SUBJECT: Licence of the City Lands Known as Part of 700 Woodward Avenue, Hamilton (Licensor) 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 (Licensee) (PED08025) (Ward 4)

RECOMMENDATION:

(a) That a Licence 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 700 Woodward Avenue, Hamilton, (as shown on Appendix “A” to Report PED08025), comprising an area of approximately .567 hectares (1.4 acres), 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 a meteorological tower and monitoring station 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;
Subject: Licence of City Lands Known as Part of 700 Woodward Avenue, Hamilton, 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 (PED08025) (Ward 5)

- Page 2 of 5

(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 #HAMTN 46110-514330.

(f) That the Mayor and City Clerk be authorized and directed to execute the License 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 drafted an agreement with HER MAJESTY THE QUEEN in Right of Ontario for a Meteorological Tower/Station and related installations at 700 Woodward Avenue. This document was executed in 1970. The term was at the “pleasure of the Council”. The annual Licence fee was $10.00 per year.

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 recommend that the City be protected at today’s standards given that this agreement involves an older tower of approximately 36.5 metres (120 feet) in height. Public Works commented in favour of a new five (5) year term for this Provincial installation on the subject property.
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 that 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 1970 agreement noting a term defined as at “pleasure of Council” 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 1970 agreement and the provisional agreement contemplated in 2005.

The conversion of the term from “pleasure of the Council” to a five (5) year term and a five (5) year extension, 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 $10.00 per year to $500.00 per year to assist the City in covering the costs associated with this new License Agreement.

Currently Fibrewired Network-Hamilton (Horizon Utilities) is conducting a pilot project involving Hamilton Police Services. In order to conduct this pilot project the Province has allowed Fibrewired Network-Hamilton to install equipment on the meteorological tower at 700 Woodward Avenue. The language of the new License Agreement permits the City to reserve future locations on the tower for City use or for use by agencies affiliated with the City of Hamilton such as Horizon Utilities. Furthermore no installations will be allowed on the tower without the permission of the City of Hamilton.

The language of this agreement is mirrored in a sister agreement for a Provincial installation at 501 Barton Street East, Hamilton (Woodland Park).

With this new License Agreement, the City of Hamilton is continuing its 37 year relationship with the Province by supplying a location for the meteorological tower and station. 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 meteorological tower and station 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.

Real Estate Staff also discussed issues concerning the municipal use of the tower with Horizon Utilities and the Trunked Radio Section of Hamilton Emergency Services.
Subject: Licence of City Lands Known as Part of 700 Woodward Avenue, Hamilton, 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 (PED08025) (Ward 5) - Page 5 of 5

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

:SGB
Attach. (1)