

Nominal Lease Agreement with the Ontario Tennis Association - Allen East District

Date: June 17, 2022

To: General Government and Licensing Committee

From: Executive Director, Corporate Real Estate Management

Wards: 6 - York Centre

SUMMARY

In October 2021, City Council directed the Executive Director, Corporate Real Estate Management, in consultation with the Chief Executive Officer, CreateTO to explore opportunities to locate a not-for-profit tennis facility, bound to a satisfactory public access agreement with the Ontario Tennis Association ("O.T.A."), a not-for-profit organization, at the southwest end of the Allen East District, and report back with all major terms and conditions of any required agreements.

The purpose of this report is to obtain City Council authority for the City to enter into a nominal ground lease agreement (the "Lease") with the O.T.A. for approximately three acres of City-owned property located east of Allen Road and south of Sheppard Avenue West (the "Property") as shown on Attachment 1 to this report, for the purpose of operating a national tennis training and sports centre with public access. The O.T.A. will provide approximately 15,000 square feet of space dedicated for community-specific programming and a minimum of 50 percent public access during operating hours, a portion of which shall be fulfilled through tennis court access and programming. This report further seeks City Council authority for the City, to negotiate and enter into a Community Access Agreement with the O.T.A., identifying the specifics around how public access and community programming will be operationalized.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management recommends that:

1. City Council authorize the Executive Director, Corporate Real Estate Management, on behalf of the City as landlord, to enter into nominal forty year lease with the Ontario Tennis Association for the property located east of Allen Road and south of Sheppard Avenue West, substantially on the terms and

conditions set out in Attachment 2, and on such other or amended terms and conditions that are acceptable to the Executive Director, Corporate Real Estate Management, or their designate, in consultation with the General Manager, Parks, Forestry and Recreation, and in a form satisfactory to the City Solicitor.

2. City Council authorize the General Manager, Park, Forestry and Recreation, or their designate, in consultation with the Executive Director, Corporate Real Estate Management, to negotiate and execute the Community Access Agreement on behalf of the City in a form satisfactory to the City Solicitor.

3. City Council authorize the Executive Director, Corporate Real Estate Management, or their designate, to execute the Lease and administer and manage the Lease including the provision and execution of any amendments, consents, approvals, waivers, notices, and notices of termination, provided that the Executive Director, Corporate Real Estate Management may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.

FINANCIAL IMPACT

The Lease will be provided for nominal rent and in accordance with the terms of the Lease, the tenant will be responsible for all costs, including development costs, construction, maintenance and operating costs, replacement costs, and property taxes, related to Property.

The estimated total opportunity cost of the Lease over the fifty year, less one day, potential term (which includes an option to extend the Lease for a ten year, less one day extension term) is \$37.5 million, based on a land value of three acres at \$5.0 million per acre, and at an annual rental rate of 5 percent.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

At its meeting on October 1 and 4, 2021, City Council endorsed the Allen East District Plan and directed the Executive Director, Corporate Real Estate Management, in consultation with the Chief Executive Officer, CreateTO, to explore opportunities to locate a not-for-profit tennis facility, bound to a satisfactory public access agreement, in partnership with the Ontario Tennis Association, to be located on the southwest end of the Allen District.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.NY25.6>

At its meeting on April 14, 2015, North York Community Council directed City Planning staff to begin community consultation for the lands within the Allen District, and direct the Community Planning to draft a final report phasing a strategy for the implementation Nominal Lease with Ontario Tennis Association - Allen East District

of the Allen district. Build Toronto submitted a District Plan for the Allen District, which is located within the Downsview Area Secondary Plan area ("D.A.S.P."). The Allen District is generally located south of Sheppard Avenue West, on either side of Allen Road. The Downsview Area Secondary Plan requires the completion of a District Plan to the satisfaction of the City prior to any development proceeding in a District. The purpose of the District Plan is to set out a finer grain level of detail for the development of the area. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.NY5.29>

The D.A.S.P. was initially approved in 1999 and amended in 2001, however, at its meeting of April 28 and 29, 2008, City Council directed City Planning staff to undertake a review and update of the D.A.S.P. In February 2010, a Final Report from the Director Community Planning, North York District recommended adoption of amendments to the Official Plan, including an updated Secondary Plan and approval of a Transportation Master Plan and Servicing and Stormwater Master Plan. Consideration of the Final Report was deferred three times by North York Community Council. At its meeting of April 21, 2011, North York Community Council recommended adoption of the Secondary Plan with amendments. At its meeting of May 17, 18 and 19, 2011 City Council referred the recommended Plan back to North York Community Council for further consideration following more public consultation. An appeal was made to the former Ontario Municipal Board and on August 17, 2011, the Board approved the updated Downsview Area Secondary Plan and related amendments to the City's Official Plan. The Downsview Area Secondary Plan can be found at the following link: <https://www.toronto.ca/wp-content/uploads/2017/11/902d-cp-official-plan-SP-7-Downsview.pdf>

COMMENTS

Allen East District Plan

Brought into force in 2011, the Downsview Area Secondary Plan (OPA 111, the D.A.S.P.) provides policies to structure future development of the City-owned lands located on high lands between the Don River and Black Creek watersheds. Located within the D.A.S.P. Area, the Allen District is one of seven districts established by the D.A.S.P. and comprises land to the south of Sheppard Avenue West, on either side of Allen Road. CreateTO guides the future development strategies of approximately 72 acres (which includes 54 acres of developable lands) of these City-owned lands called the Allen East District Plan Area. The Property to be leased to the Ontario Tennis Association (O.T.A.) is located within the Allen East District Plan Area.

The Allen East District planning process followed the planning process articulated in the D.A.S.P. and included ongoing discussions with City of Toronto staff with respect to affordable housing, community services and facilities, public art, transportation, land uses, servicing, and urban design. City staff input and feedback was incorporated into each study and report.

The major goals of the D.A.S.P. are to:

- Achieve a connected parks and open space system of which the National Urban Park will be the primary element;

- Encourage a mix of land uses that is compact and is supportive of existing and planned transit investments and that specifically provides for transit supportive scales of development around subway stations;
- Create an integrated public street network that connects lands within the Secondary Plan area to the surrounding City and has a high quality of urban design; and
- Encourage and support sustainable development and design consistent with applicable City policies such as the City's Climate Change Action Plan and Energy Strategy, "Change is in the Air" and the Toronto Green Standard (OPA 111, Section 1.2).

The City's Partnership with the Ontario Tennis Association

In support of CreateTO's District Plan Report for the Allen East District, a requirement of the D.A.S.P., the Community Services and Facilities ("CS&F") strategy was approved by City Council in May 2021. The CS&F Strategy is required to support and meet the needs of residents and employees in the D.A.S.P. area. The criteria listed in Policy 3.6.5. of the D.A.S.P. encourages the use of innovative approaches for providing community services and facilities including, shared uses and integrating facilities within private developments. Coming out of the CS&F strategy, in 2021 City Council provided the following direction to City staff:

1. Within the Allen East District, a minimum of one acre of land will be reserved for a potential community use and is anticipated to be used for the proposed O.T.A. facility; and
2. Staff will work with the Parks, Forestry, and Recreation, and/or Social Development, Finance, and Administration on a Community Use Agreement for the O.T.A. facility.

Key Terms of the Lease Agreement

As directed by City Council, City staff have negotiated the Lease with the O.T.A. with an initial term of 40 years (plus an option to extend the term for 10 years, less one day). The term of the lease will commence following receipt of site plan approval for the new development and the tennis facility must be fully constructed and operational by December 31, 2029. The community access agreement will be executed concurrently with the Lease and will require that approximately 15,000 square feet of the Property be dedicated for community specific programming, and a minimum of 50 percent public access during operating hours, a portion of which shall be fulfilled through court access/programming. See Attachment 2 for all key terms and conditions of the Lease.

Conclusion

City staff considers the proposed Lease with the O.T.A. to be fair and reasonable to both parties and recommends City Council authorize the Lease with the O.T.A to develop and operate the Property as a world class tennis facility.

CONTACT

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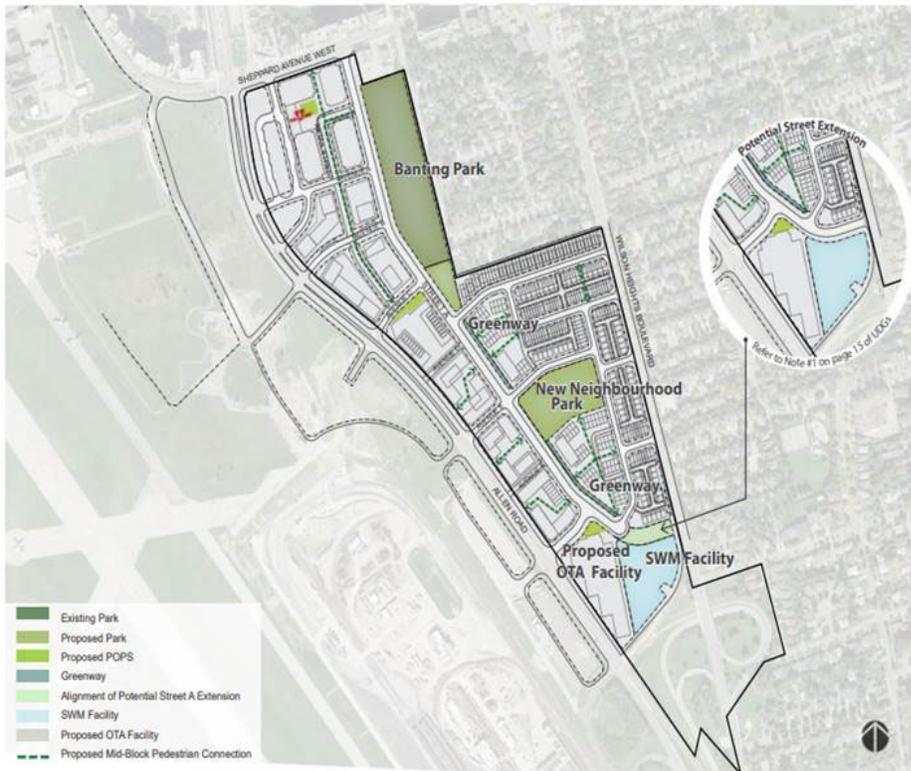
SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Attachment 1 - Location Maps
Attachment 2 - Major Terms and Conditions of Lease
Attachment 3 - Proposed Demonstration Plan

Attachment 1 - Location Maps



Attachment 2 - Major Terms and Conditions of Lease Nominal Lease with Ontario Tennis Association - Allen East District

1. Landlord: City of Toronto, in its capacity as landlord and property owner, and not as municipal authority or planning approval authority.
2. Tenant / non-profit status: Ontario Tennis Association, a registered non-profit organization or charity, or a non-profit corporation wholly-owned by Ontario Tennis Association, for the purpose of operating the Tennis Facility. The Tenant shall maintain its non-profit or charitable status throughout the Term and any extension thereof.
3. Leased Lands / "As is Condition": Approximately three (3) acres of land located at the southwest end of the Allen District Plan, as shown on the "Proposed Demonstration Plan" dated February 2021 attached hereto as Attachment 3. The Tenant acknowledges that the actual location and size of the Leased Lands will be confirmed by written notice from the Landlord, after the draft Plan of Subdivision has been registered. The Leased Lands are leased to the Tenant in an "as is" condition, including environmental condition, subject to Section 17 of this Term Sheet.
4. Project / Tennis Facility: The Downsview Training Center for the Ontario Tennis Association will be a state-of-the-art facility supporting the burgeoning growth of competitive tennis in Canada. Located in North Toronto at Allen Road in between the TTC Wilson and Sheppard West subway Stations, the Center will be a landmark location for training and recreation.

This facility will provide twenty (20) regulation tennis courts to train the next generation of athletes. Ten (10) of these courts will be indoor, within a fully conditioned space, with another ten (10) at the roof top level, with an operable enclosure allowing for open air play. There is potential for providing two additional floors providing ten (10) more indoor tennis courts on one level, as well as twenty (20) indoor pickleball courts on another for public use. Supporting these courts are a generous entry lobby and change facilities at the ground floor level and a pro-shop for equipment and repair. The facility will also provide a generous dry training area for the athletes, several community multi-purpose rooms, with kitchenette and catering support, which are available to the broader public, as well as large community function spaces. Supporting the facility is an administration area at the upper level, as well as two hundred (200) below grade parking spaces (collectively the "Tennis Facility").

5. Funding/Fixturing Period/Commencement Date:
 - (a) The Tenant shall provide evidence of funding to construct and complete the Tennis Facility, satisfactory to the Executive Director, Corporate Real Estate Management, acting reasonably, on or before December 31, 2024, failing which, the Lease shall terminate, without any compensation whatsoever to the Tenant.
 - (b) The Fixturing Period shall commence on the earlier of:
 - (i) the date that is six (6) months after Site plan approval is secured; and
 - (ii) the date prior to commencement of construction of the Tennis Facility,

and the Fixturing Period shall expire on the earlier of:

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- (i) December 31, 2029; and
- (ii) the date on which the Tenant substantially completes construction of the Tennis Facility and commences the use thereof with its constituents or the public.

The Commencement Date of the Term shall be the day following the expiry of the Fixturing Period, with the actual Commence Date to be confirmed in writing. Throughout the Fixturing Period, all of the terms and conditions of the Lease shall apply, except for the commencement of the Term. The Tenant shall provide written notice to the Landlord, at least sixty (60) days' prior to commencement of construction.

In the event the Fixturing Period has not commenced on or before December 31, 2027, the Lease shall terminate, without any compensation whatsoever to the Tenant.

6. Development Applications/Tenant Covenant to Complete Development Plan:

The Tenant shall diligently proceed with and complete all development applications for and construction of the improvements on the Leased Lands in accordance with plans and specifications approved by the Executive Director, Corporate Real Estate Management, as follows.

Without limiting the foregoing:

- Tenant shall submit all required development applications, on or before December 31, 2025;
- Tenant shall secure Site Plan approval for the Tennis Facility, on or before December 31, 2026;
- Tenant to commence construction, on or before December 31, 2027;
- Tenant to complete the Tennis Facility in accordance with plans and specifications approved by the Landlord, on or before December 31, 2029.

(each a "Construction Deadline", collectively the "Construction Deadlines").

The Construction Deadlines are subject to Force Majeure. The Landlord shall have the right to terminate the Lease, without any compensation to the Tenant whatsoever, if Tenant does not meet any of the Construction Deadlines. If any of the foregoing Construction Deadlines have not been met within one (1) year of the stated date for such Construction Deadline, by any reason other than Tenant delay, Force Majeure, or default by the Tenant of any of the terms and conditions of the Lease, the Tenant shall have the right to terminate the Lease, without any compensation to the Landlord whatsoever.

The Tenant shall provide a construction schedule satisfactory to the Executive Director, Corporate Real Estate Management, to complete the Tennis Facility.

7. Force Majeure: If the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by the Lease because of a strike, labour trouble, materials or services not available, power failure, restrictive governmental laws

or regulations, riots, insurrection, sabotage, rebellion, war, act of God, pandemics, such as COVID-19 and any public health or other order in respect thereof, unreasonable delay in municipal processing of development applications which may be required, the non-completion of site servicing including access roads to the boundaries of the Lease Lands and connection of utilities to the boundary of the Leased Lands in a manner adequate for Tenant to commence construction or for Tenant's use, or any other similar reason, that is not the fault of the party delayed, the doing of the thing is excused for the period of the delay and the party delayed will do what was delayed or prevented within the appropriate period after the delay. The foregoing does not excuse any delay caused by financial inability or excuse the Tenant from payment of amounts that it is required to pay, in the amounts and at the times specified in the Lease.

8. Term: Initial term of 40 years

9. Option to Extend: Provided the Tenant is not in default beyond any notice and applicable cure periods, and has rectified all defaults, then the Tenant shall have the option to extend the Initial Term for a further period of ten (10) years less one (1) day (the "Extension Term"), by providing written notice to the Landlord no later than 24 months before the expiry of the Initial Term.

10. Base Rent: Base Rent during the Initial Term and the Extension Term will be equal to One Dollar (\$1.00) per annum.

11. Additional Rent: The Lease shall be completely net and carefree to the Landlord. Tenant shall be responsible for all taxes and taxes and costs whatsoever, current and future, including but not limited to realty taxes, any special assessments, realty taxes, any special assessments, harmonized sales tax, rental taxes, operating costs, utilities, development charges, development charges, and all costs with respect to the Leased Lands, the Tennis Facility, and all construction, operation, repair, maintenance and replacement costs arising therefrom, including environmental remediation if required.

Landlord acknowledges that the Tenant intends to seek exemption or one hundred (100%) percent relief from any obligations to pay realty taxes, special assessments, or development charges.

12. Permitted Use/ Community Access Agreement/ Cross Default: Subject to force majeure, Tenant to use and operate the Leased Lands continuously, actively and diligently as a national tennis training and sports centre with public access, with 15,000 square feet dedicated for community specific programming and a minimum of 50% public access during operating hours, a portion of which shall be fulfilled through court access/programming. A Community Access Agreement shall be entered into between the Tenant and the Landlord to detail the specifics of how public access and community programming will be operationalized. Default of the Community Access Agreement shall be a default under the Lease.

Notwithstanding the foregoing, the Tenant shall have the right to cease business operations on no less than thirty (30) days' notice and not more than once every 5 years. If the Tenant fails to re-commence continuously, actively, and diligently within

six (6) months of ceasing business operations, then the Landlord may terminate the Lease, without any compensation whatsoever to the Tenant.

13. Approvals / Consents / No Fettering City Council:

In addition to City Planning approval, the design and construction of the Tennis Facility and detailed plans and specifications shall be subject to prior written approval by the Executive Director, Corporate Real Estate Management, not to be unreasonably withheld. The Tennis Facility and ancillary space shall be completed and open for operations on or before December 31, 2029, subject to Force Majeure, failing which, the Landlord shall have the right to terminate the Lease, without any compensation whatsoever to the Tenant.

In addition, nothing in this Term Sheet or the Lease derogates from, interferes with or fetters the Landlord's exercise of all of its rights and obligations as a municipality and planning approval authority (whether discretionary or mandatory), or imposes any obligations on the Landlord in its role as a municipality and planning approval authority. The Landlord shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities.

The Tenant's development protocols shall adhere to policies as detailed in Downsview Area Secondary Plan (DASP).

14. General & Capital Repairs & Maintenance / Ongoing Operating Costs:

Tenant shall maintain the Leased Lands and the Tennis Facility to a First Class National Tennis and Sports Facility standard consistent with the building's age, and bear all costs associated with maintenance, repair and replacement during the Term, and any extension thereof. This includes without limitation, all utilities, insurance, structural repairs, major repairs, and repair, maintenance and replacements to elevators, roofs, foundation, doors, windows and cladding, parking structures and surfaces, chillers, boilers, HVAC, etc.

Notwithstanding the foregoing, the Landlord shall be responsible to rectify damage caused by the Landlord, its agents, or employees.

15. Condition of Premises at Expiry or Earlier Termination:

At the expiry or earlier termination of the Lease, the Landlord and the Tenant shall agree, acting reasonably, for Tenant either to (i) surrender the Leased Lands and Tennis Facility to Landlord in good order, condition and repair, except for reasonable wear and tear consistent with the building's age, maintained to a First Class National Tennis and Sports facility; or (ii) demolish the buildings and improvements on the Leased Lands and surrender the Leased Lands in the condition in which they were received.

16. Security for Construction Obligations:

Prior to commencing construction, the Tenant shall:

(a) provide evidence satisfactory to the Executive Director, Corporate Real Estate Management, of its financial capacity to complete construction of the Tennis Facility; and

(b) deliver a security deposit to the City in an amount equal to Twenty Five (25%) Percent of the budgeted value of construction for the Tennis Facility, to protect the City should the development not take place as contemplated. Such security shall be reduced as work is completed and once the Executive Director, Corporate Real Estate Management, is satisfied that all amounts owing to contractors, suppliers and (sub) trades have been paid in full, and that applicable lien periods have expired. The security deposit shall be in the form of cash, certified cheque or an irrevocable and unconditional Letter of Credit from a major Canadian bank, in the form required by the City's Chief Financial Officer.

17. Leasehold Parcel / Leasehold Mortgages / Loans:

When a registrable legal description is available, the Tenant shall apply for a leasehold parcel for the Leased Lands. The Tenant is permitted to mortgage its leasehold interest or assign the Lease as security, for bona fide financing of the construction of the Tennis Facility, on such terms and conditions as agreed to by the Tenant and the Landlord, each acting reasonably.

18. Assignment / Transfer / sublet: The Tenant shall not assign, transfer or sublet ("Transfer") the Leased Lands, Tennis Facility or any part thereof, without obtaining the prior written consent of the Landlord, not to be unreasonably withheld. Notwithstanding the foregoing, the Tenant may enter into subleases of a portion of the Premises, that are ancillary to its Permitted Use, to service providers such as a food or beverage facility, a sports equipment and/or apparel store, a health or physical treatment facility, and the like (each a "Permitted Transfer"). Any request for consent shall be delivered with sufficient information from the Tenant or the proposed transferee to enable the Landlord to assess the request. No assignment or sublease of substantially all of the Tennis Facility and/or Leased Lands for substantially all of the Term shall be effective until the proposed transferee has entered into an agreement, in a form satisfactory to the City Solicitor, whereby the proposed transferee expressly agrees to assume all of the obligations and liabilities of the Tenant.

The Tenant acknowledges and agrees that the proceeds of any Permitted Transfer shall be used to fund the operations of the Tennis Facility.

19. Insurance / Release and Indemnity:

Tenant shall to take out comprehensive insurance in the amounts and forms as required by the Executive Director, Corporate Real Estate Management, in consultation with Insurance & Risk Management, and shall release, indemnify and save harmless the Landlord with respect to any injury, loss, damage, claims, costs and other proceedings whatsoever. The Tenant shall indemnify and save harmless the Landlord from any and all costs, expenses, claims, actions and losses of every nature and kind whatsoever and of and from all liabilities of every nature and kind whatsoever in connection with the Leased Lands and the Lease to be entered into with the Tenant, whether accrued, actual, contingent.

20. Environmental Condition: Prior to commencing construction of the Tennis Facility, the Tenant at its expense, shall have the right to conduct a Phase I environmental site assessment, and if necessary a Phase II environmental site assessment, and shall provide a copy thereof to Landlord together with a reliance letter from tenant's qualified environmental consultant addressed to Landlord ("Baseline Report").

The Lease shall include City's standard requirements regarding environmental claims, as modified by this Section 17.

21. City of Toronto policies: Tenant shall at all times comply with City of Toronto policies, including but not limited to Workers' Rights, Fair Wage, Labour Trade Contractual Obligations in the Construction Industry, and Non-Discrimination Policies.

22. Information not Confidential: Tenant acknowledges that the information, documents and correspondence provided by Tenant to Landlord (the "Tenant's Information") may be reproduced or otherwise copied by the Landlord, may become part of the public record of the transaction provided for in this Lease transaction, and consents to the disclosure of the Tenant's Information by the Landlord pursuant to the Municipal Freedom of Information and Protection of Privacy Act (Ontario) or otherwise, and to the extent as required by law.

23. Execution of Lease / Lease Conditions:

The Lease shall be prepared in the Landlord's form, in a form acceptable to the Landlord and the Tenant, each acting reasonably, and which shall incorporate the terms and conditions herein. For greater certainty, construction cannot commence on the Leased Lands, until the Lease and Community Access Agreement are fully executed.

24. The Lease is conditional in both Tenant and Landlord's favour upon:

- Tenant receiving all appropriate regulatory approvals for the Tennis Facility development, on or before December 31, 2027,
- The Tenant shall not appeal any decisions or non-decisions of the City as planning approval authority or the Committee of Adjustment without the consent of the City as Landlord.
- Tenant making the facilities available to the public, the details of which will be agreed to with Parks, Forestry and Recreation to be detailed in the Community Access Agreement (to be attached as a Schedule to the Lease), in advance of execution of the Lease and to be registered on title with the Lease on title to the Leased Lands.
- Agreement by the parties on the terms and conditions of the Lease and the Community Access Agreement, on or before October 31, 2023.

Attachment 3 - Proposed Demonstration Plan February 2021

