

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Meeting #2/19, Friday, February 22, 2019

FROM: Michael Tolensky, Chief Financial and Operating Officer

RE: **TORONTO AND REGION CONSERVATION AUTHORITY ADMINISTRATIVE
OFFICE BUILDING PROJECT UPDATE**
Construction and Term Financing Update

KEY ISSUE

Authorization of the finance documents with respect to award of contract #10008935 for up to \$54 million in construction and term financing to support the construction of the new administrative office building for Toronto and Region Conservation Authority.

RECOMMENDATION

THAT the entering into, execution and delivery by Toronto and Region Conservation Authority (“TRCA”) of (i) the credit agreement between TRCA and Canadian Imperial Bank of Commerce (“CIBC”) (the “Credit Agreement”), (ii) the promissory note to be issued by TRCA in favour of CIBC (the “Promissory Note”), and (iii) the ISDA 2002 master agreement (the “Master Agreement”), including the schedule thereto and forming part thereof (the “Schedule”) and the confirmation supplemental thereto (the “Subject Confirmation”), each to be entered into between TRCA and CIBC (the Master Agreement, including the Schedule, and the Subject Confirmation are collectively referred to herein as the “ISDA Agreement”, and together with the Credit Agreement and the Promissory Note, collectively, the “Primary Finance Documents”), all substantially in the forms presented to the directors of TRCA, with such changes therein as any Authorized Officer (as defined herein) executing the same on behalf of TRCA may approve (such approval to be evidenced conclusively by the signature of any such Authorized Officer thereon), together with each additional agreement, instrument, certificate and other document from time to time required or desirable to be entered into by TRCA in connection with, or in order to consummate the transactions contemplated by the Primary Finance Documents (collectively, the “Ancillary Documents”, and together with the Primary Finance Documents, collectively, the “Transaction Documents”), all actions taken in connection therewith and the performance of TRCA’s obligations under the Transaction Documents be and are hereby authorized, approved, confirmed and adopted in all respects.

THAT any one director or officer of TRCA, including, without limitation, John MacKenzie, the Chief Executive Officer of TRCA, Michael Tolensky, the Chief Financial and Operating Officer of TRCA, and Jennifer Innis, Chair of the Board of Directors of TRCA (each, an “Authorized Officer”) is hereby authorized and directed, for and on behalf of TRCA to execute and deliver the Transaction Documents, and any amendments, supplements and restatements from time to time thereto on behalf of TRCA, and all such further agreements, instruments, amendments and other documents and to do or cause to be done all such other acts and things as such Authorized Officer shall determine to be necessary or desirable in connection with or in order to effect the transactions that are contemplated in the Transaction Documents and/or in order to carry out the intent of the foregoing resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery by such Authorized Officer of such agreement,

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instrument, amendment or other document or the doing of any such act or thing by such Authorized Officer. Such authorization and direction shall be in addition to any authority expressly granted by any other paragraph of these resolutions or by any other resolution or by-law of TRCA.

AND FURTHER THAT the execution and delivery of any agreements or documents and any and all actions heretofore taken by any officer or director of TRCA for, in the name and on behalf of TRCA in connection with the Transaction Documents be, and the same hereby are, ratified, approved, confirmed and adopted in all respects.

BACKGROUND

The purpose of the Long Term Office Accommodation Project and the Long Term Office Accommodation Working Group (LTOAWG), established on May 23, 2008 by Authority Resolution #A126/08, was to determine the office accommodation needs of TRCA over the next 30 years and recommend a comprehensive, cost effective solution. This process began prior to 2003 with the creation of a task group on office accommodation created by TRCA Management Committee. The task group's mandate was to research and report on options to serve TRCA office needs in the long term, the result of which led to Authority Meeting #2/15, held on February 27, 2015, in which Resolution #A23/15 was approved, selecting 5 Shoreham Drive as the preferred site for the new headquarters - 5 Shoreham Drive was the site of TRCA's previous head office, prior to moving to 101 Exchange Avenue. A more comprehensive background on the project as a whole can be provided upon request, however, the purpose of this report is to provide background primarily on the financing aspect of the project.

At Authority Meeting #5/15, held on June 24, 2016, Resolution #A85/16 was approved as follows:

THAT the Project for the Construction of an Administrative Office Building for Toronto and Region Conservation Authority (TRCA) (Project), at a cost of \$70,000,000, be approved;

THAT the regional municipalities of Peel, York, Durham, the City of Toronto, the Town of Mono and the Township of Adjala-Tosorontio be designated as the benefiting municipalities on the basis as set out in the Project and that TRCA's member municipalities be requested to consider this matter as part of the budget deliberations at the earliest opportunity;

THAT the Minister of Natural Resources and Forestry be requested to approve the Project in accordance with Section 24 of the Conservation Authorities Act (Act), and the application to the Project of the provincial share of land disposition proceeds on the basis as set out in the Project;

THAT pursuant to Section 3(5) of the Conservation Authorities Act (Act), the Minister be requested to approve an interest rate on funds borrowed to finance the Project not to exceed 3.75% for the life of the Project;

THAT pursuant to Section 24 of the Act, the Ontario Municipal Board be requested to approve the Project, if required;

THAT staff be authorized and directed to take the necessary action to complete the Project, including obtaining any additional approvals which may be deemed necessary and the execution of any necessary documents;

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THAT staff explore, in a rigorous nature, the pursuit of funding for the Project for the Construction of an Administrative Office Building for TRCA from the federal and provincial governments, and public-private partnerships;

THAT if TRCA staff is required to utilize funds from the existing City of Toronto erosion control funding, then TRCA staff work with local TRCA board members to identify priority restoration projects;

AND FURTHER THAT staff be directed to report to the Authority upon response from the Province of Ontario and the participating municipalities.

On February 25, 2017, at Authority Meeting #1/17, staff reported that all six of TRCA's participating municipalities, by way of their respective Councils, approved the project and the allocation of \$60,000,000 in new and existing capital funding toward the project. This included \$10,500,000 of existing capital funding - \$500,000/year over 21 years, commencing in 2015 and ending 2035, in addition to \$49,500,000 of new capital funding. For all municipalities excluding Toronto, this cumulative annual payment of \$540,000/year over 33 years commencing in 2017 and ending in 2049. Toronto chose to reduce their number of payments to 27 and defer their first payment until 2023, meaning that the City will be paying \$1,173,333/year until 2049. The total annual payments are as follows:

2015 – 2016:	\$500,000 Annually (2 Years)
2017 – 2022:	\$1,040,000 Annually (6 Years)
2023 – 2035:	\$2,213,333 Annually (13 Years)
2036 – 2049:	<u>\$1,713,333</u> Annually (14 Years)
TOTAL:	\$60,000,000

In making the decision to defer payments, the City of Toronto also agreed to pay TRCA an annual interest penalty payment, to account for the fact that TRCA will need to carry additional unanticipated debt for the project, which is excluded in the table above.

On March 27, 2017, subsequent to budgetary conversations with our partner municipalities, TRCA staff submitted a formal request to the Minister of Natural Resources and Forestry (MNRF) for approval of the rate of interest and the project. Minister's approval, pursuant to the requirements of Section 3(5) and 24 of the Conservation Authorities Act, was required in order to satisfy the lending conditions of a financial institution for funds borrowed for the project and to allocate approximately \$10,000,000 to the project from existing and future land sale disposition proceeds.

On September 22, 2017, TRCA staff reported at Authority Meeting #07/17, that an interest rate not to exceed 3.75% on the funds to be borrowed to finance the construction of the building was approved by the Chief Administrative Officer of MNRF on August 14, 2017. TRCA staff also reported that TRCA received correspondence from MNRF on August 28, 2017 advising that it was the Minister's decision to not grant an exemption to the Ministry's Generated Revenue Policy to enable the use of funds from land dispositions in support of TRCA's project. Please note that subsequent to this approval, Section 3(5) of the Conservation Authorities Act has been amended, removing the need to receive Minister's approval for the rate of interest on borrowings, in case a rate greater than 3.75% is required.

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TRCA submitted an urgent financial appeal to the Minister on December 12, 2017. A response from the Minister was received on February 15, 2018, indicating that Ministry staff had been asked to explore enabling the use of existing land sale generated revenue conditional upon the requirement that TRCA repay those funds from other revenue sources back into the reserve within a determined timeframe.

On May 8, 2018, the Minister granted approval to use \$3,538,000 in disposition proceeds from land sales associated with provincial grants (as identified in TRCA 2016 audited financial statement) with no required repayment and confirmed approval of the project under Section 24 of the Conservation Authorities Act – This was reported at Authority Meeting #4/18, held on May 25, 2018. These funds will be applied to the project to ensure that TRCA's future proofing, sustainability and office modernization objectives are met as the design evolves or to reduce the overall term of the required financing.

As a result of the funding reduction, TRCA staff challenged the integrated design team, to realize a highly efficient, cost effective building that could be achieved within the available \$60,000,000 budget. This included taking measures to reduce the scope of the project, such as the elimination of underground parking and an overall reduction in the size of the building based on a refined building program. TRCA staff presented an updated budget at Authority Meeting #6/18, held on July 20, 2018, which provided approval to modify the \$70,000,000 project to adhere to the available project funding.

As a result of this approval, Request for Proposal #10008935 to provide project financing from a qualified financial institution for TRCA's New Administrative Office Building Project was publicly advertised on the electronic procurement website Biddingo (www.biddingo.com) on August 8, 2018. The proposal from CIBC was the highest ranking proposal and best aligned with TRCA's objectives and evaluation criteria and was selected as the lender for the new administration office building project.

CIBC provided TRCA an analysis of the loan mechanics, loan options and a forecasting of interest rates and outlined the advantages to using an Interest Rate Swap process, in order to:

- Offer interest rate certainty
- Offer the lowest cost option for required funding
- Customize quarterly payments to meet TRCA's requirements over a long term

At Board of Directors Meeting #10/18, held on January 4, 2019, Resolution #A214/18 was approved as follows (This resolution amended Resolution #A171/18, which was approved at Board of Directors Meeting #8/18, held on October 26, 2018), in order to support the usage of an interest rate swap:

THAT Contract #10008935 be awarded to Canadian Imperial Bank of Commerce ("CIBC" or the "Lender") to provide construction and term financing for Toronto and Region Conservation Authority's (TRCA) New Administrative Office Building Project in the City of Toronto, it being the highest ranked proposal that best meets TRCA's requirements as stipulated in the Request for Proposal;

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THAT authorized officials be directed to take the necessary action to execute International Swaps and Derivatives Association (ISDA) documentation, for the purpose of entering into interest rate swap agreements, as necessary, for the construction and term financing. The term financing swap facilities shall be for a period not to exceed 30 years from the conversion date from construction financing to term financing with a mutual put at the ten-year mark and every 5 years thereafter, as per CIBC's standard credit practice. The stamping fee for these swap facilities shall be 74 basis points per annum;

AND FURTHER THAT authorized officials be directed to take the necessary action to implement credit agreements including the signing and execution of documents with the Lender.

RATIONALE

As TRCA negotiated the agreements with CIBC, with the help of our lawyers (Fasken) and financial advisors (KPMG), it was determined that a more robust resolution was required by the Board of Directors, in order to support the approval of the financing – The new resolution is included at the outset of this report.

In order to support such a resolution, TRCA staff have provided in-camera copies of the confidential documents that the Board of Directors are being asked to approve and parties from CIBC, Fasken and KPMG have been asked to attend the meeting to answer any questions that the Board may have, prior to signing the documents.

FINANCIAL DETAILS

Although total funding available for the project totals \$63,538,000, TRCA continues to work towards a budget of \$60,000,000. In order to determine how much money is required for the term loan commencing in January 2022, TRCA calculated the following:

Anticipated Project Cost:	\$60,000,000
Less:	
Ministry Funding	(\$3,538,000)
Municipal Funding (2015 – 2021)	(\$6,200,000)
Reserves	<u>(\$ 262,000)</u>
Anticipated Term Loan Amount:	\$50,000,000

TRCA staff anticipate that the organization will pay \$262,000 out of reserves between 2015 - 2021, which will be recovered over the life of the partner municipality repayments.

TRCA and CIBC staff worked together to develop a quarterly amortization schedule for the \$50,000,000 term loan that best reflects the payment schedule from TRCA's partner municipalities, commencing on January 4, 2022 and ending on January 2, 2047, a period of 25 years.

The quarterly principal payments are as follows:

Periods 1 – 4: \$258,750 (\$1,035,000 Annually for 1 Year)

Periods 5 – 60: \$553,750 (\$2,215,000 Annually for 14 Years)

Periods 61 – 100: \$428,500 (\$1,714,000 Annually for 10 Years)

After the 100th payment, the remaining debt will be \$1,243,500. with the expectation that TRCA will pay this balance out of cash on hand as of Jan 2, 2047, and will then receive the outstanding balance from its partner municipalities later in the year, in accordance with the payment schedule.

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Although it is possible that the term loan actually required will exceed \$50,000,000, TRCA is being conservative in its calculation by reducing the project costs by the ministry funding, in order to determine the anticipated term loan amount. If \$60,000,000 of funding is not required from TRCA's partner municipalities, then the amount/term of their obligations will be reduced accordingly. Further to this point, TRCA staff continue to review and apply for provincial, federal and other funding opportunities through various grants and programs.

DETAILS OF WORK TO BE DONE

Upon approval of this resolution, TRCA staff will finalize the required documents. Our lawyers will then issue legal opinions on both the credit and ISDA agreements to CIBC and TRCA staff will sign an officer certificate to support the legal opinions. Further to signing these documents, TRCA will complete supplementary CIBC forms to validate the financial relationship.

For the Board of Director's reference, the key remaining phases of the project are as follows:

Project Phases / Duration

Site Plan Approval	June, 2018 – July, 2019
Building Permit	February, 2018 – October, 2019
Tender Contract Documents	July, 2018 – March, 2019
Award Construction Contract	March, 2019 – July, 2019
Construction (assumes partial bldg. permits)	April, 2019 – June, 2021
Occupancy	March, 2021 – June, 2021

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Date: February 22, 2019

In Camera Attachments: 3

CONFIDENTIAL Attachment 1: Credit Agreement and Promissory Note (Schedule D)

CONFIDENTIAL Attachment 2: ISDA Master Agreement and Schedule

CONFIDENTIAL Attachment 3: Officer Certificate for agreements