

DELEGATED APPROVAL FORM
DEPUTY CITY MANAGER, CORPORATE SERVICES
EXECUTIVE DIRECTOR, CORPORATE REAL ESTATE MANAGEMENT

TRACKING NO.: 2021-282

Approved pursuant to the Delegated Authority contained in Article 2 of City of Toronto Municipal Code Chapter 213, Real Property

Prepared By:	Mike Saffran	Division:	Corporate Real Estate Management
Date Prepared:	October 25, 2021	Phone No.:	(416) 392-7205
Purpose	To obtain authority to grant a permanent easement over portions of City-owned lands from the Island Filtration Plant on the Toronto Islands to the John Street Pumping Station ("JSPS") to Enwave Energy Corporation ("Enwave") to facilitate the construction and operation of a new raw water tunnel, known as the Deep Lake Water Cooling Expansion Project ("DLWC Project").		
Property	Portions of City-owned lands on the Toronto Island and on the mainland, including the properties municipally known as HTO Park, the future Rees Street Park, and lands in and around the JSPS, required for the DLWC Project, as set shown on Appendix "B", herein after the ("Easement Lands" and the "Access Lands"), and as described in the permanent easement agreement.		
Actions	1. Authority be given to grant a permanent easement over the Easement Lands and the Access Lands to Enwave substantially on terms and conditions outlined herein and on such further and other terms as may be acceptable to the Deputy City Manager, Corporate Services and in a form satisfactory to the City Solicitor.		
Financial Impact	Revenue in the amount of \$3,160,778.49 exclusive of HST is anticipated from the granting of the permanent easement and will be directed to Land Acquisition Reserve Fund (XR1012). The Chief Financial Officer and Treasurer has reviewed this DAF and agrees with the financial implications as identified in the Financial Impact section.		
Comments	By adoption of Item IE10.9 on December 17, 18, 2019, City Council authorized the negotiation of the Amended and Restated Energy Transfer Agreement, which sets out the terms of Enwave's DLWC Project. The Amended and Restated Energy Transfer Agreement was executed by Enwave and the City on February 26, 2021. To complete the DLWC Expansion project, Enwave requires a permanent easement interest in City-owned lands (that are not public highways). In accordance with the City's Real Estate Disposal By-law, No. 814-2007, the Easement Lands and Access Lands were declared surplus by the DCM, CS on May 13, 2021 (DAF No. 2021-089) with the intended manner of disposal to be by way of granting a permanent easement to Enwave. In accordance Article 2 of City of Toronto Municipal Code, Chapter 213, General Condition (L) of Appendix B, approval of the Director, Waterfront Secretariat was obtained. The attached major terms and conditions are considered fair and reasonable and the payment by Enwave is considered reflective of market value.		
Terms	(see page 4 for Major Terms and Conditions)		
Property Details	Ward:	10 Spadina-Fort York	
	Assessment Roll No.:	N/A	
	Approximate Area:	Toronto Islands: 10,652.1 m ² (114,662.0 ft ²) + Mainland: 1,257.7 m ² (13,538.2 ft ²)	
	Other Information:	OPA designated lands, reference Map 29, subject to Site and Area Specific Policy No. 265, as amended by By-law #1025-2020	

A.	Executive Director, Corporate Real Estate Management has approval authority for:	Deputy City Manager, Corporate Services has approval authority for:
<p>1. Acquisitions:</p> <p>2A. Expropriations Where City is Expropriating Authority:</p> <p>2B. Expropriations For Transit-Related Purposes Where City is Property Owner or Has Interest in Property Being Expropriated:</p> <p>Issuance of RFPs/REOs:</p> <p>4. Permanent Highway Closures:</p> <p>5. Transfer of Operational Management to Divisions, Agencies and Corporations:</p> <p>6. Limiting Distance Agreements:</p> <p>7. Disposals (including Leases of 21 years or more):</p> <p>8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:</p> <p>9. Leases/Licences (City as Landlord/Licensor):</p> <p>10. Leases/Licences (City as Tenant/Licensee):</p> <p>11. Easements (City as Grantor):</p> <p>12. Easements (City as Grantee):</p> <p>13. Revisions to Council Decisions in Real Estate Matters:</p> <p>14. Miscellaneous:</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million.</p> <p><input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million.</p> <p>Request/waive hearings of necessity delegated to less senior positions.</p> <p><input type="checkbox"/> Issuance of RFPs/REOs.</p> <p><input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.</p> <p><input type="checkbox"/> Transfer of Operational Management to Divisions, Agencies and Corporations.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p><input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$3 Million.</p> <p><input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding twelve (12) months, including licences for environmental assessments and/or testing, etc.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$3 Million.</p> <p><input type="checkbox"/> (a) Where total compensation does not exceed \$3 Million.</p> <p><input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p><input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).</p> <p><input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences</p> <p><input type="checkbox"/> (b) Releases/Discharges</p> <p><input type="checkbox"/> (c) Surrenders/Abandonments</p> <p><input type="checkbox"/> (d) Enforcements/Terminations</p> <p><input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppel Certificates</p> <p><input type="checkbox"/> (f) Objections/Waivers/Cautions</p> <p><input type="checkbox"/> (g) Notices of Lease and Sublease</p> <p><input type="checkbox"/> (h) Consent to regulatory applications by City, as owner</p> <p><input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title</p> <p><input type="checkbox"/> (j) Documentation relating to Land Titles applications</p> <p><input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$5 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$5 Million.</p> <p><input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$5 Million.</p> <p>Request/waive hearings of necessity delegated to less senior positions.</p> <p><input type="checkbox"/> Issuance of RFPs/REOs.</p> <p><input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.</p> <p><input type="checkbox"/> Transfer of Operational Management to Divisions, Agencies and Corporations.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$5 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$5 Million.</p> <p><input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$5 Million.</p> <p><input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding twelve (12) months, including licences for environmental assessments and/or testing, etc.</p> <p><input type="checkbox"/> (c) Where compensation is less than market value, provided tenant and lease satisfy Community Space Tenancy Policy criteria set out in Item EX28.8, as adopted by Council on November 7, 8 and 9, 2017, as amended from time to time.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$5 Million.</p> <p><input checked="" type="checkbox"/> (a) Where total compensation does not exceed \$5 Million.</p> <p><input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$5 Million.</p> <p><input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).</p> <p><input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences</p> <p><input type="checkbox"/> (b) Releases/Discharges</p> <p><input type="checkbox"/> (c) Surrenders/Abandonments</p> <p><input type="checkbox"/> (d) Enforcements/Terminations</p> <p><input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppel Certificates</p> <p><input type="checkbox"/> (f) Objections/Waivers/Cautions</p> <p><input type="checkbox"/> (g) Notices of Lease and Sublease</p> <p><input type="checkbox"/> (h) Consent to regulatory applications by City, as owner</p> <p><input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title</p> <p><input type="checkbox"/> (j) Documentation relating to Land Titles applications</p> <p><input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds</p>

B. Deputy City Manager, Corporate Services and Executive Director, Corporate Real Estate Management each has signing authority on behalf of the City for:

- Documents required to implement matters for which each position also has delegated approval authority.
- Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- Expropriation Applications and Notices following Council approval of expropriation.
- Community Space Tenancy Leases approved by delegated authority by the Deputy City Manager, Corporate Services and any related documents.

Pre-Condition to Approval

Complies with General Conditions in Appendix B of City of Toronto Municipal Code Chapter 213, Real Property

Consultation with Councillor(s)

Councillor:	Joe Cressy	Councillor:	
Contact Name:	Tom Davidson	Contact Name:	
Contacted by:	<input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> E-Mail <input type="checkbox"/> Memo <input type="checkbox"/> Other	Contacted by:	<input type="checkbox"/> Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Memo <input type="checkbox"/> Other
Comments:	No Objections – October 19, 2021	Comments:	

Consultation with Divisions and/or Agencies

Division:	PF&R / ECS /Planning	Division:	Finance / Toronto Water / Waterfront Secretariat
Contact Name:	Jason Bragg C Kaars-Sijpesteijn Mladen Kukic	Contact Name:	Patirica Libardo Niall Robertson David Stonehouse
Comments:	Concurs-10/18/21 Concurs-10/25/21 Concurs-10/15/21	Comments:	Concurs-10/15/21 Concurs-10/19/21 Concurs-10/17/21

Legal Services Division Contact

Contact Name: **Vanessa Bacher – October 15, 2021**

DAF Tracking No.: 2021-282	Date	Signature
Recommended by: Manager, Portfolio Management Scott Delahunt	Oct. 25, 2021	Signed by Scott Delahunt
Recommended by: Director, Real Transaction Services Alison Folosea	Oct. 25, 2021	Signed by Alison Folosea
<input checked="" type="checkbox"/> Recommended by: Executive Director, Corporate Real Estate Management <input type="checkbox"/> Approved by: Patrick Matozzo	Oct. 25, 2021	Signed by Patrick Matozzo
<input checked="" type="checkbox"/> Approved by: Deputy City Manager, Corporate Services Josie Scioli	Oct. 25, 2021	Signed by Josie Scioli

DAF 2021-282 Major Terms and Conditions (continued from page 1)

- An exclusive permanent easement over the Easement Lands, for the purpose of (i) the construction of the Tunnel and the Works (ii) maintaining the Tunnel and the Works; (iii) Utility Supply (iv) for examining, testing, inspecting, altering, repairing, removing, replacing, operating, using and maintaining the Tunnel and the Works.

Easement Lands:

Island Shaft: Part 1 on Plan 66R31943

Tunnel: Parts 2, 4, 5, 6, and 7 on Plan 66R31943

JSPS Shaft: Parts 8, 9, 10 on Plan 66R31943

JSPS Shallow Pipe Lands: Part 11 on Plan 66R31943

- A non-exclusive permanent easement at grade over the Access Lands, allowing Enwave access to their works on written notice to the City, in accordance with all facility rules and guidelines and in accordance with the access provisions set out in Section 9.16 of the Amended and Restated Energy Transfer Agreement dated February 2021.

Access Lands:

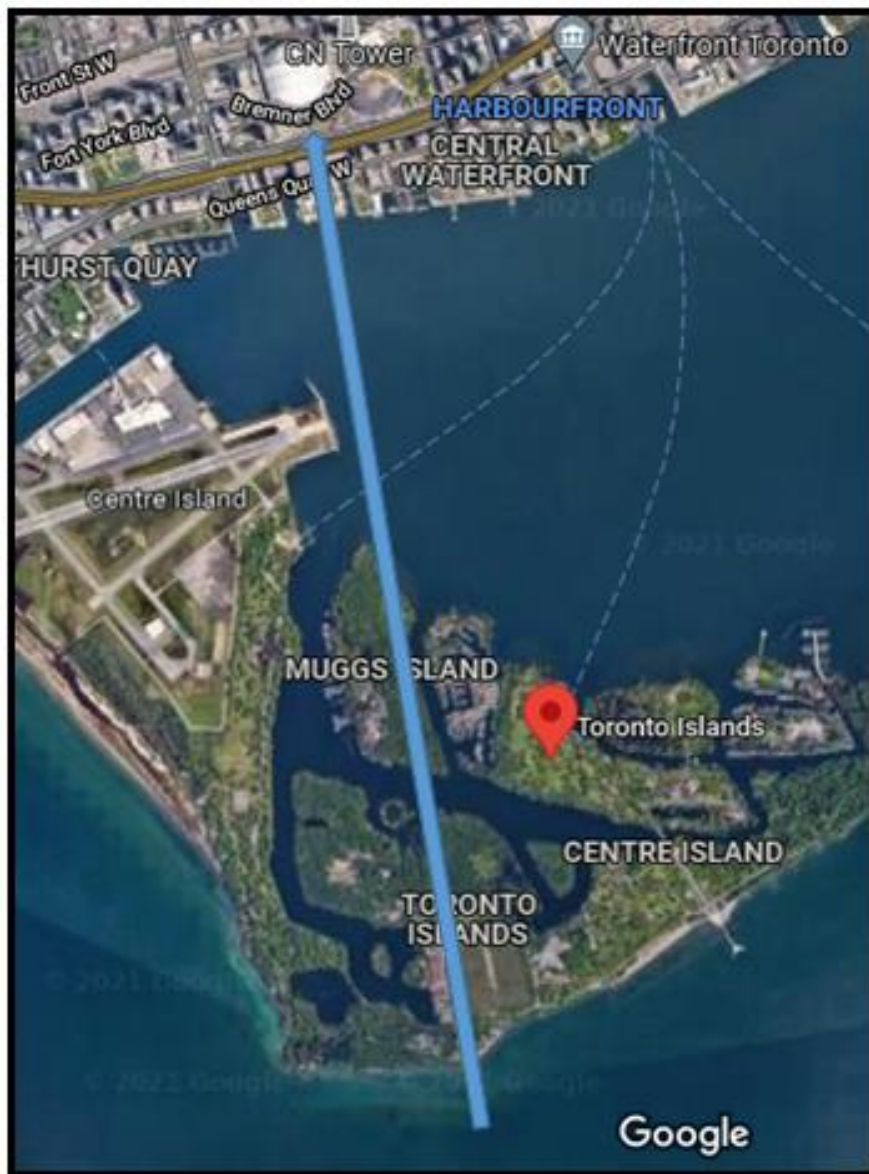
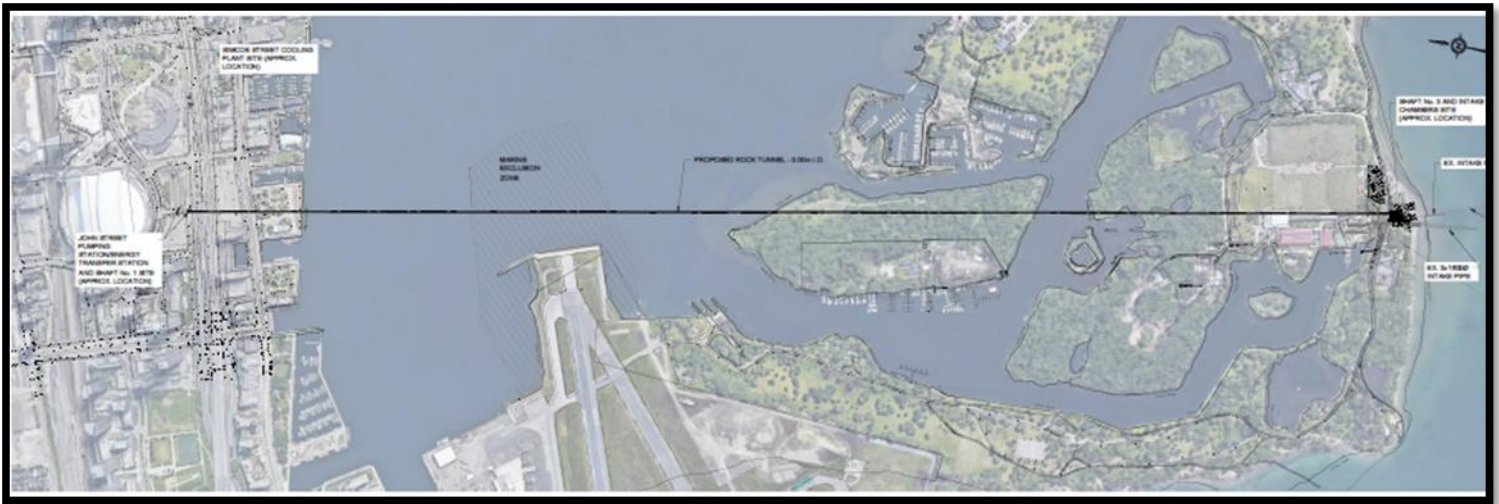
JSPS Shallow Pipe Lands: Part 11 on Plan 66R31943

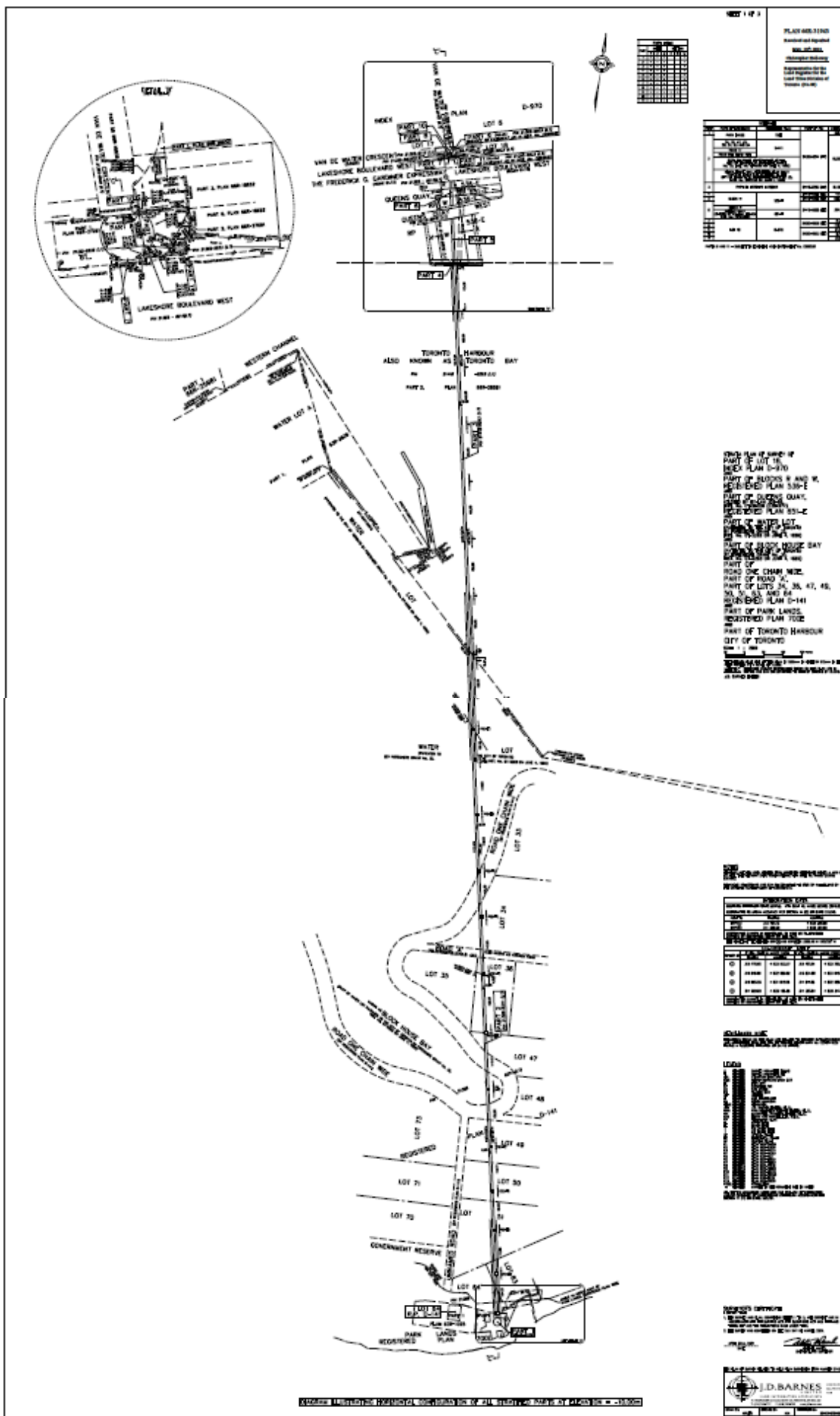
JSPS Shaft: Parts 8, 9, 10 on Plan 66R31943

Island Shaft: Part 1 on Plan 66R31943

- The Tunnel, Shaft and Works to be constructed in the Easement Lands shall be the property of Enwave.
- Enwave to pay compensation totalling \$3,160,778.49 exclusive of any applicable HST, payable in installments as follows: (i) \$1,053,592.83 by December 31, 2021; (ii) \$1,053,592.83 by March 31, 2022; and (iii) \$1,053,592.83 by January 31, 2023.
- Enwave to pay all closing costs including registration costs and land transfer tax, and to provide an HST certificate on closing providing that Enwave will self-assess and remit HST.
- Enwave accepts permanent easements "as is, where is" and City makes no warranty or representation and bears no liability with respect to the condition of the Easement Lands and Access Lands, including but without limitation, as to their environmental condition.
- Enwave responsible for all matters relating to the development and construction of the Shafts, the Tunnel and the Works, and for complying with all of its obligations under the Amended and Restated Energy Transfer Agreement.
- Prior to construction, Enwave shall:
 - Comply with all preconditions specified in the Amended and Restated Energy Transfer Agreement;
 - Complete a pre-condition survey and vibration monitoring plan in respect of the Island Filtration Plant and the John Street Pumping Station; and
 - Obtain all necessary consents and permits from all governmental and regulatory authorities.
- In exercising its rights under the easement Enwave shall comply with all applicable laws, restore City land subsequent to any entry, not increase City's insurance risk, not store or use any hazardous substances in the vicinity of the City's lands, and restore the City lands following any entry onto the Easement Lands.
- Enwave shall maintain all insurance provided for under the Amended and Restated Energy Transfer Agreement, with such coverage to include coverage for property damage, and a cross-liability/severability clause and to be in an amount of no less than \$20,000,000.00.
- Following completion of the Tunnel and Works Enwave shall provide:
 - As-built drawings;
 - Post construction condition survey for the Island Filtration Plant and the John Street Pumping Station, to the satisfaction of the City; and
 - a Qualified Personal Final Statement Letter confirming that it is unlikely that the Tunnel and Works on the Easement Lands subject to the MOE Order caused any off-site migration of Hazardous Substances in excess of applicable site condition standards; and that the Easement Lands subject to the MOE Order have been reinstated in accordance with the conditions specified in the MOE Order.
- Enwave shall at all times indemnify and save harmless the City from and against and all claims, demands, damages, losses, costs (including the costs of their respective solicitors of defending any such claims), charges, proceeds and actions.

Appendix "A"- Location Map





Easement Lands:

Island Shaft: Part 1 on Plan 66R31943

Tunnel: Parts 2, 4, 5, 6, and 7 on Plan 66R31943

JSPS Shaft: Parts 8, 9, 10 on Plan 66R31943

JSPS Shallow Pipe Lands: Part 11 on Plan 66R31943

Access Lands:

JSPS Shallow Pipe Lands: Part 11 on Plan 66R31943

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