CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Transportation, Energy & Facilities Division

TO: Chair and Members  
   Public Works Committee
WARD(S) AFFECTED: WARD 13

COMMITTEE DATE: June 14, 2010

SUBJECT/REPORT NO:
University Plaza Transit Terminal - Licence Agreement (PW10055) (Ward 13)

SUBMITTED BY:
John Mater, C.E.T.  
Acting General Manager  
Public Works Department

PREPARED BY:  
Andy McLaughlin  
Supervisor of Planning  
(905) 546-2424, Extension 1809

RECOMMENDATION

(a) That the Transportation Services Licence Agreement between Ivanhoe Cambridge Inc. and 937956 Ontario Inc. and the City of Hamilton (Appendix “A” to Report PW10055) respecting the University Plaza Transit Terminal Licence Agreement be approved;

(b) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City of Hamilton, the University Plaza Transit Terminal Licence Agreement referred to in subsection (a) and all necessary associated documents, in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

Additional HSR bus traffic introduced to University Plaza in 2007 resulted in requests from storeowners for a relocation of the bus stop/layover position within the plaza. Hamilton Emergency Services (HES) requested that HSR work with the plaza’s owners to find a location that would not conflict with an existing fire access route.

Ivanhoe Cambridge Inc. & 937956 Ontario Inc. granted HSR permission to construct a temporary transit terminal platform in a position satisfactory to all stakeholders. Execution of an updated transit terminal licence agreement (Appendix A to Report PW10055) will allow HSR operations to continue for a three year period. Strategic decision-making regarding future rapid transit along the King/Main/Queenston corridor between Eastgate Square and McMaster University, including the future configuration of
Dundas transit routes feeding this corridor, should be concluded and implementation underway prior to the expiration of the licence agreement.

Alternatives for Consideration - N/A

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** There is an annual fee of $1.00 payable to Ivanhoe Cambridge Inc. & 937956 Ontario Inc. for the use of their lands. Funding to construct the temporary transit terminal was provided by account #59212-5300985901.

**Staffing:** N/A

**Legal:** Legal Services drafted and approved this licence agreement. Any associated documents that require execution will be reviewed and approved as to form by the City Solicitor.

**HISTORICAL BACKGROUND**

HSR has been providing #5B Main West fixed route bus service into University Plaza in Dundas for many years. In September 2007, service levels were increased significantly through the extension of #10 B Line service. The volume of bus traffic laying over on one of the plaza’s internal roadways, immediately adjacent to store fronts, raised concerns from business owners with respect to reduced exposure. Additionally, HES – Fire Prevention Section had concerns in terms of buses occupying a portion of a fire access route.

**POLICY IMPLICATIONS**

As the Transit program works towards achieving the Innovate Now (Public Works Business Plan) goal of helping Hamilton to become a Canadian centre of environmental and innovative excellence, the changes at the University Plaza transit end-of-line are consistent with the mission to provide safe, strategic services that help to bring various urban area communities to life, both now and into the future.

Transit has a significant role to play in reaching the objectives and targets contained within the City’s Transportation Master Plan. Execution of the transit terminal licence agreement supports an overall GRIDS direction to expand transportation options that encourage travel by transit. Public transportation improvement strategies at or close to established and rapidly-growing nodes, such as this improved transit infrastructure installation, encourage additional transit ridership. The long term (2031) goal is to double transit ridership levels, compared to 2001. Ridership growth ensures that the future population growth (with its corresponding growth in transportation demand), confined within a firm urban boundary, can occur in a satisfactory manner.
RELEVANT CONSULTATION

Legal Services Division drafted a transit terminal licence agreement acceptable to Ivanhoe Cambridge Inc. and 937956 Ontario Inc. Insurance provisions contained within the agreement were scrutinized by the Risk Management Section. HES - Fire Prevention Section provided valuable feedback on terminal positioning within the plaza.

The Ward Councillor has been notified and he is in agreement with the recommendations.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Execution of the licence agreement for the temporary transit platform situated away from storefronts provides desired exposure for business owners and ensures the fire access route is free of HSR buses.

An up-to-date licence agreement between the City of Hamilton and Ivanhoe Cambridge Inc. and 937956 Ontario Inc. ensures that required terms and conditions, acceptable to both parties, for HSR’s occupancy and operation upon the lands, are clearly defined.

ALTERNATIVES FOR CONSIDERATION

N/A

CORPORATE STRATEGIC PLAN


Skilled, Innovative & Respectful Organization
• More innovation, greater teamwork, better client focus
• Transit platform is fully accessible, with a shelter for customers.

Financial Sustainability
• Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner
• Temporary transit platform reduces capital cost, more responsive to future transit system expansion.

Intergovernmental Relationships
• Relocation of bus layover location within plaza allows HES - Fire to access businesses directly during emergencies.

Environmental Stewardship
• Reduced impact of City activities on the environment
• Terminal installation allows for continued good level of transit service to a major trip generator, providing shoppers & workers with a good alternative to auto trips.
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
TRANSPORTATION SERVICES LICENCE AGREEMENT (the "Agreement")

This Licence Agreement made as of the day of October, 2009.

BETWEEN:

IVANHOE CAMBRIDGE INC. and 937956 ONTARIO INC.
(hereinafter collectively referred to as the "Licensor")

OF THE FIRST PART

- and -

CITY OF HAMILTON
(hereinafter referred to as the "Licensee")

OF THE SECOND PART

WHEREAS the 937956 Ontario Inc. is the registered owner (the "Owner") and Ivanhoe Cambridge Inc. is the Manager (the "Manager") of the lands and premises known as University Plaza (the "Plaza") situated in the City of Hamilton and more particularly described in Schedule "A" attached (the "Lands");

AND WHEREAS the Licensee wishes to construct a Transit Terminal on the Lands consisting of a raised concrete curb and asphalt passenger platform with one bus shelter from which the Licensee will provide Transportation Services to and from the Lands;

AND WHEREAS the parties have agreed that the Licensee shall have the right, pursuant to this Agreement, to enter upon the Lands for the purpose of constructing and maintaining the Facility and providing the Transportation Services upon the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

The following definitions apply in this Agreement:

"Roadways" means the roadways depicted as part of the Project on Schedule "B";

"Shelter" means the bus shelter located on the Transit Terminal and shown in orange on Schedule "B" attached;

"Transit Terminal" means the portions of the Lands depicted in yellow in on Schedule "B" attached together with the concrete curbs and slab, shown in black on Schedule "B", and the Shelter, all of which are to be constructed by the Licensee;

"Transportation Services" means:

(a) the transportation of persons by Transportation Vehicles over, upon and along the Roadways;

(b) the use of the Shelter by persons using the Transportation Vehicles; and

(c) the provision of all utilities necessary for the services set out in clauses (a) and (b) above including all electricity to illuminate the Transit Terminal.
"Transportation Vehicles" mean the motor vehicles operated by the Licensee or a duly authorized employee or agent for the Licensee in providing the Transportation Services.

2. **GRANT OF LICENCE**

The Licensor grants to the Licensee the licence (irrevocable except in accordance with the terms of this Agreement) to (a) enter upon the Lands for the purposes of (i) constructing and maintaining the facility including installing and maintaining required traffic signage associated with the Transportation Vehicles, and (ii) using the Facility with its Transportation Vehicles for the purpose of providing the Transportation Services; (b) have the exclusive use of the Transit Terminal for the provision of the Transportation Services; but the Licensee and not the Licensor shall have the obligation and responsibility for the enforcement of the traffic signing right of exclusive use.

3. **TERM OF LICENCE**

The Term of this Licence is forty-two months (42 months) commencing November 1, 2009 and terminating April 30, 2013; unless terminated earlier in accordance with Section 14 of this Agreement.

Provided that neither party is in default of any terms hereunder, the Licensee shall have the right to renew the Term for a further Term of one (1) year on the same terms and conditions herein upon written notice to the Licensor of not less than 180 days of its intention to terminate this Agreement hereunder.

4. **PAYMENT AND COMPENSATION FOR LICENCE**

(a) The Licensee shall pay to the Licensor for the Licence hereby granted an annual licence fee of One Dollar ($1.00) per annum, payable in advance on or before the first day of each licence year. The Licensor hereby acknowledges receipt of the licence fee for the entire Term.

(b) This Agreement is entered into on a net basis and all costs, expenses and charges, as well as all obligations for maintenance, repair, insurance and restoration relating to the Transit Terminal are the sole responsibility of the Licensee. The Licensee agrees to indemnify the Licensor in respect of all costs, expenses and charges referred to above.

5. **LICENSEE NOT A LESSEE**

No legal title or leasehold interest in the Lands is created or vested in the Licensee by this Agreement.

6. **CONSTRUCTION, REPAIR & MAINTENANCE**

(a) The Licensee shall, at its own cost and expense, construct a Transit Terminal having capacity for two Transportation Vehicles consisting of a raised concrete curb and asphalt passenger platform, with one bus shelter, subject to the approval of the Licensee, which shall not be unreasonably withheld. The Licensee will make reasonable best efforts to avoid any business interruption to the Plaza.

(b) The Licensee shall, at its own cost and expense, construct a barrier free pedestrian access which links the Transit Terminal to the walkway at the Plaza, the location of which is subject to the approval of the Licensee, which shall not be unreasonably withheld. The pedestrian access shall be
constructed in a commercially reasonable manner and with regard to pedestrian safety and existing design of the Plaza.

(c) The Licensor shall provide snow clearing and/or removal, including ice control and will remove refuse from the Transit Terminal, in accordance with City of Hamilton by-laws.

(d) The Licensee shall ensure that the Transit Terminal remains in a first-class condition and state of repair, free of graffiti, including repair and maintenance of the concrete curb, asphalt base and shelter

(e) The Licensee shall be entitled to install and display signage on the Shelter and/or the Transit Terminal for the purpose of providing information relating to the Transportation Services.

(f) The Licensee shall not install or display any third party advertising on the Shelter or the Transit Terminal, except with the express written approval of the Licensor.

(e) The Shelter shall be used solely for purposes directly related to the operation of the Transit Terminal. The Shelters shall be used solely for the protection of persons waiting for Transportation Vehicles from rain, snow and other unfavourable weather conditions and for no other purpose. No part of the Transit Terminal will be used for retail purposes.

7. TRANSPORTATION SERVICES

(a) The Licensee shall provide the Transportation Services Monday through Sunday on Schedules produced by the Licensee.

(b) The Licensee shall only allow qualified personnel authorized under governing legislation to operate the Transportation Vehicles.

(c) The Licensee shall be responsible for all operating costs necessary for the provision of the Transportation Services.

(d) Nothing in this Agreement limits the use of the Roadways by the public except for those areas designated and marked for Transportation Vehicles only. The Licensor shall use its reasonable efforts to prevent the use of those designated and marked areas by the public.

8. TRANSPORTATION VEHICLES

The Licensee agrees that:

(a) without the prior written consent of the Licensor, the Transportation Vehicles are to be used only for the provision of the Transportation Services by the Licensee during the term of this Licence and under the conditions set out in this Agreement and not for the provision of any charter or special event services;

(c) the Transportation Vehicles may stop at the Transit Terminal to allow passengers to enter or, exit them or expend route recovery time.

9. LIABILITY AND INDEMNIFICATION

(a) The Licensor shall not be liable or responsible in any way for any injury or death caused by or arising out of the operation of the Transportation Vehicles, or for any damage to any property of the Licensee or any other persons or for any loss
or consequential damages suffered by the Licensee or others arising from or out of any occurrence in, upon or relating to the Transportation Services unless such damage, loss, injury or death results from negligence or willful acts of the Licensor or those for whom the Licensor may be responsible. The Licensee shall protect and indemnify and save the Licensor harmless from and against any and all losses, claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury, damage to property or other loss or injury whatsoever arising from or out of the Transportation Services or as a result of any act or omission of any agent, servant, employee, officer, director or any other person for whom the Licensee may in law be responsible. For greater certainty, but without limiting the generality of the foregoing, the Licensee shall be responsible for any losses, claims, actions, damages, liabilities and expenses arising from any act, incident or other activity in, on or with a Transportation Vehicle. If the Licensor is made a party to any litigation commenced by or against the Licensee arising out of the operation of the Transportation Vehicles or the Transportation Services then the Licensee shall protect, indemnify and hold the Licensor harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Licensor in connection with such litigation.

(b) The Licensee will keep the lands free and clear from all construction liens and other liens arising from any construction on and operation of the Project and shall indemnify and save the Licensor harmless from and against any costs for the execution and registration of discharges for any such liens.

(c) Wherever the word “Licensor” appears in connection with any indemnity or exculpatory clause in favour of the Licensor, that clause or indemnity, as the case may be, will be construed to include the officers, directors, agents of the Licensor, any property management company that manages the Plaza, any registered beneficial owner of the Plaza, any mortgagee of the Plaza and each of their officers, directors, employees, agents and contractors. The Licensor will be deemed to be agent for or trustee for the benefit of those other persons or entities so as to enable them to enforce the benefit of the exculpatory clause or indemnity.

10. INSURANCE

The Licensee shall, at its own cost and expense, take out, carry and keep renewed during the term of this Licence in the name of the Licensor and the Licensee the following insurance:

(a) comprehensive general liability insurance on an “occurrence basis” including personal insurance, bodily injury, property damage occurrence, third party liability, contractual liability, contingent employer’s liability and owner’s protective insurance coverage with respect to the Transportation Services and the operation of the Transportation Vehicles in providing the Transportation Services (i) to be written with inclusive limits of not less than Ten Million Dollars ($10,000,000.00) or such higher limits as the Licensor, acting reasonably, may from time to time require; (ii) to a severability of interest clause, breach of conditions clause and a cross liability clause and (iii) to be primary and not call into contribution any other insurance available to the Licensor.

(b) the Licensee shall, at its own cost and expense, take out, carry and keep renewed during the term of this Licence insurance or injury to the Licensee’s staff and damage to the Licensee’s equipment. Such insurance shall include Workers’ Compensation and Employers’ Liability insurance and any such other coverages as may be required by law;

(c) the Licensee shall, at its own cost and expense, maintain automotive vehicle insurance providing third party liability insurance with inclusive limits of not less than Ten Million Dollars ($10,000,000.00) covering all...
vehicles owned or operated by or on behalf of the Licensee on the Shopping Centre; and

(d) the Licensee shall, at its own cost and expense, take out, carry and keep in full force and effect throughout the term of this Agreement, all risks property insurance insuring the Project on a full replacement cost basis, with the Licensor added as an additional insured as their interest may appear, and containing a waiver of subrogation in favour of the Licensor, its officers, directors, employers, servants and agents.

11. ASSIGNMENT AND SUB-LICENSEING

(a) This Agreement and the licence and privileges granted to the Licensee are personal to the Licensee and shall not be assigned or sub-licensed either in whole or in part by the Licensee without the consent in writing of the Licensor, which consent by the Licensor may be unreasonably withheld.

(b) The Licensor shall have the right to assign all of its rights hereunder to any transferee or mortgagee of the Lands, upon prior written notice to the Licensee. Notwithstanding paragraph 14 herein, the Licensee shall have the right to terminate this agreement immediately upon receiving notice of the Licensor assigning its interests herein.

12. LICENCE SUBORDINATE TO MORTGAGES

The Licence and all rights of the Licensee hereunder are and shall be at all times subject to and shall be subordinate to all mortgages on the Lands and as of date of commencement of this Agreement or which may hereafter be placed on the Lands or any renewals or extensions of them.

13. NOTICES

All notices and demands provided for in this Agreement shall be in writing and shall be served personally or shall be mailed to either party by registered mail, return receipt requested as follows:

To the Licensor at:

Ivanhoe Cambridge Inc.
Suite 300, 95 Wellington Street West
Toronto, ON M5J 2R2
Attention: Corporate Secretary
Fax: 416.369-3337

With a copy to:

Burlington Mall
Administration Office
777 Guelph Line
Burlington, ON L7R 3N2
Attention: General Manager
Fax: 905.632-4777

To the Licensee at:

City of Hamilton,
Transit Division (Hamilton Street Railway)
2200 Upper James Street, RR1
Mount Hope, ON L0R 1W0
Attention: Manager, Transit Planning
Fax # 905 679 7305

WITH A COPY TO:

City of Hamilton, Public Works Department
77 James Street North
Hamilton, ON L8R 2K3
Attention: General Manager of Public Works
Fax #: 905 546 4481

If notice is sent by registered mail as stated above, it shall be deemed to have been
received by the recipient five (5) working days after date of posting. If the notice is
delivered by hand to the recipient it shall be deemed to have been received by the
recipient on the date of delivery.

14. EARLY TERMINATION

(a) The Licensor or the Licensee may terminate this License Agreement,
without cause, on not less than one hundred and eighty (180) days prior
written notification to the other party.

(b) The Licensor in consultation with the Licensee (but the consultation shall
not require the approval of the Licensee) may at its own cost and expense
reconfigure or relocate the Project if portions of the Lands are required to
facilitate expansion or modification of the Plaza and in that case this
License Agreement shall be amended accordingly to take in to account
the expansion or modification.

15. REMOVAL AND RESTORATION

Upon termination or non-renewal of this Licence Agreement, the Licensee shall:

(a) remove the Shelter, and the rest of the Transit Terminal and any portions
of the Roadway and related curbs and sidewalks that the Licensor may
require, in accordance with the Licensor’s requirements;

(b) restore the portion of the Lands affected by the removal required by sub-
paragraph (a) above to the condition the portion was in immediately prior
to the construction for the Project; and

[remainder of page intentionally left blank]
16. ENTIRE AGREEMENT

This Licence Agreement constitutes and defines the entire contract and agreement between its parties. No oral term or condition, warranty, collateral understanding or agreement other than expressly contained in this Agreement shall form a part of the contract or be binding upon any party thereto.

IN WITNESS WHEREOF the parties hereto have executed this Transportation Services Licence Agreement in quadruplicate.

IVANHOE CAMBRIDGE INC.  (Licensor)

Per: [Signature]

Authorized Signature

Per: [Signature]

Authorized Signature

I/We have authority to bind the corporation.

937956 ONTARIO INC.  (Licensor)

Per: [Signature]

Authorized Signature

Per: [Signature]

Authorized Signature

I/We have authority to bind the corporation.

CITY OF HAMILTON  (Licensee)

Per: [Signature]

Fred Eisenberger, Mayor

Per: [Signature]

Kevin Christenson, Clerk

I/We have authority to bind the corporation.
Part Lots 53 and 54, Concession 1 Ancaster, being Parts 1 to 8, Plan 62R11982, Dundas, City of Hamilton, being the whole of PIN 17454-0165 (R).