



Report to: COMMITTEE OF THE WHOLE

Date of Meeting: June 27, 2006

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**SUBJECT:** Bus Loop Agreement for Victoria Park/Steeles Avenue and  
Esna Park Drive/Steeles Avenue  
Legal File No. 06 0411 LG 0183

**PREPARED BY:** Bob Boxma, Assistant Town Solicitor  
Ext. 4745

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**RECOMMENDATION:**

That the Mayor and the Clerk be authorized to execute an Agreement, in a form satisfactory to the Town Solicitor, among IBM Canada Limited, J & S Realty Nominee Inc., Toronto Transit Commission and the Town of Markham.

**PURPOSE:**

To obtain authorization for the Mayor and Clerk to execute the Agreement among IBM Canada Limited, (IBM), J & S Realty Nominee Inc., Toronto Transit Commission and the Town of Markham, in a form satisfactory to the Town Solicitor.

**BACKGROUND:**

The agreement, which is attached to this report, is an agreement among the four parties in order to allow the Toronto Transit Commission (TTC) to enter upon lands owned by J & S Realty Nominee Inc., and leased by IBM Canada Limited, to proceed with the reconstruction of the bus loop at Victoria Park and Steeles Avenue East.

**OPTIONS/ DISCUSSION:**

There was an original agreement dated April 1, 1987 between the Town and IBM leasing lands to the Town to be used as a bus loop and this agreement was extended for a further period of 5 years. Notwithstanding the expiration of the lease, the Town has continued to use the lands, with the consent of IBM, as a bus loop.

The TTC has two bus loops on the IBM lands which are shown on the attached drawing. It is the bus loop at Victoria Park and Steeles Avenue East that the TTC wishes to re-construct and this agreement is necessary in order that the TTC can enter upon the lands and carry out the re-construction of the bus loop.

The attached agreement accomplishes this and also recognizes the second bus loop on the IBM lands at Esna Park Drive and Steeles Avenue East as part of the demised premises which are being leased to the Town and TTC but no re-construction is proposed for this loop at this time.

The Town's obligations, pursuant to the agreement, are to maintain the demised premises, to maintain the road surface and to remove snow and ice. The Town's

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obligations in this agreement are substantially similar to those in the original agreement, however, it will be the TTC who will re-construct the bus loop at Victoria Park and then it will be maintained by the Town.

**FINANCIAL TEMPLATE:**

Not applicable

**ENVIRONMENTAL CONSIDERATIONS:**

Not applicable

**ACCESSIBILITY CONSIDERATIONS:**

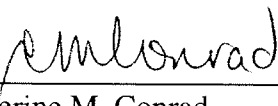
Not applicable

**BUSINESS UNITS CONSULTED AND AFFECTED:**

The Community and Fire Services Commission has been consulted in the preparation of this report.

**RECOMMENDED**

**BY:**

  
\_\_\_\_\_  
Catherine M. Conrad  
Town Solicitor

**ATTACHMENTS:**

Agreement  
Location Map

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## **AGREEMENT**

This Agreement made the                      day of                      , 2006

**BETWEEN:**

**IBM CANADA LIMITED**  
(hereinafter referred to as "IBM")

**OF THE FIRST PART**

**- AND -**

**J & S REALTY NOMINEE INC.**  
(hereinafter referred to as "J & S")

**OF THE SECOND PART**

**- AND -**

**TORONTO TRANSIT COMMISSION**  
(hereinafter referred to as the "TTC")

**OF THE THIRD PART**

**- AND -**

**THE CORPORATION OF THE TOWN OF MARKHAM**  
(hereinafter referred to as the "Town")

**OF THE FOURTH PART**

**WHEREAS**, pursuant to an agreement dated April 1, 1987, between IBM and the Town ("IBM Agreement), IBM leased certain lands (as described in Schedules A & B, in the agreement) to the Town to be used as a bus loop for an original term of five years, commencing on April 1, 1987 and ending on the last day of March 1992;

**AND WHEREAS**, pursuant to clause 5(g) of the IBM Agreement, the term was automatically extended for a further term of five years;

**AND WHEREAS**, notwithstanding the expiration of the terms of the IBM Agreement, the Town has, with the consent of IBM, continued to use the lands, as leased under the IBM Agreement, as a bus loop;

**AND WHEREAS**, J & S is the fee simple owner of the lands;

**AND WHEREAS**, IBM is the leasehold owner of the land pursuant to a long-term lease with J&S ("IBM Lease");

**AND WHEREAS**, IBM has a right of termination of the IBM Lease either as a result of a purchase of the fee simple ownership of the lands or a termination of the IBM Lease exercisable on November 1, 2007 ("IBM First Right of Termination");

**AND WHEREAS**, the TTC is proposing a re-construction of the bus loop on a portion of the Demised Area referred to as the Victoria Park Lands (as such terms are defined in clause 1 of this lease agreement);

**AND WHEREAS**, the parties are desirous of entering into a lease for certain lands (which are not identical to the lands leased in the IBM Agreement) to be used as a bus loop on lands presently leased to IBM, by J & S, the owner of the lands, for the continued use of the TTC and its successors.

**NOW THEREFORE WITNESSETH** that in consideration of the rents, covenants and other mutual promises herein contained, the parties do hereby agree as follows:

1. **Leased Lands:** IBM and J & S do hereby demise and lease to the Town and TTC, their successors and assigns, the real property, being: (i) the surface and immediately subjacent portion of the land located at the north-east corner of Victoria Park Avenue and Steeles Avenue (the "Victoria Park Lands"), and (ii) the surface and immediately subjacent portion of the land located at the south-east corner of Esna Park Drive and

Steeles Avenue (the "Esna Park Lands"), Town of Markham, as more particularly described in Schedule "A" hereto attached and collectively hereinafter referred to as the "Demised Area".

2. **Term:** The term of the lease shall be for a period of four (4) years and ten (10) months commencing the 1<sup>st</sup> day of January, 2003 and ending on the 31<sup>st</sup> day of October 2007 (the "Term");
  - a) **Renewal Term:** IBM and J & S agree that should IBM not exercise the IBM First Right of Termination, the agreement shall automatically renew at the expiration of the Term for a further period of five (5) years upon the same terms and conditions as contained herein. The rent payable during the renewal term shall be the same as set out in clause 3 of this lease.
  - b) In the event that IBM exercises the IBM First Right of Termination, J & S covenants and agree that at the expiration of the Term, this lease shall be deemed to be extended for a further period of five (5) years upon the same terms and conditions as contained herein. J & S agrees to assume all obligations of IBM as set out in this lease during the renewal term. The rent payable during the renewal term shall be at the same rate as set out in clause 3 of this lease and shall be payable directly to J & S.
3. **Rent:** The TTC, its successors and assigns shall pay rent, subject to clause 2(b), at a fixed annual rate of Two Dollars (\$2.00) for each year of the term. The rent shall be payable to IBM.
4. **Use:** The parties agree that the Demised Area may only be used by the Town and the TTC as a bus and transportation loop for the purpose of picking-up and dropping-off passengers and for allowing buses to turn around. The parties also agree that the Town and the TTC may place public shelters, lighting fixtures, signage, sidewalks, platforms and other works on the Demised Area that are required for the operation of a bus loop.
5. **Mutual agreements:** The parties mutually agree that:
  - a) The TTC shall construct, erect and use upon the Demised Area a bus loop, lighting fixtures, signage and other works incidental to the foregoing. TTC agrees to provide all construction drawings with respect to any construction in or on the Demised Area to IBM and J & S for prior written approval, which approval shall not be unreasonably withheld;
  - b) The Town shall be responsible for the maintenance of the Demised Area, including, without limitation, the boulevards and other sodded areas, the bus loop, lighting fixtures, road surfaces, sidewalks, platforms, install/maintain/replace a bus shelter and all other works incidental to the foregoing. The Town shall also be responsible for clearing snow, ice, trash and refuse from the Demised Area to the same standard as would a reasonably prudent owner of the lands;
  - c) IBM and J & S are under no obligation to ready the Demised Area in any manner for use and occupation by the Town and TTC;
  - d) The Town and TTC shall obtain all approvals and permits and comply with the requirements of every applicable statute, law, by-law, regulation and ordinance with respect to the condition, equipment, maintenance and use of the Demised Area, including without limitation, all environmental laws which shall include those relating to the reporting, licensing and remediating the presence of hazardous substances and the storage, generation, use, handling, manufacturing, processing, transportation, treatment and release or disposal of hazardous substances;
  - e) IBM and J & S may enter the Demised Area at all reasonable times to view the state of repair and conditioned use of the Demised Area;
  - f) Every right of entry which IBM and J & S have by reason of this lease may be exercised by its servants, agents, employees and contractors, with or without vehicles, machinery and equipment. IBM and J&S will make every effort not to disrupt with or interfere with bus operations within the loop during their right of entry; and

- g) IBM and J & S may relocate the location of the bus loop at their sole expense, with the consent of the Town and the TTC, which consent shall not be unreasonably withheld.

6. **TTC covenants:** The TTC covenants and agrees with the Town, IBM and J & S as follows:

- a) Not to do or permit anything to be done in or upon or about the Demised Area which would in any way conflict with the laws, rules and regulations relating to the environment (including, without limitation, those relating to the reporting, licensing, investigation and remediating the presence of hazardous substances and the storage, generation, use, handling, manufacturing, processing, transportation and release or disposal of hazardous substances), fire or with any statute or municipal by-law;
- b) Not to assign or sublet without the prior written consent of the Town, IBM and J & S which consent may be unreasonably or arbitrarily withheld or delayed;
- c) To use reasonable efforts to ensure that no inflammable or explosive substances are brought onto the Demised Area in vehicles or otherwise, other than motor vehicle fuel for the vehicles permitted on the Demised Area under this lease, while contained in normal fuel tanks of such vehicles;
- d) Except with the prior written consent of IBM and J & S which consent may be unreasonably or arbitrarily withheld or delayed, not to use the Demised Area for the purpose of displaying advertising signs or advertising material of any kind whatsoever, save and except for signage relating to use of the Demised Area as a passenger pick-up and drop-off location for use by TTC vehicles;
- e) To leave the Demised Area in good repair and upon expiration or termination of this lease, remove entirely at its expense all platforms, equipment and/or other property owned by the TTC, and to restore the Demised Area to a condition satisfactory to IBM and J & S, each acting reasonably;
- f) To save harmless and indemnify the Town, IBM and J & S, its directors, officers, employees and those for whom it may hold its interests in trust of and from all manner of actions, causes of actions, claims or demands arising out of loss, damage, or injuries sustained on the Demised Area by any person or by the property of any person, including loss of life to persons ("Claim") arising from or resulting from the breach of this lease agreement, or any negligence, omission or wilful misconduct of the TTC or its employees, agents, consultants, contractors or other persons for whom it may be legally responsible relating to the use of the Demised Area, save and except to the extent that any Claim arises out of or results from the negligence of the Town, IBM or J & S;
- g) To use the Demised Area for the purposes as set out in clause 4 of this agreement and for no other purposes;
- h) To not erect or place or permit to be erected or placed on the Demised Area, or any part thereof, any building or other structure or erection of any kind without the prior written consent of IBM and J & S, which consent may not be unreasonably withheld.

7. **Town covenants:** The Town covenants and agrees with the TTC, IBM and J & S as follows:

- (a) To at all times keep the Demised Area in a clean and tidy condition and not leave thereon any rubbish or waste material of any kind whatsoever
- (b) To maintain in good condition the road surface, sidewalks, concrete curbs, boulevards, sodded areas, bus shelter, lighting fixtures, road surfaces, sidewalks, platforms, signs and other works located or installed on the Demised Area;
- (c) To at all times remove snow and ice from the Demised Area;
- (d) To save harmless and indemnify the TTC, IBM and J & S, its directors, officers, employees and those for whom it may hold its interests in trust of and from all Claims arising from or resulting from the breach of this lease agreement, or any

negligence, omission or wilful misconduct of the Town its employees, agents, consultants, contractors or other persons for whom it may be legally responsible relating to the maintenance and repair of the Demised Area, save and except to the extent that any Claim arises out of or results from the negligence of the TTC, IBM or J & S;

- (e) Not to assign or sublet without the prior written consent of the TTC, IBM and J & S which consent may be unreasonably or arbitrarily withheld or delayed;
- (f) To keep open any existing drainage ditch or culvert on the Demised Area;
- (g) To pay rent and all property taxes, based on the Demised Area occupying 800 square meters of the Victoria Park Lands, including local improvement rates and charges, on or relating to the Demised Area, if any; and
- (h) To pay all rates and charges for water, electric power or all and other services or utilities supplied to the Demised Area;

8. **Execution of other documents:** Should IBM exercise the IBM First Right of Termination, it agrees to execute any further documents required by any of the parties to assign and/or surrender its rights under this lease agreement.

9. **Notice:** Any notice herein required or permitted to be given by either party to the other shall be in writing and shall be delivered by hand, sent by registered mail (except during a postal disruption or threatened postal disruption), or sent by facsimile, to the applicable address set forth below:

- (a) in the case of the TTC, to:

Toronto Transit Commission  
1900 Yonge Street  
Toronto, Ontario  
M4S 1Z2

Attention: General Secretary  
Telephone: 416-393-3000  
Facsimile: 416-485-9394

- (b) in the case of IBM, to:

IBM Canada Limited  
3500 Steeles Avenue E.  
Markham, Ontario  
L3R 2Z1

Attention: Director, Real Estate & Site Operations  
  
Telephone: 905-316-5000  
Facsimile: 905-316-6925

- (c) in the case of J & S, to:

J & S Realty Nominee Inc.  
c/o Torys LLP  
Suite 3000, 79 Wellington St. W.  
Toronto, Ontario  
M5K 1N2

Attention: Donald B. Roger  
Telephone: (416) 865-7347  
Facsimile: (416) 865-7380

(d) in the case of the Town, to:

The Corporation of the Town of Markham

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Attention:

Telephone:

Facsimile:

Any such communication delivered by hand shall be deemed to have been validly and effectively delivered upon receipt. Any such communication sent by registered mail shall be deemed to have been validly and effectively delivered on the third business day following the date of mailing. Any such communication sent by facsimile, shall be deemed to have validly and effectively delivered on the business day next following the day of transmission.

10. **Assignment:** IBM and J & S may assign all its rights under this lease without the consent of the Town and TTC.
11. **Laws:** This lease agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
12. **Headings:** The captions, paragraph numbers and headings appearing in this lease agreement are inserted only as a matter of convenience and in no way define, limit or construe or describe the scope or intent of such clauses of this lease agreement nor in any way affect this lease.
13. **Gender, Singular, etc.:** Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.
14. **Severability:** If any provision of this lease agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this lease agreement shall continue in full force and effect.
15. **Waiver:** No party will be deemed to have waived the exercise of any right that it holds under this lease agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.
16. **Force Majeure:** The respective obligations of every party hereunder, shall be suspended during the time and to the extent that such party is prevented from complying therewith in whole or in part by war or warlike conditions, actual or potential, terrorism, earthquake, fire, flood, strike, accident, riot, unavoidable casualty, present or future, act of any lawful authority, act of God, act of public enemy, or other causes of such same or other character beyond the reasonable control of such party. The party claiming a force majeure occurrence agrees to provide notice to every other party promptly of any such occurrence.
17. **Time is of the Essence:** Time shall be of the essence during the Term, and any renewals thereof, of this lease agreement.
18. **Enure:** This lease agreement shall be binding upon and enure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.
19. **Environmental Testing:** The TTC shall be permitted, with the prior written consent of IBM and J & S, to carry out such geotechnical, hydro geological, environmental tests and audits as it may reasonably deem appropriate. Following the completion of the tests, the TTC covenants and agrees to substantially restore the Demised Area and the lands to the condition that existed immediately prior to carrying out such tests. The TTC shall indemnify J & S and IBM and save each harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury or other claims arising out of any occurrence in or about the Demised Area and the lands occasioned or caused wholly or in part by any act or omission of TTC, its employees,



agents, consultants, contractors or other persons for whom it may be responsible in connection with such testing.

20. **Re-entry:** Despite anything contained in any future or present laws, if at any time during the Term (or any extensions or renewals thereof):

- (a) the TTC or the Town fails to pay any rent or other amounts due under this lease and such amount remains unpaid for fifteen days after the date on which the same ought to have been paid, although no formal demand shall have been made thereof, or
- (b) the TTC or the Town fails to observe or perform any other term, covenant or condition of this lease, and such failure continues for fifteen (15) days after receipt of written notice from IBM or J & S,

then in either such case (each of which shall constitute an "Event of Default") IBM or J & S, as the case may be, in addition to any other rights or remedies under this lease or the law, shall have the immediate right without further notice and at any time while the Event of Default continues to terminate this lease and re-enter the Demised Area.

**IN WITNESS WHEREOF IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**IBM CANADA LIMITED**

PER \_\_\_\_\_  
Name:  
Title:

PER \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Company

**THE CORPORATION OF THE TOWN OF MARKHAM**

PER \_\_\_\_\_  
Name: Don Cousens  
Title: Mayor

PER \_\_\_\_\_  
Name: Shiela Birrell  
Title: City Clerk

I/We have authority to bind the Municipality

**TORONTO TRANSIT COMMISSION**

PER \_\_\_\_\_  
Name:  
Title:

PER \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Commission

**J & S REALTY NOMINEE INC.**

PER \_\_\_\_\_  
Name:  
Title:

PER \_\_\_\_\_  
Name:

Title:

I/We have authority to bind the Company

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