SUBJECT: Licence of the City Lands Known as Part of 501 Barton Street East, (Woodland Park) Hamilton (Licensor) to the Ontario Realty Corporation (ORC), Acting as Agent on Behalf of Her Majesty The Queen in Right of Ontario as Represented by the Minister of Public Infrastructure Renewal (Licensee) (PED08026) (Ward 3)

RECOMMENDATION:

(a) That a License Agreement between the City of Hamilton (Licensor) and the Ontario Realty Corporation (ORC), acting as agent on behalf of Her Majesty The Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal (Licensee), for the City owned lands known as Part of 501 Barton Street East, (Woodland Park) Hamilton (as shown on Appendix “A” to Report PED08026), comprising an area of approximately 533 square feet, be approved and completed;

(b) That the term of the Licence commence on September 1, 2005 and terminate on August 31, 2010 and that upon six (6) months written notice to the Licensor the Licensee shall be entitled to extend the term for a further five (5) years with the same terms and conditions of this Licence, the initial five (5) year term and the five (5) year extension effectively makes this a ten (10) year License Agreement. There shall be no further right of extension beyond the extension of term noted above;

(c) That the Licensee utilizes the subject lands for the current use as an Air Pollution Monitoring Station and related installations and for no other purpose without the written consent of the Licensor;

(d) That the Licensor and Licensee may cancel this agreement with no penalty upon six (6) months written notice to the other party;
(e) That the Licensee shall pay the annual rent of $500.00 to the Licensor on the first day of September during each and every year of the term of the Licence. The Licensee certifies that the subject lands are licensed for the use of the Crown in Right of Ontario and therefore, not subject to the Goods and Services Tax. The annual Licence fee to be credited to Account No. 46000-444005.

(f) That the Mayor and City Clerk be authorized and directed to execute the Licence Agreement in a form satisfactory to Corporate Counsel.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

The purpose of this report is to request City Council’s approval for a new five (5) year License Agreement and an automatic five (5) year Licence extension for the subject property to the Ontario Realty Corporation acting as agent on behalf of Her Majesty the Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal. This new License Agreement is required to update the terms and conditions of the original agreement completed between the City and the Province of Ontario in 1969.

BACKGROUND:

In 1969 the City (The Board of Park Management) entered into an agreement with HER MAJESTY THE QUEEN in Right of Ontario for an Air Pollution Monitoring Station and related installations at 501 Barton Street East (Woodland Park), Hamilton. The annual licence fee was $25.00 and over the years this agreement was renewed by Real Estate. However, the last renewal expired December 31, 2002. Since that time the arrangement has continued on an over-holding basis without the benefit of documentation.

In 2005, this 35 year old agreement was brought to the attention of the Real Estate Section. In consultation with Legal Services, Risk Management and Public Works it was determined that a new License Agreement should be completed. Legal Services and Risk Management recommended that the City be protected at today’s standards given that Provincial vehicles access this station by traversing across Woodland Park.

In 2005 the Real Estate Section had a provisional agreement with Ontario Realty Corporation (ORC) for a new five (5) year Licence. This provisional agreement was authorized through a delegated authority report. Unfortunately, subsequent to the authorization a new ORC representative refused to abide by the provisional agreement. Therefore, over the past two (2) years Real Estate and Legal Services staff have had to
deal with a number of representatives from ORC to complete the negotiations and language for this new License Agreement. In this process ORC demanded a five (5) year term with an automatic five (5) year extension.

With the authorization of this report and the execution of the proposed License Agreement, the 1969 agreement will become null and void with no further effect. In addition, the 2005 Delegated Authority Report authorizing the provisional agreement, will also be redundant upon the authorization of this report by Council. Therefore, on the advice of Accounts Receivable these previous invoices are noted as being reversed. The proposed License Agreement will better protect the City in terms of both legal responsibilities and insurance provisions than the dated 1969 agreement and the provisional agreement contemplated in 2005.

The five (5) year term with an automatic five (5) year extension, negotiated with ORC, however, requires Council approval. The ORC were adamant that they required a five (5) year term and a five (5) year extension period in any new agreement.

The new agreement also increases the previous nominal fee from $25.00 per year to $500.00 per year to assist the City in covering the costs associated with this new License Agreement.

The language of this agreement is mirrored in a sister agreement for a Provincial installation at 700 Woodward Avenue, Hamilton.

With this new License Agreement the City of Hamilton is continuing its 37 year relationship with the Province by supplying a location for the Air Pollution Monitoring Station and related installations. This partnership between the two levels of government appears to have benefited the people of Hamilton and the surrounding Golden Horseshoe area.

**ALTERNATIVES FOR CONSIDERATION:**

The only two alternatives to a new agreement were to 1) continue with the terms and conditions of the dated 37 year old agreement; or 2) cancel the arrangement with the province. Option 1 was not recommended by Legal Services or Risk Management. Option 2, of removing the Air Pollution Monitoring Station and related installations from the City lands did not seem the best course to follow given the goal to protect and serve the people of Hamilton and area.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:**  The recommendations in this report are consistent with the comments that the Real Estate Section received from other City Departments to best protect the City of Hamilton. Accounts Receivable will now be able to collect the back rent from ORC.
Staffing: There are no staffing implications.

Legal: Legal Services will be required to take its normal steps to close this transaction.

POLICIES AFFECTING PROPOSAL:

This recommendation is consistent with the Real Estate Management Portfolio Strategy Plan, as approved by City Council on November 24, 2004, and the “Procedural By-law for the Sale of Land”, By-law No. 04-299. By-law No. 04-299 notes that City Council must approve any lease or license agreement over a five (5) year term. With the initial five (5) year term and the built-in five (5) year extension required by ORC, this is effectively a ten (10) year agreement.

RELEVANT CONSULTATION:

The Real Estate Section worked closely with Legal Services during the negotiations with ORC and the completion of this agreement.

Risk Management, Public Works and Accounts Receivable have commented on aspects of this agreement.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes □ No
Partnerships are promoted.
The sale and development opportunities contribute to the strategic goal of a City of Growth and Opportunity.

Environmental Well-Being is enhanced. ☑ Yes □ No
The initiative contributes to the strategic goal to encourage development which makes efficient and economical use of infrastructure and services.

Economic Well-Being is enhanced. ☑ Yes □ No
Investment in Hamilton is enhanced and supported.
A skilled, innovative and diverse workforce is attracted and retained.

Does the option you are recommending create value across all three bottom lines? ☑ Yes □ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? □ Yes ☑ No
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