TORONTO

REPORT FOR ACTION

Agreement for the Replacement of the Imperial Oil Pipeline

Date: May 11, 2021
To: Infrastructure and Environment Committee
From: General Manager, Transportation Services
Wards: 1, 2, 6, 7

SUMMARY

This report requests authorization of a Pipeline Crossing Agreement between Imperial Oil Limited ("Imperial Oil") and the City of Toronto to replace and maintain their pipeline within the City of Toronto public right-of-way in Etobicoke Centre (Ward 2), Etobicoke North (Ward 1), Humber River Black Creek (Ward 7), and York Centre (Ward 6).

In addition, this report requests standing delegated authority for the General Manager of Transportation Services to negotiate, enter into, and sign Municipal Pipeline Crossing Agreements which will be based on an approved form.

Transportation Services has reviewed an application from Imperial Oil for the replacement, operation, and maintenance of its services within the public highways situated within the City of Toronto and have no objections to the replacement of portions of the pipeline.

RECOMMENDATIONS

The General Manager, Transportation Services recommends that:

1. City Council delegate authority to the General Manager, Transportation Services to negotiate, enter into and execute on behalf of the City a Pipeline Crossing Agreement with Imperial Oil Limited to authorize the construction, installation, maintenance and operation of an oil pipeline within City of Toronto public highways, and incorporating the terms as set out in this report from the General Manager, Transportation Services, and such other terms and conditions as may be satisfactory to the General Manager, Transportation services and in a form satisfactory to the City Solicitor.

2. City Council delegate standing authority to the General Manager, Transportation Services to negotiate, enter into and execute on behalf on the City any Pipeline Crossing Agreement, based on the standard form agreement currently used by staff, to construct, install, maintain and operate oil pipelines and ancillary plants by pipeline companies in the City of Toronto public highways, including, without limitation, any renewals, extensions or subsequent amendments to a Pipeline Crossing Agreement, on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor subject to the following condition:

a. any variation from the City's standard form Pipeline Crossing Agreement, or any subsequent amendment, shall not materially impact the potential liability of the City.

3. City Council authorize and direct the appropriate City officials to take the necessary action to implement Council's decision, including the introduction in Council of any Bills that may be required.

4. City Council delegate authority to the General Manager, Transportation Services to consent to any transfer of assignment under any Pipeline Crossing Agreement where, after consulting with the Chief Financial Officer, it is determined that there is no financial impact of the proposed change to the City, and all provisions of the Pipeline Crossing Agreement continue to be in force and effect, and such delegation includes authority to negotiate and execute an assignment agreement where deemed necessary by the City Solicitor on terms and conditions substantially similar to those described in the report (May 25, 2021) from the General Manager, Transportation Services and on such other terms and conditions satisfactory to the General Manager, Transportation Services and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

There will be no direct financial impact to the City as a result of entering into the proposed Agreement with Imperial Oil.

Imperial Oil will be responsible for any costs incurred by the City due to construction, installation, and maintenance of its pipeline in City streets in accordance with this agreement including any potential contamination on the right of way.

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

DECISION HISTORY

City Council, at its meeting of May 14 and 15, 2019, directed staff to review Imperial Oil's application to the Ontario Energy Board for the Waterdown to Finch Project and authorized City Intervention to participate at the Ontario Energy Board proceedings as an intervenor:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.MM7.17

COMMENTS

Imperial Oil falls under the jurisdiction of the Ontario Energy Board (OEB) and has rights of entry to the City's public highways under provincial legislation. Imperial Oil received approval from the OEB for leave to construct a pipeline that would replace an existing pipeline carrying refined oil product between Imperial Oil's Waterdown Pump Station in the City of Hamilton and its Finch Terminal in North York. The OEB has required the work to proceed with all necessary permits and approvals. As a condition of issuing a permit for work in the public highways, the City has requested that Imperial Oil sign the Pipeline Crossing Agreement which contains a number of protections for the City and establishes roles and responsibilities.

Imperial Oil submitted an application to Transportation Services for internal review of the replacement of a pipeline within the public highways of the City of Toronto in Etobicoke Centre, Etobicoke North, Humber River Black Creek, and York Centre. Please see the Attachment 1: Schedule A for a map of the pipeline area in Toronto.

Transportation Services, Engineering Construction Services, and Toronto Water divisions reviewed the application for any impacts on infrastructure within the City of Toronto and its public right of way. As part of this review, staff recommend entering into the agreement with Imperial Oil to clearly establish protections for the City and define roles and responsibilities between the City and Imperial Oil.

Ontario Energy Board Decision

On March 12, 2020 the Ontario Energy Board approved Imperial Oil's request to construct approximately 63 kilometers of 12-inch dimeter pipeline for the transportation of refined petroleum products from it facility in the City of Hamilton to its facility in the City of Toronto. The pipeline will be largely within public highways in the City of Hamilton, the City of Burlington, the Town of Milton, the Town of Oakville, the City of Mississauga and the City of Toronto. Approximately 20km of pipeline is located within the City of Toronto. The construction of the new pipeline is anticipated to reduce the risk of accidental rupture and spills.

As a part of this approval the OEB considered: the need for the project; an alternative route; environmental and landowner concerns; and consultation with indigenous groups. The OEB required that Imperial Oil must obtain all necessary permits, licenses, certificates and agreements.

In addition, Toronto Water will enter into seven easement agreements with Imperial Oil Limited, along with a Confirmation and Acknowledgement letter. Six of these easements are located within private open space areas such as Parks, Forestry and Recreation owned -property and one easement occurs within Transportation Services owned lands used for Utility Corridors. A permanent easement agreement is being established for these. The Imperial Oil Pipeline will also be crossing several City easements on third party lands such as the Hydro One Corridor where City assets (i.e., watermains and sewers) are located.

Summary of Key Terms

The Pipeline Crossing Agreement proposed by staff for Imperial Oil includes the following provisions that establish the roles and responsibilities of the parties regarding work in the public highway and protection of the City's interests. These key terms are will be used as a basis for negotiating future agreements under the standing delegated authority requested in this report.

1. The term for the Agreement for access to public highways is 70 years with an option for renewal for a further 30 years with consent of the City. This term was agreed upon as the current pipeline has existed for 70 years and mitigation measures are in place to ensure the lifetime of the pipeline.

2. The Company shall prior to construction, post financial security in the form of a letter of credit sufficient to secure payment of the estimated total cost of the repair and restoration of the Public Highways.

3. The Company shall pay all required permit and construction fees, including but not limited to the cost of permanent restoration, including pavement degradation and work-around costs incurred by the City as a result of the activities of persons doing construction within the public highways.

4. The Company shall submit Certificates of Insurance, including Commercial General Liability Insurance, Pollution Liability Insurance, Standard Owner's Automobile Liability Insurance, and Environment Liability Insurance as well as any other insurance as may be required by the City from time to time.

5. The Company shall indemnify and save harmless the City with respect to any claims or losses incurred as a result of the construction and maintenance of the network pipeline and the use of the public highways, except in the event of damage or injury due to the gross negligence of the City. The City shall not be liable for any damage to the network pipeline however caused where the Company has failed to provide 'as-built drawings' or accurate locate information as requested.

6. All work done by the Company within the public highway is subject to the City's standard requirements for persons doing construction or otherwise occupying the public highway (i.e., submission of permit applications, pre-approval of plans, issuance of permits, provision of security, warranty of temporary restoration, submission of as-built drawings, etc.) All work is to be done to the satisfaction of the General Manager in accordance with City policies.

7. The Company shall be obliged to pay all applicable taxes, levies, charges, etc.

8. The City will not at the present time charge the Company a fee in the nature of a land based licence or lease fee for the use of the public highways during the term, unless in future it is permitted by law, including Provincial or Federal legislation and/or a

future binding decision (court), to do so in which case, the fee shall reflect rates then charged by the City for the use for similar purposes in the public highways.

9. Any future relocation of the Company's pipeline that may be required for a bona fide municipal purpose is subject to a sliding scale of cost allocation. The City would pay for relocations for the first three years after issuance of the permit with the Company thereafter assuming an increasing share of the cost over time. After 10 years, 100 per cent of the cost of relocation is the responsibility of the Company.

10. The company shall assume all environmental liabilities relating to its use of the City's public highway and shall clean up any hazardous materials which results from the operations of the company in the public highway.

11. The agreement contains commercial provisions satisfactory to the General Manager, Transportation Services, including requiring the City's consent for assignment of the agreement in the event that control of the Company changes, default provisions, termination provisions and related remedies.

12. The consent granted by the City is non-exclusive, applies on an 'as-is' basis and does not convey a property interest in the public highways.

13. The Company will participate in joint planning and co-ordinating processes to reduce disruption and damage to the public highways and at all times will be a member of a 'locate' service.

14. The Company will repair any damages to the public highways, at its sole cost and to the satisfaction of the General Manager of Transportation Services. All requirements of the General Manager of Transportation are to be met during any construction.

15. The Company shall ensure that third parties working within the Crossing Lands comply with the terms of this Agreement, at their sole expense, and to all Applicable Laws.

Request for Standing Authority

A standing delegated authority for negotiating and entering into these agreements would avoid adding to lengthening committee and Council agendas, provide a higher level of customer service, and eliminate the need to report on additional agreements which are wholly within the scope of authority being sought.

The authority being sought would only allow for variation from the current template if the variation does not materially affect the potential liability of the City. If the General Manager is of the view that the variation, or any subsequent amendment to the Agreement, does materially affect the potential liability of the City, then specific authority to enter into that agreement will be the subject of a staff report to Committee and Council as required.

Summary

Imperial Oil received Leave to Construct the Waterdown to Finch project at its application to the Ontario Energy Board to construct, install, maintain and operate its pipeline within the City's public highways. Transportation Services has undertaken an extensive review of the proposal to ensure that the installation of the pipeline will not affect City infrastructure in a negative manner and has no objections to the proposal. The proposed Pipeline Crossing Agreement, as negotiated by representatives of the company and City staff, and recommended in this report would permit the company to carry out its operations in City public highways on standard terms and conditions recommended by City Staff.

Transportation Services will consult locally impacted Councillors when executing a Pipeline Crossing Agreement on behalf of the City. Transportation Services staff will work in consultation with the ward Councillors and area representatives to limit any construction impacts to affected streets in the neighbourhood. The ongoing consultation process will include consistent engagement between staff and the ward Councillors in order to mitigate any impacts of planned construction activities related to the Imperial Oil project.

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SIGNATURE

Barbara Gray, General Manager
Transportation Services

ATTACHMENTS

Attachment 1: Schedule A - Map of Pipeline Area within Toronto

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