

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

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**No Waiver of Rights Under Expropriations Act**

- Nothing in the Design and Construction Agreement (the "Agreement") will constitute a waiver by the City or Metrolinx of any of their respective rights and entitlements under the Expropriations Act, all of which such rights and entitlements are expressly reserved by the City and Metrolinx, respectively.

**Delivery of Project by Metrolinx**

- Metrolinx has control over and overall responsibility for delivering the Union Station Enhancement Project, Package 1 (the "Project"), including acquisition of all lands or property interests required to construct the Project, determination of the scope, budget, expenditures, scheduling, design, construction and management of the Project, subject to the rights and obligations of the City as set out in the Agreement.
- If Metrolinx commences the Project, it will cause its contractor to undertake the Project in accordance with the requirements of the Agreement and it will require its contractor to obtain any permits, licences and approvals required by Applicable Law (as defined below) to construct the Project.
- If the Project is cancelled or not completed, Metrolinx will repair and restore the City's infrastructure so that it is functional for its intended purpose, operational, of good quality and free from defects and deficiencies.
- Metrolinx is responsible for all costs in connection with the performance and completion of the works contemplated under the Agreement, with the exception of:
  - any betterments or enhancements requested by the City that exceed the City's building standards for Union Station:
    - to any building systems and components to be used in common by the City and Metrolinx that are being built as part of the Project and which will be connected to other building systems within Union Station and will be owned, operated and maintained by the City following completion of the Project, being the security, sprinkler and fire alarm systems (the "City-Owned Shared Building Systems and Components"); and
    - to any works being performed as part of the Project that involve the connection of any building systems and components to be used in common by the City and Metrolinx that are being built as part of the Project and which will be connected to other building systems owned by the City within Union Station and will be owned, operated and maintained by Metrolinx following completion of the Project (the "Metrolinx-Owned Shared Building Systems and Components") to the building systems owned by the City within Union Station (the "Metrolinx Shared Building Systems and Components Connection Works");

- any variations to the scope of work for the Project that are requested by the City and accepted by Metrolinx.
- The City will permit Metrolinx to perform the Metrolinx Shared Building Systems and Components Connection Works, provided that the design of such works has gone through the design process set out in the Agreement and Metrolinx obtains all applicable permits, licences, and approvals.

**Applicable Law & Permits, Licences and Approvals**

- Applicable Law is defined to mean any federal, provincial and municipal law in force in the Province of Ontario that is applicable to the Project.
- For Project infrastructure, Metrolinx will agree to comply with the terms of any permits, licences and approvals it obtains. If, due to changed or previously unknown site conditions, the terms of any permit, licence or approval result in unanticipated costs or delays, Metrolinx will work collaboratively with the City in an effort to find a mutually satisfactory solution, failing which Metrolinx will have the right to withdraw such permit, licence or approval and proceed without it.
- When constructing the City-Owned Shared Building Systems and Components and the Metrolinx Shared Building Systems and Components Connection Works, Metrolinx will agree to build to City standards, including all applicable legislative requirements, and to obtain all applicable permits, licences and approvals.
- With respect to Metrolinx's activities on and use of the City lands, Metrolinx will comply with Applicable Law and confirm 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 lands.
- Metrolinx will at all times indemnify and hold harmless the City from and against any and all claims, suits, demands, costs, losses, expenses and damages suffered or incurred by the City directly resulting from Metrolinx's activities on and use of the City's lands, including, without limitation, breach of any federal, provincial or municipal law applicable to and enforceable against the City which is specifically referable to construction and use of the City's lands.

**City Participation in Project**

- The City will provide two (2) full-time City employees ("FTEs") to Metrolinx, designated exclusively to support Metrolinx on the Project, to be fully funded by Metrolinx through an amendment to the existing Funding Agreement pertaining to the Project, subject to approval by Metrolinx each year of the work plan and estimated budget for the FTEs for the upcoming year.
- If Metrolinx is not satisfied with the services provided by the FTEs, Metrolinx will have the right to request that the City replace the FTEs and if Metrolinx is also not satisfied with the services provided by the replacement FTEs, Metrolinx will have the right to terminate the City's obligation to provide and Metrolinx's obligation to pay for the FTEs.

- The City may also retain two (2) consultants from an external consulting firm engaged by the City to assist with the technical review of the designs and other documentation and provide support to the FTEs, to be fully funded by Metrolinx through an amendment to the existing Funding Agreement pertaining to the Project, subject to approval by Metrolinx each year of the work plan and estimated budget for the consultants for the upcoming year.
- The FTEs will form part of and be integral members of the delivery team for the Project and, at each key design stage, the FTEs will have the right to review and provide comments on behalf of the City on the designs relating to all works and infrastructure being constructed as part of the Project, in accordance with established review procedures and timelines. The FTEs will also assist with and facilitate the issuance of any permits, licences and approvals that are required from the City for the Project (but with no responsibility for issuance).
- Metrolinx is under no obligation to accept or incorporate any of the City's comments, unless and except if the City can reasonably demonstrate that the design or works:
  - will have a material adverse impact on the City-Owned Shared Building Systems and Components;
  - with respect to the Metrolinx Shared Building Systems and Components Connection Works:
    - will materially compromise the capacity and quality of existing building system to which the connection is being made; or
    - is not compatible with the existing building system to which the connection is being made, such that the proposed design will have a material adverse impact on the operation of Union Station;
  - with respect to the City-Owned Shared Building Systems and Components, contemplates the use of materials or products of which the City's preventative maintenance provider is unable to service, acting reasonably; or
  - fail to incorporate the following throughway accesses to and from certain portions of Union Station owned by the City, which shall be AODA compliant:
    - access to and from the VIA Concourse and the Lower Retail Concourse (Union Food Court, Union Fresh Market) mezzanine; and
    - access between the new south concourse and each of York East Teamway, Bay West Teamway, Lower Retail Concourse (Union Food Court, Union Fresh Market) mezzanine, Bay GO Concourse, York GO Concourse and VIA Concourse.
- The acceptance, review and comment by the City, the City FTEs or the Consultant Firm of designs, plans, reports, records or any other matter pertaining to the works and infrastructure being constructed as part of the Project(s) or the performance of the City FTE Services or any other service under this Agreement shall not have the effect of transferring any liability or obligation in respect of the design and construction of the works for the Project(s) from Metrolinx to the City, the City FTEs or the Consultant Firm and the City, the City FTEs and

the Consultant Firm will not assume any liability in connection with the acceptance, review and comment of such designs, plans, reports, records or any other matter or the performance of the City FTE Services or any other service under this Agreement and Metrolinx releases and waives the City, the City FTEs and the Consultant Firm from any such liability.

- Metrolinx is entitled to rely on comments and acceptance provided by the City, the City FTEs and Consultant Firm in the context of the above requirements, and in the event Metrolinx causes the City-Owned Shared Building Systems and Components to be constructed in accordance with such comments or acceptance, the City shall be prohibited from refusing to accept handover of such infrastructure following construction to the extent it complies with such comments or acceptance.

### **Maintenance of Pedestrian and Vehicular Access**

- During Union Station operating hours, Metrolinx will endeavor not to close or hinder pedestrian traffic in any material way through interior and exterior access connections, entrances, stairs, escalators and elevators and shall maintain specified minimum widths for pedestrian access through each of the Telus Tunnel (which provides access between the Scotiabank Arena galleria and the VIA Concourse, as well as the retail level below), the Blue Route (which provides access between the Scotiabank Arena galleria and the Bay Concourse Arcade) and the Teamways (being the York West Teamway, the York East Teamway and the Bay West Teamway) or, if Metrolinx must close or modify any of these access routes, Metrolinx will implement a reasonable effective alternative access route for such pathway(s) that provides commensurate service capacity and function.
- Metrolinx will work with the City to mitigate any negative impacts the construction of the Project may have on the use by the City, Osmington and others of the below-grade truck tunnel that provides vehicular access to the Union Station loading docks and will endeavor to complete the Project in such a manner that the operation and functionality of the truck tunnel is not materially disrupted or impacted. Metrolinx will endeavor to provide a reasonable effective alternative access route or method for delivery for any disruptions caused to the operation or use of the truck tunnel and/or the loading dock.
- In the event the Project is cancelled or delayed for a period greater than 1 year, Metrolinx agrees to make safe or reinstate the following points of access, or provide alternative points of access that are commensurate in service capacity and function until any design or construction works pertaining to the Project recommence: pathways within each of the Telus Tunnel, the Blue Route, the Teamways and the Arcade (which provides access between the York GO Concourse and the Bay West Teamway).

### **Licence to Construct Platform 20/21 Stairs**

- The City grants Metrolinx a temporary, non-exclusive licence, at no cost, over a portion of the City's lands as required to convert the existing freight elevators located on Platform 20/21 to stairs that will be owned, operated and maintained by Metrolinx as part of the Project.

### **Insurance**

- Metrolinx, at its sole cost, will obtain and maintain or cause its contractor to obtain and maintain insurance or other applicable security for the Project in accordance with the

requirements of the insurance provisions set forth in the RFP documents for the Project, which the City has reviewed and approved. The City will be an additional named insured and will be provided with not less than thirty (30) days' prior written notice of cancellation.

**Warranty**

- Following completion of the inspection, commissioning and handover procedures set out in the Agreement, and acceptance by the City of the City-Owned Shared Building Systems and Components, Metrolinx warrants for a period of two (2) years that the City-Owned Shared Building Systems and Components and the Metrolinx Shared Building Systems and Components Connection Works conform to the requirements of the final design approved by the City in accordance with the provisions of the Agreement and Applicable Law and are new, of good quality, fit for their intended purpose and free of defects and deficiencies.

**Post-Construction Access and Operating Arrangements**

- Metrolinx and the City agree that prior to completion of construction of the Project, 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 the Project, by either amending the Amended and Restated Reciprocal Rights Agreement or by separate agreements, in each case on terms satisfactory to both parties.