

Yorkdale TTC Pedestrian Bridge

Date: June 19, 2018

To: North York Community Council

From: Director, Real Estate Services and Acting Director, Transportation Services,
North York District

Wards: Ward 15 - Eglinton-Lawrence

SUMMARY

Transportation Services working in conjunction with Real Estate Services and Toronto Transit Commission is responding to a request from OMERS Realty Corporation and ARI YKD GP Inc. (collectively "Oxford Properties") to purchase the City owned pedestrian bridge located over Yorkdale Road and under the Allen Road, connecting Yorkdale Shopping Mall and the TTC Yorkdale subway station (the "Pedestrian Bridge"). Transportation Services and Real Estate Services is requesting City Council's authority to sell the Pedestrian Bridge and North York Community Council's authority to enter into an Encroachment Agreement with Oxford Properties with respect to the Pedestrian Bridge and related entrance connections

RECOMMENDATIONS

The Director, Real Estate Services and Acting Director, Transportation Services, North York District, recommend that:

1. City Council authorize the City to sell to OMERS Realty Corporation and ARI YKD GP Inc. (collectively "Oxford Properties") the pedestrian bridge located over Yorkdale Road and under the Allen Road connecting Yorkdale Shopping Mall and the Toronto Transit Commission Yorkdale subway station (the "Pedestrian Bridge") as set out in Appendix "A" to this report;
2. City Council authorize the Director, Real Estate Services, to enter into an encroachment agreement with Oxford Properties (the "Encroachment Agreement") generally in accordance with the terms and conditions set out in Appendix "A" attached to this report and such other terms and conditions and such related documents as may be acceptable to the Deputy City Manager, Internal Corporate services and in a form satisfactory to the City Solicitor.

3. City Council authorize severally each of the Deputy City Manager, Internal Corporate Services and the Director of Real Estate Services to execute the Encroachment Agreement and any other related documents on behalf of the City as it relates to Recommendation No. 1 and 2.

4. City Council authorize the Deputy City Manager, Internal Corporate Services to administer and manage the Encroachment Agreement and all matters relating thereto, including the provision of any amendments, consents, approvals, waivers and notices, provided that Deputy City Manager, Internal Corporate Services may, at any time, refer consideration of any such matters (including their content) to City Council for its consideration and direction.

FINANCIAL IMPACT

Revenue in the amount of \$1,000,000.00 (net of HST), less closing costs and the usual adjustments, is anticipated from the sale of the pedestrian bridge.

Proceeds will be contributed to the Land Acquisition Reserve Fund (XR1012) upon closing of the transaction.

Encroachment Agreement will generate an estimated revenue of \$92.00 per square foot of the Pedestrian Bridge with annual increase by an amount equivalent to the percentage increase in the Consumer Price Index. Licence fee will be finalized prior to entering into the Encroachment agreement when the reference plan is available.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Metropolitan Council, by adoption of Clause No. 7 of Report No. 22 of the Metropolitan Executive Committee of June 22, 1973, approved the station design and layout for Yorkdale subway station that included an overhead pedestrian connection from Yorkdale subway station across Yorkdale Road to an enclosed stairway building located on Yorkdale Shopping Centre property.

At its meeting on August 15, 1991 Metropolitan Council by adoption of Report No. 14 of the Parks, Recreation and Property Committee of June 5, 1991, approved a licence agreement with Bramalea Limited and T.T.C. for a stairway entrance building and pedestrian passageway from Yorkdale Subway to Yorkdale Shopping Centre.

COMMENTS

The Pedestrian Bridge was constructed in or on or about 1991 by the then owner of Yorkdale Mall, Bramalea Limited, on terms and conditions approved by TTC and The Municipality of Metropolitan Toronto.

The public highways known as Allen Road and Yorkdale Road, and adjacent sidewalks, are under the jurisdiction of the City of Toronto.

The Toronto Transit Commission, Bramalea Limited, and The Municipality of Metropolitan Toronto (now the City of Toronto) entered into an agreement dated April 1, 1991 with respect to the operation and maintenance of the Pedestrian Bridge and adjacent pedestrian connections thereto (the "Original Pedestrian Bridge Agreement"). This Original Pedestrian Bridge Agreement was effective on the 1st day of April, 1991 and is set to expire on June 6, 2023, unless expired or sooner terminated.

As part of the Yorkdale Mall re-development, Oxford Properties wishes to purchase the Pedestrian Bridge and assume the responsibility for the on-going maintenance and repairs of the Pedestrian Bridge and related adjacent pedestrian connections.

This report seeks authority for the City to sell the covered pedestrian bridge to Oxford Properties and to enter into the Encroachment Agreement for future maintenance and repairs of the Pedestrian Bridge and adjacent pedestrian connections on the terms and conditions set out in Appendix "A".

As City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of, does not provide for bridge encroachments over major arterial roadways as defined by the City's Road Classification System, Transportation Services is required to report on the application.

The Acting Director, of Transportation Services, North York District in consultation with the Director of Real Estate Services and the Toronto Transit Commission, recommends approval of the recommendations contained in this report.

CONTACT

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SIGNATURE

Peter K. Hillier
Acting Director, Transportation Services, North York District

David Jollimore
Director, Real Estate Services

ATTACHMENTS

Attachment A - Summary of terms and conditions of proposed transaction, including the Encroachment Agreement

Attachment A - Summary of terms and conditions of proposed transaction, including the Encroachment Agreement

Term	Summary
Parties	City of Toronto ("City"), Toronto Transit Commission ("TTC") and OMERS Realty Corporation and ARI YKD GP Inc., as the general partner of ARI STC Investments LP (both collectively the "Licensee")
Termination of Original Pedestrian Agreement	The Original Pedestrian Bridge Agreement between the parties is terminated and replaced by the Encroachment Agreement, save and except for any rights and obligations relating to the period prior to the entering into of the Encroachment Agreement
Sale of Pedestrian Bridge as a Chattel	In consideration of the sum of One Million Dollars (\$1,000,000.00) plus any applicable taxes thereon from the Licensee to the City, the City sells to the Licensee the City's interest in the Pedestrian Bridge as a chattel. The sale of the Pedestrian Bridge does not give the Licensee any property interest in the lands owned by the City, including any part of Allen Road and/or Yorkdale Road.
City Grant of Licence	In consideration of the estimated fee of \$92.00 per square foot of the Pedestrian Bridge plus an annual increase by an amount equivalent to the percentage increase in the Consumer Price Index, plus HST, the City grants to the Licensee over those portions of the City lands in which the Pedestrian Bridge is located a licence to operate, maintain, repair, expand, renovate, replace and redevelop the Pedestrian Bridge for the purposes of connecting the buildings and facilities located on the lands owned by the Licensee to TTC's Yorkdale subway station. The Licence fee will be finalized prior to entering into the Encroachment agreement when the reference plan is available.

Term	Summary
Maintenance and Operation Standards	<p>The Licensee is to operate, repair and maintain the Pedestrian Bridge and its connection to the Pedestrian Bridge at its own expense to the satisfaction of the General Manager of Transportation Services for the City or his or her designate(s) from time to time (the "GM"); and/or the Director of Property for the TTC or his or her designate(s) from time to time (collectively and individually the "Approving Authorities").</p>
Termination	<p>The City's permission relating to the Pedestrian Bridge terminates on that date, that is the earlier of: (i) the date that the Pedestrian Bridge is removed, (ii) date of demolition of either the Licensee's facilities or Yorkdale subway station, (iii) that date that is 365 days from when the Licensee receives a notice from the City to remove the Pedestrian Bridge for municipal purposes, (iv) the date as determined by the Approving Authorities determine that there is an emergency that presents a danger to public health or safety that requires the removal of the Pedestrian Bridge; or (v) the date that the Licensee receives a notice of termination of the Encroachment Agreement</p>
Licensee's Indemnity, Release and Insurance Obligations	<p>The Licensee provides a release and indemnity in favour of the City and TTC for any claims relating to the Pedestrian Bridge, save and except for claims, caused by the wilful misconduct or negligence of the City, TTC, its employees, agents and contractors.</p> <p>The Licensee is to obtain insurance as required by the City and the TTC.</p>

Term	Summary
City and TTC Indemnity and Release	<p>The City and TTC indemnify the Licensee against: (a) any breach of, incorrectness of or misrepresentation contained in any representation or warranty made by it in the Agreement;</p> <p>(b) any breach or non-fulfilment of any covenant or agreement by the City and/or TTC in the Agreement;</p> <p>(c) any and all claims, arising pursuant to or in connection with the Pedestrian Bridge with respect to any matter that has occurred prior to the entering into of the Agreement; and (d) such other matters as the City Solicitor considers appropriate.</p>
Reservation of right to install TTC and City Utilities	<p>The Licensee shall permit the City and TTC, at the cost, charge and expense of the City or TTC, as applicable, to access the Pedestrian Bridge to attach, construct, install, maintain, repair, alter, replace, restore, inspect or reconstruct any and all City utilities or TTC equipment over, under, through, within or affixed to the interior or exterior of the Pedestrian Bridge as may be required by the City or TTC.</p>
Representation and Warranties Re Pedestrian Bridge	<p>The City gives certain representation and warranties with respect to the Pedestrian Bridge relating to the authorization and enforceability of the Agreement and the Pedestrian Bridge generally, and provides an indemnity with respect to the same.</p>
Pedestrian Bridge Redevelopment	<p>The intention is for parties to work collaboratively with one another for the Pedestrian Bridge Redevelopment to occur within five (5) years from the date of execution of this Agreement. This does not obligate the Licensee to complete the Pedestrian Bridge Redevelopment within such time period and further does not limit or derogate from the power of the City and/or the TTC as a municipality or a transportation commission. Any future redevelopment of the Pedestrian Bridge will be subject to review and approval of the TTC and the City, with such conditions as may be required.</p>