

Consolidated Clause in Policy and Finance Committee Report 9, which was considered by City Council on October 26, 27, 28 and 31, 2005.

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**Union Station - Amending Agreement to the Reciprocal
Rights Agreement with GO Transit
(Ward 28 - Toronto Centre-Rosedale)**

City Council on October 26, 27, 28 and 31, 2005, adopted this Clause without amendment.

The Policy and Finance Committee recommends that City Council adopt the recommendation of the Administration Committee contained in the communication (October 7, 2005) from the Committee.

Recommendation:

The Administration Committee recommended to the Policy and Finance Committee that City Council adopt the staff recommendations in the Recommendations Section of the report (September 26, 2005) from the Chief Corporate Officer.

Background:

The Administration Committee on October 6, 2005 considered a report (September 26, 2005) from the Chief Corporate Officer seeking approval of an amendment to the existing Reciprocal Rights Agreement to resolve an outstanding dispute with GO Transit.

Recommendations:

It is recommended that:

- (1) City Council approve the Reciprocal Rights Amending Agreement attached as Appendix A to this report in settlement of the outstanding title and repair issues with GO Transit;
- (2) City Council approve in principle GO Transit's proposal to create a central glass atrium over the train platforms encroaching into the City's airspace above as part of its Trainshed Roof Rehabilitation project on terms and conditions satisfactory to the Chief Corporate Officer and City Solicitor, to include execution of an encroachment agreement, ensuring that this element will not preclude or limit the City's ability to deal with the airspace, and that City staff continue to be involved in the design process; and

- (3) appropriate City staff be authorized and directed to take any action and execute any documents necessary to give effect thereto.

(Report dated September 26, 2005, addressed to the Administration Committee from the Chief Corporate Officer.)

Purpose:

To secure approval of an amendment to the existing Reciprocal Rights Agreement to resolve an outstanding dispute with GO Transit.

Financial Implications and Impact Statement:

The cost to the City to undertake repairs to services and a waterproofing program at Union Station is estimated on a preliminary basis to be \$2,400,000.00 over a three year period with construction commencing in 2006. GO Transit will tender the work and invoice the City for the City's share of the cost. It is likely the cost will be spread evenly resulting in an approximate capital requirement in each of 2007, 2008 and 2009 of \$800,000.00. This waterproofing and repair program will overlap with work already identified in the City's State of Good Repair Program.

The Union Pearson Group (UPG) did not include any costs to deal with the waterproofing in its proposal. As part of the Station Lease negotiations, which are the subject of the companion report from the Deputy City Manager and Chief Financial Officer, UPG has agreed to be responsible for ongoing operating issues relative to the services and waterproofing and to contribute on an annual basis a reserve amount of \$40,000.00 for the future capital replacement of the waterproofing not included in its original proposal.

The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) City Council approve the Reciprocal Rights Amending Agreement attached as Appendix A to this report in settlement of the outstanding title and repair issues with GO Transit;
- (2) City Council approve in principle GO Transit's proposal to create a central glass atrium over the train platforms encroaching into the City's airspace above as part of its Trainshed Roof Rehabilitation project on terms and conditions satisfactory to the Chief Corporate Officer and City Solicitor, to include execution of an encroachment agreement, ensuring that this element will not preclude or limit the City's ability to deal with the airspace, and that City staff continue to be involved in the design process; and

- (4) appropriate City staff be authorized and directed to take any action and execute any documents necessary to give effect thereto.

Background:

When the City and GO Transit purchased the Union Station assets from Toronto Terminals Railway Company Limited in June 2000, the City purchased the station building and the air rights above it. GO Transit purchased the rail corridor from Strachan Avenue to the Don Valley including the trainshed, consisting of the railway tracks and platforms at the rear of the station. The station building extends below the trainshed. The boundary between the City's building and GO's trainshed is described as "the top of the concrete slab" that forms the roof of the station building.

Due to the stratified interests, the City and GO Transit entered into a Reciprocal Rights Agreement (the "RRA") defining their ownership interests and the rights and obligations of each with respect to the inter-relationship between their property interests. Among other matters, the RRA allocates repair and maintenance responsibilities between the station building owned by the City and the trainshed owned by GO regardless of function.

At the time GO Transit and the City entered into the RRA, the parties did not yet have a full appreciation of how the dynamic of managing Union Station would work out. This was due in large part to the fact that TTR had owned the entire property and did not have to concern itself about whether some building system or maintenance responsibility related to the rail operations (now owned by GO) or the building operations (now owned by the City).

Concerns related to water leaking from the trainshed (GO's property) into the Union Station building below (City property) have focused attention on the division of responsibility for various services, structures and their repair. At issue between the City and GO Transit in particular is the layer of waterproofing material placed immediately on top of the concrete slab but below the railway tracks. GO took the position that the waterproofing is part of the concrete slab making the City responsible for its repair. City staff disagreed and interpreted this as being within GO's ownership.

GO is also embarking on a program commencing in 2006 to rehabilitate the trainshed roof. This provides the opportunity to put the various tracks and platforms out of service, pull up the rails, ties and underlying ballast to investigate and repair the source(s) of the leaks in a cost effective manner with the least impact on GO operations. To take advantage of the cost savings this will involve, GO and City staff have been trying to negotiate a resolution that would allow the necessary repairs to be made and cost shared, both as part of GO's program as well as an overall solution to the dispute.

GO and City staff, including the City Solicitor's office, have spent a number of months negotiating the resolution of a series of items. While at one time it appeared that negotiations may need to proceed to arbitration as contemplated by the RRA, GO Transit and City staff have successfully negotiated a resolution that in our opinion is fair to both parties, is comprehensive and makes operational sense. Staff at GO are simultaneously taking a report recommending this settlement to the GO Transit Board.

The amendment to the RRA, outlined in the Reciprocal Rights Amending Agreement attached to this report as Appendix A, deals with a series of items where the properties and operations of the City and GO interface including:

(1) Waterproofing Layer:

This is the largest issue. The existing waterproofing is comprised of a layer of asphalt on top of the concrete slab which acts as the roof of the station and the floor of the trainshed. As the asphalt layer lies under the platforms and the ballast under the tracks it was not possible to inspect it completely. While it is felt to generally be in good condition it is probable that portions of the asphalt layer will need to be repaired and the proposed work program includes the placement of a membrane on top of the asphalt layer under the tracks and up the sides of the platforms.

(2) Services and Expansion Joints:

There are a variety of services which penetrate the slab such as roof drains, slab drains, water services and other City and GO service penetrations. The amendment to the RRA allocates cost responsibility and repair/replacement responsibility for these services on a practical basis.

The concrete slab is comprised of 5 different sections running in a north/south alignment. Between each of these sections is an expansion joint. These expansion joints are clearly the responsibility of the City and in order to ensure a complete waterproofing job is done it is considered prudent to incorporate the replacement of the expansion material as part of the work program. This waterproofing program will overlap with work already identified in the City's State of Good Repair Program. Coupling it with GO's roof rehabilitation project will create cost savings that allow the additional waterproofing component to be absorbed within the existing budget.

(3) Encroachments:

The third function of the RRA is to clarify the list of building elements that are owned by either the City or GO and which encroach into the other's ownership.

The basic concept in resolving the waterproofing issue is to coordinate the work associated with the waterproofing layer itself and the related services with GO's upcoming roof rehabilitation project. The fundamental approach from a cost perspective both on a capital repair/replacement and operating basis is based on GO and the City paying for those services which are solely relative to their respective operation and to share on a 50/50 basis the cost of repairing the waterproofing layer. As set out in the Financial Implications of this report it has been estimated on a preliminary basis by GO that the total cost of the City's share of the work would be in the range of \$2,400,000 inclusive of a 25 percent contingency.

It is estimated that approximately 60 percent of the total cost or \$1,400,000 is attributable to the waterproofing repairs/replacement. Because it was believed that the waterproofing

belonged to GO Transit, the UPG proposal to lease Union Station did not include these costs. As noted in the companion report on the Station Lease negotiations, UPG has agreed to take on any annual operating costs for waterproofing and contribute \$40,000 annually to a capital reserve to cover future capital replacement/repair. The City is responsible, in any event, for the initial capital outlay and excess future capital replacement costs, if any, over and above the accumulated reserve.

GO staff have recently advised that they plan to tender the roof replacement work together with other related work including the waterproofing in spring, 2006 with construction to start later in 2006. As the program entails the temporary shutting down of tracks it will be undertaken over a three year period. GO will submit regular invoices to the City for payment commencing in 2007.

The Amending Agreement establishes a process for management of the procurement of contracts for the current capital maintenance, which will be performed as part of the work for the repair of the trainshed roof, as it makes sense to do both at the same time. This includes staging the required work over three years, segregating the various costs between trainshed roof work (which is a GO project) and the other rehabilitation work, which will be shared between GO and the City as negotiated, as well as providing input from both parties before final decisions are made and contracts awarded, particularly regarding costs, should the preliminary estimates not be accurate.

In addition, also as part of GO's roof rehabilitation project, it proposes to replace the central portion of the trainshed roof with a raised glass atrium to allow more natural light in and create a brighter, more open and inviting environment for the millions of passengers that pass through the station by rail each year. This will project into the City airspace above, requiring an encroachment agreement. Before embarking on a costly design process, GO has requested that the City provide approval in principle to the concept, subject to execution of an encroachment agreement that will protect the City's ability to proceed with development of the air space when ever the City determines it appropriate to do so.

The Master Plan for Union Station envisions creation of an "astonishing" trainshed roof potentially coupled with development of the City airspace. The Urban Design Study recommended by the Master Plan is underway and will be completed by the spring of 2006. GO has delayed its roof rehabilitation project as long as it can. City staff from Urban Development Services have reviewed the GO proposal and agree that it represents a marked improvement to the existing trainshed and support it as an interim condition until a more comprehensive redevelopment is approved. GO is willing to take the risk that this new element could be replaced at any time with a more comprehensive trainshed redevelopment and as such, City staff recommend the concept of a central raised atrium extending into the City's airspace in principle, subject to terms and conditions to be addressed in an encroachment agreement, ensuring that redevelopment of the City air space is not precluded or limited and continuing City involvement in the design process. A further report will be provided to City Council on the terms of the encroachment once a more detailed design has been developed that identifies the extent of the encroachment.

Conclusion:

The negotiated settlement with GO Transit resolves the outstanding issues now and for the future in a manner which is fair to both parties, makes operational sense and provides the City with an opportunity to repair the waterproofing/services in order to protect the Union Station asset from any further damage.

The proposal by GO Transit to replace a portion of the trainshed roof with a central atrium encroaching into the City's airspace represents a marked improvement to the existing condition and should be approved in principle as an interim solution pending a more comprehensive redevelopment of the trainshed.

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Appendix A

RECIPROCAL RIGHTS AMENDING AGREEMENT

B E T W E E N:

**CITY OF TORONTO, a municipal corporation established
pursuant to the laws of Ontario,**

OF THE FIRST PART,

- and -

**GREATER TORONTO TRANSIT AUTHORITY, a
corporation established pursuant to the laws of Ontario,**

OF THE SECOND PART.

WHEREAS:

- A. In June 2000 the City of Toronto (“the City”) and Greater Toronto Transit Authority (“GO Transit”) acquired the assets of Toronto Terminals Railway at and in the vicinity of Union Station, Toronto;
- B. GO Transit owns the rail corridor, tracks, platforms and related rail infrastructure at the rear of Union Station (“the Rail Corridor Envelope”) and the City owns the Union Station Building, a portion of which extends below the Rail Corridor Envelope (the “Rail Corridor Lower Area”);
- C. GO Transit and the City entered into a Reciprocal Rights Agreement dated as of June 30, 2000 to set out the rights and responsibilities of the parties with respect to their ownership interests at Union Station;
- D. As a result of water leaking from the Rail Corridor Envelope into the Rail Corridor Lower Area, a dispute has arisen with respect to the ownership of and responsibility for the waterproofing material located on top of the concrete slab described as the dividing line between the Rail Corridor Envelope and the Rail Corridor Lower Area;
- E. The parties wish to resolve responsibility for the waterproofing and other servicing elements that penetrate the waterproofing and concrete slab now and in the future;

NOW THEREFORE staff of GO Transit and the City have agreed to the following amendments to the Reciprocal Rights Agreement:

- 1. (a) GO Transit will expand its upcoming Roof Rehabilitation project (the “Project”) to attempt to resolve the water leaks by including the following scope of work:
 - (i) Removal of Tracks and Ballast;
 - (ii) Inspect and Repair/Replace Waterproofing as Required;
 - (iii) Inspect and Repair/Replace Track/Slab Drains as Required;
 - (iv) Repair Expansion Joints in the Concrete Slab Under Tracks and Platforms;
 - (v) Replace Tracks and Ballast;
 - (vi) Inspect, and Where Necessary, Repair or Replace Waterproofing Around City Service Penetrations
 - (vii) Removal and Replacement of Deteriorated Smoke Ducts;
 - (viii) Remediation of Train Shed Structural System;
 - (ix) Remediation of Train Shed Roof Deck;
 - (x) Replacement of Train Shed Roof Membrane;
 - (xi) Improvement of Lighting and Signage in Train Shed;
 - (xii) Remediation and Improvement of Platforms in Train Shed;
 - (xiii) Inspect, and Where Necessary, Repair or Replace Train Shed Roof Downspouts, Including Heating Coils, and Platform Water Services;
 - (xiv) Inspect, and Where Necessary, Repair or Replace Waterproofing Around Go Service Penetrations; and
 - (xv) Apply Waterproofing Spray to Train Shed Platforms.

- (b) Items (i) through (vi) will be priced separately from the rest of the Project, provided however that for items (i) and (v), the separate pricing shall include only the cost of labour, not materials. The work set out in Appendix A hereto (which includes items (i) to (xv) above) shall be paid in accordance with that Appendix. The amounts to be paid by the City pursuant to this sub paragraph shall not include any of GO's administrative costs. For greater certainty, those administrative costs do not include GO's costs relating to the retention of a consulting engineer hired to do the detailed design and/or provide construction supervision on, the Project.
 - (c) Prior to the Project going out to tender, the City shall review the entire tender package, including any subsequent addenda thereto. City approval is required for those portions of the tender package relating to items (i) to (vi). The City may review and comment on items (vii) to (xv), but has no approval rights with respect thereto. The City shall be provided with 30 days (or such further time as may be agreed to by both parties) to conduct the said review, and provide its approval and/or comments. If the City's approval and/or comments with respect to items (i) to (vi) are not provided to GO within that time, it shall be deemed that the City has approved the portions of the tender package relating to items (i) to (vi). During the course of the Project, any changes to the Project pertaining to items (i) to (vi) require the approval of both GO Transit and the City.
 - (d) GO Transit shall provide the City with the construction schedule and proposed payment schedule for the Project. GO Transit shall invoice the City for the City's contributions as set out in this agreement as such costs are incurred by GO Transit. Each invoice shall provide sufficient supporting documentation to explain the invoices. The City may, on five days prior notice in writing, audit GO Transit's records relating to the Project reasonably required to support the said invoices. Invoices for which no such audit has been requested shall be paid within 30 days.
 - (e) It is acknowledged that this agreement is based on the anticipated costs of the work set out in the first sentence of paragraph 1(b) not exceeding \$4,000,000. In the event the tenders for the Project exceed this amount both parties reserve the right to require a change to the scope or scheduling of this arrangement, however, the allocation of fiscal responsibility for that work, even in the event of any such change in its scope or scheduling, shall remain as stipulated in paragraph 1(b).
- (2) (a) The building elements outlined in Appendix A are to be properly maintained and repaired, to the standard of a prudent owner.
 - (b) Ongoing repair and maintenance of the building elements outlined in Appendix A shall be undertaken by the party from whose space the element is most readily accessible and the costs allocated in accordance with Appendix A.
 - (c) If any single repair or maintenance project is for work that is to be paid for in whole or in part by a party other than the one undertaking that work, and its cost

is to exceed \$25,000.00, the parties will consult with each other and agree on the work, if any, to be done, and its price, before proceeding with that project.

- (d) If any repair or maintenance project for work that is to be paid for in whole or in part by a party other than the one undertaking that work, would result in repair or maintenance costs exceeding \$50,000.00 in total for all such projects for that calendar year, then the parties will consult with each other, and agree on the work, if any, to be done, and its price, before proceeding with that project.
 - (e) The parties will have the mutual right to inspect any building elements for which either is obliged to contribute towards the cost of repair or maintenance, as set out in Appendix A. Except in case of emergency, such inspections shall be made after giving reasonable prior written notice, including the intended time of inspection. Such inspection shall be undertaken expeditiously, and so as to cause the least possible interference with the use or operation of the other parties' property, and to this end, shall be performed outside of normal business hours whenever possible.
- (3) The parties agree that any future capital replacement of the building elements identified in paragraph 1 above shall be undertaken in accordance with the approach identified therein.
 - (4) Certain activities and facilities of GO and the City encroach upon areas of one and others fee simple ownership. Such encroachments identified to date are listed in Appendix B hereto, and the parties confirm that they agree to such encroachments.
 - (5) All disputes referred to in paragraph 8.1 of the Reciprocal Rights Agreement between the parties (dated June 30, 2000) are to be referred to mediation, in accordance with the mediation provisions attached as Appendix C hereto, before proceeding with arbitration.
 - (6) For greater certainty, and without limiting the generality of paragraph 5 hereto, the parties agree that in the event they cannot agree on items that require City approval in paragraph 1(c), or agree on changes in scope or schedule referred to in paragraph 1(e), or agree on the work to be done or price referred to in paragraph 2, such disputes shall be referred to mediation in accordance with paragraph 5 hereto, before proceeding to arbitration.

IN WITNESS WHEREOF this Agreement has been executed by the parties.

DATED AT TORONTO this day of May, 2005

CITY OF TORONTO

Per: _____

Per: _____

We have authority to bind the Corporation.

**GREATER TORONTO TRANSIT
AUTHORITY COMPANY**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the Corporation.

Appendix A

Building Elements	Responsibility for Payment	Corresponding Agreement Sub paragraph Number
Remediation of Train Shed Roof Deck and Train Shed Structural System (Including Supporting Columns). Replacement of Train Shed Roof Membrane.	GO	(viii) (ix) (x)

Building Elements	Responsibility for Payment	Corresponding Agreement Sub paragraph Number
Inspect and Where Necessary, Repair or Replace Train Shed Roof Downspouts (Including Heating Coils) and Platform Water Services	GO responsible for repair or replacement to first elbow below concrete slab. City responsible below that point, provided that if GO decides to put an entirely new downspout or water service in a new location, then GO is responsible for the cost to the connection point to the existing waste water collection system or water system, as the case may be.	(xiii)
Inspect, and Where Necessary, Repair or Replace Waterproofing Around City Service Penetrations	City	(vi)
Remediation and Improvement of Platforms in Train Shed	GO except cost of cuts required to access expansion joints to be split 50/50 between GO and City	(xii)
Stairs/Escalators/Elevators To Platforms { 1 to 6/7 and 13/14} (as may be amended form time to time)	GO	
Remove and Replace Tracks and Ballast	GO unless removal required to repair/replace waterproofing and/or expansion joints, then labour costs only to be split 50/50, and balance paid by GO	(i) and (v)
Inspect and Repair/Replace Track/Slab Drains as Required	City	(iii)
Inspect and Repair Waterproofing as Required (includes repair to existing asphalt on top of the concrete slab and installation of any new membrane on top of that asphalt or concrete slab, and/or, on the sides of the platforms)	GO/City Split 50/50 (including labour costs to remove tracks and ballast)	(ii)

Building Elements	Responsibility for Payment	Corresponding Agreement Sub paragraph Number
Repair Expansion Joints in the concrete slab under the tracks and platforms	City	(iv)
Concrete Slab	City	
Support Structures for Concrete Slab	City	
Removal and Replacement of Deteriorated Smoke Ducts	GO	(vii)
Improvement of Lighting and Signage in Train Shed	GO	(xi)
Inspect, and Where Necessary, Repair or Replace Waterproofing Around GO Service Penetrations	GO	(xv)
Apply Waterproofing Spray to Train Shed Platforms	GO	(xv)
Maintenance, Repair and Replacement of Go Services That Pass Through City Property	GO, unless and until that service joins a City system, at which point it becomes the City's responsibility.	

Schedule "B" – List of Encroachments

- (1) Portion of City of Toronto ("City"), Union Station Room 208, that intrudes into GO Transit (GO) airspace;
- (2) Skylight over the VIA walkway part of Union Station (City Property), though intruding into GO airspace;
- (3) The base of the City's air-conditioning chiller, and a number of City exhaust vents and air-conditioning units, are located on the roof of the train shed, in GO's airspace;
- (4) Mechanical working of GO's elevator shafts in City airspace on the train shed roof;
- (5) Footings for the advertising sign owned by the City, but attached to GO's train shed roof;

- (6) Two cable tresles that service GO, cross the train shed roof, and encroach on City airspace;
- (7) City freight elevators that service the train shed encroach into GO's train shed space;
- (8) Rooms that belong to the City, that are accessible only from GO's platform No.1.