

Attachment 1 – Treasurer's Report on a Material Lease

Background

Ontario Regulation 653/05, under the *Municipal Act, 2001* requires the Regional Treasurer to prepare a report to Council for material leases. The report must contain the Treasurer's assessment of the costs and financial and other risks associated with the proposed agreement. The Regulation also indicates that municipal councils must provide a statement of policies and goals which may provide for a category of lease financing arrangements which in the opinion of the Treasurer and Council does not result in a material impact for the municipality.

As such, Regional Council approved the Corporate Financing and Debt Policy in 2006 which defined a material lease as having payments in excess of \$250,000 a year. A policy update approved on September 18, 2008, (Clause 8, Report No.7 of Finance and Administration Committee) extended the definition of a material lease as having a net present value of \$2.0 million.

Lease under Consideration

Council authorization is being sought to enter into a ten year lease, commencing on September 1, 2009 for 12,469 square feet comprising the 8th floor of a commercial property located at 3601 Highway 7 East in the Town of Markham. This space will be used to relocate the Fare Enforcement and Security unit of York Region Transit from the South Service Centre.

The terms of the Offer to Lease for the 8th Floor are to be incorporated into the Region's existing lease for the 12th Floor of the same building through a lease amending agreement. The authorization to enter into the 12th Floor lease was granted by Council in September 2008. The base rent cost will be \$14.00 per square foot per year (plus GST) for the first 60 months and a base rent cost of \$15.00 per year (plus GST) for the final 60 months.

Additional rent to the Region is based on its proportionate share of the building expenses, including applicable taxes, common area utilities, common area maintenance, insurance premiums, and operating costs incurred in the operation of the building. This additional rent which is currently estimated by the landlord to be \$12.10 per square foot (plus GST) shall be adjusted from time to time based on actual expenses. On this basis, assuming no increase in the additional rent, annual payments including GST will be \$341,713 for the first five years and \$354,805 in years 6-10.

The Region is responsible for the cost of leasehold improvements which are estimated by Property Services staff to be \$60 per square foot for a total estimated cost of \$748,000.

The lease contains the right to renew for a period of up to 10 years at then current market rates.

The Region's obligations under the Offer to Lease include:

- Paying for own in-suite utilities
- The Region is responsible for removing any non-standard office improvements at the end of the lease term

Analysis of Lease

Ontario Regulation 653/05 requires the Regional Treasurer to comment on specific aspects of the proposed lease. These aspects are noted below with the appropriate analysis of each requirement. The lease itself has not been analysed as it was not available. Legal staff has advised they will not approve the final lease document until such time as the Regional Treasurer has concurred with provisions of the lease and is satisfied as to its requirements.

A comparison between the fixed and estimated costs associated with proposed agreement and those associated with other methods of financing.

Property Services have advised they have conducted a market review of comparable space in the area at the time of the lease for the 12th floor and there was no space available for purchase available that meet the space requirements of the Region. Additionally, renting the subject space will give the Region flexibility to relocate these operations to other regionally owned buildings which may become available by 2014.

The Offer to Lease gives the Region the right of first refusal to purchase the property if the Landlord chooses to sell the premises.

A statement summarizing, as may be applicable, the effective rates of financing of the agreement, the ability for agreement payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the agreement.

The base rent amounts of the lease are set for the entire term of the lease. The additional rent is variable as it is based on actual costs incurred and the proportionality of the space occupied by the Region. These are industry standard terms. It is recommended as per the Region's standard practice the final lease contains a clause allowing the Region the right to review the actual expenses reported upon to determine their reasonableness.

A statement summarizing any contingent payment obligations under the agreement that in the opinion of the Treasurer would result in a material impact for the municipality, including termination provisions, equipment loss, equipment replacement options, and guarantees and indemnities.

Our external legal counsel advises the negotiated Lease for the 12th Floor, which will be amended for the inclusion of the 8th Floor space, does not contain any contingent payment obligations, material termination provisions, or guarantees. All indemnity clauses are standard terms found in commercial leases. It is a requirement of this report that Legal Services and the Regional Treasurer must authorize the Lease prior to its execution by the Region.. It is a further requirement of this Report that the Commissioner of Corporate Services and the Regional Treasurer be authorized to sign any lease extension subject to the review of Legal Services.