

## **Licence Agreement - Land Exchange of 1700 Keele Street and 15 Rotherham Avenue**

**Date:** June 17, 2022

**To:** General Government and Licensing Committee

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

**Wards:** 5 - York South-Weston

### **SUMMARY**

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The purpose of this report is to seek authority to enter into a licence agreement with the Toronto District School Board to permit the City to temporarily use portions of Toronto District School Board's lands (including a portion of their existing parking lot at George Harvey Collegiate Institute at 1700 Keele Street) for construction staging, in order to facilitate Engineering and Construction Services' Fairbank-Silverthorn Storm Trunk Sewer System Project. In exchange for the use of the Toronto District School Board's lands, and displacing the Toronto District School Board from a portion of their parking lot, the licence agreement will permit the Toronto District School Board to temporarily use a portion of a nearby City-owned property at 15 Rotherham Avenue for parking purposes.

### **RECOMMENDATIONS**

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

1. City Council authorize the Executive Director, Corporate Real Estate Management, on behalf of the City, to enter into a licence agreement (the "Agreement") with the Toronto District School Board ("T.D.S.B.") for the temporary exchange of lands between both parties, substantially on the major terms and conditions set out in Appendix A of this report, and including such other terms and conditions that are acceptable to the Executive Director, Corporate Real Estate Management and in a form satisfactory to the City Solicitor.

## FINANCIAL IMPACT

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The licence fee for both parties associated with the proposed Agreement is approximately \$45,000 per annum, or up to \$90,000 in total costs given the proposed duration of up to two (2) years associated with the Agreement. Given the equal fee for both parties, the licence fee will be offset by the use of each other's land, and no licence fee shall be paid by either party to the other.

The City will incur real estate related costs of approximately \$50,000 as a result of entering into the proposed Agreement with T.D.S.B. Funding for these costs associated with the Agreement is available in the 2022-2031 Council Approved Capital Budget and Plan for Toronto Water under capital project account Basement Flooding Relief (CWW421-11).

In addition to the real estate related costs, the City will also incur construction related costs of approximately \$150,000 associated with the proposed use and restoration involving the T.D.S.B.'s lands. All construction related costs associated with the Fairbank-Silverthorn Storm Trunk Sewer System Project have been approved by City Council through the adoption of Item IE23.9 and are included in the 2022-2031 Council Approved Capital Budget and Plan for Toronto Water.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

## DECISION HISTORY

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At its meeting on July 14, 15 and 16, 2021, City Council adopted Item IE23.9, entitled "Award of Contract Number 21ECS-LU-01TT to EBC Bessac Canada ("F.S.P.S.T.T.") Joint Venture for the Construction of the Fairbank Silverthorn Storm Trunk Tunnel and Micro-Tunneled Storm Collectors for Basement Flooding Protection Program Study Area 3".

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.IE23.9>

At its meeting held on June 18 and 19, 2019, City Council adopted Item EX6.4 with amendments, entitled, "Federal Disaster Mitigation and Adaption Fund - Update". The report provided an update on the Disaster Mitigation and Adaptation Fund program and sought City Council approval for the Mayor to execute contribution agreements for projects that are successful in receiving funding under the Disaster Mitigation and Adaptation Fund from the Government of Canada.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX6.4>

At its meeting held on January 17, 2019, the Infrastructure and Environment Committee adopted Item IE1.2, granting authority to the Chief Engineer and Executive Director, Engineering and Construction Services to negotiate and enter into an agreement with CH2M Hill Canada Limited, (being the highest overall scoring proponent meeting the requirements of RFP No. 9117-18-7185), to provide Professional Engineering Services for the Detailed Design, Services During Construction and Post Construction Services

for the Fairbank Silverthorn Storm Trunk Sewer System, in the amount of \$30,469,539 net of Harmonized Sales Tax recoveries.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.IE1.2>

## **COMMENTS**

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### **Project Background**

The Fairbank-Silverthorn Storm Trunk Sewer System Project (the "Project") was recommended through the Investigation of Chronic Basement Flooding Study Area 3 Class Environmental Assessment completed in 2010. The Project involves the construction of approximately 3 kilometers long new storm trunk sewer by tunneling from Fairbank Memorial Park to Black Creek and 17 kilometers of new subsurface storm sewers. Upon completion of this Project, approximately 4,645 homes will be protected from surface flooding and sewer back up during the 100 year storm event. The major component of the Project is the construction of a 4.5 meter diameter storm trunk sewer to collect, store and convey storm water from the impacted communities to the Black Creek water course. Given the anticipated benefits of the Project, the Federal Government has allocated \$73.2 million towards its completion through the Disaster Mitigation and Adaptation Fund.

The storm trunk sewer tunnel will be constructed from various shaft locations using a tunnel boring machine at a depth of 13 to 40 metres below the surface of each impacted property. As a result of the proposed method of construction, there will be minimal disturbance on the surface above the sewer tunnel. The majority of the sewer tunnel will be constructed within the City's right-of-way.

### **Land Requirements for the Project**

One of the Project's tunneling shafts is located at the intersection of Nashville Avenue and Bicknell Avenue. The tunnel boring machine will be retrieved from this shaft location. The project team identified temporary land requirements within a portion of the parking lot of the George Harvey Collegiate Institute (the "School") located at 1700 Keele Street. The land is required on a temporary basis for a construction laydown area and will result in keeping Bicknell Avenue open for one-way traffic which will reduce traffic congestion surrounding the School and improve overall public and school safety.

City staff have been in communication with the T.D.S.B. to inform them of the upcoming Project and requested use of portions of the T.D.S.B.'s property located at 1700 Keele Street to facilitate the Project. City staff have also stressed the urgency of the temporary land requirements given the negative impact to the local residents and the users of the School in the event that the T.D.S.B.'s lands are not available for the City's use.

In the event that City staff are unable to successfully negotiate an agreement with the T.D.S.B. for use of the T.D.S.B.'s lands, the contractor will have to use Bicknell Avenue for placement of construction equipment beside the shaft and for the staging area, resulting in the complete closure of Bicknell Avenue between Nashville Avenue and Westbury Crescent for up to 24 months. This will result in about 19 residential

properties losing access to their driveways and requiring additional on-street parking, which is challenging in this area. The full closure of both Nashville Avenue and Bicknell Avenue will result in traffic challenges surrounding the School.

## **Details of Licence Agreement**

As the T.D.S.B. will be displaced from a portion of their parking lot at the School, the T.D.S.B. requested the City to provide replacement parking at a nearby City-owned property at 15 Rotherham Avenue. In addition to the use of the City's parking lot, the T.D.S.B. requested additional site specific requirements (such as the construction of a temporary pathway leading to a School exit along Bicknell Avenue and a new school bus drop off area, amongst other requirements) to mitigate the Project's impact on the operation of the School, and to ensure the T.D.S.B. does not incur costs as a result of the City's land requirements. These additional site specific requirements result in additional costs to the City, as outlined in the Financial Impact section, beyond the fair market value of the licence fee for the exchange of the parties' respective lands.

Staff within the Engineering and Construction Services Division recommend that the costs associated with the temporary land exchange with the T.D.S.B. are justified when compared to the additional costs of traffic control for a full road closure, potential increase in construction costs of the overall Project as well as the inconvenience caused to the general public from a long-term full closure of Bicknell Avenue. The improved traffic movement will also help the contractor to expedite work and reduce construction costs.

Both parties have recently reached an agreement that would allow the City to use the required T.D.S.B. lands at 1700 Keele Street in exchange for the T.D.S.B. using a portion of a nearby City-owned property at 15 Rotherham Avenue to park its vehicles for a term of up to 24 months. The major terms and conditions of the Agreement are set out in Appendix A.

To ensure that the Project's construction schedule is maintained and to minimize the anticipated disturbances to the local residents and users of the School, it is recommended that City Council approve the proposed Agreement between the City and the T.D.S.B.

## **CONTACT**

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Alison Folosea, Director, Transaction Services, Corporate Real Estate Management, 416-338-2998, [Alison.Folosea@toronto.ca](mailto:Alison.Folosea@toronto.ca)

Simon Hopton, Director, Design and Construction, Major Infrastructure, Engineering and Construction Services, 416-395-6270, [Simon.Hopton@toronto.ca](mailto:Simon.Hopton@toronto.ca)

**SIGNATURE**

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Patrick Matozzo  
Executive Director, Corporate Real Estate Management

**ATTACHMENTS**

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Appendix A - Major Terms and Conditions of Agreement  
Appendix B - Location Map

## **Appendix A - Major Terms and Conditions of Agreement**

**T.D.S.B. Lands to be licenced to the City in "as is" condition:** (i) a portion of the School parking lot at 1700 Keele Street, being approximately six hundred and twelve (612) square meters in area, and described in Appendix B as the School Parking Lot Licensed Area, and (ii) a portion of the School, being approximately three (3) square meters in area, abutting Bicknell Avenue at Westbury Crescent, and described in Appendix B as the Bicknell License Area.

**City Lands to be licensed to T.D.S.B. in "as is" condition:** A portion to the parking lot at 15 Rotherham Avenue, being approximately six hundred and thirty-four (634) square meters in area, and described in Appendix B as the Rotherham Licensed Area.

**Permitted Use:** (i) School Parking Lot Licensed Area - for construction staging purposes, including the storage of vehicles, supply, machinery, gear, materials and equipment, and other uses reasonably necessary and ancillary; (ii) Bicknell Licensed Area - to construct a Temporary Pathway for use by T.D.S.B. students to access the School; and (iii) Rotherham Parking Lot Licensed Area - for parking purposes

**Term:** Eighteen (18) months, commencing on a date to be specified by the City upon at least fifteen (15) business days' prior written notice to T.D.S.B., provided that the commencement date shall be no later than December 31, 2023.

**Option to Extend:** The City shall have the option to extend the term of Agreement for a period of six (6) months, upon the same terms and conditions upon at least thirty (30) days' prior written notice to T.D.S.B.

**Licence Fee:** The lands being exchanged are of approximate equal fair market value, being approximately \$45,000 per annum. The licence fee will be set-off by the use of each other's land, and no licence fee shall be paid by either party to the other. City to pay all applicable Harmonized Sales Tax costs for both parties associated with the Agreement.

**City Covenants:** City covenants to carry out the construction plan for the Project in a good workerlike manner including:

- (i) install temporary pedestrian entrance/exit on the east side of the Rotherham Parking Lot Licensed Area;
- (ii) separate and divide the School Parking Lot Licensed Area from the unused portions of the School Parking Lot with construction hoarding;
- (iii) separate and divide the Rotherham Parking Lot Licensed Area from the unused portions of the parking lot with a chain link fence;
- (iv) construct alternate access routes to the School Parking Lot Licensed Area and the Rotherham Parking Lot Licensed Area, and paint lines for the parking spaces on the Rotherham Parking Lot Licensed Area;
- (v) allow for street parking for up to five (5) additional vehicles along Rotherham Avenue for T.D.S.B. staff and students;
- (vi) construct a new school bus drop off area along the Keele Street right of way;
- (vii) construct a new temporary pathway leading to the school exit along Bicknell Avenue, for use by T.D.S.B. students; and

(viii) use reasonable efforts to facilitate an educational component related to the Project as a learning opportunity for students who are part of the T.D.S.B.'s STEM enrichment program.

**T.D.S.B. Covenants:** T.D.S.B. covenants to use, operate and maintain the Rotherham Parking Lot Licensed Area in a clean and tidy, well-ordered, safe and good workerlike manner including winter maintenance. T.D.S.B. shall remain responsible for and shall expeditiously repair and remedy any damage to the Rotherham Parking Lot Licenced Area caused by T.D.S.B., Toronto Lands Corporation or their respective representatives and those for who they are responsible at law.

**Costs payable by the City:**

(i) City to reimburse T.D.S.B. for its reasonable winter maintenance costs associated with the Rotherham Parking Lot Licenced Area. The City shall remain responsible for regular maintenance of the Rotherham Parking Lot to the City's standards; and  
(ii) City to pay all T.D.S.B.'s net reasonable costs and expenses for: (a) reasonable legal fees (up to a maximum of Fifteen Thousand Dollars (\$15,000), inclusive of Harmonized Sales Tax) in connection with the proposed Agreement, (b) T.D.S.B.'s winter maintenance costs associated with the use of the Rotherham Parking Lot Licenced Area, (c) City's failure to fulfill its obligations under this Agreement and/or (d) subsequent enforcement of any term/condition under this Agreement.

**City Restoration Obligation:** The City shall repair and restore the soil and any subsurface, surface, and overhead area of the School Parking Lot Licenced Area and the Bicknell Licenced Area (save and except any damage caused by or arising from T.D.S.B.'s use of the Bicknell Licenced Area), to as close as practicable to their condition immediately prior to its entry and to the satisfaction of T.D.S.B., acting reasonably, at the City's own expense. In order to ensure consistency to the appearance of the entire School Parking Lot, the City shall restore the other portion of the School Parking Lot occupied by T.D.S.B., including repairing the school fence, restoring the grass and curbs, re-paving and re-lining the parking spaces for the entire School Parking Lot.

**City Indemnity:** The City shall indemnify T.D.S.B. and Toronto Lands Corporation and their respective representatives for all claims, damages, losses, etc. including environmental impairment of T.D.S.B. Lands arising from this Agreement.

**City Insurance:** The City shall maintain at its sole expense, commercial general liability insurance or wrap up insurance which shall include appropriate coverage in connection with the City, the City's representatives or anyone permitted by the City to use the School Parking Lot Licensed Area or the Bicknell Licensed Area. The insurance shall be written on an occurrence basis with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence.

**T.D.S.B. Insurance:** T.D.S.B. shall take out and keep in full force and effect commercial general liability insurance which shall include appropriate coverage in connection with its use of the Rotherham Parking Lot Licenced Area, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence.

**T.D.S.B. Labour Requirements:** T.D.S.B. has entered into a collective agreement (the “Collective Agreement”) with the Maintenance and Construction Skilled Trades Council (the “Council”), that requires, with certain limited exceptions, that all construction, maintenance and repair work on T.D.S.B. Lands, is to be performed by members of the Council or by contractors and subcontractors who have entered into an agreement with the Council. The City agrees that prior to performing any works on the School Parking Lot Licensed Area or the Bicknell Licensed Area, the City will obtain T.D.S.B.'s confirmation that T.D.S.B.'s obligations to the Council are satisfied. The City agrees to indemnify T.D.S.B. and Toronto Lands Corporation with respect to any costs, damages and awards that may be incurred by T.D.S.B. resulting from a grievance filed by the Council under the Collective Agreement with respect to work carried out by the City on the School Parking Lot Licensed Area or the Bicknell Licensed Area.

**Damage and Destruction on City Land:** If any part of the Rotherham Parking Lot Licenced Area is destroyed or damaged including but not limited to acts of God, the City shall have the option to (i) repair or restore the Rotherham Licenced Area, or (ii) find a suitable alternative parking lot for use by T.D.S.B., subject to the approval of T.D.S.B. acting reasonably. T.D.S.B. shall not be responsible for any damage or destruction to the City Lands unless such damage or destruction is caused by T.D.S.B. or those for whom they are responsible at law.

**Damage and Destruction on T.D.S.B. Land:** If any part of the School Parking Lot Licenced Area or the Bicknell Licenced Area is destroyed or damaged, the T.D.S.B. shall be under no obligation to rebuild or repair the same unless the damage is caused by T.D.S.B.'s or their representatives, and the City shall observe its restoration obligations as set out above.



## Appendix B - Location Map

