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Memo

To: Tim Crowley, Project Manager – Watershed Management
Cari Vanderperk, Director, Watershed Management

Date: September 2, 2022

From: Mary K. Kelly, Canadian Director of Social Inclusion

CC: Ron Scheckenberger, Principal Consultant
Brian Bishop, Senior Associate
Dale Klodnicki, Associate Aquatic Ecologist
Trina Maher, Senior Human Environment Specialist
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Re: Chedoke Creek Remediation Project - Summary of Engagement with Indigenous Nations

The City of Hamilton recognizes the importance of and values engagement with Indigenous Nations and Peoples. While engagement with Indigenous Nations and Peoples is not a requirement of the Provincial Order received from the Ministry of Environment, Conservation and Parks (MECP), the City undertook engagement in the spirit of their reconciliation journey. The City, with the support of their consultant (Wood), conducted outreach and engagement with several Indigenous Nations, creating space to share knowledge, understand interests and priorities and advance remedial activities with these learnings in mind.

As the Project planning progressed, specific activities required further engagement, including Fisheries and Oceans' *Fisheries Act* Authorization, MECP Species At Risk Permitting, and Archaeological Assessments per the Ministry of Tourism, Culture and Sport.

The following subsections provides an overview of the City's engagement with the following Indigenous Nations:

- Mississaugas of the Credit First Nation (MCFN)
- Six Nations of the Grand River (SNGR)
- Haudenosaunee Confederacy Chiefs' Council (HCCC) as represented by the Haudenosaunee Development Institute (HDI)
- Huron-Wendat Nation (HWN)

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As the Project continues progress, Indigenous Nations will be contacted at key intervals and kept informed of opportunities to participate.

MISSISSAUGAS OF THE CREDIT FIRST NATION

Wood, on behalf of the City, contacted the Mississaugas of the Credit First Nation (MCFN) via email on July 16, 2021, regarding the Project by providing MCFN with a cover letter, project summary and offer to meet to discuss the Project. Wood followed-up via phone and email on July 23, 2021, to inquire of MCFN interest to meet and learn more about the Project. MCFN expressed interest in the Project and a virtual meeting was held September 1, 2021.

During the meeting on September 1, 2021, the City provided an overview of the Project and the actions undertaken by the City. Wood provided an overview of the targeted dredge plan, construction phase, surface water quality program, timeline and engagement opportunities, and next steps. Action items recorded from the meeting included providing MCFN with an update on the vegetative mats (Floating Treatment Wetlands) installments, providing a copy of the meeting summary to MCFN for validation and a commitment to keep MCFN updated on the progress of the Project. The meeting summary was provided to MCFN on September 13, 2021. There were no comments received on the meeting summary from MCFN. On September 21, 2021, the City provided MCFN with pictures and articles of the vegetative mats (Floating Treatment Wetlands) installment. One the same day, MCFN responded thanking the City for the pictures and articles and requested a site visit once COVID-19 related worksite access restrictions are lifted.

Wood provided MCFN with the 90% Design and Permitting Compliance Report for review on December 20, 2021. Wood followed-up via phone call and email on January 12, 2022, January 27, 2022, and February 11, 2022, to inquire if MCFN had any comments or feedback on this report. No comments were received.

On August 26, 2022, Wood contacted MCFN to provide an update on the timeline of the Project, to confirm if MCFN has interest to participate in environmental monitoring of the targeted dredge phase of the Project work and invited MCFN for a site visit. On August 29, 2022, MCFN responded and identified their interest in sending an Environmental Field Liaison Representative to participate and included their Participation Agreement for the City's review.

SIX NATIONS OF THE GRAND RIVER

Wood, on behalf of the City, contacted the Six Nations of the Grand River (SNGR) via email on July 16, 2021, regarding the Project by providing SNGR with a cover letter, project summary and offer to meet to discuss the Project. Wood followed-up via phone and email on July 23, 2021, to inquire of SNGR's interest to meet and learn more about the Project. SNGR expressed interest in the Project and a virtual meeting was held August 31, 2021.



During the meeting August 31, 2021, the City provided an overview of the Project and the actions undertaken by the City. Wood provided an overview of the targeted dredge plan, construction phase, surface water quality program, timeline and engagement opportunities, and next steps. Action items recorded from the meeting included the request by SNGR for further engagement with SNGR in determining the preferred alternative, providing the sample results from the initial excavation, providing pictures of dredging and cross-sections, keeping SNGR up to date on the progress of the Project and providing a copy of the meeting summary to SNGR for feedback and validation. The meeting summary was provided to SNGR on September 13, 2021. There were no comments received on the meeting summary from SNGR.

Wood provided SNGR with the 90% Design and Permitting Compliance Report for review on December 20, 2021. SNGR requested a virtual meeting to discuss this report, which was scheduled for January 18, 2022. At this meeting, SNGR requested more time to provide feedback on 90% Design and Permitting Compliance Report and requested a copy of the City's signage for the Project for review and comment. A meeting summary was provided to SNGR on January 27, 2022.

Following SNGR's request, the City provided a picture of the signage near Chedoke Creek on January 19, 2022. SNGR provided feedback on the signage near Chedoke Creek on February 23, 2022, expressing concerns regarding the lack of clarity on contaminants on the signage and the limited number of signs around the study area.

Feedback was also received from SNGR on the 90% Design and Permitting Compliance Report on February 25, 2022. A virtual meeting was scheduled to review this feedback with SNGR on March 4, 2022. The meeting summary was provided to SNGR on March 14, 2022, along with the Information Gathering Form and responses to all the comments received from SNGR to date.

Wood contacted SNGR on August 26, 2022, to provide an update on the timeline of the Project, to confirm if SNGR has interest to participate in environmental monitoring of the targeted dredge phase of the Project work and invited SNGR for a site visit.

The City held a conference call with SNGR on August 31, 2022. SNGR reconfirmed that the completion of the dredging project to be of significant importance. The City was advised that SNGR has interest in monitors on the site. The City will follow-up with SNGR to reach an agreement for participation.

HAUDENOSAUNEE DEVELOPMENT INSTITUTE

The City contacted the Haudenosaunee Development Institute (HDI) by email on February 17, 2021 to request a meeting to discuss the Project. The City led a virtual meeting with HDI to discuss the Chedoke Creek Workplan on February 25, 2021. Wood attended this meeting to provide support and address any technical questions related to the Project. HDI identified their concerns with the City's lack of prior



consultation and requested the City obtain consent from HDI, in writing, prior to initiating any actions to comply with the order. HDI requested the consent letter and copies of all technical reports by March 12, 2021. The technical information package, which included the workplan, Provincial Order and all background reports were mailed to HDI on March 11, 2021. The cover letter that was included with the package, was not a request for consent by the City, however it did welcome any comments or concerns to be brought forward. On April 26, 2021, HDI noted that the City has not met its obligation for engagement and requested that the City cease and desist any further work on the Project.

It is Wood's understanding that multiple conversations were held between senior members of City staff and HDI representatives over several months following the City's initial contact with the HDI. However, there was no outcome reached that was acceptable to both parties.

On August 18, 2022, representatives from HDI visited the Project site and impacted access of the City's dredge operations contractor (Milestone Environmental Contracting Inc.) to a large portion of the work site where the Dredge Material Management Area was being constructed. As a result, the contractor contacted the City and the Police. During the initial discussions on site between City staff, Police and HDI representatives, HDI requested that the City provide access to the site for HDI representatives to conduct environmental site observations for the duration of the dredging activities. It was decided to direct the contractor to stop work and secure equipment until more fulsome discussions on the matter could take place. The City provided via email to the HDI representatives the contact details for City staff managing the Project. HDI responded to confirm receipt and identify that one of their colleagues would be forwarding their Monitoring Agreement. A following email on that day was received by the City, which included the monitoring agreement and offered timeframes on August 19, 2022 for further discussions.

On August 19, 2022, the City and HDI held a conference call where it was agreed that a path forward could be achieved, suitable to both parties. The City followed up on the conversation with an email confirming that the City does believe there is a path forward for a monitoring agreement and they would respond back to HDI on Monday, August 22, 2022.

The dredge operations contractor, under direction from the City, resumed site preparation work on August 22, 2022 and were also directed to defer starting any in-water dredging until the details of the Monitoring Agreement were negotiated and formally executed. HDI left a voice message and followed up with an email on August 22, 2022, inquiring about the status of the contractors at the Project site. The City responded the same day to identify that they were continuing with mobilization and ancillary works while the City and HDI work towards a resolution. The email also noted that they are aiming to begin dredging activities on August 29, 2022, with an agreement in place for participation by HDI environmental monitors. In response, on the same day, HDI emailed the City identifying that their position is that the City has not received their consent to advance the Project.



The City called HDI on August 23, 2022 to discuss a proposed path forward for the monitoring agreement, whereby the City's contractor would enter into the agreement with the HDI. HDI was receptive to the solution and agreed to schedule a virtual meeting the next day to introduce the various parties that would be involved with negotiating the agreement. The City followed up the discussion with an email to confirm the conversation and agreed-upon path and inquire about HDI representatives for the introductory meeting along with a proposed time.

Later that same day representatives from HDI visited the Project site and impacted the contractor's access to the site. The City once again decided to direct the contractor to stop work and secure equipment. At the same time, an HDI representative left a voice message for the City identifying that they were at the Project Site to exercise their Treaty Rights, and that the City was progressing without consent or an agreement. Following this voice message, the City received an email from HDI expressing their disappointment in work having resumed without engagement or consent being provided by HDI. The email also identified that HDI remained open to sitting down with the City to discuss engagement. HDI identifies their position that they believe there has been a delegation of engagement from the Province to the City.

Recognizing that the Province has not delegated any engagement, such as the procedural aspects of the duty to consult, to the City, on August 24, 2022, the City sent a formal letter to the HDI. The letter addressed three specific aspects.

1. Activities HDI representatives witnessed the week of August 22, 2022 were not remedial activities (i.e., no active dredging) and were mobilization and ancillary works to prepare for dredging activities once an agreement was in place.
2. Proposed work is being conducted in response to a Provincial Order, and as the City does not have jurisdiction in this matter, contact details were provided for MECP representative and the City offered their willingness to participate in any discussions with the Crown
3. Agreement for monitoring is something the City is interesting in advancing and proposed a path forward (i.e., agreement through their contractor).

On August 26, 2022, the City emailed HDI to follow up on the August 24, 2022 letter and express interest in setting up a meeting to discuss. HDI responded the same day and declined a meeting citing concern that the City is of the position that it is not obligated to engage with the HCCC, and that HDI is waiting to hear from the City Manager.

Following HDI's August 26, 2022 email, the City had a phone conversation with HDI to discuss a path forward to resolve the matter. HDI followed up with an email summarizing their requirements for the matter to be resolved, including a monitoring agreement and costs incurred to date. HDI also shared another email which provided links to support the items discussed during the phone conversation, specifically the City's adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).



On August 27, 2022, the City responded to HDI and expressed thanks for the for the shared information. The City suggested focusing their discussions on the dredging project, and specifically to document the following to support meaningful discussions: Issues, HCCC / HDI Position, City (Hamilton Water) Position and Resolution. The City sought agreement to this approach and offered to draft information for sharing with HDI on August 29, 2022. The City representative committed to keeping Mayor, Council and City Manager informed of the progress. HDI responded to the City's email and identified that the proposed approach does not address their concerns, and that they will make themselves available to discuss further with the Mayor and City Manager.

HURON-WENDAT NATION

Wood, on behalf of the City contacted the Huron-Wendat Nation (HWN) via email on July 16, 2021 about the Project by providing HWN with a cover letter, project summary and offer to meet to discuss the Project. Wood followed-up via phone and email on July 23, 2021, to inquire of HWN interest to meet and learn more about the Project. HWN identified interest to review archaeological studies and archaeological fieldwork. Wood provided the draft Background Marine Archaeological Assessment, specific to Chedoke Creek and Princess Point Embayment to HWN for review on February 11, 2022. No comments were received.