

Move Ontario Trust Release and Indemnification

Date: June 27, 2017

To: City Council

From: City Manager and City Solicitor

Wards: All Wards

SUMMARY

In March 2006, the Move Ontario Trust was created by the Province of Ontario for the purpose of providing funding for the Toronto York Spadina Subway Extension project. After having depleted its funds in fulfilling its mandate, the Trust is now being wound up. This report seeks authority for the City Manager to execute a Release and Indemnification Agreement which indemnifies and releases the current and former trustees of the Move Ontario Trust (the "Trustees") against any liabilities that may be incurred by them in relation to the Trust.

RECOMMENDATIONS

The City Manager and the City Solicitor recommend that:

1. Council authorize City Manager to execute a Release and Indemnification Agreement on behalf of the City, as beneficiary, that releases the current and former Trustees of the Move Ontario Trust from liabilities arising from their roles as trustees.

FINANCIAL IMPACT

No financial impact has been identified arising from this report.

DECISION HISTORY

As part of the Ontario Budget, on March 23, 2006 the Province announced the creation of the Move Ontario Trust (the "Trust"), which was constituted as a trust under the laws of Ontario for the purpose of funding distributions in respect of project expenditures for the development of the Toronto-York Spadina Subway Extension (TYSSE) project. The

City of Toronto and the Regional Municipality of York are designated beneficiaries of the Trust.

The Trust was structured with three Trustees, one from each of the City of Toronto, the Regional Municipality of York, and the Province of Ontario. At its meeting of September 25, 26, 27, 2006, City Council adopted recommendations of Policy and Finance Committee Report No 7, Clause 35.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/pof7rpt/cl035.pdf>

Since the Trust's inception, the City of Toronto Trustee has been its Deputy City Manager & Chief Financial Officer.

COMMENTS

At this point in time, the Trust is being wound up, having depleted its funds in fulfilling its mandate of providing funding for the TYSSE project.

The Trust received deposits from the Province totaling \$870 million, and an additional \$75 million from the Federal Government (attributed under the Public Transit Capital Trust), for total deposits of \$945 million. These deposits were used to fund TYSSE, and in addition, Trust interest earnings of approximately \$110 million were used to fund TYSSE.

To date, the Trust has provided TYSSE funding of approximately \$1.054 billion. The Trust has held back \$1.5 million from the total amount for the purpose of winding up its business affairs. Any unused amount will be returned to the beneficiaries (the City and the Regional Municipality of York), to be used as TYSSE funding.

This report seeks authority for City Manager to execute a Release and Indemnification Agreement in respect of the Trustees on behalf of the City. Pursuant to this Agreement, the City and the Regional Municipality of York:

- (a) acknowledge the termination of the Trust;
- (b) confirm approval of the Trust's accounts. City staff have reviewed the Trust's audited financial statements as prepared by BDO Canada LLP, and confirm that they are accurate;
- (c) release the Trustees from any claims they may have against them in their capacity as trustees of the Trust;
- (d) indemnify the Trustees from all liability, loss, costs and expenses in relation to any of their acts or omissions in respect of the Trust's assets, with the exception of fraud, misconduct or gross negligence on the part of the Trustees.

Trustees have a legal right to indemnification, and a contractual indemnity from the beneficiaries is customary upon the retirement of trustees particularly where the trustees have acted in their personal capacity.

CONTACT

Joe Farag, Executive Director, Corporate Finance, tel: 416-392-8108,
joe.farag@toronto.ca

Christina Hueniken, Practice Lead, Legal Services, tel: 416-392-6160,
christina.hueniken@toronto.ca

Peter Notaro, Executive Director, Strategic & Corporate Policy, tel: 416- 392-8066,
peter.notaro@toronto.ca

SIGNATURE

Peter Wallace
City Manager

Wendy Walberg
City Solicitor