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A subsidiary corporation of the TDSB



May 16, 2017

Transmittal No. 2017 – 50
(Public)

Update: TDSB - City of Toronto Pool Lease Agreement

To: Robin Pilkey, Chair

This communication is to inform you that the report entitled *Update: TDSB - City of Toronto Pool Lease Agreement* (see attached) was received for information by the TLC Board at its meeting of May 16, 2017.

On behalf of the Board of Directors of the Toronto Lands Corporation., the report, *Update: TDSB - City of Toronto Pool Lease Agreement* is being forwarded to the TDSB Board for information.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Crombie', written in a cursive style.

David Crombie
Chair, TLC

cc. D. Sage, CEO, TLC
cc. J. Malloy, Director of Education, TDSB
cc. A. Bacoupoulos, Associate Director, TDSB
cc. C. Kisko, Associate Director, TDSB

G04 (2017 Board Minutes/Transmittals/2017-50)/City-Tdsb Pool Lease Agreement May 2017) lp.8000

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Regular Meeting 16 May 2017	Swim Toronto Committee Report No. 2017-05-612
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TORONTO LANDS CORPORATION

Update: TDSB - City of Toronto Pool Lease Agreement

TO The Chair and Members of the Swim Toronto Committee 16 May 2017

RECOMMENDATION **IT IS RECOMMENDED** that the report *Update: TDSB – City of Toronto Pool Lease Agreement*, be received for information.

RATIONALE **Background**

In 2012, the TDSB and the City of Toronto entered into a 5-year lease agreement whereby the Board provided exclusive after hour use of 33 school swimming pools. In exchange, the parties agreed to a payment schedule and various other terms and conditions including the right to remove pools from the agreement upon notice. Over the past two years the City has opted to remove 6 pools and the TDSB has removed two. Given the timing of notice from the City and the financial impact on TDSB when pools are released from the agreement, there has been a great deal of concern regarding the overall longevity of TDSB pool operations.

At the TLC Board meeting of April 2016, and subsequently the TDSB Board meeting of May 2016, the TLC was authorized to lead, with input from TDSB staff, the negotiation with the City on a renewal agreement for the continued leasing of the TDSB’s pools.

At the July 5, 2017, Swim Toronto meeting, TLC reported that the City and TDSB (Facility Services) have had an opportunity to separately review the existing 5-year lease agreement including areas of concern to be addressed in any new agreement.

Having received input from TDSB’s Planning and Priorities Committee, on March 1, 2017, TLC reassessed the direction of current negotiations and developed a new strategy for presentation to Senior City staff; *see Appendix 1* for speaking notes developed by TLC that provides the context for creating a broader City-wide pool strategy. Following presentation and acceptance from City staff, TLC proceeded and crafted an Extension Agreement to the current TDSB-City pool agreement, *see Appendix 2*.

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The following are highlights of the Extension Agreement:

- The existing 5-year pool agreement will continue in effect until June 30, 2019
- There will be a moratorium placed on any pool being removed from the pool agreement during the extension period.
- The City agrees to access and program all pools contained within the appendix to the extension agreement along with the payment schedule established as of September 1, 2017 and increased by 3% each year.
- TLC will undertake the commissioning of a pool condition audit for all schools contained within the extension agreement.
- Agreed upon capital investment in pools will be amortized over a period not to exceed 20 years

During the lease extension period the City has agreed to work with TLC to develop a broader City-wide pool strategy. It would be the outcome of an adopted City wide pool/aquatic strategy that would then inform a new long-term TDSB/City pool agreement. This broader scope may result in the creation of a longer agreement horizon such as 10 years.

**IMPLEMENTATION
AND REVIEW**

TLC and City staff will be initiating the creation of a joint team to undertake a broader review of how pools can better serve both the students of TDSB and their respective communities. TLC has included the cost of pool audits in its 2017-18 budget and subject to Budget approval would anticipate a tender for the required service in the summer 2017. TLC will continue to monitor progress and provide ongoing status reports to TDSB.

APPENDICES

- Appendix 1: Speaking Notes to City
Appendix 2: Extension Agreement

FROM

Daryl Sage, CEO, Toronto Lands Corporation, at dsage.tlc@tdsb.on.ca or at 416-393-0575.

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Appendix 1:



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A subsidiary corporation of the TDSB



Meeting with Janie Romoff, General Manager PF&R

March 21, 2017

D. Sage notes re. City-TDSB Pools Lease Agreement

The TDSB-City Pool Agreement is set to expire on June 30th, 2017. While City, TDSB and TLC staff works through amendments to existing terms in an effort to strengthen the Agreement and ready ourselves for respective organizational approvals, as a general observation, there is a City/TDSB tendency to localize decision-making rather than seeking joint opportunities through a broader and more strategic approach. Given that we have narrowed the outstanding issues on the current pool Agreement and the City has an approved 2017-18 budget, I believe there is an opportunity to secure pool operations effective July 1, 2017 while undertaking a broader joint approach to pools based on the following guiding principles:

1. Pools are integral to our Toronto community.
 - As such, the TDSB and City operate nearly 100 pools combined throughout the City and may better serve students/residents and the broader community if pool could become seamless to all end users.
2. Develop a City wide pool strategy.
 - Undertake a review of TDSB and City combined pool capacity hours and measure against current pool by pool utilization. This utilization data could then be analyzed; creating possible new programming opportunities. Pool planning data will also be very useful in order to assess strengths, opportunities, threats and weaknesses given the physical distribution, pool condition and the anticipated level of demand for all existing pools.
3. Demonstrate that pools are community assets.
 - Pools provide an excellent example of being destinations for the public and that the operations of these facilities are consistent with the Provincial interest and application as community hubs. Pools within the amalgamated City of Toronto, were funded through the local assessment base and that all community members (students and residence) can benefit from the continuation of these assets regardless of being located in schools, on school board lands or in City recreation centres.

Given the above guiding principles, I suggest the following:

- A staff working group be established to jointly identify and report out on the existing total available per pool capacity (i.e. total hours available for use), current per pool utilization and then assess how pools can be accessed effectively to accommodate all student and community demand.

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- In the spirit of pools operating under the community hub umbrella, on a go forward basis, TDSB to consider providing day time access for City and community, given availability of access and accommodation for student safety within schools as a way to increase utilization and address or create additional demand.
- That a scope of work be defined so that a joint pool by pool condition audit can be commissioned. Audit findings would provide professional pool condition information and would be relied upon to support much needed capital investment. New capital funding will be necessary to bring all pools to a high standard of good state of repair and continued to be identified as a part of long term planning for capital investment. The pool condition audit would provide evidence based data that would be the catalyst to seek provincial funding that would ensure the retention of pools and the costs of maintaining day to day operations. Given the outcome of the pool condition audits combined with demographic and program analysis, key strategic decisions can be developed so that a balance of pools and demand for pools across the City can be identified and preserved. It is anticipated that at the conclusion of this stage, the degree of capital investment will be known on a pool by pool basis, operating costs identified, early identification of which pools may need to be removed from inventory or even decommissioned and where new pools need to be built. This analysis will also have an aim of producing the best value for money.

In terms of the current negotiations for a new agreement, I propose that the current agreement:

- i. Be extended for an additional 2 year period, adjusting for the four pools to be removed as of June 30th, 2017 leaving 25 pools operational effective July 1, 2017 for the 2-year term
- ii. Agree on a 3 % annual revenue adjustment to the revised 25 pool inventory schedule
- iii. Agree to create an amortization of approved capital investment
- iv. Agree on details that would provide credit to the City when TDSB pools are not accessible for use
- v. Given the partnership work over the extended period of the agreement, the resulting pool strategy could then be formalized with all other terms and conditions into a possible long term arrangement such as ten years.

Given the time and effort to commission and undertake pool conditions audits, prepare applications to seek Provincial funding support and conduct a pool utilization review and create a collective strategic direction, it would be agreed that the construction of new pools, the removal of additional pools by the City from the agreement or the decommissioning of pools by TDSB will not occur but be guided following the approval of an overall pool strategy. Should there be extraordinary circumstances; with the approval of both governing bodies, changes could be advanced.

Other items to consider:

- Joint provincial application be pursued to access community hub funding in support of the pool condition audits
- I also wish to acknowledge that the City and TDSB/TLC are functions of different Provincial Ministry's and as such decisions and outcomes are guided by varying mandates and legislative authority. This, combined with both parties operating under different policies, procedures, funding sources and collective agreements creates a challenge to reach common goals. This is evident as we attempt to address other pool matters such as:

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- The City’s request for a long-term pool agreement at the Elm’s and Norsemen. A new agreement is being requested by the City in order for the City to undertake major capital repair at the facility. These two pools have been without formalized agreements for more than twenty years and now, any renewal needs to contemplate the impact of Ontario Regulation 444/98 and TDSB’s collective and Trade Union agreements. The Regulation imposes the demand on TDSB to secure fair market value for the land whereby in the past the City has enjoyed and continues to request access at no cost.
- The City is seeking an agreement to acquire lands at the TDSB Davisville school site for the construction of a new swimming pool. TLC has initiated discussion to enter into a long term land use lease agreement that is to be guided by both Ontario Regulation 444/98 and TDSB’s collective agreement conditions. The Regulation requires any lease to be at fair market value whereas the City is requesting a 49-year land-use agreement be at nominal fee.

It is these types of scenarios that need to be shared with the Province of Ontario in order to receive clarity around the relationship of Ontario Regulation 444/98 and the local implementation of the government’s interest in community hubs. TLC sees opportunity in jointly pursuing the provincial government and seeking resolution on these matters of public interest.

As the pool strategy is being developed it can also form the foundation for an even broader recreational shared use discussion involving fields, gyms, recreation Centres, arenas and transportation systems.

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Appendix 2:

THIS AMENDING AGREEMENT made in quadruplicate this 1st day of July, 2017,

B E T W E E N:

Toronto District School Board,
By its agent and manager
The Toronto Lands Corporation

(hereinafter called the "**TDSB**"),

OF THE FIRST PART

- and -

The Corporation of the City of Toronto

(hereinafter called "**the City**"),

OF THE SECOND PART

WITNESSES THAT:

WHEREAS by an agreement for the City use of TDSB swimming pools dated June 1, 2012, (the "2012 Agreement"), the Toronto District School Board ("TDSB") as owner agreed to allow the City of Toronto ("the City") as partner the ability to provide aquatic programming and services through TDSB owned pools, as further described in the 2012 Agreement, for a term of five (5) years, expiring on June 30, 2017, on the terms and conditions contained in the 2012 Agreement;

IN CONSIDERATION of the premises and of the mutual covenants hereinafter contained, the parties hereto hereby mutually agree as follows:

1. The defined terms used in this Amending Agreement shall have the same meanings as set out in the 2012 Agreement.
2. The 2012 Agreement is hereby amended by amending Clause 1, General, and replacing it with the following:

This Agreement shall expire on June 30, 2019. The parties, represented by the General Manager of Parks, Forestry and Recreation or her designate for the City and the Chief Executive Officer of the Toronto Lands Corporation or his designate for the TDSB, agree to work in earnest on a renewal of the 2012 Agreement and to come to terms for that renewal by no later than June 30, 2019.

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3. The 2012 Agreement is further amended by deleting Clause 4, General, and replacing it with the following:

Except where the TDSB advises of immediate closures for emergency maintenance, neither the City or the TDSB shall be permitted to delete any locations outlined in Appendix A of the 2012 Agreement.

4. The 2012 Agreement is hereby amended by amending *Appendix A – TDSB Pool Operating Charges for City Use*, and replacing it with the updated *Appendix A – TDSB Charges for City Use, Amended* attached to this Amending Agreement.

5. The parties agree to the annualized fees per pool as outlined in Appendix A. Refer to Appendix A for further fee details.

6. With mutual written consent to share costs, TLC may seek to secure pool conditions audits for any or all of the pools as set-out in Appendix A. If TDSB can seek and secure provincial funding in support of pool condition audits, any monies received will be shared between the parties to reduce or eliminate the costs of the pool audit(s). Where mutual consent is entered into, duplicate pool condition audit reports will be requested and presented to each party.

7. Upon the written agreement of both parties, capital investments to the pools will have its costs amortized over a maximum 20 year period. Details pertaining to the return of any outstanding balance, should the amortization schedule be interrupted prior to expiry, will form a part of the a renewal Agreement.

8. In case of any conflict or inconsistency between the 2012 Agreement and this Amending Agreement, this Amending Agreement will prevail.

9. The 2012 Agreement shall continue in full force and effect except as otherwise set out in this Amending Agreement.

IN WITNESS WHEREOF the City and TDSB have signed this Amending Agreement.

SIGNED AND DELIVERED

THE CORPORATION OF THE CITY OF TORONTO

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)
)

I have authority to bind the corporation

)

TORONTO DISTRICT SCHOOL BOARD

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)	
Witness:)	BY ITS
)	AGENT AND MANAGER THE TORONTO
)	LANDS CORPORATION
Print name:)	PER:
)	_____
)	Print name:
)	Title:
)	
_____)	
Print name:)	I/We have authority to bind the corporation.

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Appendix A – TDSB Charges for City Use, Amended

NAME OF SITES	School Ward	Fiscal Yeas 16/17 Ending Sept 1/17	July 1/17 - August 31/17	Fiscal Year 17/18 3.0 % Increase	Fiscal Year 18/19 3.0% Increase
Albert Campbell CI	21	\$ 206,963.73		\$ 213,172.64	\$ 219,567.82
Bedford Park	13	\$ 137,452.65		\$ 141,576.23	\$ 145,823.52
Bowmore/Fairmount Jr.&Sr.PS	16	\$ 215,095.04		\$ 221,547.89	\$ 228,194.33
Cedarbrae CI	4	\$ 177,265.83		\$ 182,583.80	\$ 188,061.31
CW Jefferys CI	19	\$ 140,987.71		\$ 145,217.34	\$ 149,573.86
DA Morrison Jr. High(see Oak Park)	16	\$ 235,565.59		\$ 242,632.56	\$ 249,911.54
Earl Beatty Jr.&Sr.PS/Comm.Centre	16	\$ 261,195.31		\$ 269,031.17	\$ 277,102.11
Emery CI	4	\$ 103,103.50		\$ 106,196.61	\$ 109,382.51
Frankland Comm.JS & Comm.Centre	15	\$ 154,349.99		\$ 158,980.49	\$ 163,749.90
Georges Vanier SS	17	\$ 170,082.04		\$ 175,184.50	\$ 180,440.04
Glen Ames Sr. PS	16	\$ 281,637.81		\$ 290,086.94	\$ 298,789.55
Gordon A. Brown Middle Sch.	16	\$ 206,018.23		\$ 212,198.78	\$ 218,564.74
Hillcrest PS & City Comm.Centre	11	\$ 152,488.24		\$ 157,062.89	\$ 161,774.78
L'Amoreaux CI	20	\$ 223,393.06		\$ 230,294.85	\$ 237,203.70
Lester B. Pearson CI	21	\$ 225,496.42		\$ 232,261.31	\$ 239,229.15
Northview Heights SS	5	\$ 149,491.76		\$ 153,976.51	\$ 158,595.81
Parkdale Public	7	\$ 264,068.82		\$ 271,990.88	\$ 280,150.61
Runnymede C.I.	7	\$ 173,307.20		\$ 178,506.42	\$ 183,861.61
Sir Oliver Mowat CI	22	\$ 226,396.01		\$ 233,187.89	\$ 240,183.53
Swansea PS	7	\$ 245,287.43		\$ 252,646.05	\$ 260,225.43
Vaughan Road Academy	8	\$ 197,873.37	\$ 230,000.00	\$ 236,900.00	\$ 244,007.00
Victoria Park CI	17	\$ 174,595.10		\$ 179,832.95	\$ 185,227.94
West Hill CI	22	\$ 190,450.12		\$ 196,163.62	\$ 202,048.53
Weston C.I.	6	\$ 217,669.77		\$ 224,199.86	\$ 230,925.86
Wexford CI	19	\$ 249,218.02		\$ 256,694.53	\$ 264,395.37
York Mills CI	13	\$ 164,228.23		\$ 169,155.08	\$ 174,229.73
** Note - These are anualized payment for the year					