

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

TRACKING NO.: 2024-137

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

Prepared By:	Diane Silver	Division:	Corporate Real Estate Management
Date Prepared:	May 30, 2024	Phone No.:	416-394-5502
Purpose	To obtain authority to enter into a non-exclusive licence agreement with Metrolinx (the "Licensee") with respect to the property municipally known as Union Station, Toronto, for the purpose of providing access to certain parts of Union Station to conduct, or cause to be conducted, certain Due Diligence Work in advance of Metrolinx's design and construction of its OnCorr Union Station Enhancement project (the "Project") to facilitate the implementation of Metrolinx's GO Expansion Program.		
Property	Parts of the property municipally known as Union Station, 65 Front Street West, 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" as deemed appropriate by the approving authority herein, and in a form satisfactory to the City Solicitor.		
Financial Impact	There is no financial impact.		
Comments	<p>The Licensee has requested a non-exclusive nominal licence to use the Licensed Area for providing access to certain parts of Union Station in order to conduct, or cause to be conducted Due Diligence Work for (the "Project"), for a term of twelve (12) months, commencing on March 12, 2024.</p> <p>The proposed licence and other major terms and conditions of the Licence Agreement are considered to be fair and reasonable.</p>		
Terms	See Appendix "A"		
Property Details	Ward:	10 – Spadina-Fort York	
	Assessment Roll No.:		
	Approximate Size:		
	Approximate Area:		
	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/REOs:	<input type="checkbox"/> Issuance of RFPs/REOs.	<input type="checkbox"/> Issuance of RFPs/REOs.
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/Licensor):	<input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$3 Million. <input checked="" 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 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.
<ul style="list-style-type: none"> • Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
<ul style="list-style-type: none"> • Expropriation Applications and Notices following Council approval of expropriation.
<ul style="list-style-type: none"> • 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:	Deputy Mayor Ausma Malik				Councillor:					
Contact Name:	Deputy Mayor Ausma Malik				Contact Name:					
Contacted by:	Phone	E-Mail	<input checked="" type="checkbox"/>	Memo	Other	Contacted by:	Phone	E-mail	Memo	Other
Comments:	Advised				Comments:					

Consultation with Divisions and/or Agencies

Division:	Corporate Real Estate Management	Division:	Financial Planning
Contact Name:	Scott Barrett	Contact Name:	N/A
Comments:	No concerns	Comments:	■

Legal Services Division Contact

Contact Name:	Jacqueline Kiggundu
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DAF Tracking No.: 2024-137	Date	Signature
Recommended by: Manager, (Interim) Property Management Services Diane Silver	May 30, 2024	Signed by Diane Silver
Recommended by: Director, (Interim) Property Management Services Scott Barrett	May 30, 2024	Signed by Scott Barrett
<input type="checkbox"/> Recommended by: Executive Director, Corporate Real Estate Management <input type="checkbox"/> Approved by: Patrick Matozzo	May 30, 2024	Signed by Patrick Matozzo

Appendix "A"

Major Terms and Conditions

- Licensed Area: Certain lands located within Union Station.
- Term: Twelve (12) months, commencing March 12, 2024, and ending March 11, 2025.
- License Fee: Nominal
- Licensees' Use: For the purpose of providing access to certain parts of Union Station in order to conduct, or cause to be conducted, certain Due Diligence Work in advance of Metrolinx's design and construction towards the implementation of the GO Expansion Program (Union Station Enhancement project).
- Premises As-Is: The License is granted on an as-is basis.
- Scope of work: The City hereby grants Metrolinx the right to, and Metrolinx hereby agrees to, conduct any Due Diligence Work on City Property in connection with the Project, all subject to and in compliance with the terms set out in this Agreement, including, without limitation, the following:
- all Due Diligence Work in connection with the Project and the related scope of work and the Due Diligence Areas are to be identified in advance in a clear and detailed work plan in writing and delivered to the City in accordance with the City Approval and Access Protocol (collectively, the "**Work Plan**");
 - the City agrees to review the Work Plan without unreasonable delay and shall have the right, to either approve the Work Plan or suggest modifications or require clarifications to the Work Plan and any reasonable supporting documentation or materials, all in a manner which is satisfactory to the City, acting reasonably; and
 - no Due Diligence Work may be undertaken unless and until the City has provided its prior written approval to the applicable Work Plan.
- Restoration:
- (a) In the event that Metrolinx or a Metrolinx Authorized Person causes any damage or alteration to any City-owned property, including the City Property and the Due Diligence Areas, while conducting any of the Due Diligence Work or while accessing the Due Diligence Areas, Metrolinx shall (or shall cause a Metrolinx Authorized Person to), at its sole cost and expense, promptly repair, return and restore such property to the condition it was in immediately prior to the damage having occurred and in a safe condition or otherwise as approved in the Work Plan.
 - (b) In the event that any Due Diligence Work that Metrolinx or a Metrolinx Authorized Person proposes to undertake in or on the Due Diligence Areas is invasive and/or destructive in nature:
 - (i) Metrolinx or the Metrolinx Authorized Person, shall not undertake the same unless Metrolinx shall have first agreed with the City, either in the Work Plan or otherwise, as to the approach for undertaking such Due Diligence Work on the City Property and for the post-testing repair or replacement of any areas on the City Property that are damaged by such Due Diligence Work; and
 - (ii) Metrolinx acknowledges and agrees that the City from time to time may modify the health and safety, wayfinding, pedestrian traffic, hours of work and preservation of easement rights protocols, procedures, rules and regulations applicable to the City Property (the "**Protocol Changes**") and that if Protocol Changes are adopted by the City during the Term, the City, acting reasonably and provided that reasonable prior written notice thereof is delivered to Metrolinx, may impose on Metrolinx and/or any Metrolinx Authorized Person, as the case may be, such Protocol Changes to any Due Diligence Work on the City Property and to entry on the City Property in connection with the Due Diligence Work regardless of whether the Protocol Changes are in addition to the City Approval and Access Protocols. In connection with any Protocol Changes, the City agrees to consult with Metrolinx on their application to any Due Diligence Work on the City Property and to entry on City Property in connection with the Due Diligence Work in order to minimize any material adverse effect or material delay to the completion of the Due Diligence Work.

(c) Metrolinx agrees to, and to cause any Metrolinx Authorized Person to, suspend any Due Diligence Work immediately if there is a reasonable apprehension of danger to safety, life or property as determined by the City, acting reasonably, as communicated by the City to Metrolinx.

(d) If any damage to any City-owned property resulting from the Due Diligence Work is the subject of warranties provided by the City's contractor and subcontractors in connection with the City's Union Station Revitalization Project, then such damage shall be made good only in compliance with such warranties and, if necessary, by the contractor or subcontractors required to preserve such warranties, all at Metrolinx's sole cost and expense.

(e) If Metrolinx fails to repair any damage it caused to any City-owned property during the course of performing the Due Diligence Work within 20 Business Days of causing such damage, or within the timeframe set out in the Work Plan, then the City shall be entitled to remedy such damage itself and Metrolinx shall reimburse the City within 30 days of receipt of an invoice therefor (with reasonable supporting documentation, if available) plus the City's reasonable third-party out of pocket costs of so doing.

(f) This section shall survive the termination or expiration of the Agreement for any reason or cause whatsoever

Indemnities:

(a) In consideration for the Licence and for all the other rights granted to Metrolinx in this Agreement, Metrolinx hereby agrees to indemnify and hold harmless the City and its elected and appointed officials, officers, contractors, subcontractors, employees, agents, representatives, tenants, subtenants, licensees and others for whom it or they are responsible at law, including, without limitation, Osmington and VIA (collectively, the "**City Indemnified Parties**", and each a "**City Indemnified Party**") from and against any and all claims, suits, demands, costs, losses, expenses (including, without limitation, legal fees and costs on a solicitor-client basis), obligations, actions, settlements, judgments, liabilities and damages (collectively, "**Losses**") arising out of and/or related to:

- (i) the use or occupation of, or work performed on, the City Property related to or in connection with the Due Diligence Work, including, without limitation, any loss of revenue as a result of any business interruption of the City Indemnified Parties or other third parties holding rights to any part of the City Property, including, without limitation, any revenue from sponsorship or advertising;
- (ii) any damage to the City Property or to City infrastructure and assets in connection with the Due Diligence Work or entry upon the City Property in connection with the Due Diligence Work, including, without limitation, Losses for damage to any property whatsoever and for any personal injury or death caused to any individual whomsoever in connection with the Due Diligence Work or entry upon the City Property in connection with the Due Diligence Work;
- (iii) breach of, or default under, this Agreement (including without limitation conducting Due Diligence Work on City Property which is not approved by the City in a Work Plan or not otherwise in compliance with a Work Plan approved by the City) or breach of any Applicable Laws

(collectively, the "**City Claims**" and each a "**City Claim**") suffered or incurred by the City Indemnified Parties, or any of them before, after or during the Term, in each case caused by, or contributed to or exacerbated by (on a proportionate share basis), directly or indirectly, Metrolinx or any person for whom Metrolinx is responsible at law.

(b) The indemnity in will not extend to:

- (i) any City Claim(s) involving a motor vehicle owned by a City Indemnified Party except (A) to the extent that the proceeds paid to the City Indemnified Party 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 Indemnified Party is entitled to be indemnified, and (B) for any deductible amount payable by the City Indemnified Party 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;

- (c) The Indemnity does not limit the City's rights, including in common law and in equity, to make any other claim or claims related to the Due Diligence Work and the Project against Metrolinx, any other Metrolinx Authorized Party or against any other party. Except as expressly stated in this Agreement, the indemnification in Section (a) above shall not be limited by a limitation on time, amount or type of damages or compensation.
- (d) In order to be entitled to the indemnity, the City agrees to the following:
- (i) The City will give prompt notice to Metrolinx, with available particulars, of any proceeding, whether actual or threatened, in respect of all City Claims(s) for which indemnity may be sought under this Agreement by any of the City Indemnified Parties;
 - (ii) Upon the written request of Metrolinx, the City shall, subject to any legal limitations (including any applicable limitations under the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario)), furnish to Metrolinx copies of all documents and provide any other information relating to the City Claim(s) that is in the possession or under the control of the City;
 - (iii) if the City receives a claim from a third party (a "**Third Party Claim**") purportedly arising out of an action or omission by Metrolinx in respect of which the City seeks indemnity from Metrolinx pursuant to Section 2.5(a), which in the case of Third Party Claims shall include direct and indirect City Claims as well as Indirect Losses, the following provisions will apply:
 - (A) The City will: (1) take all reasonable steps necessary to secure and preserve the rights of the City Indemnified Parties in respect of such Third Party Claims, and (2) retain, preserve and not destroy any records or documentation relating to, in any manner whatsoever, such Third Party Claim in the event Metrolinx elects to defend and requires such records or documentation;
 - (B) Metrolinx will have the right to assume control of the negotiation, settlement or defence of such Third Party Claim, including any proceedings relating thereto or appeal thereof, but Metrolinx may not settle any Third Party Claim(s) or action commenced against the City Indemnified Parties, or any of them, without the written consent of the City, such consent not to be unreasonably withheld or delayed;
 - (C) If Metrolinx elects, in its sole discretion, not to assume control of the negotiation, settlement or defence of such Third Party Claim, Metrolinx will have the right to participate in such negotiation, settlement or defence of Third Party Claim(s), but the City may not admit liability or settle any Third Party Claim(s) against the City Indemnified Parties, or any of them, without the written consent of Metrolinx, such consent not to be unreasonably withheld or delayed;
 - (D) If Metrolinx participates in or assumes control of the negotiation, settlement or defence of such Third Party Claim(s) and any proceedings relating thereto or appeal thereof, the City Indemnified Parties will, at Metrolinx's sole cost and expense, aid Metrolinx in securing information and evidence and the attendance of any witnesses and cooperate fully with Metrolinx (except in a pecuniary way) in such negotiation, settlement or defence; and
 - (E) Metrolinx will reimburse the City and other City Indemnified Parties for all reasonable costs incurred by them for investigation, defence or appeal of such Third Party Claim unless the City is found liable, in which case the City will reimburse Metrolinx for all reasonable costs incurred by Metrolinx and for amounts in excess of insurance proceeds paid by Metrolinx in respect of such Third Party Claim(s).
- (e) If the City or any other City Indemnified Party suffers damage, expenses or loss and seeks indemnity from Metrolinx pursuant to Section (a) above, the following provisions will apply:
- (i) The City will take all reasonable steps necessary to secure and preserve all relevant information in order to enable Metrolinx to assess and defend such claim; and

- (ii) If the City is not found liable or is otherwise entitled to be indemnified by Metrolinx, all costs legally payable for preserving and securing information; conducting the investigation; enforcing the indemnity; or any appeal, in each case, will be payable by Metrolinx. If the City is found liable or is otherwise not entitled to be indemnified by Metrolinx, all costs legally payable for preserving and securing information; conducting the investigation; enforcing the indemnity; or any appeal, in each case, will be payable by the City. Notwithstanding the foregoing, if such claim and the right to indemnification is determined by mediation, arbitration or litigation, including adjudication or in court of law, then the amount payable for costs by the Parties will be determined by the mediator, arbitrator, adjudicator or court.
- (f) If an injurious affection action or claim is brought against the City, which is related to the use or occupation of, or work performed on, the City Property related to or in connection with the Due Diligence Work and for which the City is not liable, Section (e) above will apply *mutatis mutandis* to such action or claim(s). For clarity, Metrolinx may or may not be found liable for such action or claim, including for Indirect Losses, depending on the final determination by a court of competent jurisdiction. For further clarity, the term "liable", as it applies to the City and as used in Sections (d), (e) and (f), above shall exclude any finding of liability on the part of the City, whether by mediation, arbitration, adjudication or otherwise, solely as a result of: (i) the City's ownership of the City Property; (ii) the City's performance of its obligations in accordance with this Agreement, including, without limitation, the City's permission or authorization of the Due Diligence Work on the City Property, granting Metrolinx the Licence and access to the City Property in connection therewith, or the City's degree of control and approval over the scope of the Due Diligence Work; or (iii) whether the City receives or is expecting to receive any benefit from the Project.
- (g) Metrolinx shall be responsible for all Losses incurred by the City Indemnified Parties resulting from the acts, errors or omissions of any person for whom Metrolinx is at law responsible, as if Metrolinx was performing the Due Diligence Work.
- (h) The City Indemnified Parties shall not be responsible for, and Metrolinx hereby releases the City Indemnified Parties from, any Losses, injury or damage resulting from the negligence, acts or omissions, wilful misconduct, or breach of contract by any one of the Metrolinx Authorized Persons or anyone acting on their behalf or for whom they are at law responsible.
- (i) All the City Indemnified Parties, including, without limitation, Osmington and VIA, shall be entitled to rely on the provisions of this section notwithstanding that some of them are not parties to this Agreement. The parties acknowledge and agree that, to the extent that this Agreement and/or any surviving rights and obligations contained herein remain valid and in full force and effect, any claims or Losses whatsoever that either Osmington and VIA may have in connection with the matters contemplated in this section shall be made directly to Metrolinx in accordance with this section and the City is hereby released in connection therewith.
- (j) This section shall survive the termination or expiration of this Agreement for any reason or cause whatsoever.

Insurance:

At all times during the Term the Licensee, at its own expense, shall obtain, maintain and keep in full force and effect (or cause a Metrolinx Authorized Representative to obtain, maintain and keep in effect), at all times during the Term and while conducting any Due Diligence Work on, in or under the City Property:

- a commercial general liability policy (CGL), covering bodily injury, death and property damage, on an occurrence basis with respect to the City Property in the minimum amount of \$100,000,000;
- contractors pollution liability policy (CPL) and/or professional liability insurance with pollution coverage, in the minimum amount of \$10,000,000; and
- any other insurance that is reasonable and customary for the type of Due Diligence Work that Metrolinx and/or any Metrolinx Authorized Person shall be performing.

The insurance policies shall be primary and non-contributing to any other insurance and shall name the City as an additional insured. Such insurance policies shall also provide that they may not be cancelled or modified without at least 30 days' prior written notice to the City. Metrolinx shall deliver to the City a certificate of insurance evidencing insurance coverage prior to the commencement of any Due Diligence Work.