

DELEGATED APPROVAL FORM
DIRECTOR, REAL ESTATE SERVICES
MANAGER, REAL ESTATE SERVICES

TRACKING NO.: 2022-124

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

| | | | |
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| Prepared By: | Owen Bartley | Division: | Corporate Real Estate Management |
| Date Prepared: | May 31, 2022 | Phone No.: | (416) 338-1297 |

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| Purpose | To obtain authority to enter into a licence agreement (the "Licence Agreement") with Metrolinx (the "Licensee") with respect to certain lands shown as Parts 1A, 1B, and 2B on the attached Appendix "B" (the "Licensed Area"), for the purpose of providing access, ingress, egress and for removing, processing and hauling materials to and from the Union Station Rail Corridor. |
| Property | Part of PIN 21395-0161 (LT), legally described as PT BLK C PL 536E Toronto; PT The Esplanade Plan 5A Toronto PT 31 & 59, PL 64R13323; S/T CA476870, C476869; City of Toronto |
| Actions | 1. Authority be granted to enter into the Licence Agreement with the Licensee, substantially on the major terms and conditions set out in Appendix "A", and including such other terms as deemed appropriate by the approving authority herein, and in a form satisfactory to the City Solicitor. |
| Financial Impact | <p>The City will receive maximum potential total net revenues of \$530,616.00 (plus HST) over the full six (6) years of the agreement, including the option to renew, for the licence fee, as further described in Appendix "A".</p> <p>Revenue to the City (plus HST) is as follows:</p> <p>a) \$431,031.00 (plus HST) in 2022</p> <p>b) \$95,985.00 (plus HST) in 2027 (if extended).</p> <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> |
| Comments | <p>The Licensee has requested a temporary licence to use the Licensed Area for providing access and hauling materials related to the Union Station Enhancement Project, for a term of five (5) years, with a potential extension of one (1) year, commencing on May 30, 2022.</p> <p>The proposed licence fee and other major terms and conditions of the Licence Agreement are considered to be fair, reasonable and reflective of market rates.</p> |
| Terms | See Appendix "A" |

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| Property Details | Ward: | 10 – Spadina-Fort York |
| | Assessment Roll No.: | |
| | Approximate Size: | |
| | Approximate Area: | 145.02 m ² ± (1,561 ft ² ±) |
| | Other Information: | |

| A. | Manager, Real Estate Services has approval authority for: | Director, Real Estate Services has approval authority for: |
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| <p>1. Acquisitions:</p> <p>2A. Expropriations Where City is Expropriating Authority:</p> <p>2B. Expropriations For Transit-Related Purposes Where City is Property Owner or Has Interest in Property Being Expropriated:</p> <p>3. Issuance of RFPs/REOIs:</p> <p>4. Permanent Highway Closures:</p> <p>5. Transfer of Operational Management to Divisions, Agencies and Corporations:</p> <p>6. Limiting Distance Agreements:</p> <p>7. Disposals (including Leases of 21 years or more):</p> <p>8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:</p> <p>9. Leases/Licences (City as Landlord/Licensors):</p> <p>10. Leases/Licences (City as Tenant/Licensee):</p> <p>11. Easements (City as Grantor):</p> <p>12. Easements (City as Grantee):</p> <p>13. Revisions to Council Decisions in Real Estate Matters:</p> <p>14. Miscellaneous:</p> | <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.</p> <p><input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.</p> <p><input type="checkbox"/> (b) Request Hearings of Necessity.</p> <p><input type="checkbox"/> (c) Waive Hearings of Necessity.</p> <p>Delegated to more senior positions.</p> <p>Delegated to more senior positions.</p> <p>Delegated to more senior positions.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to more senior positions.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><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.</p> <p>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to more senior positions.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to more senior positions.</p> <p>Delegated to more senior positions.</p> | <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</p> <p><input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</p> <p><input type="checkbox"/> (b) Request Hearings of Necessity.</p> <p><input type="checkbox"/> (c) Waive Hearings of Necessity.</p> <p><input type="checkbox"/> Issuance of RFPs/REOIs.</p> <p><input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.</p> <p>Delegated to more senior positions.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.</p> <p><input checked="" type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><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.</p> <p>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).</p> <p><input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences</p> <p><input type="checkbox"/> (b) Releases/Discharges</p> <p><input type="checkbox"/> (c) Surrenders/Abandonments</p> <p><input type="checkbox"/> (d) Enforcements/Terminations</p> <p><input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppel Certificates</p> <p><input type="checkbox"/> (f) Objections/Waivers/Cautions</p> <p><input type="checkbox"/> (g) Notices of Lease and Sublease</p> <p><input type="checkbox"/> (h) Consent to regulatory applications by City, as owner</p> <p><input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title</p> <p><input type="checkbox"/> (j) Documentation relating to Land Titles applications</p> <p><input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds</p> |

B. Director, Real Estate Services and Manager, Real Estate Services each has signing authority on behalf of the City for:

- Documents required to implement matters for which each position also has delegated approval authority.
- Expropriation Applications and Notices following Council approval of expropriation (Managers whose position includes responsibility for implementing Council-approved expropriations are the only Managers with such signing authority).

Director, Real Estate Services also has signing authority on behalf of the City for:

- Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- 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: | Formerly Councillor Cressy | Councillor: | |
| Contact Name: | Brent Gilliard | Contact Name: | |
| Contacted by: | Phone <input type="checkbox"/> x E-Mail <input type="checkbox"/> Memo <input type="checkbox"/> Other <input type="checkbox"/> | Contacted by: | Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Memo <input type="checkbox"/> Other <input type="checkbox"/> |
| Comments: | No objections from the Ward 10 office | Comments: | |

Consultation with Divisions and/or Agencies

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| Division: | Corporate Real Estate Management | Division: | Financial Planning |
| Contact Name: | Graham Leah | Contact Name: | Filisha Jenkins |
| Comments: | No concerns | Comments: | Revisions incorporated |

Legal Services Division Contact

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| Contact Name: | Jacqueline Kiggundu |
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| DAF Tracking No.: 2022-124 | Date | Signature |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------------------------|
| <input type="checkbox"/> Recommended by: Manager, Real Estate Services Vinette Prescott-Brown <input type="checkbox"/> Approved by: | June 1, 2022 | Signed by Vinette Prescott-Brown |
| <input type="checkbox"/> Approved by: Director, Real Estate Services Alison Folosea | June 1, 2022 | Signed by Alison Folosea |

Appendix "A" – Major Terms and Conditions

- The Property:** Certain lands located on the south side of the Union Station Rail Corridor (as hereinafter defined) in the City of Toronto, Ontario.
- Licensed Area:** A portion of the Property comprising approximately 1,561 square feet identified as Parts 1A, 1B, and 2B on the sketch attached hereto as Appendix "B".
- Term:** The term of the Licence shall commence on May 30, 2022 and end on May 31, 2027.
- Right to Extend:** Provided that the Licensee is not then in default, then, upon delivery of written notice exercising this right given to the City not less than sixty (60) days before the expiration of the Term, the Licensee shall have the right to extend the Term of the License for a period of one (1) year (the "Extended Term") on the same terms and conditions as contained in the Agreement excepting:
- (a) there will be no further right to extend the Term; and
 - (b) the License Fee for the Extended Term shall be Ninety-Five Thousand Nine Hundred and Eighty-Five Dollars (\$95,985.00), plus any applicable HST payable in advance on or before the first day of the Extended Term.
- Early Termination:** At any time during the Term and any extension thereof, the Licensee shall have the right (but not the obligation) to terminate the Agreement in respect of all of the Licensed Area in its sole discretion, upon giving written notice (the "Termination Notice") of such termination to the City. The Termination Notice shall specify the termination date (the "Termination Date"), which shall be at least thirty (30) days after the Termination Notice is given. If the Termination Notice is given, then the following shall apply:
- (1) the Agreement shall terminate on the Termination Date, the Licensee shall restore the Licensed Area in accordance the Agreement;
 - (2) it is understood and agreed by the City that from and after the Termination Date, no Licence Fee or other charges shall be payable by the Licensee with respect to the Licensed Area, and the City shall refund such portion(s) of the Licence Fee and/or other charges previously paid by the Licensee with respect to the Licensed Area for any period after the Termination Date; and
- License Fee:** Four Hundred and Thirty-One Thousand and Thirty-One Dollars (\$431,031.00) plus any applicable HST for the Term, payable no later than thirty (30) days after the first day of the Term.
- Licensee's Use:** The Licensee and the Licensee's Representatives shall use the Licensed Area on a non-exclusive basis, subject to the priority of use to be accorded to the Licensee and the Licensee's Representatives pursuant to the Agreement for the purposes of (i) the construction and installation of the Licensee's Chattels (and all related and ancillary work thereto) and (ii) the use of the Licensed Area as a right of way in common with the City and all other Existing Rights Holders (to the extent of their existing rights), for access, ingress, egress and the removing, processing and hauling materials therefrom by the Licensee and the Licensee's Representatives to and from the Union Station Rail Corridor and to and from Bremner Boulevard at all times and from time to time for Project purposes, twenty-four hours a day, without restriction (except to the extent agreed in writing by the parties), for persons, vehicles, supplies, machinery, gear and equipment in, to, over, through, across, along and within the Licensed Area (the "Licensee's Use").
- Premises "As-Is":** The Licensee accepts the Licensed Area in its "as is" and "where is" condition.
- Inspections and Access:** The City shall be permitted to access and to carry out inspections of the Licensed Area to ensure compliance with the terms of the Agreement as the City deems reasonably necessary, upon not less than two (2) business days' prior written notice to the Licensee (except in the event of an emergency), provided that such inspections are not carried out in a manner which causes an unreasonable interference with the operation of the Licensee's Use. The City shall comply with all rules imposed by the Licensee or the Licensee's Representatives in respect of the Licensed Area and the City must be accompanied by the Licensee or its designated representative during any access to the Licensed Area.
- The City will have the right to review and comment on the designs relating to the Licensee's Chattels being constructed within the Licensed Area pursuant to the Agreement.
- Restoration:** Upon the expiry or termination of the Licence for any reason whatsoever, the Licensee shall immediately (or shall cause the Licensee's Representatives to), at its sole cost and expense and to the satisfaction of the City Designate, acting reasonably:
- (a) remove all of the Licensee's Chattels from and about the Licensed Area;
 - (b) restore the Licensed Area to a condition as close as is practicable to its condition prior to occupation by the Licensee; and

(c) leave the Licensed Area clean, tidy, and in good repair.

(2) Pursuant to the Agreement, the Licensee shall obtain, prior to commencing to use the Licensed Area, at its cost, a Phase I environmental site assessment of the soil and groundwater within the Licensed Area, and, if a Phase II environmental site assessment is recommended by such Phase I environmental site assessment, the Licensee shall complete, or cause to be completed, the field work and testing required for the Phase II environmental assessment.

(4) In the event that the Licensee has not commenced its obligations outlined above prior to the expiry of the Term and is not thereafter proceeding continuously and diligently to complete such obligations, the City shall on thirty (30) days' notice to the Licensee, have the right, but not the obligation, to complete such obligations for and on behalf of the Licensee, at the Licensee's sole cost and expense, and the Licensee covenants that it shall pay to the City, the City's reasonable cost to complete such obligations plus a 15% administrative fee.

Release and Indemnity: The Licensee will at all times indemnify and hold harmless the City, its elected officials, officers, employees, contractors, subcontractors, agents and others to whom it or they are responsible in law (hereafter referred to collectively as the "City Indemnitees") from and against any and all claims, suits, demands, costs, losses, expenses and damages arising out of and/or related to:

(a) the use or occupation of or work performed on the Licensed Area,

(b) damage to City infrastructure and assets, including, without limitation, claims for damage to property and for personal injury or death, or

(c) the Licensee's activities on and use of the Licensed Area, 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 Licensed Area, (individually and collectively, "City Claim(s)"), in each case, suffered or incurred by the City Indemnitees, or any of them, in each case caused by the Licensee or anyone for whom it is responsible at law.

The Licensee will comply with Applicable Laws with respect to its activities on and use of the Licensed Area. It is not the Licensee's 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 Licensed Area.

This indemnity will not extend to (i) any City Claim(s) involving a motor vehicle owned by a City Indemnitee except (A) to the extent that the proceeds paid to the City Indemnitee under his/her/its policy or policies is less than the full amount of the loss suffered by him/her/it in respect of which the City Indemnitee is entitled to be indemnified, and (B) for any deductible amount payable by the City Indemnitee under his/her/its policy or policies in respect of such City Claim(s); and (ii) City Claim(s) for Indirect Losses. The term "Indirect Losses" will be defined for the purpose of this clause as any punitive, exemplary or aggravated damages; loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or consequential loss or indirect loss of any nature.

Insurance: At all times during the Term and any renewal thereof, the Licensee, at its own expense, shall take out and keep in full force and effect, or cause to be taken out and kept in full force and effect, commercial general liability insurance including, products liability, if applicable, personal injury, employer's/and contingent employer's liability, blanket contractual liability and provisions for cross liability and severability of interests and non-owned automobile liability with limits of not less than Ten Million Dollars (\$10,000,000.00), per occurrence. The City is to be added as an additional insured.

The Licensee shall be responsible for any loss or damage whatsoever to any of the Licensee's Chattels and shall maintain appropriate all-risk coverage as would any prudent owner of the Licensee's Chattels. The Licensee shall have no claim against the City or the City's insurers for any damage or loss to its property (save and except to the extent such damage or loss is caused by the City) and shall require its property insurers to waive any right of subrogation against the City.

The above-mentioned policies of insurance shall contain or shall be subject to the following terms and conditions:

Notice of Cancellation– each policy shall contain an endorsement requiring the insurer(s) to notify the City in writing, , at least thirty (30) days, (fifteen (15) days if cancellation is due to non-payment of premium), prior to any cancellation of the Licensee's insurance;

Approval of Insurers – all policies taken out by the Licensee shall be placed with an insurer licensed to write in the Province of Ontario;

Primary Coverage – the insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the City;

Evidence of Insurance – prior to the commencement of the Term, the Licensee shall provide the City with a Certificate of Insurance in form and detail satisfactory to the City, acting reasonably, signed by the insurer or an authorized agent of the insurer. The Licensee shall provide signed Certificates evidencing renewals or replacements to the City prior to the expiration date of the original policies, without notice or request therefor by the City; and

Deductibles - the above policies may be subject to deductible amounts, which deductible amounts shall be borne entirely by the Licensee.

The Licensee shall promptly advise the City of any cancellation, material alteration or lapse of any policies of insurance required under the Agreement.

Transfers:

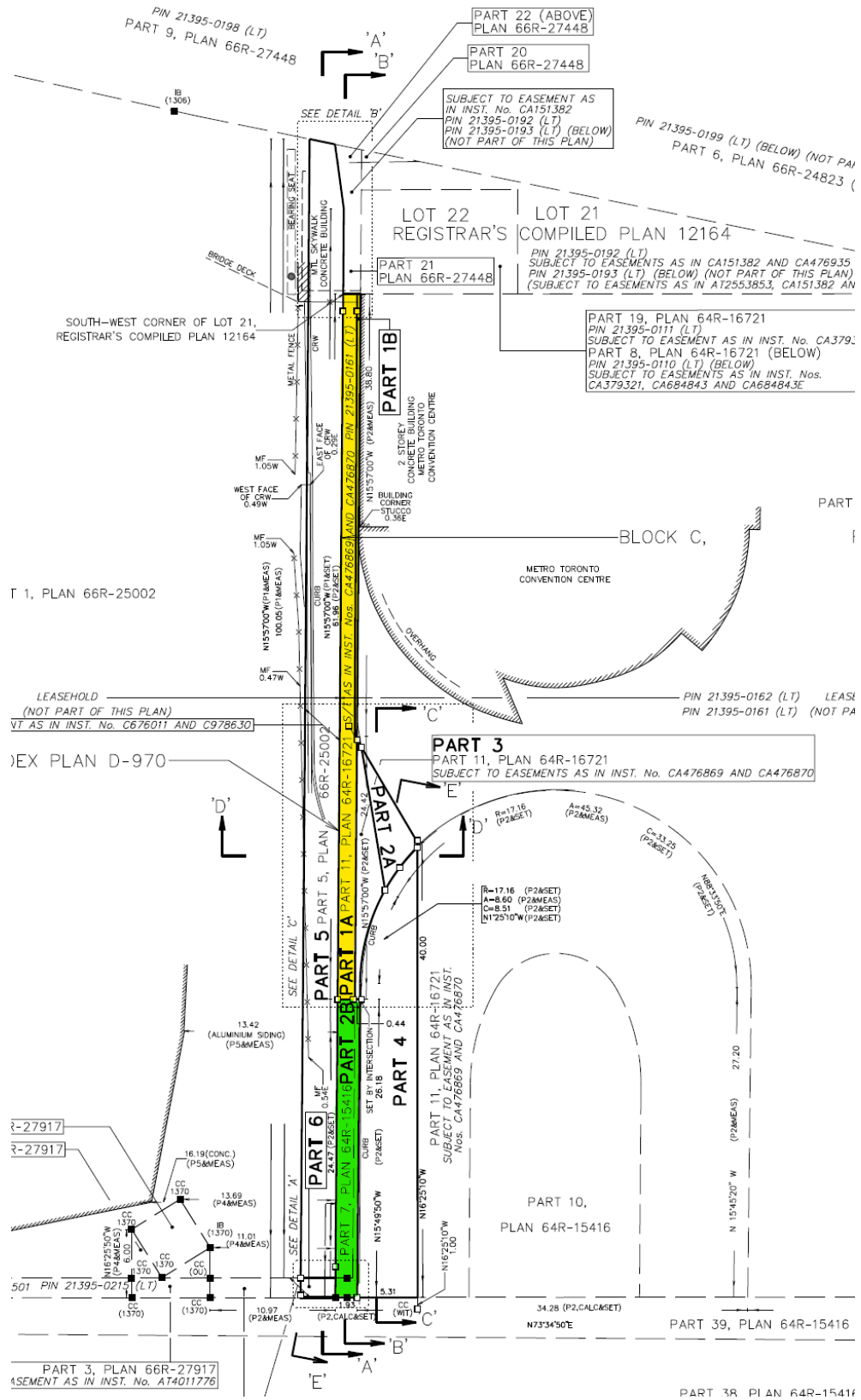
The Licensee may, without the consent of the City, transfer or assign the Agreement or any component of it to the Government of Ontario or to a Crown Agency as defined by the Crown Agencies Act, R.S.O. 1990, Chapter C.48 or to a third party acquiring the Licensee's interest in all or part of the Project provided such third party owns and/or operates the Project, but, on any transfer or assignment to a third party who acquires the Licensee's interest in all or part of the Project, the Licensee: (i) may not transfer or assign any real property interest therein without the consent of the City, not to be unreasonably withheld or delayed, and (ii) may grant contractual rights and licences to use the real property interests therein without the consent of the City. The City acknowledges that the Licensed Area may be used by the Licensee's Representatives upon and subject to the terms of the Agreement and same shall not be considered or deemed to be an assignment, either in whole or in part.

The Licensee shall pay all of the City's reasonable external legal costs in connection with any request for consent.

During the Term, in the event the City enters into an agreement to sell or transfer the Property, the City shall:

- (a) immediately notify the Licensee;
- (b) assign the Agreement to the proposed transferee in writing and cause the proposed transferee to assume the Agreement in writing, in each case prior to the effective date of such sale or transfer; and
- (c) notify the Licensee when the Property has been sold or transferred and provide the name of the transferee, as well as their contact information, to the Licensee.

Appendix "B" – Licensed Area



Appendix "C" – Location Map

