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YDSS 16TH AVENUE TRUNK SEWER PROJECT INFRASTRUCTURE ASSUMPTION TOWN OF MARKHAM, PROJECT 74030

The Transportation and Works Committee recommends the adoption of the recommendations contained in the following report, February 9, 2006, from the Commissioner of Transportation and Works:

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council authorize the temporary assumption of control of the stormwater pond located at the Berczy Village development (referred to as the Berczy Village Stonebridge Pond A, Block 99 M-3168 or “Pond A”, *see Attachment 1*) from the Berczy Developers Group Incorporated (the “Group”).
2. Regional Council authorize the execution of an agreement with the Corporation of the Town of Markham (the “Town”) and the Group with respect to obligations associated with Pond A.

2. PURPOSE

The purpose of this report is to obtain authorization to enter into an agreement obligating the Region to complete various activities related to construction of a stormwater management pond by developers in Markham. The agreement is required to continue discharging water from the 16th Avenue Trunk Sewer Project into Pond A.

3. BACKGROUND

Construction of the pond is an obligation of the Group, secured through a Subdivision/Servicing Agreement with the Town of Markham. The works ultimately form part of a stormwater system to be assumed by the Town.

The Group had entered into a contract (the “Contract”) with Wasero Construction (1991) Ltd. (“Wasero”) to clean silt from Pond A to satisfy the conditions of their subdivision agreements with the Town. The Region, through our consultant Marshall Macklin Monaghan Limited, instructed the Group to terminate the contract to enable the Region to discharge water from the 16th Avenue Trunk Sewer Project into Pond A. The Region commenced discharging approximately 10 L/s of groundwater into Pond A on Thursday,

July 21, 2005, to assist with compliance under the Region's Permit to Take Water ("PTTW"). In order for this discharge to continue, the Region, the Town and the Group have negotiated the terms of an agreement transferring the obligations associated with the maintenance of the Pond, pending its delayed assumption by the Town.

4. ANALYSIS AND OPTIONS

The Agreement outlines in detail all obligations with respect to Pond A; details of the agreement are set out below. The Agreement will be signed once Council approval is in place.

4.1 The Region's Obligations

The Region agrees to assume, as of July 21, 2005 all obligations in respect of Pond A as set out below, including silt removal, maintenance and assumption, and more particularly, the Region agrees, at its sole expense, to:

1. Assume the obligations of the Group to complete dewatering of Pond A and removal of silt from Pond A once the Region's 16th Avenue sewer construction dewatering requirements are completed as determined by the Region ("Completion"); the Group will not be responsible for anything related to the cleaning or removal of silt from any upstream sewers that discharge into Pond A.
2. Carry out any monitoring or maintenance required by the Town in respect of Pond A during this period, removal of silt to design grades, as per Stantec/Cosburn Patterson Mather, upon Completion and provide and pay for 'as-built' cross-sections and bathymetric survey verification along with Stantec Consulting's certification of this 'as-built' survey. The Town is to be provided with an engineer's certificate confirming that Pond A has been constructed in accordance with the approved design and that it operates/functions as designed and that it controls flows, quantity and quality as approved.
3. Pay the Group's engineering, legal and construction costs of \$6,887.36 in respect to the construction of Pond A and accept responsibility for all aspects, risks and costs of assuming the Pond A obligations as set out herein upon Completion.
4. Acknowledge, as of the date of the Agreement, the existence of silt within Pond A that was present before this Agreement and to monitor, according to an approved program, quality of effluent discharging from Pond A into receiving waters, in order to comply with applicable MOE/TRCA water quality regulatory requirements, and the need to maintain Pond A to Town requirements until Pond A has been assumed by the Town.
5. Restore any damage to Pond A, including plantings, in general conformity with the Pond A landscape plan as a result of and upon completion of silt removal from Pond A. The plantings must be 100% completed as per approved landscape plan for Pond A.
6. Provide the Town with details of any connection to or alteration of an existing Town storm sewer to facilitate dewatering of Pond A, and to remove/ disconnect/ restore to

a condition that reasonably approximates the original condition of the storm sewer subject to an engineer's certification and approval by the Town after Completion.

7. Indemnify and save harmless the Town in regard to the dewatering and discharge operation, as well as save the Town harmless from any downstream claims due to water quality from Pond A in respect of the period of time Pond A was used by the Region until such time as Pond A is assumed by the Town.

4.2 The Group's Obligations

The Group agrees to:

1. In respect to the Contract with Wasero, finalize financial obligations satisfactory to the Region as set out below, provide monetary compensation to Wasero, and to transfer the unpaid monies from the silt removal contract to the Region, to permit the Region to complete Pond A silt removal, in future.
2. The Group's engineer (Stantec Consulting) has valued the above as follows:
 - contract amount of \$175,255.00 exclusive of GST.
 - payment to Wasero of \$33,740.00 plus GST.
 - amount due to the Region from the Group is \$141,515.00 plus GST.
3. Upon execution of this Agreement, issue a certified cheque payable to the Region in the amount of \$134,627.64 plus GST (representing settlement of the amount due to the Region in B.2.iii minus the amount of \$6,887.36 due to the Group in A.3. above).
4. The Group acknowledges that each individual subdivision developer is required to comply with the currently known requirements of the Town to control discharge of silt laden water from existing storm sewers out letting their respective subdivision to Pond A.

4.3 The Town's Obligations

The Town agrees that:

1. The Group has completed their obligations in regard to Pond A, and the Group and its members will be released of all financial obligations related to Pond A, as well as their obligations contained in their subdivision agreements with the Town, in regard to Pond A and downstream damages, if any.
2. Pond A upstream developers are responsible for their sewers within their subdivision including cleaning and each upstream developer is responsible to control their own silt from their respective subdivision.
3. The obligations assumed by the Region in section A are the sole obligations that the Region will be required to undertake in respect of Pond A.
4. Upon the Region fulfilling the conditions of the agreement, assume the completed works.

5. FINANCIAL IMPLICATIONS

The Agreement is relatively revenue neutral to the Region due to the fact that the Group is transferring the money the Group was going to spend to clean Pond A to the Region in exchange for the Region assuming control of Pond A from the Group.

6. LOCAL MUNICIPAL IMPACT

The Region is responsible for landscaping and verifying the proper construction of the pond before the pond is transferred back to the town. The Region has agreed to indemnify the Town in respect of any claims, lawsuits etc. regarding the downstream water quality until the ownership of the pond is transferred to the Town of Markham.

7. CONCLUSION

It is recommended that the Region assume Pond A from the Group. The Town will assume Pond A once the Region has ceased discharging groundwater to Pond A and has remediated Pond A as set out initially in the Subdivision/Servicing agreement with the Developer Group.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause was included in the agenda for the March 1, 2006 Committee meeting.)