

USEP, PACKAGE 1 – MAJOR TERMS OF DESIGN AND CONSTRUCTION AGREEMENT

In addition to applicable principles from the Framework Agreement, the following are some additional key principles and examples of some of the related issues that the City requires in the Design and Construction Agreement and associated schedules:

Metrolinx Obligations to City to Undertake and Be Responsible for Project

- Metrolinx is obliged to the City to undertake and be responsible for the Project, either through the Project Agreement/Output Specifications or on substantially similar terms, and in any case to be completed by a defined and promised end date. Metrolinx shall cause Project Co (or such other entity) to complete the Project in accordance with the Project Agreement/Output Specifications (or similar agreement).
- Metrolinx must expressly flow down:
 - all of the City's requirements/impacts/ constraints/standards/agreements (including from the Framework Agreement, and the Design and Construction Agreement); and
 - all of the third party stakeholder requirements/impacts/ constraints/agreements (including as a result of negotiation of agreements with such stakeholders relating to Union Station);directly into the Project Agreement/Output Specifications, or after the Project Agreement/Output Specifications are created then directly by addendum to the Project Agreement/Output Specifications.
- Metrolinx shall cause Infrastructure Ontario to comply with, and to give effect to, Project matters agreed by Metrolinx and the City or the resolution of disputes under the Design and Construction Agreement.
- The City may provide Metrolinx with notice of default of its obligations under the Design and Construction Agreement. If Metrolinx fails to cure the default, then the City may cure the default (at the cost of Metrolinx) or terminate the Design and Construction Agreement.

Metrolinx to Provide Its Contractual Agreement to City to Comply with Laws Etc. Consistently Throughout Project

- Despite Crown Immunity of Metrolinx, Metrolinx agrees as a matter of contract to follow (or causing Project Co to follow):
 - all laws including codes, regulatory permits and approval requirements, and related obligations, including those associated with Site Plan Approval, zoning, and other planning requirements, for the portion of the Project located on City-owned lands; and
 - the same laws etc. on the Metrolinx side of the Project as are applicable on the City side of the Project, to avoid material impact to the City (e.g. inconsistent standards being applied to integrated infrastructure).

- The City has ownership of and control over the City Infrastructure. In respect of City approvals, reviews and other matters required to construct the Project including to protect and modify City Infrastructure and to build New City Infrastructure, the Parties will adhere to the City Processes and Approval Protocol.
- Except to this extent, subject to City's role as regulatory authority and other than any requirements in the Project Agreement/Output Specifications, the City has no right to review or participate in decisions pertaining to Project Infrastructure located on Metrolinx lands.

City Is Owner of City-Side of Project; City Engagement; City Approval For Material Impacts Needed

- City owns the portion of the Project that is located on City-owned lands, along with any agreed-upon utilities that are to be located on the Metrolinx owned lands.
- The City received a copy of the draft Output Specifications from Metrolinx, and is the process of agreeing to those portions of the draft Output Specifications pertaining to City Infrastructure and New City Infrastructure. If there is a change to the City Infrastructure or New City Infrastructure whether by way of a revision to the draft Output Specifications or a variation to the Project Agreement, the City will have the right to approve any such change or variation, acting reasonably.
- Metrolinx should provide the City with regular updates on the progress of the status of the Project and access to Project documents. Metrolinx will also share information pertaining to proposed scheduling with the City and provide the City with advance notice of the timing of reviews and approvals that the City will be required to undertake.
- The City would grant Metrolinx a nominal sum licence to access the City Lands to complete the Project. Any easement in respect of the completed Project should be dealt with in the ARRA instead.
- The City to have the right to access aspects of the Project which impact City Infrastructure or New City Infrastructure (not just New City Infrastructure) and any restrictions and conditions imposed by Project Co should only relate to safety.
- If Metrolinx proposes a change to the City Infrastructure or New City Infrastructure whether by way of a revision to the Output Specifications or a variation to the Project Agreement, it will provide the City with the opportunity to approve any such change or variation.
- Beyond a "compliance check" during the design development process, City also has approval right regarding the design or changes to the Output Specifications where it causes a material impact on the City-side of the Project, including consideration of any tenant or other third-party arrangements in respect of the Union Station.
- If the City proposes a change in the design after having completed the compliance check on the 100% design prepared by Project Co, then City to be responsible for the cost of design changes provided such design changes can be implemented by Project Co.
- Unless specifically agreed to the contrary, New City Infrastructure will be handed over to the City on Substantial Completion. The City will accept all New City Infrastructure if was

constructed in compliance with the Output Specifications and has also met the requirements for commissioning set out in the City's Commissioning and Acceptance Protocol.

- Metrolinx provides the City with the warranties that Project Co is providing to Metrolinx, on a back-to-back basis. Despite that and any attempted delegation of handover or commissioning or inspection or other similar function under the Project Agreement, Metrolinx is always the Single Point of Contact to the City for Handover / Commissioning/ Inspection/ Warranty Issues, and City has additional handover/commissioning related requirements to be set out in schedules. City will not be dealing directly with Project Co.

Coordination and Cooperation with Other Projects

- Prior to commencing construction, Metrolinx shall also provide all documents to satisfy the City that health and safety requirements have been satisfied, including a copy of the Notice of Project and executed construction separation agreements as may be required by the City.
- Metrolinx will coordinate the Project with other projects by the City and other stakeholders at Union Station, to allow their projects to be undertaken at the same time with minimal impact to their projects.

City Generally Bears No Costs/Losses

- The City should not bear any costs in relation to the Project, except for the cost of City existing internal staff assigned to assist with the Project and a breach by the City of the Design and Construction Agreement. Reasonable costs above the current \$750,000 cap approved by Metrolinx will be funded on an as requested basis.
- Therefore, as part of paying for the entire Project, Metrolinx to also be responsible to fully fund and promptly and from time to time reimburse the City for all out of pocket costs and all claims against and liabilities of City as a result of USEP, including:
 - costs of consultants and cost of upgrades/improvements/ additional infrastructure to City property or to property of third parties at or around Union Station, as required by the Output Specifications;
 - costs, liabilities, and impacts suffered or incurred by City or third parties (including the stakeholders);
 - costs resulting from breach of the Design and Construction Agreement from Metrolinx
- Metrolinx is responsible for any costs/liabilities arising from the use of any background information re: Union Station.
- Metrolinx shall be entitled to recover from the City any out of pocket loss (i.e. any costs, expenses, liabilities, etc.) relating to or in connection with a breach of the Design and Construction Agreement by the City.

General Caveat:

Additional principles and issues may arise in the course of negotiations of the Framework Agreement and Design and Construction Agreement with Metrolinx or in the course of discussions with stakeholders at Union Station, which must be addressed to the satisfaction of the appropriate City officials.