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October 27, 2009

Ms. Crystal Greer
City Clerk
City of Mississauga
300 City Centre Drive
Mississauga, Ontario
L5B 3C1

Michael J. Nobrega
President and CEO

Dear Ms. Greer:

We are writing you in connection with the judicial investigation which has been proposed by Council Resolution 0222-2009.

In connection with our comments below, we have reviewed the reports of City Solicitor, Mary Ellen Bench dated September 24 and October 13, 2009 ("Reports"). Based upon a review of these documents, and our knowledge of some of the underlying facts, OMERS Administration Corporation ("OMERS") urges members of Council to consider carefully the scope of the proposed inquiry. In our view, these Reports do not disclose issues that warrant reference to OMERS in the terms of reference.

The City Solicitor's Report of September 24, 2009 was summarized in her Report of October 13, 2009 as follows:

"Attached to that report were two opinions obtained from the law firm McLean & Kerr, with the first opinion concerning any conflicts of interest on the part of the Mayor, Members of Council or City Staff relating to the City Purchase Agreement and/or WCD's involvement with the property, and the second legal opinion related to whether City Staff acted appropriately in respect of negotiating the relevant Agreement of Purchase and Sale, to properly protect the City's interests. Regarding the conflict of interest, the report concluded that only Mayor McCallion had contravened the *Municipal Conflict of Interest Act*, however the opinion also advised that the contravention which occurred on May 21, 2008, "may have been committed through inadvertence or by reason of an error in judgment" as contemplated by Section 10(2) of the *Municipal Conflict of Interest Act*. Regarding the negotiations of the real estate transaction, the legal opinion concluded that the City Purchase Agreement was a sophisticated and comprehensive agreement negotiated between sophisticated parties and that "City Legal staff exercised the proper standard of care in documenting the City Purchase Agreement and in documenting the issues unique to the Purchase Transaction."

We note the question left open relating to the WCD transaction was whether Mayor McCallion properly disclosed a conflict of interest at the May 21, 2008 Council meeting. OMERS should be excluded from the second resolution dealing with the terms of reference.

With respect to Enersource and OMERS, we bring your attention to the third proposed term of reference contained in the Draft Resolution, which is Appendix 2 to the October 13, 2009 Report. It states:

"3. to investigate and inquire into all aspects of similar real estate, development or other business transactions involving Enersource, OMERS and its related companies, and/or the

principals and representatives of WCD which engaged in the City of Mississauga's resources or approval processes, and the basis of the decisions that were taken in respect of these matters."

OMERS believes there is nothing in the record before Council which would in any way justify a judicial inquiry into the matters set out in paragraph 3 in relation to OMERS and Enersource.

With respect to Enersource, a decision to proceed based on this third proposed term of reference could potentially jeopardize an imminent transaction involving OMERS, Enersource and the City. Since January 22, 2009, OMERS has indicated a willingness, as requested by the City, to negotiate amendments to Enersource's shareholders' agreement as a result of the expiry of the Put Agreement between OMERS and the City. Over the past nine months, the City and OMERS have negotiated the form of an amended and restated shareholders' agreement (the "New Agreement") which protects and respects the new underlying interests of both shareholders. OMERS understands that the Special Negotiating Committee of the Mississauga City Council appointed to negotiate the amendments with OMERS is recommending that the City Council approve the entering into of the New Agreement at tomorrow's Council meeting. If the OMERS/Enersource transaction is to be a subject of the judicial inquiry then it would not seem appropriate for OMERS to enter into the New Agreement at this time pending the outcome of the judicial inquiry.

The inquiry under consideration references OMERS on several fronts. We are concerned in the interests of OMERS plan members and retirees, over 17,000 of whom live and/or work in Mississauga, that the inquiry is overly broad as proposed and could involve reputational harm to OMERS and its plan members. The OMERS organization is at risk of becoming tied to a multi-month inquiry that will, by that reason alone, expose OMERS to reputational risk even with exonerating findings in the future.

We respectfully request that the City obtain a report from an appropriate third party source substantiating the merits of proceeding with an inquiry as contemplated and specifically whether there are sufficient grounds for involving OMERS. The report, we request, would cover the estimated costs of separate representation for participants like OMERS if the City decides to proceed with a judicial inquiry, as well as how reputational risks will reasonably be protected and managed and compensation to OMERS for reputation damage should that occur.

Were an inquiry to proceed as proposed, we would expect full representation opportunities, a clear process to minimize reputational risk and assurances that our costs would be covered in full. We also think it is fair and reasonable for the City to cover the costs of the many months of negotiations around Enersource in which we were encouraged to participate that are now at risk.

Yours truly,



Michael Nobrega