLC rail siding.

It is also proposed that, in the event the usage of the TPLC rail siding by TPA or other third parties increases during the term of the agreement, the parties will negotiate in good faith a reduction in the City's pro rata share of such direct costs based on the relative use of the TPLC rail siding by the City, TPLC, TPA and any other third parties.

A mutual indemnification in the event of a party's negligent inspection, maintenance, repair or use of the rail line on its respective property is also proposed.

CONTACT

Frank Quarisa, P.Eng, MBA
Director, Wastewater Treatment
E-mail: fquaris@toronto.ca
Tel: 416-392-8230

SIGNATURE

Lou Di Gironimo
General Manager
Toronto Water