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TO:	CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON DECEMBER 19, 2011
FROM:	RON STANDISH, P. Eng. DIRECTOR, WASTEWATER AND TREATMENT PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES
SUBJECT:	STATUS REPORT FOR ENVIRONMENTAL ASSESSMENT STUDY FOR TRIBUTARY 'C' DRAINAGE AREA

RECOMMENDATION

That, on the recommendation of the Director, Wastewater and Treatment, Planning, Environmental and Engineering Services, the following actions **BE TAKEN** with respect to a First Nation's review request of the Draft Environmental Study Report (ESR) for the Municipal Class Environmental Assessment (EA) Study, Schedule "C" for the Storm/Drainage and Stormwater Management (SWM), Transportation and Sanitary Trunk Servicing Works for the Tributary 'C' drainage area located within the Downstream Thames River Subwatershed Area:

- (a) the Mayor and the City Clerk **BE AUTHORIZED** to execute an agreement with the Munsee-Delaware First Nation's Consulting Team: Willms Shier Environmental Lawyers LLP and Red Lea Environmental Corporation, 14 Mintwood Court, Brampton, Ontario L6Z3K2 in the amount of \$91,430, excluding HST, for the legal and engineering peer review of the Draft Environmental Study Report (ESR) for the Municipal Class EA Study for the Tributary 'C' drainage area in accordance with the final work program and schedule as provided by the Consultants, it being noted that the revised upset total estimated fees cost for this First Nation's Consultant's peer review is based upon the Fee Guideline for Professional Engineering Services, 2006, recommended by the Ontario Society of Professional Engineers;
- (b) the approval given herein **BE CONDITIONAL** upon receiving the First Nation's confirmation on the finalized peer review's work plan ; and
- (c) the financing for this work **BE APPROVED** as set out in the Sources of Financing Report attached hereto as Appendix "A".

PREVIOUS REPORTS PERTINENT TO THIS MATTER

ETC June 1997 – Riverbend Community Plan that was completed by Proctor & Redfern Limited, was accepted

ETC 2008-10-24; Appointment of Consulting Engineer for Municipal Class Environmental Assessment for a Tributary 'C' Drainage Area (2008-A03-00-00/W05-00, 1/19/ETC)

ETC 2009-05-11; Appointment of Consulting Engineer for Municipal Class Environmental Assessment for the Tributary 'C' Drainage Area (2009-A03-00) (AS AMENDED) (2/10/ETC)

ETC 2009-11-16; Appointment of Consulting Engineer for Municipal Class Environmental Assessment for the Tributary 'C' Drainage Area

BNEC 2011-02-14; Additional Engineering Fees for Municipal Class Environmental Assessment (EA) Study for the Tributary 'C' Drainage Area

BNEC 2011-10-31; Status Report for Municipal Class Environmental Assessment (EA) Study for the Tributary 'C' Drainage Area

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BACKGROUND

Purpose:

The purpose of this report is to obtain a Council approval to execute an agreement with the Munsee-Delaware First Nation's Consulting Team in the amount of \$91,430.00, excluding HST it being noted that Council, at its meeting on November 7, 2011, gave Administration approval to negotiate up to \$50,000, excluding HST, for consulting fees for the legal and engineering peer review of ESR for the Municipal Class EA Study for the Tributary 'C' drainage area. However, because the final fee exceeds the anticipated \$50,000 value, that delegated authority cannot be used..

Context:

The Downstream Thames River Subwatershed Study was accepted by Council in 1995. This Subwatershed study identified the SWM criteria, environmental targets and governing principles to manage water resources and ecological health of the system.

The RiverBend Community Plan was completed by Proctor & Redfern Limited in May 1997 with various amendments completed in 2000. As part of the community planning process a Servicing Plan was completed and identified a preferred preliminary approach to storm/drainage and SWM servicing within the RiverBend development area. The water resources strategy recommended that the development area be serviced by a combination of a conveyance and SWM system, and other SWM measures.

In November 2008, Council accepted, at the recommendation of Administration, to engage AECOM to undertake the Municipal Class EA study for the Tributary 'C' drainage area. Further, in May 2009, Council accepted an increase to the Municipal Class EA Study for the purpose of including an Environmental Impact Study (EIS).

The field information completed for the EIS identified a cold fishery designation for a majority of the existing watercourse located on the subject lands. Based on the environmental and ecological sensitivity and requirements of the study area, it became evident that it would be beneficial to evaluate the proposed transportation and sanitary trunk works in coordination with the storm/drainage and SWM servicing works within one Municipal Class EA process. An increase in project scope was accepted by Council in November 2009 to incorporate road and sanitary trunk servicing works as a component of the study.

The coldwater fishery within the Tributary 'C' drainage area is believed to be one of the last water resources of its kind within the City of London. Cooler water supplied by the subsurface springs provides base flow and creates a habitat for resident trout and other coldwater fauna within the creek. Through discussions with approval agencies, they had requested that further ecological assessment be completed as part of the current study to confirm its classification and ensure protection against adverse impacts for London's last remaining coldwater fishery. In order to protect and sustain the resource, further analysis is necessary to assess source control measures as the SWM Best Management Practices (BMP) low impact development (LID) options and base flow to protect, recharge and discharge functions of the Tributary 'C' drainage area. This information was finalized in October, 2011.

The subject land within this study consists of approximately 161 ha of undeveloped grass/forest and small areas of existing low density residential development lands within the Downstream Thames Subwatershed. Development applications have been submitted for the majority of the undeveloped parcels of land within the study area and the intent of this study's recommendations are to develop infrastructures that will service the subject lands and minimize the potential adverse environmental impacts.

The goal of this project is to recommend servicing alternatives which provide the most efficient and cost effective stormwater and storm drainage servicing, sanitary servicing and collector road alignment for the study area in combination with the ability to maintain the main function of the existing water resources and Natural Heritage components. The recommended servicing option will provide storm/drainage and SWM for approximately 29 ha that will discharge directly to Tributary C and the remaining portion of the drainage area is going to the Thames River via the RiverBend Mews SWM facility under post development conditions.

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Discussion:

Approximately twenty six options have been evaluated and reviewed by AECOM and City's staff for this study in order to deliver a preferred storm/drainage and SWM servicing option that will be:

- completed in accordance with the Municipal Class EA process;
- meeting the City and approval agencies' standards and requirements;
- taking in consideration landowners' expectations and needs;
- based on the system approach; and
- blended well with the Natural Heritage System.

Engineering complexity, significant approval requirements by approval agencies, a commitment to protect/preserve one of London's last remaining coldwater fisheries and regard for landowners' expectations and needs, has led to a high level of dialogue between the approval agencies, the public and numerous interest groups including Muncee-Delaware First Nation. The City and Consulting Team reviewed and conducted 3 Public Meetings (PM) and 15 meetings with the landowners. On August 19, 2011, the City and the Consulting Team conducted PM #3 where the recommended draft servicing option was presented.

On August 19, 2011, Chief Waddilove of the Munsee-Delaware First Nation, undertook discussions with the City's staff and attended PM #3. In these discussions, Chief Waddilove wanted confirmation that the City of London, as the Proponent of this study, would ensure that the proposed stormwater flow that would be discharged to the cold water fishery stream would not adversely affect the environment and/or ecological habitat conditions of this system. It is our understanding that the Chief of Munsee-Delaware Nation is primarily concerned with the following issues:

- Preservation of the Tributary 'C' in relation to the water quality;
- Preservation of the Tributary 'C' in relation to temperature control;
- Preservation of the Tributary 'C' in relation to the fishery and aquatic habitat; and
- Preservation of springs that are supplying and feeding the cold water stream (Tributary 'C') and the setbacks associated with maintaining the cold water fishery functions.

Upon completion of the 1st Draft ESR for this Class EA study, a copy was forwarded to the Munsee-Delaware First Nation on September 19, 2011.

Duty to consult with First Nations is regarded by the approval authority (for this ESR the Ministry of the Environment) as an essential step in stakeholder consultation. It is unfortunate that their concerns were not raised until just before the Public Meeting of August 19, 2011. The recommendations in this report are now being put forward by City staff in an effort to expedite the process and advance the related development plans.

On October 24, 2011, the MOE, City staff and the Consulting Team met with the Munsee-Delaware First Nation. The Chief and First Nation's representatives of Munsee-Delaware Nation confirmed that they would engage consultants to prepare the Terms of Reference for a legal and engineering review of the Draft report of the Municipal Class EA Study for Tributary 'C'.

The Munsee-Delaware First Nation agreed to the City's request to permit City staff to have direct discussions with their consultants and subsequently provide additional information during all phases of this review as required. The consultants are as follows:

- Engineering - Kevin J.D. Ridley, Ph.D., P.Eng. (ON, AB), P.Geol. (AB), QP Red Lea Environmental Corporation;
- Legal Willms Shier Environmental Lawyers LLP

On November 7, 2011, Council approved the preliminary cost estimation of of \$50,000.00 excluding HST for the First Nation engineering and legal peer review cost of the ESR for the Class EA Study for the Tributary 'C', noting the City did not have the finalized work plan and staff were proceeding in advance of final costing in an effort to expedite this work with an ultimate goal of accelerating the submission of the EA and advancing development opportunities.

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On December 5, 2011, the City received the First Nation's Consultants' peer review work plan and schedule at a cost of \$91,430, excluding HST. While this is higher than was previously estimated, staff have reviewed the work plan and it appears to be more comprehensive than we anticipated but still within the scope of the Peer Review Guidelines for Professional Engineers of Ontario.

The First Nation's Consultants' Engineering and Legal Peer Review Fees – Estimated Probable Cost (EPC) for this project is as follows:

1	Willms Shier Environmental Lawyers - Legal Fees (excluding HST)	\$ 7,000	Recommended for award
2	Red Lea Environmental Corporation (excluding HST)	\$ 69,430	Recommended for award
3	Project Disbursements allowing for contingency	\$15, 000	Recommended for award
	total	\$91, 430	Recommended for award

The Munsee-Delaware First Nation's Consulting Team's expects this peer review will be completed by February 20, 2012.

Conclusions:

Therefore, it is recommended that the Mayor and the City Clerk be authorized to execute an agreement with the above noted consultants in the amount of \$91,430, excluding HST, conditional upon receiving First Nation's confirmation of the final work plan.

Next Steps:

1. Upon completion of the Peer Review the City will schedule a meeting the end of February, 2012, with the Munsee-Delaware Nation to receive and discuss the peer review comments.
2. A status report for this Class EA will be provided following the discussions with the First Nations.
3. Upon agreement of the peer review it will be incorporated into the Class EA and the draft ESD will be distributed to all approval agencies and landowners for final comment.
4. The final ESR report will then be prepared for acceptance by Council.

Acknowledgements:

This report was prepared by Berta Krichker - Manager of the Stormwater Management Unit.

SUBMITTED BY:	RECOMMENDED BY:
BERTA KRICKER, M.Eng., F.E.C., P. Eng. MANAGER OF STORMWATER STORMWATER MANAGEMENT UNIT	RON STANDISH, P.ENG. DIRECTOR, WASTEWATER AND TREATMENT – PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES
REVIEWED & CONCURRED BY:	
PAT MCNALLY, P.ENG. EXECUTIVE DIRECTOR OF PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES	

Attach: Appendix "A" – Sources of Financing
Appendix "B" – Location Map

c.c. AECOM
John Braam, City Engineer
Mary Goss, Budget Analyst

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