

Court File No.: 211/19

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

BETWEEN:

**CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION
AND LESTER BROWN**

Applicants

- and -

**TORONTO WATERFRONT REVITALIZATION CORPORATION, CITY OF
TORONTO, HER MAJESTY IN RIGHT OF ONTARIO as represented by the
MINISTER OF INFRASTRUCTURE, HER MAJESTY IN RIGHT OF
CANADA as represented by the MINISTER OF COMMUNITIES AND
INFRASTRUCTURE, AND THE ATTORNEY GENERAL OF CANADA**

Respondents

**AFFIDAVIT OF KRISTINA LYNNE VERNER
(affirmed January 17, 2020)**

I, Kristina Lynne Verner, of the City of Hamilton, in the Province of Ontario, AFFIRM:

1. I am the Vice-President, Innovation, Sustainability and Prosperity at Waterfront Toronto and as such have knowledge of the following matters. Where the statements in my affidavit are based on information and belief, I do verily believe them to be true. Where I do not have personal knowledge, I have identified the source of my information and believe it to be true.
2. As the Vice-President, Innovation, Sustainability and Prosperity at Waterfront Toronto, I have overall responsibility for the corporation's innovation agenda, strategic alliances portfolio and economic development activities.
3. By way of background, I have over 20 years of experience in the development of smart communities. I previously served as the Research & Development Officer at the University of Windsor Centre for Smart Community Innovation where I led various aspects of the Connecting

Windsor-Essex Smart Community project, and currently sit on the Boards of Directors for the Intelligent Community Forum Foundation and the Intelligent Community Forum Canada. In addition to my role at Waterfront Toronto, I currently serve as a Sessional Instructor in the School of Computer Science at the University of Windsor where I teach a range of courses, including Computer Concepts, Social Media and Mobile Technology, and Cyber Ethics.

4. I make this affidavit in support of a motion to strike portions of the Corporation of the Canadian Civil Liberties Association (“CCLA”) and Mr. Brown’s Application on the basis of prematurity.

Overview

5. Located just southeast of the downtown Toronto core lies a 12-acre piece of land known as the Quayside area. The Toronto Waterfront Revitalization Corporation (“**Waterfront Toronto**”) owns about 10.5 acres of Quayside, with the remaining 1.5 acres under public and private ownership. Waterfront Toronto and Sidewalk Labs LLC (“**Sidewalk Labs**”) entered into agreements which would, if pursued, lead to the revitalization of the Quayside area and that would showcase urban innovations such as advanced building materials, technologies, and sustainable practices, amongst other things.

6. Waterfront Toronto is at the evaluation phase of the project. Waterfront Toronto and Sidewalk Labs entered into an agreement that sets the framework and timelines for developing the scope and commercial terms of the project. Through public consultations, internal reviews, consultation with governments and feedback from industry experts Waterfront Toronto is evaluating the plans, including the proposed innovations and ideas that Sidewalk Labs has put forward and assessing these proposals against Waterfront Toronto’s objectives. Waterfront Toronto is also assessing the commercial feasibility of Sidewalk Labs’ proposals. In parallel, Sidewalk Labs continues to review and assess the feasibility of the project. The plans are referred to collectively as the Master Innovation and Development Plan or “MIDP”. The MIDP is fluid and evolving, as a result of the process of ongoing comment and analysis.

7. Waterfront Toronto and Sidewalk Labs each continue to review and consider the feasibility of the project plans and discuss principal commercial terms. Either party can decide to

walk away from the project and there is no agreement to proceed with the implementation of the project.

8. With respect to innovations and technology, no agreements have been entered into regarding Sidewalk Labs' proposed innovations, technologies, or buildings. Specific solutions are evolving and vendors have not been identified at this time. Therefore, the specific details relating to privacy and data collection have not crystallized. Specific types of technologies have been proposed by Sidewalk Labs at different times and, while Waterfront Toronto has rejected some based on public and stakeholder feedback, none have been approved by Waterfront Toronto.

9. Considerable analysis needs to be undertaken, and various development and regulatory approvals would need to be applied for, and be received, before the Quayside project can proceed to implementation. In particular:

- i. the Waterfront Toronto Board of Directors must approve the MIDP (as amended) together with a set of principal commercial terms by the current approval deadline of March 31, 2020 (referred to in this affidavit as the "**Plan Approval Deadline**"), otherwise the project automatically terminates;
- ii. if the MIDP (as amended) is approved by the Waterfront Toronto Board of Directors, the next stage is to negotiate a series of principal implementation agreements with Sidewalk Labs that will include the full commercial and business terms of the project, and identify any additional implementation agreements to be entered into;
- iii. if the principal implementation agreements are not settled and approved by both parties by the current approval deadline of December 31, 2020 (referred to in this affidavit as the "**PIA Approval Deadline**"), the project will automatically terminate; and
- iv. all three levels of government will be consulted with and have an opportunity to comment before each of the Plan Approval Deadline and the PIA Approval Deadline.

10. As well, Waterfront Toronto and Sidewalk Labs will issue competitive requests for proposals to select developers and builders for the built environment at Quayside and seek planning, development and regulatory approvals from the relevant authorities. The project also needs to receive various government approvals including development and site approvals from the City of Toronto. By my best estimate, if all approvals are obtained, actual construction of the project will likely not begin before 2023.

Background to Waterfront Toronto

11. Waterfront Toronto is a corporation without share capital established pursuant to the *Toronto Waterfront Revitalization Corporation, 2002*, S.O. 2002, c. 28 (the “*WT Act*”) by the Government of Canada, the Province of Ontario and the City of Toronto.

12. Waterfront Toronto’s statutory role is to oversee and deliver the revitalization of Toronto’s waterfront area within what is called the “Designated Waterfront Area” (the “*DWA*”). The ultimate goal of the corporation is to transform the DWA into sustainable mixed-use communities and public spaces. Pursuant to the *WT Act*, Waterfront Toronto’s objects are described as being:

- i. To implement a plan that enhances the economic, social and cultural value of the land in the designated waterfront area and creates an accessible and active waterfront for living, working and recreation, and to do so in a fiscally and environmentally responsible manner.
- ii. To ensure that ongoing development in the designated waterfront area can continue in a financially self-sustaining manner.
- iii. To promote and encourage the involvement of the private sector in the development of the designated waterfront area.
- iv. To encourage public input into the development of the designated waterfront area.
- v. To engage in such other activities as may be prescribed by regulation.

13. Waterfront Toronto is also mandated by the *WT Act* to carry out its objects so as to ensure that the revitalization of the DWA creates new economic growth, new jobs, diverse and dynamic new commercial, residential and recreational communities, new cultural institutions and new parks and green spaces for the public.

Waterfront Toronto is Engaged in Many Projects

14. Waterfront Toronto is a party to a Memorandum of Understanding dated March 31, 2006 among Waterfront Toronto, the City of Toronto and City of Toronto Economic Development Corporation (the “**MOU**”) which sets out, among other things, that Waterfront Toronto is the revitalization lead for the Port Lands and East Bayfront (in each case, as defined in the MOU), which mandate includes preparing Business and Implementation Plans for City Council approval. The MOU is attached as **Exhibit “A”**.

15. Waterfront Toronto has undertaken numerous projects to date and is currently engaged in a series of revitalization projects in the DWA. In addition to the East Bayfront (which includes the Quayside lands), Waterfront Toronto was the revitalization lead in the area known as the “West Don Lands”, being a 55-hectare site west of the Don River and north of the Gardiner Expressway. East Bayfront and the West Don Lands are both mixed-use urban renewal projects, prioritizing Waterfront Toronto’s core principles of design excellence, intelligent communities, affordable housing, and sustainable development. Examples of Waterfront Toronto’s “intelligent communities” initiatives include our partnership with Beanfield Metroconnect to establish low-cost, open access, ultra-broadband infrastructure and ensure digital inclusion throughout the East Bayfront and the West Don Lands, and the Waterfront Innovation Centre in the East Bayfront which will be a brand new, purpose built workplace for Toronto’s rapidly evolving creative technology sectors.

16. Waterfront Toronto has received accolades for its work, including the 2017 Canadian Brownfield Awards: Redevelopment at the Community Scale for East Bayfront/Bayside Development and 2017 Toronto Urban Design Awards: Award of Excellence for the West Don Lands Public Realm.

17. In the past, Waterfront Toronto has also received awards for its integration of innovation in its revitalization efforts, such as:

- i. the 2007 Broadband Properties Summit Cornerstone Award for Developing a World-Class Concept for an Ultra-Broadband Community for Waterfront Toronto's Intelligent Communities;
- ii. the 2014 Intelligent Community of the Year for the City of Toronto;
- iii. the 2013 and 2014 Intelligent Community Forum Top 7 Designation for the City of Toronto; and
- iv. the 2013 and 2014 Intelligent Community Forum Smart 21 Designation for the City of Toronto.

18. The Intelligent Community awards were conferred by the Intelligent Community Forum (ICF), which is a non-profit policy research organization. These awards recognize jurisdictions that exemplify “best practices in broadband deployment and use, workforce development, innovation, digital inclusion and advocacy.” In 2013 and 2014, Waterfront Toronto led the application on behalf of the City of Toronto. The Waterfront Toronto model was a core element of the decision to name Toronto as the global Intelligent Community of the Year in 2014.

Waterfront Toronto Engages with its Government Stakeholders

19. Waterfront Toronto has numerous points of contact with its government stakeholders. As the three orders of government are ultimately accountable for their respective expenditure of funds through Waterfront Toronto, they established the Intergovernmental Steering Committee (“IGSC”) at the outset of the creation of Waterfront Toronto. Representatives from the three orders of government meet quarterly with Waterfront Toronto to discuss issues of importance and report its progress. Governments also have closed sessions of the IGSC without Waterfront Toronto present to discuss matters amongst themselves. The IGSC reviews, among other things, the Waterfront Toronto Five-Year Plan and annual business plans. Additional working groups or project-specific committees are established as needed.

The Quayside Project

20. The Quayside lands are located within the East Bayfront (and the DWA) and are principally owned by Waterfront Toronto. The Quayside area, bound by Parliament St. to the east and Bonnycastle St. to the west, is displayed below as Figure 1.

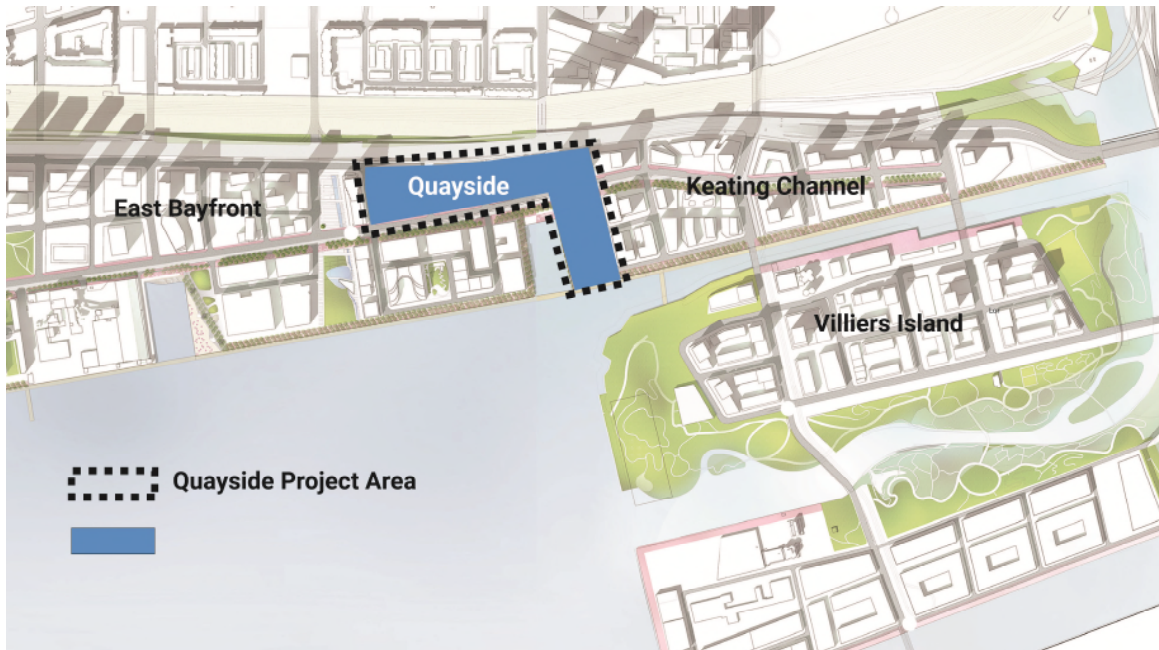


Figure 1. Quayside Area

Preliminary Stages

21. To assess the possibility and potential development of Quayside, between February 2016 and March 2017, Waterfront Toronto conducted thirteen months of market sounding with industry. This included firms ranging from development and infrastructure to venture capital, pension funds and technology companies.

22. Also, in August 2016, Waterfront Toronto appointed the Honourable Coulter A. Osborne as a Fairness Advisor for an anticipated procurement process related to Quayside, and retained additional consultants, advisors and subject matters experts to advise on the procurement process.

The Request for Proposals

23. Following preliminary market sounding, on March 17, 2017, Waterfront Toronto issued a Request for Proposals (“**RFP**”) for an innovation and funding partner for the Quayside lands, with the potential to carry successful solutions, processes and partnerships forward into the subsequent developments of the eastern waterfront (subject to future applicable procurement policies and additional requirements of the City of Toronto or other land owners or funding authorities) (the “**Quayside Project**”). The deadline for submissions was April 27, 2017. Attached as **Exhibit “B”** is a copy of the Request for Proposals.

24. As is customary, Waterfront Toronto published RFP documents and timelines related to the Quayside Project on its website, and broadly to industry through a variety of channels, including via the MERX procurement portal.

25. Proponents were required to develop a proposal for the Quayside Project. Waterfront Toronto envisioned a partner that would create a vision for a next-generation community that would showcase urban innovations such as advanced technologies, building materials, sustainable practices (consistent with the Waterfront Toronto Resilience and Innovation Framework for Sustainability) and affordable housing. The envisioned Quayside Project would create a highly sustainable mixed-use, mixed income neighbourhood, providing a range of housing types and amenities for all income levels and stages of life, as well as addressing the need for mobility and accessibility. The RFP also contemplated that the Quayside Project would have the potential to accommodate retail, commercial and institutional development. Attached as **Exhibit “C”** is a copy of the Waterfront Toronto Resilience and Innovation Framework for Sustainability.

26. While Waterfront Toronto sought a partner to help develop and design an innovative community, “innovation” was not synonymous with technology. In other words, in the RFP, the role that technology would play would be to enable Waterfront Toronto to realize its broader objectives of delivering sustainable, vibrant, mixed-use communities. Technology was (and remains) an enabling tool to assist in achieving the objectives.

27. On May 19, 2017, Waterfront Toronto shortlisted three prospective proponents and requested a Best and Final Offer by August 22, 2017. Four rounds of commercially confidential meetings took place with each of the short-listed proponents from May 29, 2017 to August 11, 2017.
28. On June 15, 2017, Waterfront Toronto provided the IGSC an update on the Quayside RFP process and timelines with a view to an October 2017 announcement.
29. From August 22-30, 2017, the Waterfront Toronto Evaluation Team, with input from subject matter experts, evaluated the Best and Final Offer submissions. Sidewalk Labs received the highest score.
30. Sidewalk Labs is an Alphabet Inc. subsidiary that was formed in 2015 with the mission of “reimagining cities and accelerating innovation to address urban challenges and achieve new stands of sustainability, affordability, mobility and economic prosperity.” Attached as **Exhibit “D”** is a copy of “Plan Development Agreement, July 31, 2018, Frequently Asked Questions” page, which describes Sidewalk Labs.
31. The Quayside Steering Committee, which was composed of senior management and external subject matter experts, approved the recommendation of the Waterfront Toronto Evaluation Team.
32. On October 16, 2017, the Waterfront Toronto Board of Directors authorized the execution of the Framework Agreement. This information was made publicly known on October 17, 2017. Attached as **Exhibit “E”** is a copy of the press release.

The Framework Agreement

33. On October 16, 2017, Waterfront Toronto entered into a Framework Agreement with Sidewalk Labs, which authorized the parties to continue to negotiate a more detailed Plan Development Agreement (“PDA”). Attached as **Exhibit “F”** is a copy of the Framework Agreement.
34. The Framework Agreement defined on a provisional basis, the roles of the two parties and processes to guide in the preparation of the MIDP, with consultation and approvals from the

City of Toronto, the Province of Ontario, the Canadian federal government and other entities as necessary, and to be set out more fully in the PDA, to be drafted and executed. In addition to other termination rights, Waterfront Toronto had the right to terminate the Framework Agreement at any time prior to the execution of the PDA.

35. On January 17, 2018, Waterfront Toronto's Quayside Board Committee¹ approved a Protocol for Briefing Governments to formalize communication relating to the Quayside Project (the "**Protocol**"). Pursuant to the Protocol, the PDA and any subsequent "Key Agreement" (as defined in the Protocol) is to be circulated to the three orders of government for comment prior to execution or amendment. Attached as **Exhibit "G"** is a copy of the Protocol.

The Plan Development Agreement

36. Between October 18, 2017 and July 31, 2018, Waterfront Toronto and Sidewalk Labs negotiated the terms of the PDA, with regular updates to the IGSC, the Waterfront Toronto Quayside Committee and the Board of Directors. Attached as **Exhibit "H"** is a copy of the PDA, signed on July 31, 2018. The PDA terminated and replaced the Framework Agreement.

37. The principal objective of the PDA is to establish a roadmap for the design and preparation of the MIDP and implementation agreements, subject to required approvals. The PDA called for the creation of the MIDP to occur, within a structured framework of stakeholder consultation and budgets. The PDA contains deadlines for completion, notably, the Plan Approval Deadline and PIA Approval Deadline, as described above (and which have since been extended, as described further below).

38. Schedule "I" to the PDA sets out the Digital Governance Framework Principles to govern the project. Among other things, all work contemplated is to comply with applicable legislation as may be amended from time to time, and to be guided by enumerated guiding digital design principles relating to data and privacy.

¹ At various times the Board committee responsible for the Quayside Project oversight and making recommendations to the Board has gone by different names including: Investment and Real Estate Committee ("**IREC**"), the Quayside Committee and the Investment, Real Estate and Quayside Committee ("**IREQ**") which remains in place today.

39. The Digital Governance Framework Principles also describe the role of the existing Digital Strategy Advisory Panel (“**DSAP**”). DSAP is an arm’s length panel of experts who are recognized as leaders or experts in their respective fields, including Canadian and international subject matter specialists from academia, industry, the civic technology community and the law. The DSAP advises Waterfront Toronto on how best to incorporate data privacy, digital systems, and the safe and ethical use of technologies throughout DWA and not just with respect to Quayside. The current Chair of DSAP is Michael Geist, a recognized Canadian academic, the Canada Research Chair in Internal and E-Commerce Law at the University of Ottawa and a member of the Centre for Law, Technology and Society.

40. The MIDP is subject to the approval of both Waterfront Toronto and Sidewalk Labs. Section 3.01 of the PDA reads in relevant part:

3.01 Approvals

(a) The MIDP will be subject to the approval of each of Waterfront Toronto, in its sole, absolute and unfettered discretion (including the approval of its board of directors and any Additional Approvals on which Waterfront Toronto elects to condition its approval, the “Waterfront Toronto Approval”) and Sidewalk Labs, in its sole, absolute and unfettered discretion (the “Sidewalk Approval”). Sidewalk acknowledges that, in addition to the approval of the Waterfront Toronto board, Waterfront Toronto may, at its option, seek the approval of the MIDP by any or all of the Three Orders of Government (the “Additional Approvals”) and that the Waterfront Toronto Approval shall not be deemed to have been given until Waterfront Toronto has obtained the approval of its board of directors and obtained any Additional Approvals on which it has elected to condition its approval. The MIDP will also be subject to the review and input of the Waterfront Toronto Design Review Panel and Digital Strategy Advisory Panel. [...]

41. The PDA states that implementation of the MIDP will be governed by future agreements to be negotiated, if the MIDP is approved. The PDA does not bind Waterfront Toronto to implement any proposal from Sidewalk Labs with respect to the MIDP.

Release of the Draft Master Innovation and Development Plan (MIDP)

42. Pursuant to the RFP, the Framework Agreement and the PDA, Sidewalk Labs, as the Innovation and Funding Partner, has been working towards proposing a plan to address Waterfront Toronto's programmatic requirements, together with planning and partnership frameworks, and an underlying business plan for Waterfront Toronto's consideration and approval.

43. From October 16, 2017 to June 17, 2019, Sidewalk Labs proposed ideas and elements of the MIDP for comment which Waterfront Toronto analyzed with input from the public through public consultation, and from government stakeholders. During this period, the creation of the MIDP was an evolving and iterative process. The public consultation schedule from October 16, 2017 to June 17, 2019 is attached as **Exhibit "I"**. Further, the public was also invited to submit their comments in writing at any time to Waterfront Toronto.

44. On June 17, 2019, Sidewalk Labs provided, in draft form, a proposed MIDP to Waterfront Toronto. The proposal, titled "Draft Master Innovation and Development Plan" (the "**Draft MIDP**") detailed Sidewalk Labs' recommendations for the Quayside Project lands. The Draft MIDP was made available to the public by Waterfront Toronto on June 24, 2019.

45. The Draft MIDP was composed of four volumes:

- i. Overview – this volume essentially served as an executive summary of the full proposal.
- ii. The Plans – this volume elaborated on the development plan and the physical manifestations of proposed innovations, as well as economic impacts associated with the implementation of the MIDP;
- iii. The Urban Innovations – this volume outlined the proposed innovations across five pillars: mobility, public realm, buildings and housing, sustainability, and digital innovation; and

- iv. The Partnership – this volume described the commercial proposal, including governance constructs, roles and responsibilities, transaction economics, stage gates, implementation plans and risk mitigation measures.

46. Waterfront Toronto created a Note to Reader that summarized the contents of the Draft MIDP in order to assist the public in navigating and understanding the Draft MIDP. Attached as **Exhibit “J”** is a copy of the Note to Reader.

Waterfront Toronto’s Preliminary Concerns

47. On June 24, 2019, Waterfront Toronto’s Board Chair, Stephen Diamond, released an open letter to the public outlining preliminary concerns that would need to be resolved by Sidewalk Labs before the Waterfront Toronto Board of Directors would direct management to evaluate the MIDP. The concerns included elements of the cumulative public and government stakeholder feedback received to date. The open letter was released concurrently with the Note to Reader. Attached as **Exhibit “K”** is a copy of Mr. Diamond’s open letter. In his letter, Mr. Diamond pointed to four key issues:

- i. The Draft MIDP contemplated a much greater space than the original 12 acres of Quayside for the development of an “IDEA District”. Waterfront Toronto advised Sidewalk Labs that it must first see Sidewalk Labs’ goals and objectives achieved at Quayside before deciding whether to work together in other areas;
- ii. Waterfront Toronto needed to lead a competitive public procurement process for traditional development partners to work with Sidewalk Labs;
- iii. The Draft MIDP required future commitments from governments to realize project outcomes. These were not commitments Waterfront Toronto could make; and
- iv. More information from Sidewalk Labs was required regarding data collection, data use, and digital governance.

The Amending Plan Development Agreement

48. Waterfront Toronto and Sidewalk Labs recognized that in order to address the concerns raised in the open letter, and to complete a fulsome review of the MIDP, the Plan Approval Deadline (and accordingly, PIA Approval Deadline) would have to be extended. On July 31, 2019, Waterfront Toronto and Sidewalk Labs entered into an amending agreement that amended the PDA to extend certain time periods provided for in the PDA (the “**Amending PDA**”). Attached as **Exhibit “L”** is a copy of the Amending PDA.

49. The Amending PDA extended, by six months from September 30, 2019 to March 31, 2020, the deadline by which Waterfront Toronto and Sidewalk Labs must determine whether or not to approve the MIDP. This extension allowed Waterfront Toronto more time to receive public feedback on the draft MIDP (discussed below) and to undertake expert evaluations of it prior to making recommendations to Waterfront Toronto’s Board of Directors.

50. The PDA was also amended to extend the deadline for entering into the Principal Implementation Agreements from December 31, 2019 to December 31, 2020, should the Waterfront Toronto Board of Directors approve the MIDP by March 31, 2020.

51. The Amending PDA also included a new provision that stated that if the parties could not agree on a set of threshold issues, the PDA would terminate as of October 31, 2019.

Threshold Issues

52. In October 2019, Waterfront Toronto and Sidewalk Labs reached alignment on the issues that were identified in the open letter from Waterfront Toronto’s Board Chair in June 2019, as well as certain other issues raised subsequently (together, the “**Threshold Issues**”).

53. On October 29, 2019, Waterfront Toronto’s President and CEO, George Zegarac, wrote to Josh Sirefman of Sidewalk Labs regarding the Threshold Issues and to confirm Sidewalk Labs’ agreement on the proposed resolutions to the Threshold Issues. Attached as **Exhibit “M”** is a copy of Mr. Zegarac’s October 29, 2019 letter, and attached as **Exhibit “N”** is a chart summarizing the threshold issues and Waterfront Toronto and Sidewalk Labs’ alignment on these issues.

54. Mr. Zegarac's letter clarified a number of issues relating to the Quayside Project. Chief among these issues were:

- i. To reestablish the project boundaries to be the 12-acres of Quayside only and not extend the project at this stage to a larger area;
- ii. To plan and pursue an Innovation Plan, that would enable Waterfront Toronto to carry out the objectives set out in the RFP, being job creation and economic development; sustainable and climate-positive development with a commitment to design excellence; housing affordability; new mobility; and urban innovation (including robust data privacy and digital governance);
- iii. To define roles and responsibilities around design and implementation of municipal and advanced infrastructure;
- iv. To require procurement for third-party developer partners;
- v. To refine principles and roles around digital governance and privacy; and
- vi. To refine principles around intellectual property and data ownership.

55. Mr. Zegarac's letter also stated that the Innovation Plan would be enabled through appropriate and applicable legislative and regulatory processes, and Waterfront Toronto acknowledged that regulatory reform and modernization may be required that are beyond the jurisdiction of Waterfront Toronto.

56. Most importantly, the Innovation Plan will be subject to the results of Waterfront Toronto's evaluation and further public consultation, and will be dynamic.

57. There were significant clarifications and confirmations with respect to digital governance and privacy. The amendments include, but are not limited to:

- i. Sidewalk Labs reaffirmed its commitment to comply with all existing and future privacy legislation, regulations and policy frameworks established by the three orders of government;

- ii. Data governance will be determined by municipal, provincial and federal laws, rules and regulations applicable to access and protection of data in the Quayside Project;
- iii. Sidewalk Labs will respect Waterfront Toronto's Digital Principles (attached as **Exhibit "O"**) and comply with emerging Intelligent Community Guidelines, to be developed with input from government stakeholders, industry, and the broader community;
- iv. Personal information will be stored and processed in Canada, and commercially reasonable efforts will be made to process non-personal data in Canada;
- v. Sidewalk Labs will not require new or amended privacy laws or other new laws or regulations in order to achieve a digital governance structure as a pre-condition to the implementation agreements. Also, the creation of the "Urban Data Trust" proposed by Sidewalk Labs was removed; and
- vi. Sidewalk Labs will issue a Digital Innovation Appendix ("**DIA**") that will supplement the MIDP and which will form the core content that is to be formally evaluated by Waterfront Toronto regarding these matters.

58. Attached to Mr. Zegarac's letter was a letter from the City of Toronto and CreateTO stipulating open and competitive procurement processes, and a City-led public consultation process of the MIDP to take place in Q2 of 2020.

59. Sidewalk Labs confirmed its commitment to the realigned Quayside Project and its alignment with the Threshold Issues outlined in the October 29, 2019 letter. Attached as **Exhibit "P"** is a copy of Mr. Joshua Sirefman's letter dated October 30, 2019.

60. With the alignment on the threshold issues, Waterfront Toronto's Board of Directors unanimously directed management to proceed with the evaluation of the proposal for the Quayside Project on October 31, 2019. Attached as **Exhibit "Q"** is a copy of the Letter from Waterfront Toronto's Board Chair dated October 31, 2019 confirming the direction to proceed with the evaluation of the proposal.

61. Mr. Diamond’s October 31, 2019 letter stated: “Let me be clear: this is not a done deal. There is still much work to do before a final decision. While a final Board decision whether or not to proceed has yet to be made, we are pleased that we are now able to move to the evaluation stage on a project that has the potential to create new jobs and economic development opportunities, create carbon-neutral neighbourhood, and more affordable housing units.”

The Draft MIDP Evaluation Process

62. With the Threshold Issues aligned, Waterfront Toronto has begun the formal evaluation of the Draft MIDP, based on a process created in consultation with the Waterfront Toronto Board of Directors and government stakeholders. The formal evaluation provides an integrated and collaborative due diligence review process with external experts, focusing on the potential risks and benefits of each idea and issue presented in the Draft MIDP, including but not limited to:

- i. whether the MIDP meets Waterfront Toronto’s goals and objectives;
- ii. whether the MIDP aligns with the planning framework for the waterfront; and
- iii. whether the proposed business plan is viable and in the public interest.

63. As part of the evaluation process, Waterfront Toronto will also take into account feedback from DSAP, the public consultations and a Preliminary Human Rights Impact Assessment which is currently underway.

The Digital Strategy Advisory Panel

64. DSAP provided a preliminary review of the Draft MIDP to Waterfront Toronto in the form of a Preliminary Commentary and Questions document on August 19, 2019. Attached as **Exhibit “R”** is a copy of DSAP Preliminary Commentary and Questions on Sidewalk Labs’ Draft Master Innovation and Development Plan (MIDP). A supplementary report from the DSAP which reflects on the DIA is expected to be provided to Waterfront Toronto in February 2020.

65. DSAP will continue to advise Waterfront Toronto’s management as the Quayside Project evolves.

Public Consultations

66. Since signing the Framework Agreement, the execution of the PDA, the issuance of the Draft MIDP, execution of the Amending PDA and alignment on the Threshold Issues, Waterfront Toronto has continued its public and stakeholder consultation process. These consultation processes have involved:

- i. a town hall;
- ii. three “design jams”;
- iii. a stakeholder advisory committee
- iv. a resident reference panel (selected through a civic lottery);
- v. three Civic Labs focused on potential digital elements;
- vi. a data trust exploration workshop with MaRS Solutions Lab;
- vii. a digital public consultation in concert with Toronto Public Library and the Digital Justice Lab,
- viii. four public roundtable sessions,
- ix. seven drop-in sessions at public library branches across the city; and,
- x. a public briefing.

67. In addition to in-person sessions, the public has had the opportunity to submit feedback through online consultations and written submissions until the Fall of 2019.

68. To date, Waterfront Toronto has engaged the participation of thousands of citizens. Attached as **Exhibit “I”** is the schedule of public consultations that have taken place up to November 2019. The CCLA has been invited to, and representatives have attended some of these consultations.

Preliminary Human Rights Impact Assessment

69. In November 2019, Waterfront Toronto issued a Request for Proposals seeking consulting services to conduct a Preliminary Human Rights Risk Assessment on the Draft MIDP, as informed by the Universal Declaration of Human Rights and the Declaration of Cities Coalition for Digital Rights.

70. The objective of the Preliminary Human Rights Risk Assessment is to identify any preliminary or potential human rights issues arising from the Draft MIDP, and any additional information required to conduct a full Human Rights Risk Assessment. If the Draft MIDP (as will be amended by the Innovation Plan) is approved by Waterfront Toronto and Sidewalk Labs, a full Human Rights Risk Assessment would be conducted.

The Quayside Project will Continue to Evolve

71. Based on the feedback from the Draft MIDP formal evaluation, ongoing public consultations and the Preliminary Human Rights Impact Assessment, Waterfront Toronto staff may seek further amendments to the Draft MIDP and/or the Innovation Plan prior to seeking Waterfront Toronto Board of Directors' approval.

72. As the Draft MIDP described, “[the MIDP] is a work-in-progress meant to be refined by further consultation – not a finished product.” Even if the Quayside Project receives approval from Waterfront Toronto’s Board of Directors by the Plan Approval Deadline, and the principal implementation agreements are finalized and approved by the PIA Approval Deadline, any implementation will continue to require various approvals from the City of Toronto and will be required to meet all federal and provincial, and municipal regulations.

73. Waterfront Toronto is now at the evaluation stage of the Quayside Project. During this phase, Waterfront Toronto will evaluate the ideas put forward by Sidewalk Labs in the Draft MIDP against Waterfront Toronto’s objectives and the commercial feasibility of Sidewalk Labs’ proposal will be considered. There will also be additional public consultation on Waterfront Toronto’s evaluation of Sidewalk Labs’ proposal in early 2020.

74. There are a number of innovations proposed in the Draft MIDP that are being evaluated. However, it has not been determined which, if any, will be included in the proposed Innovation Plan for Quayside.

75. Various proposed innovations and projects, such as the use of tall timber designs for buildings, adaptive traffic signals, and low energy building designs, even if approved between Waterfront Toronto and Sidewalk Labs, will require regulatory approval or amendments to existing regulations, code or by-laws by the appropriate governmental authority.

76. However, at the present time, we have not yet identified all of the innovations which might be pursued at Quayside nor how they might be implemented and by whom. Neither the Framework Agreement, the PDA, nor the Draft MIDP (as will be amended by the Innovation Plan to be defined) confirm or crystalize the innovations at Quayside or how those technologies will be developed. These previous agreements and the Draft MIDP only set out the process by which such innovations would be developed and evaluated in the future. Indeed, it may be the case that Sidewalk Labs is not the solution provider for some or all of the innovations. The procurement of such partners has yet to be determined.

Privacy and Data Considerations have not yet crystalized

77. In response to concerns raised in respect of the Draft MIDP, Sidewalk Labs developed the DIA in November 2019. The DIA provides detailed information on the digital innovation proposals included in the Draft MIDP and provides an overview of Sidewalk Labs' approaches to data use and inclusive design. More specifically, the DIA includes explanations of the purpose of each potential type of innovation, what data may need to be collected for the innovation to work, and how data may be used and protected. Attached as **Exhibit "S"** is a copy of the DIA.

78. The DIA has been made publicly available such that both the public and DSAP have had and will continue to have the opportunity to offer feedback on what the DIA proposes. The DIA is designed to spark a discussion about data implementation in smart cities and provide in-depth exploration of innovations. It is in no way an agreement in respect of data collection, data use, or privacy interests. Issues relating to personal data and privacy have not been formally agreed to or implemented at this stage of the Quayside Project.

79. As I have described above, the Framework Agreement, the PDA and the Draft MIDP do not commit Waterfront Toronto to any specific plan, idea or innovation, and therefore a detailed plan on data stewardship is not in place at this time. Innovations and concepts are constantly evolving, adapting, and improving and the specifics of digital and privacy matters are not yet identified. What may have been envisioned at earlier stages of this project may no longer necessarily apply to the present stage nor will they necessarily apply when the project is ready to be built.

Steps after the Evaluation Phase

80. The Quayside Project is evolving. Even after the evaluation stage, if the Draft MIDP (as may be amended) is approved, an Innovation Plan is agreed to, and principal implementation agreements are executed, by my best estimate at this stage, construction will likely not begin any earlier than 2023, with occupancy not likely to occur prior to July 2025.

81. The Waterfront Toronto Board of Directors and the IREQ Committee are actively involved in these matters. Between now and March 31, 2020, the Waterfront Toronto Board of Directors is scheduled to meet at least twice and the IREQ Committee is scheduled to meet at least 3 times.

82. The Waterfront Toronto Board of Directors meeting, scheduled for March 2020 will involve a consideration of the IREQ Committee's recommendation to approve some, all or none of the Draft MIDP (as amended). The Board of Directors will also review the principal commercial terms. Project implementation agreements will not be approved until the PIA Approval Deadline.

83. Further, I am advised by Meg Davis, the Chief Development Officer, Waterfront Toronto and do verily believe that before construction can commence, Waterfront Toronto will need to, amongst other things:

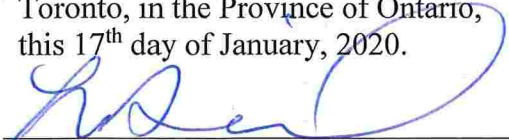
- submit a Business Implementation Plan for the City-owned lands in Quayside pursuant to the MOU for City Council approval;

- draft and agree with Sidewalk Labs on principal implementation agreements prior to the PIA Approval Deadline;
- consult with all three levels of government. Each level of government may have its own evaluation process and requirements;
- work with Sidewalk Labs to seek permit and development approvals;
- ensure Sidewalk Labs obtains the necessary environmental approvals;
- work with Sidewalk Labs to enter into affordable housing agreements;
- lead a developer proposal call to engage developers and constructors with Sidewalk Labs; and
- WT and SWL will need to select vendors on any proposed innovations.

The CCLA has had an Opportunity to participate in this Process

84. As I have stated above, since launching the Quayside Project, Waterfront Toronto and Sidewalk Labs have engaged in numerous public and stakeholder consultation meetings to present and gain feedback on work in progress. The CCLA has had the opportunity to and has attended public consultation sessions, including but not limited to: the civic labs sessions, public roundtables, and data trust workshop. They have also attended public DSAP sessions. To the best of my knowledge, the CCLA has not submitted any comments in writing to date.

AFFIRMED BEFORE ME, at the City of)
 Toronto, in the Province of Ontario,)
 this 17th day of January, 2020.)


 _____)
 A Commissioner, etc.)

Lauren Theresa Daniel, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 8, 2022.



KRISTINA LYNNE VERNER