Delegation of Authority during the 2014 Council Election Recess

DATE: July 24, 2014

TO: Executive Committee

FROM: City Manager

WARDS: All

REFERENCE NUMBER: P:\2014\Internal Services\pmmd\ec14007pmmd (AFS20069)

SUMMARY

In order to ensure that the City’s approved operating and capital activities can continue to move forward while Standing Committees and Council are in recess, it is recommended that during the 2014 election recess when Standing Committees and Council do not have any regularly scheduled meetings, the following delegated authorities are recommended, provided sufficient funds are available in the approved project or program total budget:

a) Deputy City Manager and Chief Financial Officer to approve any reallocation of budget between capital projects in an amount of not more than $3 million;

b) City Manager, or his delegate, to approve over-expenditures of contracts up to a maximum of $1,000,000; and

c) Board of the Toronto Atmospheric Fund (TAF) to give prior approval, on behalf of Council, to enter commitments that extend beyond the current term of Council, limited to a time period prior to and immediately following municipal elections when Council is not in session. Approval for these commitments is prescribed by the Toronto Atmospheric Fund Act, 2005, S.O. Ontario, 2005 c. PR6 (TAF Act). TAF further requests Council’s approval of its commitments listed in Schedule A.

The delegated authorities will end after the 2014 election recess. Any exercise of the delegated authority for capital reallocations and over-expenditure of contracts will be reported to Budget Committee and Government Management Committee respectively, in 2015.

For the delegated authorities described in this report related to capital reallocation and over-expenditure of contracts, these delegated authorities will override the provisions in the Financial Control By-law and these two delegations of authorities will only operate
during the 2014 election recess. The Financial Control By-law will not be amended as a result and the remaining provisions of the Financial Control By-law will otherwise apply. The Financial Control By-law is being reviewed in its entirety in 2015 and staff will be reporting on any changes required for the Financial Control By-law, including any further delegated authority during all election recesses moving forward at that time.

RECOMMENDATIONS

The City Manager recommends that:

1. In addition to the authority currently delegated by Chapter 71, Financial Control, City Council temporarily delegate authority to the Deputy City Manager and Chief Financial Officer, to approve any reallocation of budget between capital projects in an amount of not more than $3 million during the 2014 Election recess from September to December, 2014.

2. In addition to the authority currently delegated by Chapter 71, Financial Control, City Council temporarily delegate authority to the City Manager, or his delegate, to approve any over-expenditures of a commitment in an amount not to exceed $1 million during the 2014 Election recess from September to December, 2014, provided that Council has:
   a. provided funds in the operating or capital budget for that purpose or donated funds are provided pursuant to Chapter 71, Financial Control; or
   b. approved the project and the funding thereof; and
   c. sufficient funds remain in the project or program.

3. City Council direct the City Manager, or his delegate, to report to:
   a. Budget Committee in early 2015 on any exercise of the delegated authority for approving reallocation of budget between capital projects in accordance with Recommendation 1; and

4. City Council delegate authority to the TAF Board of Directors (TAF Board) to approve on behalf of Council, for the period commencing on the day following the last City Council meeting of this term up to the first regular meeting of Council following the 2014 municipal election, transactions described in Subsections 11(8) and (9) of the TAF Act that satisfy the following conditions:

   a. The proposed transaction is of a type, and for an amount, which is set out in a line item in a TAF budget approved by Council; or
   b. The proposed transaction is an investment permitted to be made by TAF, as set out in TAF’s Statement of Investment Objectives and Principles approved by Council as amended; or
c. The proposed investment is specifically permitted by a provision of the Relationship Framework, 2013 between TAF and the City, as amended.

5. City Council require that any approval for transactions by the TAF Board pursuant to this delegated authority be disclosed in the Board's 2014 Audited Annual Financial Statements, no later than June 2015.

6. Council approve the commitments set out in Schedule A to this report that have commitments that extend beyond the current term of Council as required in the TAF Act and as requested in the TAF Board report dated July 15, 2014.

**Financial Impact**

There are no budgetary implications as a result of the recommendations of this report.

Any financial impact to a capital program or specific capital project arising from capital reallocations exercised under the delegated authority of the Deputy City Manager and Chief Financial Officer will be reported to Budget Committee in 2015.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

**DECISION HISTORY**

At its meeting held on August 25, 26 and 27, 2010, City Council adopted a revision to the Financial Control By-law with respect to reallocation of funding for capital projects during the election period and delegated authority to the Board of Directors of the Toronto Atmospheric Fund to approve transactions described in subsections 11(8) and 11(9) of the Toronto Atmospheric Fund Act, 2005, subject to certain conditions and report back on the use of such delegation. Following is a link to the Council decision and staff report.

http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX46.38

The TAF Act, 2005, requires that the TAF Board obtain prior approval of Council for commitments which extend beyond the term of Council. At its meeting of July 16, 2014, the TAF Board passed a resolution to request that Council temporarily delegate prior approval of such transactions for the period prior to and following the municipal election when Council and Committees are in recess. The Board further committed to report back on all transactions approved by the TAF Board under this delegation in its audited annual financial statements.

COMMENTS

Delegated Authority to Reallocation Between Capital Projects and for Over-expenditure of Commitments

The Financial Control By-law establishes the authorities and controls with respect to the allocation, commitment, and spending of funds. The Financial Control By-law also established the controls with respect to authorizing over-expenditures of commitments. The Purchasing By-law outlines the authority for the procurement of goods and services. The Purchasing By-law, in combination with the Financial Control By-law, provides the overall framework for proper and effective procurement processes in the City that meet divisional operational needs cost-effectively and efficiently, while ensuring effective financial controls and accountability.

To ensure that capital related procurement activities can continue uninterrupted during the extended Council election recess in 2014, a temporary increase to existing delegated authority in the Financial Control By-law is being recommended. Currently, section 71-9 (E) “Reallocations” of the By-law authorizes the Chief Financial Officer to approve any reallocation of budget between capital projects in an amount of not more than $250,000 except during a summer recess or an election recess which allows the Chief Financial Officer to approve up to $1,000,000.

With the extended election recess from September to December 2014 and the high priority projects upcoming in and for 2015, such as the Pan American/Parapan American Games, capital projects requiring a reallocation of budget of greater than $1 million in order to award a contract could be delayed for up to five (5) months. In order to ensure that the City’s approved capital activities can continue to move forward while Standing Committees and Council are in recess, it is recommended that during this 2014 election recess when Standing Committees and Council do not have any regularly scheduled meetings, the Deputy City Manager and Chief Financial Officer be authorized to approve any reallocation of budget between capital projects in an amount of not more than $3 million.

In addition, the Financial Control By-law, section 71-11.1, sets out the authorization level required for over-expenditure of contracts. Over-expenditures of contracts over $500,000 require authorization from the appropriate Standing Committee. With the extended election recess, over-expenditures on contracts over $500,000 could be delayed for up to five (5) months. In order to ensure that the work of the Divisions can continue to move forward while Standing Committees and Council are in recess, it is recommended that during this 2014 election recess, the City Manager or his delegate, be granted temporary delegated authority to authorize over-expenditures over $500,000, up to $1,000,000, under the condition that Council has provided funds in the operating or capital budget for that purpose; or has approved the project and the funding and there is sufficient funds remaining in that project. This delegation would be applied in the same manner as the current over-expenditure of $500,000, meaning that the cumulative amendments that may have taken place previously within staff's authority will be considered in assessing
whether it falls within the delegated authority. For example, a request for an amendment up to $1,000,000 on a contract which has been previously amended by $100,000 will not be approved as it will exceed the delegation.

The delegated authorities for capital reallocation and over-expenditure of contracts, these delegated authorities will override the provisions in the Financial Control By-law and will only operate during the 2014 election recess. The Financial Control By-law will not be amended as a result and the remaining provisions of the Financial Control By-law will otherwise apply. A comprehensive review of the Financial Control By-law and the Purchasing By-law is scheduled for 2015 at which time staff will report to Committee and Council on any recommended updates to the By-laws including whether this delegated authority should be applied to all future election recesses.

**Delegated Authority for TAF Board to Approve Transactions Beyond Council Term**

Subsections 11(8) and (9) of the TAF Act provide:

**Effect on City’s debt limits**

11(8) For the purpose of calculating its debt and financial obligation limits under Section 401 of the Municipal Act, 2001, the City shall be deemed to have incurred as a long-term debt any financial commitment, liability or contractual obligation of the Fund in respect of which the Fund is required to make payments after the expiry of the term for which the City Council was elected.

**Approval**

(9) The Fund shall not undertake a financial commitment, liability or obligation described in subsection (8) without prior authorization of the City Council.

Certain long-term commitments of TAF are deemed to be liabilities of the City. This provision would include any contractual obligation such as equipment leases, commitments to make grants, loans or investments, if any portion of the agreement requires funding beyond the current Council term. TAF must include in every such commitment a clause to the effect that it is not binding on TAF unless and until approved by Council. Without Council's approval, TAF would be restricted from carrying out its core function of administering funding for green initiatives.

Schedule A identifies all direct investments (to be drawn from TAF’s assets) and all grants (to be drawn from returns on TAF investments) that have an obligation extending beyond the term of the current Council. These include Board-approved investments that have not yet been advanced or only partially advanced, and Board-approved grants that have not yet been released or only partially released. In all cases, fulfillment of the obligation would only occur if contracted conditions imposed by TAF are met.
TAF is required to report all transactions executed under this delegated authority from Council in its 2014 Audited Annual Financial Statements, no later than June, 2015.

CONTACTS

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Josie Lavita, Director, Financial Planning, jlavita@toronto.ca, 416-397-4229
Peter Notaro, Director, Corporate Intergovernmental and Agency Relations, City Manager's Office, pnotaro@toronto.ca, 416-392-8066

SIGNATURE

_____________________________________________________________________
Joseph P. Pennachetti
City Manager

ATTACHMENTS: Schedule A: Toronto Atmospheric Fund's Commitments
# SCHEDULE A

## Toronto Atmospheric Fund’s Commitments

<table>
<thead>
<tr>
<th>Organization</th>
<th>Grant Description</th>
<th>Amount Granted</th>
<th>Year of Grant</th>
<th>Outstanding amount as of July 22, 2014</th>
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<tbody>
<tr>
<td>City of Toronto - Transportation Services</td>
<td>Electric Vehicle Charging Station Pilot for City “Right-of-Way” Scenarios</td>
<td>65,000</td>
<td>2011</td>
<td>13,000</td>
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<td>Toronto &amp; Region Conservation Authority</td>
<td>Geothermal Technology Assessment and Best Practice Development in Urban Areas</td>
<td>40,000</td>
<td>2011</td>
<td>8,000</td>
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<td>York University</td>
<td>Developing Practical Local Experience with Urban Renewable Energy Charging Stations for Electric Vehicles</td>
<td>35,000</td>
<td>2011</td>
<td>7,000</td>
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<td>Ryerson University</td>
<td>Combined Building integrated photovoltaics and thermal and air source heat pump for Net-Zero Buildings</td>
<td>138,000</td>
<td>2012</td>
<td>69,000</td>
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<td>Ryerson University Centre for Urban Energy</td>
<td>Geo-Cities Initiative: Evaluating and Advancing for Earth Energy Systems in the Urban Context</td>
<td>75,000</td>
<td>2012</td>
<td>15,000</td>
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<td>City of Toronto - Environment &amp; Energy Office</td>
<td>Live Green Toronto EcoEnergy Pilot</td>
<td>200,000</td>
<td>2013</td>
<td>40,000</td>
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<td>Pembina Institute</td>
<td>Location Efficient Development – Strategy &amp; Funder Toolkit</td>
<td>76,200</td>
<td>2014</td>
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<td>Evergreen</td>
<td>Tower Renewal Showcase</td>
<td>20,000</td>
<td>2014</td>
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**TOTAL $176,050**
## DIRECT INVESTMENTS

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<tr>
<th>Organization</th>
<th>Description</th>
<th>Outstanding amount as of July 22, 2014 (000's)</th>
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<td>Enermotion</td>
<td>Operating loan for energy saving technology</td>
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<td>Toronto Community Housing - Energy Savings Performance Agreement</td>
<td>Energy saving retrofit</td>
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<td>YMCA</td>
<td>Energy saving retrofit</td>
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<td>Windmill Development Group (Green Condo Loan)</td>
<td>Energy saving loan</td>
<td>750</td>
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<td>Rouge Valley Co-op - Energy Savings Performance Agreement</td>
<td>Energy saving retrofit</td>
<td>321</td>
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<tr>
<td>Hospital Workers' Co-op - Energy Savings Performance Agreement</td>
<td>Energy saving retrofit</td>
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<td>The Energy Efficiency Financing Company</td>
<td>Energy saving retrofit</td>
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<td>Legend Power clients</td>
<td>Vendor financing for energy saving equipment</td>
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<td>Hospital Workers' Co-op</td>
<td>Loan for energy saving chiller</td>
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<td>Perth Avenue Co-op - Energy Savings Performance Agreement</td>
<td>Energy saving retrofit</td>
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<td><strong>TOTAL</strong></td>
<td><strong>$7,721</strong></td>
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