

DELEGATED APPROVAL FORM
DEPUTY CITY MANAGER, CORPORATE SERVICES
EXECUTIVE DIRECTOR, CORPORATE REAL ESTATE MANAGEMENT

TRACKING NO.: 2021-211

Approved pursuant to the Delegated Authority contained in Article 2 of City of Toronto Municipal Code Chapter 213, Real Property

Prepared By:	Joseph Sergnese	Division:	Corporate Real Estate Management
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Date Prepared:	July 23, 2021	Phone No.:	416-392-1857
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Purpose	To obtain authority to enter into an encroachment agreement between the City of Toronto (the "City"), as Licensor, and Noventa-Toronto Western L.P ("Noventa"), as Licensee, for the permission to construct, install, maintain, repair, operate, replace and decommission a wastewater energy transfer project under and across the City Lands (the "Encroachment Agreement").
Property	Parts of Wales Ave, Carlyle Street, Dundas Street West and Bathurst Street, as described in Appendix 'A'
Actions	<ol style="list-style-type: none"> Authority be granted to enter into the Encroachment Agreement with Noventa, on the terms set out herein, as may be satisfactory to the Executive Director, Corporate Real Estate Management and in a form acceptable to the City Solicitor; The Executive Director, Corporate Real Estate Management or his designate shall administer and manage the Licence which shall include providing any consents, approvals, waivers, notices and notices of termination provided that, at any time, refer consideration of such matter to City Council for its determination and direction; .
Financial Impact	<p>The City will receive annual revenue that will amount to the sum of the vault fee (\$54,300 + HST) and HDPE Pipe Fee (\$13.18 per metre + HST, to be calculated when the final wastewater energy transfer project design is completed by the Licensee) over at least 30 years with a CPI percentage increase over the previous year.</p> <p>The fee is to be deferred for the first 5 years with an annual interest rate of 4.5%. Repayment will begin on the 6th anniversary of the Commencement Date of the agreement over 5 years at a rate of 4.5%.</p> <p>All revenue will be directed to 2021 Council Approved Operating Budget for Corporate Real Estate Management under cost center FA1375. Future year revenues will be referred to the City's annual budget process and will be included as part of the 2022 and future year budget submissions for Council consideration.</p>
Comments	<p>The Chief Financial Officer and Treasurer has reviewed this DAF and agrees with the financial implications as identified in the Financial Impact section.</p> <p>The Licensee is undertaking a wastewater energy transfer project to transfer thermal energy to and from the City's wastewater system ("Noventa System") which will then supply thermal energy to Toronto Western Hospital.</p> <p>City Council authorized the Deputy City Manager, Corporate Services or designate, in consultation with the General Manager, Toronto Water, to negotiate, enter into and execute a Wastewater Energy Transfer Agreement with the Licensee. The City entered into the Wastewater Thermal Energy Agreement with the Licensee on April 29, 2021 (the "WTEA"). The WTEA has an initial term of 30 years from the date the system is commissioned. Followed by the right to extend for a further two terms at 5 years each.</p> <p>The WTEA requires the City and Noventa to enter into a Property Agreement to construct, install, maintain, repair, operate, replace and decommission the Noventa System under and across the City Lands to be located generally as shown on the sketch attached to this Agreement as Appendix B.</p> <p>The Property Agreement is the Encroachment Agreement as detailed in the foregoing sections of this Delegated Approval Form.</p>
Terms	See Appendix "C"

Property Details	Ward:	Ward 11 – University-Rosedale
	Assessment Roll No.:	n/a
	Approximate Size:	Irregular
	Approximate Area:	VAULT 5,741 sq ft (533 sq. m.) WET WELL 1,181.89 sq ft (110 sq. m.)
	Other Information:	

A.	Executive Director, Corporate Real Estate Management has approval authority for:	Deputy City Manager, Corporate Services has approval authority for:
1. Acquisitions:	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
2A. Expropriations Where City is Expropriating Authority:	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million.	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$5 Million.
2B. Expropriations For Transit-Related Purposes Where City is Property Owner or Has Interest in Property Being Expropriated:	<input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million. Request/waive hearings of necessity delegated to less senior positions.	<input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$5 Million. Request/waive hearings of necessity delegated to less senior positions.
3. Issuance of RFPs/REOIs:	<input type="checkbox"/> Issuance of RFPs/REOIs.	<input type="checkbox"/> Issuance of RFPs/REOIs.
4. Permanent Highway Closures:	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.
5. Transfer of Operational Management to Divisions, Agencies and Corporations:	<input type="checkbox"/> Transfer of Operational Management to Divisions, Agencies and Corporations.	<input type="checkbox"/> Transfer of Operational Management to Divisions, Agencies and Corporations.
6. Limiting Distance Agreements:	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
7. Disposals (including Leases of 21 years or more):	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:	<input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.	<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/Licenser):	<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 twelve (12) months, including licences for environmental assessments and/or testing, etc. Delegated to a more senior position.	<input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$5 Million. <input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding twelve (12) months, including licences for environmental assessments and/or testing, etc. <input type="checkbox"/> (c) Where compensation is less than market value, provided tenant and lease satisfy Community Space Tenancy Policy criteria set out in Item EX28.8, as adopted by Council on November 7, 8 and 9, 2017, as amended from time to time.
10. Leases/Licences (City as Tenant/Licensee):	<input checked="" type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$5 Million.
11. Easements (City as Grantor):	<input type="checkbox"/> (a) Where total compensation does not exceed \$3 Million. <input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.	<input type="checkbox"/> (a) Where total compensation does not exceed \$5 Million. <input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.
12. Easements (City as Grantee):	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
13. Revisions to Council Decisions in Real Estate Matters:	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).
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/Estoppel 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/Estoppel 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. Deputy City Manager, Corporate Services and Executive Director, Corporate Real Estate Management each has signing authority on behalf of the City for:
<ul style="list-style-type: none"> • Documents required to implement matters for which each position also has delegated approval authority. • Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval. • Expropriation Applications and Notices following Council approval of expropriation. • Community Space Tenancy Leases approved by delegated authority by the Deputy City Manager, Corporate Services and any related documents.

Pre-Condition to Approval

Complies with General Conditions in Appendix B of City of Toronto Municipal Code Chapter 213, Real Property

Consultation with Councillor(s)

Councillor:	Mike Layton	Councillor:	
Contact Name:	Stephanie Nakitsas	Contact Name:	
Contacted by:	<input 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:	(No objections, July 20, 2021)	Comments:	

Consultation with Divisions and/or Agencies

Division:		Division:	Financial Planning
Contact Name:		Contact Name:	Patricia Libardo
Comments:		Comments:	(Concurs, July 22, 2021)

Legal Services Division Contact

Contact Name: Vanessa Bacher (July 19, 2021)

DAF Tracking No.: 2021-211	Date	Signature
Recommended by: Manager, Real Estate Services	July 28, 2021	Signed by Daran Somas
Recommended by: Director, Real Estate Services	July 29, 2021	Signed by Alison Folosea
<input type="checkbox"/> Recommended by: Executive Director, Corporate Real Estate Management <input checked="" type="checkbox"/> Approved by: Patrick Matozzo	July 29, 2021	Signed by Patrick Matozzo
<input type="checkbox"/> Approved by: Deputy City Manager, Corporate Services Josie Scioli		X

Appendix "A"
LEGAL DESCRIPTION – City Lands

Bathurst Street

RDAL BTN LT 18 & 19 CON 1 FTB TWP OF YORK; PT LT 1-7 PL 312 CITY WEST PT 1 63R343; ST. PATRICK ST PL 312 CITY WEST (AKA DUNDAS ST W AKA SCADDING COURT) S OF PT 1 63R343, BEING BATHURST ST BTN QUEEN ST AND DUNDAS ST W; CITY OF TORONTO

PIN: 21237-0043 (LT)

Dundas Street West

DUNDAS ST W PL D1482 TORONTO EXCEPT PT 1 RD79; CARLYLE ST, CASMIR ST PL 312 CITY WEST; ST. PATRICK ST PL D122 TORONTO; LANE PL D1482 TORONTO; RDAL BTN PARKLT 18 & 19 CON 1 FTB TWP OF YORK; PT LT 4 PL D1482 TORONTO PT 2 63R343; PT LT 13-14 PL 312 CITY WEST; PT LT 5 PL D1482 TORONTO PT 3 63R343; PT PARKLT 17 CON 1 FTB TWP OF YORK TRAVELLED RD BEING DUNDAS ST W BTN BATHURST ST AND AUGUSTA AV; CITY OF TORONTO

PIN: 21236-0038 (LT)

Carlyle Street

CARLYLE ST PL 312 CITY WEST N OF DUNDAS ST W ON PL D1482; PT LT 24-25 PL 1070 CITY WEST; PT 1 FT RESERVE PL 312 CITY WEST; PT LT 22-23 PL 312 CITY WEST; PT RESERVE PL 1070 CITY WEST AS IN WA74053; PT LT 3 PL D1482 TORONTO AS IN WA95460 (FIRSTLY), BEING CARLYLE ST BTN DUNDAS ST W AND WALES AV; CITY OF TORONTO

PIN: 21236-0494 (LT)

Wales Avenue

BELLEVUE PLACE PL D55 TORONTO AKA WALES AV; CITY OF TORONTO

PIN: 21226-0493 (LT)

SCHEDULE B
Encroachment Area

Appendix "C"

Major Terms and Conditions

1. **License fee:** annual licence fee, initially being \$54,300.00, plus a per metre fee for the HDPE Pipes
2. **Term:** being 30 years from the Commencement Date and shall continue until the earlier of (i) the end of the First Extended Term (a 5 year extension) or the Second Extended Term (a further 5 year extension); (ii) The termination of the WTEA; or (iii) the termination of this Agreement
3. **Insurance:** Article 10 of the WTEA applies to this Agreement which requires Noventa to obtain Comprehensive General Liability Insurance of not less than \$10,000,000
4. **Use:** non-exclusive permission to access subsurface parts of City Lands to operate, maintain, repair, replace and decommission a subsurface Wetwell, with surface access point, a subsurface ETS Vault and subsurface HDPE pipes connecting the Wetwell to the ETS Vault, as shown on Appendix B;
5. **Indemnity:** the WTEA sets out the indemnities provided between the City and the Licensee, whereby the licensee will indemnify, defend and hold harmless the City from and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever, directly or indirectly resulting from occupation of or use of the licensed area.
6. **Removal of Encroachments:** (i) Upon expiry or termination of the Licence or earlier termination of the Term, the licensee shall restore the licensed area to its original condition within ninety (90) days following the expiration or earlier termination of this Agreement, at the sole cost and expense of the Licensee. If the Licensee fails to remove the Encroachments within ninety (90) days the removal will be undertaken by the City and the Licensee agrees to pay to the City, all costs of the removal; or (ii) At the discretion of the Licensee, the licensee shall restore the licensed area upon one hundred and eighty (180) days' notice in writing to the General Manager of Transportation Services, at the sole cost and expense of the Licensee. Removal must be to the reasonable satisfaction of the General Manager of Transportation Services, for this Agreement to be terminated.