

**DELEGATED APPROVAL FORM
CHIEF CORPORATE OFFICER
DIRECTOR OF REAL ESTATE SERVICES**

TRACKING NO.: 2016-042

Approved pursuant to the Delegated Authority contained in Executive Committee Item EX43.7 entitled "**Delegation of Authority in Certain Real Estate Matters**" adopted by City Council on May 11 and 12, 2010 (City Council confirmatory By-law No. 532-2010, enacted on May 12, 2010), as amended by GM24.9 entitled "**Minor Amendments to Delegation of Authority in Certain Real Estate Matters**" adopted by City Council on October 8, 9, 10 and 11, 2013 (City Council confirmatory By-Law No. 1234-2013 enacted October 11, 2013), as amended by DAF 2013-307 and DAF 2014-087.

Approved pursuant to the Delegated Authority contained in Executive Committee Item EX33.44 entitled "**Union Station Revitalization Implementation and Head Lessee Selection**" adopted by City Council on August 5 and 6, 2009. City Council confirmatory By-law No. 749-2009, enacted on August 6, 2009.

Prepared By:	Kathie Capizzano	Division:	Real Estate Services
Date Prepared:	February 16, 2016	Phone No.:	2-4825

Purpose
To obtain approval for the City to enter into an agreement with the Canadian National Railway Company ("CN") to acquire a fee simple interest in the stratified air rights owned by CN over the rail lands north of 10 Ordnance Street and south of Wellington Street, between Bathurst Avenue and Strachan Avenue, for the purpose of building a pedestrian bridge to connect Fort York to Wellington Street.

Property
Stratified air rights owned by CN over Metrolinx's Georgetown line, north of 10 Ordnance Street, south of Wellington Street and just east of Strachan Avenue commencing at a horizontal plane approximately 27 feet (or 8.2 metres) above the top of rail, to be described in a strata reference plan of survey and shown approximately in Schedule "B" attached, (the "Air Rights").

Actions

1. The City to enter into an Agreement of Purchase and Sale (the "Agreement") with CN for the purchase of a fee simple interest in the Air Rights, substantially on the terms and conditions outlined in Appendix "A" to this report and on such other terms and conditions as may be acceptable to the Chief Corporate Officer and in a form satisfactory to the City Solicitor;
2. The City Solicitor complete the transaction(s) on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable; and
3. The appropriate City Officials be authorized and directed to take the necessary action to give effect to these recommendations.

Financial Impact
The following costs will be incurred by the City in connection with this transaction:

1. Approximately \$191,500.00 plus HST for the market value of the property based on \$60.00 per square foot and 3,192 square feet. The purchase price shall be increased or decreased as the case may be, based upon the foregoing price per square foot as certified by the Ontario Land Surveyor, who prepares the Strata Plan.
2. Registration fees of approximately \$100.00

Funds are available in the 2016 Capital Budget for Waterfront Revitalization Initiative under Waterfront Secretariat's account CWR003-12. The Deputy City Manager & Chief Financial Officer has reviewed this DAF and agrees with the financial impact information.

Comments
The City has entered into an agreement with Build Toronto, Inc. ("BT") dated June 4, 2014, pursuant to which BT will procure and manage the design and construction of the Fort York Bridge that will join Old Fort York to Wellington Street. The Bridge will be owned and maintained by the City. The Bridge construction is scheduled to start in March, 2016.

The bridge will be crossing two sets of rail tracks. One being the Weston Sub/Georgetown Line and one being the Oakville Sub/Lakeshore West Line. CN, the former owner of both sets of tracks, had sold their interest in the tracks to Go Transit/Metrolinx. However, as part of that transaction CN retained the air rights starting at 27 feet (8.2 metres) above the rail tracks on the Weston Sub/Georgetown line for potential development rights. Since the bridge will be located within this airspace, which has been retained by the CN for development purposes and not for rail use, it is CN's position that the bridge falls outside of the normal railway/road crossing regime under the *Canadian Transportation Act*. As such, in order to construct the bridge the City must enter into an Agreement of Purchase and Sale with CN for the Air Rights.

Negotiations between the City and CN have resulted in an agreement, terms and conditions of which are set out in Appendix A.

Property Details	Ward:	19 – Trinity Spadina
	Assessment Roll No.:	
	Approximate Size:	
	Approximate Area:	Approximately 296.55 square meters (3192 square feet)
	Other Information:	

A.	Director of Real Estate Services has approval authority for:	Chief Corporate Officer has approval authority for:
1. Acquisitions:	<input checked="" type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
2. Expropriations:	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million.
3. Issuance of RFPs/REOs:	Delegated to a more senior position.	<input type="checkbox"/> Issuance of RFPs/REOs.
4. Permanent Highway Closures:	Delegated to a more senior position.	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.
5. Transfer of Operational Management to ABCDs:	Delegated to a more senior position.	<input type="checkbox"/> Transfer of Operational Management to ABCDs.
6. Limiting Distance Agreements:	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
7. Disposals (including Leases of 21 years or more):	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:	Delegated to a more senior position.	<input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.
9. Leases/Licences (City as Landlord/Licensor):	<input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$1 Million;	<input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$3 Million;
	<input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding three (3) months, including licences for environmental assessments and/or testing, etc.	<input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding six (6) months, including licences for environmental assessments and/or testing, etc.
10. Leases/Licences (City as Tenant/Licensee):	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$3 Million.
11. Easements (City as Grantor):	<input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
	<input type="checkbox"/> (b) When closing road, easements to pre-existing utilities for nominal consideration.	Delegated to a less senior position.
12. Easements (City as Grantee):	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
13. Revisions to Council Decisions in Real Estate Matters:	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$500,000).	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$1 Million).
14. Miscellaneous:	<input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences; <input type="checkbox"/> (b) Releases/Discharges; <input type="checkbox"/> (c) Surrenders/Abandonments; <input type="checkbox"/> (d) Enforcements/Terminations; <input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates; <input type="checkbox"/> (f) Objections/Waivers/Cautions; <input type="checkbox"/> (g) Notices of Lease and Sublease; <input type="checkbox"/> (h) Consent to regulatory applications by City, as owner; <input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title; <input type="checkbox"/> (j) Documentation relating to Land Titles applications; <input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds.	<input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences; <input type="checkbox"/> (b) Releases/Discharges; <input type="checkbox"/> (c) Surrenders/Abandonments; <input type="checkbox"/> (d) Enforcements/Terminations; <input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates; <input type="checkbox"/> (f) Objections/Waivers/Cautions; <input type="checkbox"/> (g) Notices of Lease and Sublease; <input type="checkbox"/> (h) Consent to regulatory applications by City, as owner; <input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title; <input type="checkbox"/> (j) Documentation relating to Land Titles applications; <input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds.

B. Chief Corporate Officer and Director of Real Estate Services each has signing authority on behalf of the City for:

- 1. Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- 2. Expropriation Applications and Notices following Council approval of expropriation.
- 3. Documents required to implement the delegated approval exercised by him.

Chief Corporate Officer also has approval authority for:

- Leases/licences/permits at Union Station during the Revitalization Period, if the rent/fee is at market value.

Consultation with Councillor(s)										
Councillor:	Councillor Mike Layton					Councillor:				
Contact Name:	Councillor Layton					Contact Name:				
Contacted by:	<input checked="" type="checkbox"/> Phone	<input checked="" type="checkbox"/> E-Mail	<input type="checkbox"/> Memo	<input type="checkbox"/> Other		Contacted by:	<input type="checkbox"/> Phone	<input type="checkbox"/> E-mail	<input type="checkbox"/> Memo	<input type="checkbox"/> Other
Comments:	concurs					Comments:				
Consultation with ABCDs										
Division:	Parks					Division:	Waterfront Secretariat			
Contact Name:	Marc Kramer					Contact Name:	Stephen McKenna			
Comments:	concurs					Comments:				
Legal Division Contact										
Contact Name:	Ray Mickevicius									
DAF Tracking No.: 2016- 042			Date			Signature				
Recommended by: Manager			February 23, 2016			Brian Varner				
<input type="checkbox"/>	Recommended by: Director of Real Estate Services Joe Casali					February 26, 2016			Joe Casali	
<input checked="" type="checkbox"/>	Approved by:									
<input type="checkbox"/>	Approved by: Chief Corporate Officer Josie Scioli									

General Conditions ("GC")

- (a) The local Councillor (or local Councillors if the subject property is located on a ward boundary or if the transaction involves an exchange of properties in more than one ward), will be consulted prior to the exercise of delegated Approving Authority by staff for all Acquisitions, Disposals, Land Exchanges and Leases.
- (b) Where approving power has been delegated to staff, the Chief Corporate Officer, in consultation with the applicable Deputy City Manager or the City Manager, may determine that such matter is of such special interest that same should be returned to the relevant Committee and Council for consideration and determination.
- (c) Exercise of delegated authority is subject to all applicable Council policies, statutes or other applicable law.
- (d) Authority to approve financial commitments/expenditures is subject to all amounts being available in an approved budget [or funding is available from alternative sources].
- (e) Property interests are to be based on appraised value, and no interest shall be granted at less than market value unless otherwise specifically authorized.
- (f) Authority to approve transactions at less than market value is subject to statutory anti-bonusing provisions.
- (g) Total compensation means the aggregate of all types of payments, including land value, estimated clean-up costs, potential arbitration awards, loss claims, etc, but exclusive of any applicable taxes and registration costs.
- (h) Authority to acquire property is conditional upon provision being made to bring the property into compliance with applicable MOE or other requirements such that it will be fit for its intended municipal purpose.
- (i) Authority to initiate the permanent road closure process in **A.4** is conditional upon confirmation by the GM of Transportation Services that it is feasible to permanently close the highway.
- (j) Disposal authorities in **A.7** are subject to the property having been declared surplus, and the disposal policy complied with.
- (k) Land exchanges, except for those in **A.8**, may be authorized based on the delegated Approving Authority for Disposals in **A.7**.
- (l) Approving Authority with respect to land located in the Designated Waterfront Area is conditional upon the approval of the Director, Waterfront Secretariat.
- (m) Authority to approve an exchange of land in **A.8** is conditional upon confirmation by the Chief Planner and Executive Director, and the GM of Parks, Forestry & Recreation, that the land being exchanged is (i) nearby land of equivalent or larger area, and (ii) of comparable or superior green space utility.
- (n) Approving Authority in **A.9** Leases (City as Landlord) but not Licences (City as Licensor) is limited to periods (including options/renewals) of less than twenty-one (21) years.
- (o) Total compensation in leasing matters where the City is landlord (**A.9**) includes the value of tenant improvements if factored into tenant's rental payments.
- (p) Total compensation in leasing matters where the City is the tenant (**A.10**) includes the value of any tenant improvements to be paid by the City.
- (q) Where options/renewals are included in leases, if the renewal rent is to be determined at a date later than the original approval date, total compensation is to be calculated as though all options are exercised, estimating the renewal rent based on the highest rent payable in the first term of the lease.
- (r) Total compensation in leasing matters where the City is landlord (**A.9**) or tenant (**A.10**) is to be calculated from the date of approval pursuant to this delegation (ie. first allowing for the expiry of any prior approvals, whether by Council or a delegated authority).
- (s) Approving Authority in leasing matters includes authority to approve renewals/extensions within the parameters of the delegated Approving Authority.
- (t) Approving Authority includes authority for amendments within the parameters of the delegated Approving Authority, the cumulative total of which may not exceed the delegated financial limit.
- (u) Where proposed additional amounts in **A.13** exceed 10 per cent of the original decision, even if otherwise in compliance with all other conditions, then approving authority is transferred upwards to the next more senior level of approving authority having the relevant overall financial limit.
- (v) Approving Authority includes authority for all documents necessary to implement the authority, on terms and conditions satisfactory to the Approving Authority, in consultation with the relevant operating Division(s).
- (w) Staff positions referred to in this delegation include successors from time to time.
- (x) Documents are to be in a form satisfactory to the City Solicitor (including indemnity and insurance provisions).
- (y) Delegated signing authorities in **B** are conditional upon the documents having received the City Solicitor's prior "Approval as to Form".
- (z) This delegation does not affect sales, acquisitions and leases over which the Affordable Housing Committee has responsibility.
- (aa) Authority to use land acquired by the City for parking purposes by the Toronto Parking Authority is conditional upon Council enacting a by-law designating such use.
- (bb) All residential leasing documents shall adhere to the *Residential Tenancies Act* and any successor legislation.
- (cc) Despite GC(n), Approving Authority in residential leasing matters is not limited to periods of less than twenty-one (21) years.

APPENDIX "A"

**Terms and Conditions of Agreement of Purchase and Sale (the "Agreement")
between
City of Toronto (the "City")
and
Canadian National Railway Company ("CN")**

Location:	Property north of 10 Ordnance Street and south of Wellington Street, between Spadina Avenue and Strachan Avenue and shown approximately in Appendix "B", (the "Property"),
Description of Premises:	Approximately 296.55 square meters (3192 square feet) of air rights commencing at a horizontal plane approximately twenty seven feet (27 feet, 8.2 metres) above the top of rail on the Property to be described on a strata reference plan of survey (the "Air Rights").
Purchase Price:	Approximately \$191,500.00 plus applicable taxes and charges
Irrevocable Date:	30 days after execution by the City
Due Diligence:	30 days after execution and acceptance by CN
Closing Date:	June 15, 2016.

Conditions:

1. The City agrees that it is responsible to prepare, at its sole cost, an appropriate "strata" reference plan of survey (the "Strata Plan"), satisfactory to CN. The City shall provide a draft of such Strata Plan to CN for review prior to March 25, 2016. CN shall review and provide any comments regarding the draft Strata Plan within a reasonable period following receipt. Following confirmation from CN that the draft Strata Plan is satisfactory, the City shall then cause, at its sole cost, the Strata Plan to be deposited no later than May 18, 2016.
2. The City's obligation to complete the transaction contemplated by the Agreement is conditional until closing upon the City securing all necessary approvals from Metrolinx, for the construction of a pedestrian bridge over the right-of-way and track.
3. The City acknowledges that the property is subject to an Air Rights Agreement made as of March 31, 2009, between the CN and Metrolinx (the "Air Rights Agreement"), which is a Permitted Encumbrance. The City covenants, to enter into, prior to Closing at the request of CN, an assumption agreement with Metrolinx in a form and substance acceptable to Metrolinx whereby the City shall be bound by all of the terms of such Air Rights Agreement pertaining to the property (the "Assumption Agreement") going forward. The City, and not CN shall thereafter be responsible for compliance with the Air Rights Agreement in relation to the property and shall indemnify the CN and hold harmless the CN from any liability arising because of a breach of this obligation, which shall survive Closing.
4. The City covenants and agrees with CN that prior to commencing any construction within or with respect to the property, the City acting reasonably and in good faith, shall, if required by Metrolinx, enter into a reciprocal agreement with Metrolinx.
5. The parties agree that the purchase price for the property is based upon and calculated at a rate of Sixty Dollars (\$60.00) per square foot, measured at a horizontal plane at the lower limit of the property, for Three Thousand One Hundred Ninety Two (3,192) square feet. The purchase price shall be increased or decreased as the case may be, based upon the foregoing price per square foot as certified by the Ontario Land Surveyor, who prepares the Strata Plan, which certificate shall be addressed to CN and the City.
6. The City agrees that the property may be encroached by Metrolinx for its own use only on and subject to the terms of the Air Rights Agreement. Metrolinx shall not erect any structures in the property unless it first provides 30 days' written notice to the City and obtains its consent for any such installation which consent shall not be unreasonably withheld. Provided however that the City may require Metrolinx at any time to relocate or remove, at its sole cost and expense, any structure so erected which encroaches on the property should the City, subsequent to giving its consent and acting reasonably, require the removal of the said structure.

SCHEDULE "B"

