

Consolidated Clause in Administration Committee Report 1, which was considered by City Council on January 31, February 1 and 2, 2006.

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**Union Station - Station Lease to The Union Pearson Group Inc.
65 Front Street West (Ward 28 - Toronto Centre-Rosedale)**

City Council on January 31, February 1 and 2, 2006, adopted the following:

“That:

- (1) Council adopt the following staff recommendations contained in the Recommendations Section of the report (December 16, 2005) from the Deputy City Manager and Chief Financial Officer:*

‘It is recommended that:

- (1) the Station Lease with The Union Pearson Group to restore, develop and operate Union Station be approved for a 35 year term with one automatic renewal period of 15 years and a further 50 year conditional renewal, at an annual basic rent of \$500,000.00 to be adjusted by CPI and at stabilization, plus participation rent, in accordance with the terms and conditions set out in Appendix 1 to this report and on such other terms and conditions as may be satisfactory to the Deputy City Manager and Chief Financial Officer and in a form acceptable to the City Solicitor;*
- (2) the City Solicitor be authorized to complete the transaction on behalf of the City if all closing conditions are met by May 31, 2006;*
- (3) until a governance model is implemented for Union Station, the Chief Corporate Officer shall administer and manage the Station Lease including the provision of any consents, approvals, waivers notices and notices of termination provided that the Chief Corporate Officer may at any time, refer consideration of such matter (including their content) to City Council for its determination and direction; and*
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.’; and*
- (2) the following motions be referred to the City Solicitor for consideration:*

Moved by Councillor Watson:

'That:

- (1) the City Solicitor be requested to obtain the following unqualified legal opinions from Robert Bauer:*
 - (i) certifying that the lease conforms to the Master Agreement and does not extend the obligations of the City of Toronto or enhance the rights of UPG Inc.;*
 - (ii) that the Due Diligence requirements under s.3.5 of the Master Agreement were fully complied with by the Due Diligence date of December 15, 2005, and that no items were waived as not being finalized; and*
 - (iii) that all necessary approvals by the City of Toronto have been obtained with respect to any Change of Control or ownership of the entities which are UPG Inc. shareholders, including details of those approvals.”;*
- (2) the Deputy City Manager and Chief Financial Officer be requested to report to the next meeting of the Administration Committee providing the following information:*
 - (a) who were the shareholders of UPG Inc., and in what proportion did each hold shares at the time the UPG Proposal was made;*
 - (b) who were the shareholders of UPG Inc., and in what proportion did each hold shares at the time the Master Agreement was executed;*
 - (c) who were the shareholders of UPG Inc., and in what proportion did each hold shares at the Due Diligence date of December 15, 2005;*
 - (d) whether the ownership or control of any of the shareholder companies changed since the date of the UPG Inc. Proposal (for example, have the shares of Olympia and York been sold to another entity), and, if so, provide details concerning the change;*
- (3) further discussions be held between City staff and the Union Pearson Group Inc. in order to:*
 - (a) obtain payment to the City for use of the name “Union Station” in any context other than the naming of the existing station;*

- (b) *address concerns about the potential cost to the City or transportation providers of future expansions of the transportation function at the station;*
- (c) *ensure that public use of the facility, including use by charitable/not-for-profit/City use is protected and enhanced, and that provisions are made for requiring the lessee to promote and advertise City-authorized events or public uses to be undertaken at Union Station;*
- (d) *ensure that any notice and response periods requiring a response from the City are of sufficient length to enable reports to be brought through the Council process for appropriate deliberation and consideration; and*
- (e) *secure the provision and maintenance by UPG Inc. of a significant element in the Station recognizing Railway Heritage, such as a Railway Museum;*

and request the Deputy City Manager and Chief Financial Officer and Treasurer to report to the March 6, 2006 meeting of the Administration Committee on these efforts;

- (4) *the Deputy City Manager and Chief Financial Officer be requested to submit a report to the next Administration Committee meeting scheduled to be held on March 6, 2006, providing a detailed summary of the costs the City has incurred to date with respect to the Union Station RFP, Agreement negotiations, documentation, etc., such costs to include the cost of outside consultants such as planners, legal and other advisers and City staff;*
- (5) *the Deputy City Manager and Chief Financial Officer be requested to report to the next meeting of the Administration Committee providing a financial analysis of the proposed transaction showing the investments to be made by UPG Inc. and the City of Toronto, as well as the income expected to be received by each; and*
- (6) *prior to City Council approving the Station Lease, the Deputy City Manager and Chief Financial Officer be requested to obtain from UPG Inc., up-to-date schedules to the Station Lease, having regard to the proposed closing date of May 31, 2006.’ ”*

This Clause, as amended, was adopted by City Council.

The Administration Committee submits the report (December 16, 2005) from the Deputy City Manager and Chief Financial Officer to City Council without recommendation.

Purpose:

To advise Council that the Due Diligence date in the Master Agreement has been met and to seek authority to execute the Station Lease with The Union Pearson Group Inc.

Financial Implications and Impact Statement:

In the Station Lease, the City agrees to lease Union Station to The Union Pearson Group (“UPG”) for 35 years with one 15-year renewal and the possibility of a further 50 years if the lower level access route is constructed. On closing of the transaction, UPG will assume all responsibility for the restoration, operation and maintenance of Union Station, except as outlined below. The City will receive a minimum guaranteed annual rental income stream of \$500,000 with the opportunity to share in increased net rental revenues plus a participation component commencing in year 11. UPG will invest up to \$150,000,000 in the restoration and renovation of the Union Station building if it includes a hotel in the West Wing (\$115,000,000 if offices) and then maintain and operate the building to be self-sustaining.

The transaction does not include any right of UPG to create or build out any additional development in the air space above the building or the tracks. This right remains with the City, subject to a three-year moratorium period to allow UPG to fulfill its restoration and redevelopment obligations in the Lease without interruption or interference and an agreement assuring quiet enjoyment to UPG’s tenants.

The City remains responsible for the environmental condition of the lands beneath the Station prior to the Commencement of the Lease and for the capital repairs for the waterproofing layer immediately above the concrete slab which divides the Station building (owned by the City) and the tarnished (owned by GO Transit). The cost of immediate repairs to the waterproofing is estimated at \$1,400,000 to be paid over 3 years commencing in 2007. UPG will contribute \$40,000 annually toward future capital repair/ replacement costs for the waterproofing. The City would be responsible for the excess if future repair costs exceed the amount reserved by UPG. Finally, as previously authorized, the City and UPG will work together to obtain additional funding sources for certain capital costs and deferred maintenance required at Union Station, totaling \$5,900,000. In the event additional funding sources cannot be found, the City is responsible to make two lump sum payments of \$1,300,000 each to UPG in 2007 and 2008. With the concurrence of the City, UPG will either defer or reduce the scope of work in Phase 4 of the project until funding is made available for the remaining \$3,300,000.

All transaction costs, including legal or other consultants, are to be funded from the revenues currently generated at Union Station.

Recommendations:

It is recommended that:

- (1) the Station Lease with The Union Pearson Group to restore, develop and operate Union Station be approved for a 35 year term with one automatic renewal period of 15 years and a further 50 year conditional renewal, at an annual basic rent of \$500,000 to be adjusted by CPI and at stabilization, plus participation rent, in accordance with the terms and conditions set out in Appendix 1 to this report and on such other terms and conditions as may be satisfactory to the Deputy City Manager and Chief Financial Officer and in a form acceptable to the City Solicitor;
- (2) the City Solicitor be authorized to complete the transaction on behalf of the City if all closing conditions are met by May 31, 2006;
- (3) until a governance model is implemented for Union Station, the Chief Corporate Officer shall administer and manage the Station Lease including the provision of any consents, approvals, waivers notices and notices of termination provided that the Chief Corporate Officer may at any time, refer consideration of such matter (including their content) to City Council for its determination and direction; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

The City purchased Union Station in June 2000. In doing so it identified three public policy objectives:

- (a) promotion of Union Station as a multi-modal transportation hub first and foremost;
- (b) preservation of Union Station as a heritage building; and
- (c) revitalization of Union Station as a destination in order to ensure its ongoing financial stability.

In July 2002 City Council selected UPG to restore, develop and operate Union Station. In May 2004 City Council approved terms of a Master Agreement (similar in nature to an agreement to lease) with UPG. The Master Agreement was executed in November 2004.

As documented in the latest report considered by City Council at its special meeting held November 24, 2005, the parties were unable to meet the Due Diligence date or Closing Deadline set out in the Master Agreement. City Council confirmed a new Due Diligence date of December 15, 2005 and a Closing Deadline of May 31, 2006.

Comments:

The City negotiating team and representatives of UPG have been able to settle the terms of the Station Lease by December 15, 2005 as required. The salient points are highlighted in the body of this report and a more complete term sheet is attached as Appendix 1 to this report. A copy of the complete Station Lease is on file with the City Clerk under confidential cover.

Key Terms.

(1) Leased Premises:

Union Station (both land and buildings, as defined) excluding the GO Transit Envelope, the Upper Area (airspace above the Station and GO Transit Envelope), the below-grade Harbourfront LRT station and sufficient area (to be determined) in the moat to accommodate the proposal to relocate the stairs to the TTC subway station as part of the Second Platform Project.

(2) Lease Term:

35 years with two extensions:

First Extension: 15 years

Second Extension: 50 years, provided that the area below the VIA Concourse is built out in accordance with the Lease terms and conditions.

Commencement Date: no later than May 31, 2006.

(3) Rent:

(i) Minimum Guaranteed Rent: \$500,000 per annum, to be adjusted

(a) every 5 years for CPI, and

(b) on "Stabilization" as defined in the Lease to capture 25 percent of the amount, if any, by which the Net Rental Income for the first Lease Year following the Stabilization Date exceeds the original projected Net Rental Income for that Lease Year

(ii) Participation Rent: 5 percent of Net Rental Income, commencing with eleventh Lease Year, with quarterly statements, annual audited statements, right to review, audit and contest, and adjustment provisions

(4) UPG Responsibilities

This is essentially a net and carefree lease to the City, subject to certain exceptions noted below. UPG will take over all responsibility to operate and maintain Union Station and will undertake the redevelopment contemplated in UPG's response to the City's RFP. Completion of the redevelopment will be secured by a completion assurance agreement to be provided by

PCL Constructors Canada Inc. in advance of construction, a \$5,000,000 letter of credit to be provided on closing and held by the City for 66 months and a City Charge to be registered on title.

(5) Continuing City Responsibilities

As the land owner, the City will retain responsibility for the environmental condition of the soil beneath the Station and will indemnify UPG in this regard. Pursuant to the settlement with GO Transit approved by City Council in September 2005 the City will share responsibility with GO Transit for immediate capital repairs to the waterproofing layer that is on the boundary between the City and GO Transit's ownership interests. UPG will contribute \$40,000 annually toward the City's share of future ongoing maintenance and repair of the waterproofing layer. UPG will maintain reserves for all other capital repairs.

The City and UPG will pursue additional funding of \$5,900,000 for the project, which may be satisfied out of the \$25,000,000 identified by the federal government in accordance with the May 2001 Memorandum of Understanding between the Mayor and the Minister of Transport to be used for capital improvements to the Station. In the event no additional funding is forthcoming, the City will make two lump sum payments to UPG of \$1,300,000 in 2007 and 2008. Phase 4 of the redevelopment will either be delayed or reduced in scope unless a further \$3,300,000 in funding is made available to the project.

(6) City Approvals

The City, as Lessor, retains the right to approve various changes including: to the development concept, schedule or budget, the principal project agreements (including the Station Architects' and construction contracts) or to the UPG consortium or identified project team.

Settling the Station Lease completes the Due Diligence requirements under the Master Agreement between the City and UPG. However, there still remain a number of closing obligations on both parties that must be completed between now and the Closing Deadline of May 31, 2006. The City must finalize the leases with VIA Rail and GO Transit in sufficient time for UPG to obtain its lender's approval. UPG must finalize and obtain all necessary approvals to the concept design; provide updated financing confirmation, development schedule and budget; and settle the Heritage Easement Agreement with the City. There is a mutual obligation on both parties to complete all necessary legal documentation and both must be satisfied with the outcome of the Master Plan Review.

Conclusion:

The City negotiating team and representatives of UPG have settled the Lease and met the Due Diligence Deadline. City staff recommend approval of the Station Lease on the terms and conditions summarized on Appendix 1 to this report and in a form satisfactory to the City Solicitor. In accordance with City Council's November 24, 2005 direction, the City negotiating team will continue to work diligently to complete the necessary closing obligations in order to close this transaction by May 31, 2006. If that deadline is not met then, as previously instructed,

the transaction will be terminated automatically by the Deputy City Manager and Chief Financial Officer.

Contacts:

Name:	Patricia Simpson	Bruce Bowes P. Eng.
Position:	Project Co-ordinator Union Station RFP	Chief Corporate Officer
Telephone:	416-392-8057	416-397-4156
Fax:	416-392-3848	416-397-4007
E-Mail:	psimpson@toronto.ca	bbowes@toronto.ca

Appendix 1

Station Lease Principal Terms

(1) Parties

- City of Toronto, as Lessor
- The Union Pearson Group Inc., as Lessee

(2) Premises

- Union Station (land and buildings, as defined)
- Excludes the GO Transit Envelope, the Upper Area (above Station and GO Transit Envelope), the Harbourfront LRT station and sufficient area in the moat to accommodate the proposal to relocate the stairs to TTC station
- Subject to Permitted Encumbrances (e.g. leases with GO and VIA, GO reciprocal rights agreement, fibre optic easement, relocated sewer)
- Lessee to be granted reasonable access rights (licence, easements) around Union Station "envelope"

(3) Term

- Initial Term: 35 years
- First Extension: 15 years
- Second Extension: 50 years, provided that the area below the VIA Concourse is built out in accordance with the Development Plan, etc.

(4) Rent

(a) Basic Rent:

- Minimum Guaranteed Rent: \$500,000 per annum commencing on the Commencement Date, adjusted for CPI every 5 years and for the Stabilization Adjustment

(b) Stabilization Adjustment

- 25 percent of the amount, if any, by which the Net Rental Income for the first Lease Year following the Stabilization Date exceeds the original projected Net Rental Income for such Lease Year
- Stabilization Date means, essentially, the earlier of:
 - (i) that date which is the third anniversary of the Substantial Completion Date of all Phases of the Redevelopment, and
 - (ii) at the election of the City, that date when the Lessee obtains permanent financing in respect of the Redevelopment;

provided that, if the actual construction of Phase 3 does not commence before the third anniversary of the Substantial Completion Date of Phase 2, the City may by notice given within the six month period immediately following such third anniversary elect that there be a Stabilization Adjustment for just Phases 1 and 2 with a subsequent Stabilization Adjustment for Phases 3 and 4.

(c) Participation Rent:

- commencing with the eleventh Lease Year, 5 percent of Net Rental Income, with quarterly statements, annual audited statements, right to review, audit and contest and adjustment provisions.

(5) Net Lease

- Lease to be absolutely net to the Lessor, except as expressly provided to the contrary

(6) Basic Obligations

- Lessee accepts Station “as is” to operate and maintain for the term of the Lease
- Adherence to the Key Objectives:
 - (a) the enhancement and integration of transportation functions
 - (b) the development of a distinguished identity and destination facility

- (c) a demonstrated conservation ethic and respect for the heritage character and design of the Station and its beaux-arts architecture;
- (d) the integration and connectivity to surroundings, including an improved south access route, enhanced pedestrian circulation, accommodation of servicing requirements and improved signage and way finding.

(7) Restoration/Redevelopment

- To be completed in phases, in diligent, timely and efficient manner in accordance with:
 - Union Station Master Plan
 - Functional Plan
 - Key Objectives
 - Concept Design
 - Development Plans, Schedule and Budget
 - Heritage Easement Agreements (Federal and City)
 - Heritage Design Guidelines
 - City's public art requirement
- Secured by a completion assurance agreement from PCL Constructors, City Security and City Charge
- Construction co-ordination with VIA, GO Transit and TTC
- Regular meetings with stakeholders, including Union Station Revitalization Public Advisory Group
- Lessee to achieve build-out of Phases by respective milestone dates set out in the Development Schedule, subject to force majeure

(8) Additional Funding

- Lessor to continue to pursue the contribution from the Ministry of Transport (Canada) of the \$25,000,000 in funds for the Station contemplated by the Memorandum of Understanding between the Mayor and the Minister dated May, 2001 (the "Federal Funding")
- Lessor and Lessee to use diligent efforts to source:
 - additional funding (including the Federal Funding) for certain enhancements to the Moats as identified in Lessee's proposal as being contingent on receiving the Federal Funding, recognizing that such enhancements may be deferred until such funding is available

- additional sources of funding (including the Federal Funding) for life safety, deferred maintenance and inflation adjustments totaling \$5.9 million, otherwise Lessor must make two lump sum payments of \$1.3 million each and Phase 4 may either be reduced in scope (if agreed by the Lessor and the Lessee) or delayed until further funds become available

(9) Lessor's Approvals etc.

- Lessor to approve all material modifications to the Concept Design, Development Plans, Development Schedule, Development Budget, Construction Contract, Station Architects' Contracts or other specified Principal Project Agreements
- Lessor to have access and inspection rights at all reasonable times to the Station as well as to all material reports, studies, models and other documentation relating to the Station and the right to attend regular site meetings
- Lessor to receive regular construction progress reports
- Changes to UPG Organizational Structure or specified project Team to be approved by Lessor (i.e. "replacements" of team members permitted, provided Lessor approves new team member)

(10) Lessor to have access to "City Security" for default

(11) Use

- Transportation operations to be paramount
- Carry out Uses as per proposal (minimum 130,000 sq. ft. of retail, etc.)
- No Prohibited Uses without Lessor's consent (may be arbitrarily withheld)
- Establish and comply with Tenant Design Criteria including a Naming/Signage Policy
- Comply with Project Agreements, including Heritage Easement Agreements
- Comply with Leasing Policy
- Comply with Applicable Law

(12) Operations

- Lessee assumes full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Station throughout the term including:

- Operating costs
- Maintenance and repair
- Capital reserve funds (capital repairs and contribution to future waterproofing repair/replacement)
- Insurance
- Compliance with laws
- Indemnity (see environmental indemnity)
- Security
- Books and records

(13) Environmental

- Lessee to be responsible for environmental risk/liability and any related costs for:
 - existing and future Station Building condition, other than in respect of causes of action arising prior to Commencement Date
 - hazardous substances, contaminants, etc. introduced to the Station Lands, post commencement date
- Lessor to be responsible for environmental risks/liability and any related costs for:
 - any causes of action in respect of the Station Building arising prior to the Commencement Date
 - existing condition of the Station Lands as at the Commencement Date

(14) Redevelopment Rights

- Lessee may only undertake subsequent redevelopment with Lessor approval on comparable provisions to initial construction
- Annual Basic Rent continues
- Fixed "Participation Rent" for redevelopment period, being average participation rent over previous five years

(15) Damage or Destruction

- Unless specifically provided to the contrary, partial or complete destruction shall not terminate the lease or entitle the Lessee to surrender possession or demand any abatement of rent
- Lessee shall repair or replace such damage or destruction unless specifically provided to the contrary
- Lessee may terminate Lease following substantial damage or destruction (a) occurring within last five (5) years of term if the insurance proceeds available to the Landlord are sufficient to rebuild Union Station to its prior state (plus a Lessor approved deductible); or (b) if the major transportation tenants at the time could not be obligated by the Lessor to continue under their leases post repair/restoration

(16) Transfers by Lessee

- Includes change of control, other than control changes resulting from exercise of customary joint venture rights-of-dilution; buy/sell, etc. approved by the Lessor, acting reasonably
- Lessor approval required:
 - during construction phase up to substantial completion, may arbitrarily withhold
 - during operations, not to be unreasonably withheld (usual tests)

(17) Space Leases

- May enter into Space Leases without the consent of Lessor if in compliance with Leasing Policy
- Otherwise, require Lessor's consent, not to be unreasonably withheld
- Accommodate new transportation tenants
- Lessor to provide non-disturbance

(18) Leasehold Mortgages

- Lenders (other than certain pre-approved Lenders) to be approved by Lessor acting reasonably
- To secure construction financing, permanent refinancing and capital improvement financing

- Leasehold mortgaging for other financing permitted provided that (a) lender is a recognized financial institution; (b) the principal amount of such financing, when aggregated with the outstanding principal amount of prior financings, does not then exceed 75 percent of the value of the leasehold estate; and (c) there is projected debt service coverage (including prior or pari passu ranking debt) of at least 1.3 to 1
 - Subject to three party agreement (Lessor/Lessee/Lender) with reciprocal notices of default, rights to cure, etc.
 - No subordination by Lessor
- (19) Events of Default
- Non- payment of rent
 - Failure to perform or comply with terms, covenants or conditions
 - Insolvency
 - Abandonment
 - Failure to achieve Development Milestones or Total Completion Date (subject to Force Majeure)
- (20) Remedies
- Lessee has right to cure default
 - Standard remedies including recourse to security
- (21) Dispute Resolution
- Recourse to expert
 - Arbitration
- (22) Lessor as Municipal Corporation
- Lease will not fetter City rights or statutory obligations
- (23) Quiet Enjoyment

(24) Reciprocal Rights re Upper Area

Separate Agreement to be provided on closing to accommodate the possible build-out of improvements in the Upper Area:

- easement for access, subject to reasonable objective requirements
 - easement for support, subject to reasonable objective requirements and provided Lessee's consent required re any material impediment, restriction or interruption of Lessee's activities
 - Lessee to approve scheduling of work, not to be unreasonably withheld
 - Lessee's (and sub lessees) costs of disruption (i.e. actual direct costs of accommodating the build-out and lost revenues, if any, during disruption) to be covered by party undertaking the build-out
 - Lessor to indemnify Lessee against any third party claims arising from build-out of Upper Area unless caused by Lessee or persons for whom it is responsible
 - co-operation in respect of joint initiatives
 - no barriers
 - cross indemnities
 - insurance (named insureds) and insurance trust agreements
 - equitable allocation of any shared costs
 - binding dispute resolution procedures
 - Separate three year "Moratorium Periods" for Station Upper Area and Rail Corridor Upper Area during which the City may not build-out the permitted improvements
 - Lessee may elect to shorten either or both of the Moratorium Periods
 - City may proceed to create the additional density in such manner (i.e., RFP or otherwise) and with or without third parties, as it may determine, in its complete discretion, which may or may not include the Lessee, subject to finalization of any arrangement contemplated above
 - Lessee has no exclusive rights in respect of the Additional Density, and for its own part, will respect the Moratorium Periods
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A copy of the confidential Station Lease is on file in the City Clerk's Office, City Hall.

The following persons addressed the Administration Committee:

- John Sewell, former Mayor of Toronto, and filed a written submission;
- Art McIlwain, President, Urquhart Consortium Inc., and filed a written submission; and
- Janice Etter, Chair, Union Station Revitalization Public Advisory Group.