

Clause embodied in Report No. 3 of the Economic Development and Parks Committee, as adopted by the Council of the City of Toronto at its meeting held on April 14, 15 and 16, 2003.

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**Assignment of Toronto Island Marina Lease
(Ward 28 Toronto Centre-Rosedale)**

(City Council on April 14, 15 and 16, 2003, amended this Clause in accordance with the following recommendations:

“It is recommended that:

- (1) in addition to the requirements outlined in the March 24, 2003 recommendations of the Economic Development and Parks Committee, the assignment shall be conditional upon all prepaid mooring fees being transferred by the existing tenant to the City, such funds to be held in trust or in a separate account, as deemed appropriate by the Chief Financial Officer and Treasurer, all but \$100,000.00 of which shall be distributed to the assignees immediately following the effective date of the assignment;*
- (2) the \$100,000.00 in prepaid mooring fees retained by the City shall be returned to the assignees in \$25,000.00 payments to be made monthly or at such times as the Commissioner of Economic Development, Culture and Tourism is satisfied that the required infrastructure repairs are being made to bring the marina to a safe operating condition, the last payment not to be released until the Commissioner is satisfied with the condition of the marina;*
- (3) the existing obligations under the lease for the marina be maintained to require that, at the conclusion of the lease in October 2005, the marina must be left in a first class condition, and further that first class condition be clarified to mean that the marina is safe, meets all legislative and operational requirements as is necessary for the continued safe and prudent operation of the marina, to the satisfaction of the Commissioner;*
- (4) Council confirm that staff should commence a proposal call process in the fall of 2004 for the operation of the Marina past October 2005; and*
- (5) the Commissioner of Economic Development, Culture and Tourism, the Commissioner of Corporate Services and the City Solicitor be requested to report to the Administration Committee on appropriate clauses to include in new leases to ensure that when lessors are in default of their obligations under their lease, their ability to influence the assignment of their lease is limited and that Council’s option to re-tender such lease is secured.”)*

The Economic Development and Parks Committee recommends the adoption of the joint report (March 18, 2003) from the Commissioner of Economic Development, Culture and Tourism and the City Solicitor.

The Economic Development and Parks Committee reports, for the information of Council, having requested the Assignee to meet with Members of the Boating Club prior to the Council meeting of April 14, 2003.

The Economic Development and Parks Committee submits the joint report (March 18, 2003) from the Commissioner of Economic Development, Culture and Tourism and the City Solicitor:

Purpose:

The purpose of this report is to obtain approval to complete an Assignment of the current lease agreement for the operation of the Toronto Island Marina held with 412237 Ontario Limited to new owners.

Financial Implications and Impact Statement:

There are no financial impacts resulting from the adoption of this report. The rental revenue comprised of the basic rent of \$11,193.00 per annum plus a percentage of gross revenues will remain consistent for the rest of the term of the lease. Outstanding tax payments in the amount of approximately \$138,000.00 will be paid by the assignee company by November 1, 2003, and secured by a Letter of Credit.

Recommendations:

It is recommended that:

- (1) the Commissioner of Economic Development, Culture and Tourism, in consultation with the City Solicitor, be authorized to negotiate and finalize an Assignment and Assumption Agreement providing for the assignment of the existing Toronto Island Marina Lease Agreement with 412237 Ontario Limited to the Assignee, as defined in this report and the assumption by the Assignee of the obligations under the lease, such assignment to be on the terms and subject to the fulfilment of the conditions set out in this report, and in a form and content satisfactory to the Commissioner and the City Solicitor; and
- (2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto, including the signing of the necessary documentation.

Background:

412237 Ontario Limited (the "Tenant") operates a marina on Toronto Island Park that includes but is not limited to provision of moorings, marine services, sale of petroleum, sale of food and beverage, and other related commercial activity involving marina operations.

The existing lease agreement for marina services at Toronto Island Park (the “Leased Premises”) is between the former Municipality of Metropolitan Toronto and Toronto Island Park Marina Limited dated June 13, 1967 as amended by agreements dated April 1, 1969 and April 17, 1973. By agreement dated April 21, 1979, the amended lease was assigned to the Tenant and subsequently amended and extended for a term expiring on October 15, 2005. All of the above agreements are collectively called the “Lease”. By Agreement dated March 31, 1995 (the “1995 Agreement”), the Tenant leased additional land for use as a winter boat storage area, and has been over holding as a month-to-month tenant since May 1, 1997. The Assignee will be granted a new lease for the winter boat storage on the same terms and conditions as contained in the 1995 Agreement, the term of which shall expire on May 1, 2005, with no right of renewal.

The current operators of the Marina have experienced significant difficulties over the last five years, and as a result the marina has fallen into disrepair and several obligations under the Lease have not been met. The defaults under the Lease consist of non-payment of property taxes and the failure to fulfil obligations to undertake certain capital upgrades, most notably the requirement to complete dredging within the Marina Basin.

The Tenant was also the successful proponent in a Request for Proposals issued by the former Municipality of Metropolitan Toronto in 1996, in relation to the operation of a trackless train at Toronto Island. The two parties signed an agreement for operation of the train, which was to expire in 2005. In 1997, the Tenant commenced a lawsuit against Metro claiming damages for misrepresentation with respect to the projected number of passengers on the train, and seeking rescission of the contract. In 1998, the City of Toronto terminated the contract and assumed ownership of the trains. The City subsequently commenced a separate legal action against the Tenant for defaults under both the Lease and the trackless train agreement. The parties have agreed to dismiss these actions as a condition of the assignment.

The death of the principal owner of the Marina in 2002, and the variety of issues facing the future of the operation has now led to the proposed sale of the Marina and a request by the Tenant to seek approval from the City to assign the Lease to a new owner. The new owner shall be a company to be incorporated prior to the effective date of the assignment, the principals of which shall include Mr. Carl Lovas, Mr. Gary Lovas and Mr. William Duron (the “Assignee”).

Comments:

The requirement to have a viable operation at the Toronto Island Marina for the three remaining boating seasons under the terms of the Lease have led staff to support the notion of an assignment of the Lease to the Assignee, subject to a variety of conditions as outlined in this report.

The proposed Assignees have strong credentials with the operational knowledge, marine experience and financial resources to implement a turn-around strategy for the Marina in the three remaining years under the Lease.

Consent to the assignment of the Lease to the Assignee is conditional upon the following:

1. The Assignee shall enter into an Assignment and Assumption Agreement with the City agreeing to assume the Lease and to be bound by all the terms and conditions contained therein, including the payment of all rent, taxes and other fees. The Assignee shall ensure that Mr. Carl Lovas, Mr. Gary Lovas and Mr. William Duron continue, throughout the term of the Lease, to be the key people directly responsible for the management and operation of the Marina, failing which the Lease may be terminated by the Commissioner upon fifteen days' notice to the Assignee.
2. The City will require full payment of all outstanding rents and any other fees or charges owing to the City, and the discharging of any outstanding liens or other encumbrances registered against or otherwise affecting the Leased Premises, prior to the effective date of the assignment. The Assignee shall assume any other amounts owing to third parties. The Assignee acknowledges that outstanding tax arrears of approximately \$138,000.00 for the years 1999, 2000, 2001 and 2002 remain unpaid. The Assignee shall pay all outstanding tax arrears, including any penalties that may accrue, by November 1, 2003. As security for the payment of these taxes, the Assignee shall provide to the City on or before the effective date of the assignment, an irrevocable letter of credit in the amount of \$138,000.00 from a bank listed in Schedule I or II of the Bank Act, satisfactory in form and content to the City's Chief Financial Officer and Treasurer and the City Solicitor. If the taxes are not paid in full by midnight on November 1, 2003, the City may use the letter of credit to pay the outstanding taxes.
3. 412237 Ontario Limited and Island Train Tours will obtain a consent order dismissing, on a without costs basis, Action No. 97-CV-138064 commenced in the Ontario Court (General Division) at Toronto, and provide a copy thereof to the City Solicitor.
4. 412237 Ontario Limited and Island Train Tours will execute a full and final release on behalf of themselves, their principals, agents, assigns, and employees in favour of the Municipality of Metropolitan Toronto and its successor the City of Toronto, their agents, assigns, and employees (hereafter the releasees), in a manner and form satisfactory to the City Solicitor, releasing them from all claims for damages, interest, and costs, and without limiting the generality of the foregoing, from all claims for damages, interest and costs arising out of the allegations in Action No. 97-CV-138064 commenced in the Ontario Court (General Division) at Toronto.
5. Through its solicitor, 412237 Ontario Limited will execute and provide to the City Solicitor an irrevocable consent to dismissal, on a without costs basis, of Action No. 02-CV-229464CM3 commenced in the Ontario Superior Court of Justice at Toronto. The City of Toronto shall provide a release to 412237 Ontario Limited with respect to the causes of action set out in the Statement of Claim in this action.
6. The Assignee shall be required to maintain the Leased Premises in accordance with the Lease and applicable laws, by-laws, rules, regulations and policies affecting the Leased Premises. The City shall not be responsible for arranging or paying for any work at the Leased Premises apart from grass-cutting and garbage removal.

7. The Assignee shall be released from the obligation set out in section 11 of the Lease Extension and Amending Agreement dated March 31, 1993, to spend \$150,000.00 for dredging in Basins A, B and C, provided that the Assignee shall be required to dredge to the extent necessary to continue the safe operation of the marina, and/or as may be required by the Commissioner of Economic Development, Culture and Tourism, acting reasonably.
8. The Assignee shall not be required to obtain the City's approval of mooring fees and other charges.
9. The Assignee acknowledges and agrees that it is aware of and will comply with the City's policy regarding winter liveaboards and float homes. Failure to comply may result in the termination of the Lease, at the sole discretion of the Commissioner.
10. The Assignee acknowledges that the Lease expires in October 2005, and that there are no further rights with respect to the extension or renewal of the Lease and that it is the intention of the City of Toronto to undertake a Proposal Call for the continued operation of the Marina past October 2005.

Conclusions:

While there has been a deterioration of the Marina Operation and a variety of contractual defaults in the last five years, staff believe that there is the potential to turn-around and revitalize the operation over the remaining three years of the Lease. The principals of the Assignee possess the required operational experience and have presented a turn-around strategy to make a revitalization possible.

Although the City will be providing relief with respect to the clause requiring extensive dredging of the Marina, the Assignee will be responsible for operationally necessary dredging and has plans to upgrade the docks and operating equipment necessary to revitalize the operation. In staff's opinion, this assignment is beneficial to the City as it ensures the payment of outstanding property taxes that may otherwise not have been collected, and it provides an opportunity for the revitalization of the Marina.

The assignment will not be completed without these conditions being fulfilled to the satisfaction of the Commissioner of Economic Development, Culture and Tourism and the City Solicitor. The assignment does not extend the term of the Lease beyond the existing October 15, 2005 expiry date and will result in the collection by the City of outstanding taxes in the amount of approximately \$138,000.00.

Contact Names:

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Ms. Lisa A.A. Strucken, Solicitor, Municipal Law, Legal Division,
Telephone: 416 392-8518, Fax: 416-392-3848, E-mail: lstrucke@toronto.ca.

The Economic Development and Parks Committee also had before it during consideration of the foregoing matter the following communications:

- (a) (March 22, 2003) from Mr. Brian Monrad, M.A., C.A., LL.B., requesting that the assignment be deferred for one month to allow further representations by boaters; and
- (b) (March 23, 2003) from Ms. Doreen H. Green, requesting that the Toronto Island Marina be encouraged to continue to operate a quiet, inexpensive marina for the use of the residents of Toronto.

The following persons appeared before the Economic Development and Parks Committee in connection with the foregoing matter:

- Mr. Chris Diamond;
- Mrs. Elizabeth Lytle;
- Mr. Paul Peachey;
- Mr. Bob Kemball;
- Mr. Carl Lovas; and
- Councillor Sandra Bussin, Ward 32 Beaches-East York.

(City Council, at its meeting on April 14, 15 and 16, 2003, had before it, during consideration of the foregoing Clause, a communication (April 10, 2003) from Brian Monrad, LL.B.)