

### **Union Station Enhancement Project, Package 1 - Update on Metrolinx Expropriation and Design and Construction Agreement**

**Date:** September 9, 2020

**To:** Executive Committee

**From:** Executive Director, Corporate Real Estate Management

**Wards:** 10 - Spadina-Fort York

#### **SUMMARY**

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This report provides an update on the details of Metrolinx's expropriation of City-owned land at Union Station, outlined in Attachment 1, and presents the results of negotiations between City of Toronto ("City") staff and Metrolinx on the necessary agreements for the design and construction of Metrolinx's Union Station Enhancement Project (USEP), Package 1, for a new south concourse.

This report also recommends the allocation of additional resources, including two permanent City staff and third party subject matter experts, to allow for further City involvement in Union Station Enhancement Project, Package 1, conditional upon full funding being provided by Metrolinx, with the exception of legal fees required for the proposed sale of two heritage elevator shafts and certain legal services related to finalization of the Design and Construction Agreement with Metrolinx.

#### **RECOMMENDATIONS**

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The Executive Director, Corporate Real Estate Management, recommends that:

1. City Council authorize the City Manager or designate to execute the Design and Construction Agreement between the City and Metrolinx, based on the major terms outlined in Attachment 2 and such other terms and conditions as may be satisfactory to the City Manager, the Chief Financial Officer and Treasurer, the Deputy City Manager, Corporate Services and the Deputy City Manager, Infrastructure and Development Services, and in a form satisfactory to the City Solicitor.
2. City Council authorize the City Manager or designate to execute amendments to the Funding Agreement for Union Station Enhancement, Package 1 to permit the addition of

funding for two (2) full-time City staff to perform the scope of services outlined in Attachment 2, conditional upon full funding being provided by Metrolinx, and such other terms and conditions as may be satisfactory to the City Manager, the Chief Financial Officer and Treasurer, the Deputy City Manager, Corporate Services, and the Deputy City Manager, Infrastructure and Development Services, and in a form satisfactory to the City Solicitor.

3. City Council authorize the Deputy City Manager, Corporate Services to approve and execute any necessary easements, operating agreements and/or amendments to the existing reciprocal rights agreement between the City and Metrolinx that are required as a result of Metrolinx's expropriation of property at Union Station and construction of USEP Package 1, on terms and conditions satisfactory to the Deputy City Manager, Corporate Services, and in a form satisfactory to the City Solicitor.

4. City Council authorize an amendment to the existing retainer agreement with Davies Ward Phillips & Vineberg LLP (Purchase Order number 6025203) for property matters at Union Station in connection with the Union Station Revitalization Project, to include the provision of legal advice and expertise for any necessary easements, operating agreements and/or amendments to the existing reciprocal rights agreement between the City and Metrolinx related to USEP Package 1.

5. City Council authorize an amendment to the existing retainer agreement with Davies Ward Phillips & Vineberg LLP (Purchase Order number 6048193) for property matters in connection with USEP Package 1, in the additional amount of up to \$35,000 (net of all applicable taxes) to provide legal advice and expertise to complete the proposed sale to Metrolinx of the elevator shafts connecting to Union Station Platform 20/21, and to provide legal services on property matters related to the finalization of the Design and Construction Agreement, increasing the current contract value from \$580,000 (net of all applicable taxes) to \$615,000 (net of all applicable taxes).

6. City Council authorize an amendment to the existing retainer agreement with Osler Hoskin & Harcourt LLP (Purchase Order number 6049837) for construction matters in connection with USEP Package 1, in the additional amount of up to \$90,000 (net of all applicable taxes) to provide legal advice and expertise to complete the execution of the Design and Construction Agreement, increasing the current contract value from \$530,000 (net of all applicable taxes) to \$620,000 (net of all applicable taxes).

7. City Council amend the 2020 - 2029 Council Approved Capital Budget and Plan for Corporate Real Estate Management to increase total project cost and cash flow funding by \$0.329 million in 2020, \$0.514 million in 2021, \$0.368 million in 2022, \$0.372 million in 2023, and \$0.526 million in 2024 for "Union Station Enhancement Project" (CCA913-01), from \$1.250 million to \$3.359 million, for additional resources for USEP Package 1, conditional upon full funding being provided by Metrolinx, with the exception of \$0.125 million in 2020, to be funded within the existing Corporate Real Estate Management Council Approved 2020 Capital Budget to cover external legal costs to complete the proposed sale to Metrolinx of the elevator shafts connecting to Platform 20/21 and finalize the Design and Construction Agreement following the expropriation of City-owned lands.

8. City Council increase the 2020 Approved Operating Budget and Complement for Corporate Real Estate Management by 2.0 temporary positions and \$0.104M gross, \$0 net for necessary project management resources, conditional upon full funding being provided by Metrolinx.

## FINANCIAL IMPACT

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The financial impact of the expropriation will be determined in accordance with the provisions of the Expropriations Act, which requires the expropriating authority to pay compensation to the owner (the City) based on the market value of the land taken, the damages attributable to disturbance, and damages for injurious affection.

This report requests an amendment to the 2020 - 2029 Council Approved Capital Budget and Plan for Corporate Real Estate Management ("CREM") to increase the total project cost and cash flow for "Union Station Enhancement Project (USEP)" (CCA913-01), from \$1.250 million to \$3.359 million, funded by Metrolinx, with the exception of \$0.125 million, which is to be within the existing Corporate Real Estate Management Council Approved 2020 Capital Budget from the "Strategic Projects - Feasibility" project account (CCA266-02). Cash flows for required third party resources are included in Table 1, with any additional funding requests highlighted.

Further, this report requests additional temporary staff positions in the Project Management Office for the on-going review of Package 1. Based on initial information regarding the scope of the project, the City's resource requirements for USEP Package 1 includes (2) Senior Project Managers, at a cost of \$1.384 million from 2021 to the end of 2024 with cash flows also outlined in Table 1. The general responsibilities of each required position are broken out in Attachment 2.

Table 1: Updated USEP Package 1 funding requirements (Full-time equivalent positions escalated at 1.25 percent annually)

Third Party Service	Life-to-Date Spend (\$ million)	Current Budget (\$ million)	New Funding (\$ million)					Proposed Funding (\$ million)
			2020	2021	2022	2023	2024	Total
Legal: Property Matters	0.545	0.580	0.035	0.000	0.000	0.000	0.000	0.615
Legal: Construction Matters	0.473	0.530	0.090	0.000	0.000	0.000	0.000	0.620
Pedestrian Modelling	0.090	0.090	0.000	0.000	0.000	0.000	0.000	0.090

Third Party Service	Life-to-Date Spend (\$ million)	Current Budget (\$ million)	New Funding (\$ million)					Proposed Funding (\$ million)
			2020	2021	2022	2023	2024	Total
Engineering Reviews	0.018	0.050	0.100	0.200	0.050	0.050	0.200	0.650
Senior Project Manager (2)	0.000	0.000	0.104	0.314	0.318	0.322	0.326	1.384
<b>Total</b>	<b>1.126</b>	<b>1.250</b>	<b>0.329</b>	<b>0.514</b>	<b>0.368</b>	<b>0.372</b>	<b>0.526</b>	<b>3.359</b>

All costs outlined in Table 1, with the exception of \$0.125 million assigned to 2020 legal fees, are subject to full cost recovery from Metrolinx through the USEP Package 1 Funding Agreement, as amended.

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

**DECISION HISTORY**

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In April 2018, City Council adopted Item EX33.1 "Implementation of the SmartTrack Stations Program and the Metrolinx Regional Express Rail Program", and approved, in principle, the use of the City-owned land to the south of Union Station for the USEP Package 1 and authorized the Deputy City Manager, Corporate Services, to negotiate the terms of the necessary easements, licenses and other agreements with Metrolinx, and the terms of any required amendments to existing agreements that will be impacted by the USEP Package 1 and report back to the Executive Committee on the recommended terms of such agreements.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX33.1>

In July 2018, City Council adopted Item EX36.13 "Metrolinx's Union Station Enhancement Project, Package 1 Implementation and Package 3 Review", and approved the key terms and negotiating principles to be used in the negotiations with Metrolinx on the Framework Agreement, the Design and Construction Agreement and certain other Key Agreements for the USEP Package 1.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX36.13>

In December 2019, City Council adopted Item EX11.7 "Metrolinx's Union Station Enhancement Project - Package 1", which provided an update on the proposed expropriation of certain City-owned lands at Union Station, and directed staff to waive the City's right to request a Hearing of Necessity.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX11.7>

## **COMMENTS**

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GO Expansion is being delivered in three “packages” of work. The USEP Package 1 falls into the category of enabling works for the delivery of GO Expansion, which includes work to build a south concourse that will connect into Union Station. Package 2 includes work off the rail corridor related to stations and surrounding infrastructure that does not apply to Union Station, while USEP Package 3 falls into the category of on-corridor works to realign tracks, providing a solution to deliver fully-integrated enhanced train service. Layouts and renderings illustrating USEP Package 1, which is the topic of this Staff Report, are included as Attachment 4.

### **Expropriation of City-owned Lands at Union Station**

Metrolinx determined that in order to meet its scheduled construction start of September 2020 (which sits in the critical path of future GO Expansion works), and to mitigate associated risks that could potentially affect both Metrolinx and the City, it would be in the best interest of the project to pursue expropriation to acquire the land and portions of Union Station that Metrolinx requires.

Accordingly, on January 9, 2020, Metrolinx expropriated the areas detailed in Attachment 1, which include unexcavated lands behind Union Station, two corridor areas within the Station that provide access to the most southern platforms from the teamways and concourses, airspace above the viaduct on both York Street and Bay Street, as well as access to and from Maple Leaf Square. The expropriation also included the City's existing bike storage room in the York East Teamway, a portion of the truck tunnel leading to the City's loading dock, and a portion of the York West Teamway that was leased to VIA Rail.

In addition, Metrolinx expropriated a temporary, exclusive easement over the rest of the City-owned portion of Union Station until the end of 2024, to ensure it has unfettered access throughout the Station for the purpose of constructing USEP 1.

Metrolinx has taken possession of the expropriated lands and temporary easement on July 15, 2020.

In early April 2020, Metrolinx served statutory Offers of Compensation on the City, together with a copy of the appraisal on which the Offers are based. Staff are in the process of reviewing these materials, in consultation with external expropriation consultants, and will report back to the Executive Committee when in a position to make recommendations on the City's position regarding compensation.

### **Proposed Purchase of City-owned Lands at Union Station**

Prior to the closure and demolition of the two (2) most southerly platforms within the Union Station train shed, Metrolinx will look to widen existing Platform 20/21, currently servicing VIA Rail, in order to temporarily re-allocate GO train service in an effort to minimize impacts to transit operations while the new south concourse is being

constructed. Since the widened platform will accommodate a higher volume of pedestrians, additional vertical access points will be required to safely manage the flow of alighting passengers.

Two (2) of the proposed vertical access points are currently heritage freight elevator enclosures that are owned by the City. These elevator shafts are located north of the City-owned lands that were expropriated, and are further detailed in Attachment 3. Metrolinx has requested to purchase these elevator shafts to construct the new stairways to the widened Platform 20/21.

Pursuant to Chapter 213 of the City of Toronto Municipal Code, before disposing of any property, the property must first be declared surplus and a notice of the proposed disposal and the manner of disposal must then be given to the public. A circulation to the City's divisions, agencies, and corporations has been undertaken to ascertain whether or not there is any municipal interest in retaining the elevator shafts. While the deadline for this circulation passed on June 18th, 2020, the City is still waiting on finalized reference plans from Metrolinx. Approval for the surplus declaration and subsequent sale transaction will be sought through the appropriate delegated authorities.

Given the complicated legal arrangements at Union Station and the continued involvement of Davies Ward Phillips & Vineberg LLP (DWPV) with the various ongoing property matters related to the Union Station Revitalization Project (USRP) and USEP Package 1, it is recommended that the existing retainer agreement with DWPV for USEP Package 1 be amended by an additional amount of up to \$35,000.00, net of taxes, to include the provision of legal advice and expertise to complete the proposed sale to Metrolinx of the elevator shafts connecting to Platform 20/21, should the necessary approvals be obtained for this sale.

## **Design and Construction Agreement**

In July 2018, City Council authorized the City Manager to negotiate and execute a Framework Agreement and a Design and Construction Agreement (DCA) with Metrolinx, together with certain other key agreements, based on major terms outlined in attachments to the staff report (EX36.13). City Council also directed the City Manager to negotiate all of the agreements consistent with certain Council-approved negotiating principles.

When Metrolinx decided to expropriate the property interests it required, rather than enter into the Framework Agreement and the other key agreements, the parties focused on negotiating revised terms for the DCA based on Metrolinx's change in direction. The parties have agreed, however, that nothing in the DCA constitutes a waiver by the City or Metrolinx of any of their respective rights and entitlements under the Expropriations Act.

The major terms for the DCA that have been settled between Metrolinx and City staff are set out in Attachment 2 and have resulted in the following changes to the Council-approved negotiating principles:

(1) Impact of the Union Station Enhancement Project on the proper functioning of Union Station, its tenants, and other Projects will be mitigated, and not result in any breach of any City tenant or other third party arrangements.

- Due to project constructability, this requirement was found to be impractical from Metrolinx's perspective, as it required agreement from multiple stakeholders. In order to maintain project timelines, Metrolinx expropriated certain City-owned lands, together with a temporary construction easement, with the intent being that any impact on Union Station, the City and the other stakeholders will be determined and compensated in accordance with the provisions of the Expropriations Act. In addition, Metrolinx has agreed to enter into the DCA, which includes provisions that are intended to mitigate potentially adverse impacts of USEP 1 on Station operations.

(2) The Union Station Enhancement Project will be undertaken in compliance with applicable law, including but not limited to site plan control processes.

- As a result of the expropriation, Metrolinx now owns all of the land on which the new south concourse will be built. While constructing its infrastructure on its own land, Metrolinx will not agree to comply with laws that do not specifically bind Metrolinx, including laws that require it to obtain permits, licences and approvals, including site plan approval, as that would be contrary to Metrolinx's right of Crown immunity. Metrolinx will agree, however, to comply with the terms of any permits, licences and approvals it does obtain. Also, when constructing any City infrastructure and/or any connections to City infrastructure, Metrolinx will agree to build to City standards, including all applicable legislative requirements, and to obtain all applicable permits, licences and approvals.
- For any activities on or use of City-owned land, Metrolinx has confirmed that it is not its intention to put the City offside any federal, provincial or municipal law applicable to and enforceable against the City pertaining to the use of the City's land.

(3) The City will incur no direct or indirect cost or liability as a result of Union Station Enhancement Project.

- Metrolinx has agreed to provide the City with an indemnity for any losses, costs, or damages the City suffers or incurs directly resulting from Metrolinx's activities on and use of the City's land, including any acts or omissions by Metrolinx that breach federal, provincial or municipal laws binding on the City. This means that Metrolinx will be responsible for any losses that arise as a direct and natural result of Metrolinx's activities on and use of the City's land, as well as any resulting losses that could reasonably be expected to have been in the parties' contemplation at the time they enter into the DCA, based on the known facts and circumstances. The City will retain the risk for any unforeseeable losses that the parties could not reasonably be expected to have contemplated at the time they enter into the DCA, subject to any rights the City may have under the Expropriations Act. It should also be noted that the City and Metrolinx may not agree as to the characterization of any particular losses the City may suffer, such that a dispute may arise between the parties as to whether or not the indemnity applies.

- As part of the negotiations, City staff agreed to recommend that the City will cover its own legal costs associated with the potential sale of two existing heritage elevator enclosures that are required by Metrolinx to facilitate construction, together with a portion of its legal costs pertaining to finalization of the DCA following the expropriation of City-owned lands.
- Metrolinx has agreed to list the City as an additional insured party on the Project's insurance policy.

(4) The new south concourse should be properly incorporated into and function as an integral part of Union Station, and administered according to all of the existing terms of the Amended and Restated Reciprocal Rights Agreement, as amended (ARRRA).

- To accommodate Metrolinx's timelines, City staff agreed to decouple negotiation of the DCA from the ARRRA. As a term of the DCA, Metrolinx and the City will agree that prior to completion of construction of the new south concourse, the parties will expeditiously proceed with diligence and in good faith to settle and enter into such easements and associated rights and obligations as are reasonably required to address ongoing access and operational requirements as a result of Metrolinx's expropriation of property at Union Station and construction of USEP Package 1, by either amending the ARRRA or by separate agreements that are on terms satisfactory to both parties.

(5) The City's current standards will be maintained for all pedestrian movements across the Union Station precinct, based on a 2041 planning horizon.

- Due to the phased nature of USEP, and the Design-Build-Finance-Operate-Maintain procurement model of the next Package of work (USEP Package 3), modelling efforts would not be based on a final design, so efforts will be made to maintain key pedestrian thoroughfares with construction hoarding extended to provide the maximum level of clearance that can be safely provided, while respecting any existing access easement requirements.

Council authority is required to execute the DCA that has been negotiated with Metrolinx. If Council approval is not obtained, there will not be an agreement in place that provides processes and procedures that look to minimize disruption at Union Station and delineate the parties' respective roles and responsibilities following the expropriation referenced above.

As a number of required amendments to the existing ARRRA have already been identified in connection with USRP, it is intended that the amendments and additional agreements for both USRP and USEP Package 1 will be negotiated and finalized with Metrolinx as one package. It is recommended, therefore, that the existing retainer agreement with DWPV for property matters related to USRP be amended to include the operating agreements related to USEP Package 1.



## City Involvement in USEP Package 1

Metrolinx and Infrastructure Ontario are proceeding with an "Alliance model" procurement structure for this project. Under this model, Metrolinx and non-owner participants share risks and responsibilities equally and make unanimous decisions on key project issues. A Request for Qualifications under this Alliance model was issued on October 28, 2019. Since the City is not a party to those contractual arrangements, the DCA is the bridge between the City and Metrolinx with respect to the project.

In collaboration with Metrolinx, City staff provided valuable feedback into the development of the performance specifications for the USEP Package 1. This feedback has informed the new Alliance model procurement that is currently underway. Following a full review of the project's Request for Proposal documentation, reference concept design, and a thorough pedestrian modelling and movement analysis, it has been determined that the new south concourse will provide a number of positive benefits to Union Station, as it combines increased capacity at track level with improved pedestrian connections to and from Union Station. This will be necessary to facilitate the increased ridership anticipated from GO Expansion.

City staff will be providing certain support to the project's Alliance, and with the support of third-party technical reviewers, will be participating in the review of project materials and handover of City-owned building systems and components to allow for the proper level of due diligence. This will be funded by Metrolinx, through an amendment to the existing USEP 1 Funding Agreement, in accordance with the terms included in Attachment 2.

## Conclusion

This report details the expropriation of lands in and around Union Station, and provides recommended terms of a Design and Construction Agreement with Metrolinx that will allow the delivery of a new south concourse at Union Station. If adopted, the recommendations in this report both will help protect the City's interests at Union Station and facilitate Metrolinx's works in support of GO Expansion, furthering a mutual interest in expanding transit options in Toronto and the surrounding region.

## CONTACT

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## **SIGNATURE**

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Patrick Matozzo  
Executive Director, Corporate Real Estate Management

## **ATTACHMENTS**

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Attachment 1 - USEP Package 1 – Summary of Expropriated Property Interests  
Attachment 2 - USEP Package 1 – Major Terms of Design and Construction Agreement  
Attachment 3 - USEP Package 1 – Details of Heritage Elevator Shafts  
Attachment 4 - USEP Package 1 – Layouts and Renderings