

Authority: Toronto and East York Community Council Item 20.12,
as adopted by City of Toronto Council on November 27, 28 and 29, 2012
Enacted by Council: November 29, 2012

CITY OF TORONTO

BY-LAW No. 1649-2012

To amend the General Zoning By-law No. 438-86 of the former City of Toronto with respect to lands known municipally as 90 Harbour Street and 1 York Street.

WHEREAS the Council of the City of Toronto has been requested to amend its Zoning By-law pursuant to Section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, with respect to lands known municipally in the year 2012 as 90 Harbour Street and 1 York Street; and

WHEREAS the Council of the City of Toronto conducted a public meeting under Section 34 of the *Planning Act* regarding the proposed Zoning By-law amendment; and

WHEREAS the Council of the City of Toronto has determined to amend Zoning By-law No. 438-86, as amended, of the former City of Toronto;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Pursuant to Section 37 of the *Planning Act*, the heights and density of development permitted by this By-law are permitted subject to compliance with the conditions set out in this By-law and in return for the provision by the *owner* of the facilities, services and matters set out in Appendix 1 hereof, the provisions of which shall be secured by an agreement or agreements pursuant to Section 37(3) of the *Planning Act*.
2. Upon execution and registration of an agreement or agreements with the *owner* pursuant to Section 37 of the *Planning Act* securing the provision of the facilities, services and matters set out in Appendix 1 hereof, the *site* is subject to the provisions of this By-law, provided that in the event the said agreement(s) requires the provision of a facility, service or matter as a precondition to the issuance of a building permit, the *owner* may not erect or use such building until the *owner* has satisfied the said requirement.
3. Wherever in this By-law a provision is stated to be conditional upon the execution and registration of an agreement entered into with the *City* pursuant to Section 37 of the *Planning Act*, then once such agreement has been executed and registered, such conditional provisions shall continue to be effective notwithstanding any subsequent release or discharge of all or any part of such agreement.
4. Except as otherwise provided herein, the provisions of *By-law No. 438-86* shall continue to apply to the *site*.
5. None of the provisions of Sections 2(1) with respect to the definition of *grade*, *height*, *owner* and *parking garage*, 4(2), 4(5)(a) to (f), 4(8), 4(12), 4(13)(d), 8(3) Part I 1, 2 and 3(a), 8(3) Part III 1(a), 12(2)302 of *By-law No. 438-86*, shall apply to prevent the erection or use of a *mixed-use building* within the *site*, which may contain *dwelling units* and non-residential uses and *accessory* uses thereto, including a *parking garage* provided that all of the provisions of this By-law are complied with.

6. The *lot* on which the uses are located shall comprise at least the *site*.
7. The total combined *residential gross floor area* and *non-residential gross floor area* erected or used on the *site* shall not exceed 192,000 square metres.
8. The total *residential gross floor area* erected or used on the *site* shall not exceed 95,000 square metres and the total number of *dwelling units* erected or used on the *site* shall not exceed 1,305.
9. The total *non-residential gross floor area* erected or used on the *site*:
- shall not exceed 97,000 square metres;
 - exclusive of the part of the below *grade parking garage* used for parking of motor vehicles whose users are not occupants or customers of the *mixed-use building*.
10. At least ten percent (10%) of the total number of *dwelling units* erected or used on the *site* shall have three or more bedrooms.
11. No part of any building or structure erected within the *site* shall be located above *grade* otherwise than wholly within a *building envelope*, except for the type of structures listed in the column entitled "STRUCTURE" in the following chart, provided that the restrictions set out opposite the structure in the columns entitled "MAXIMUM PERMITTED PROJECTION" and "OTHER APPLICABLE QUALIFICATIONS" are complied with:

STRUCTURE	MAXIMUM PERMITTED PROJECTION	OTHER APPLICABLE QUALIFICATIONS
A. light fixtures, cornices, sills, eaves, bay windows, mullions, ornamental or architectural elements, balustrades, public art	1.0 metres	Provided the height of the "STRUCTURE" is no higher than that portion of the building to which it is attached
B. balconies on <i>Towers 2</i> and <i>3</i> , except where prohibited as shown on Map 2.	Not more than 1.5 metres from the wall where it is attached, except that within Area B as shown on Map 2, between <i>grade</i> and 165.0 metres <i>above grade</i> , no more than 75 percent of the balconies attached to the face of <i>Tower 2</i> shall project more than 0.75 metres from the face of <i>Tower 2</i>	No balconies are permitted on <i>Tower 1</i> or the podium base of the building

STRUCTURE	MAXIMUM PERMITTED PROJECTION	OTHER APPLICABLE QUALIFICATIONS
C. canopies, other than canopies set out in D. below	Not more than 3.5 metres from the wall where it is attached	Provided the height of such "STRUCTURE" is not greater than 6.0 metres
D. canopy along York Street	A minimum of 3.0 metres and not more than 4.5 metres from the wall where it is attached	Area beneath the canopy is to be free and clear of all obstructions. No patios, cafes are permitted within the area under the canopy
E. parapets	Maximum 1.0 metre projection	Provided the height of such "STRUCTURE" is not greater than 1.0 metre above the height limits established in this By-law
F. fences, safety railings and guardrails	No restriction	Provided the height of such "STRUCTURE" does not exceed 3.0 metres above finished ground level
G. stairs, stair enclosures, ramps, wheel chair ramps and/or stairs (and associated structures), underground garage ramps and their associated structures, garbage and servicing areas and their associated structures, retaining walls, air shafts, transformer vaults and elements required for the functional operation of the building	No restriction	Provided the height of such "STRUCTURE" does not exceed 2.0 metres above finished ground level
H. any building or structure related to an above <i>grade</i> publicly accessible PATH connection	No restriction	No restriction

12. The *height* of each portion of a building or structure erected above *grade* within the *site*, shall in respect of each *building envelope* area, have a maximum *height* in metres as shown following the symbol H on the attached Map 2 for the corresponding *building envelope* area.

- 13.** The preceding section of this By-law does not apply to prevent the erection or use above the said *height* limits of:
- (a) with respect to *Tower 1* and *Area A*, - parapets, fences, railings, balcony and terrace guards and dividers, decorative screens, privacy screens, wind screens, planters, elevator shafts and enclosures, balustrades, open air recreation, safety or wind protection purposes and window washing equipment, for unenclosed heating, ventilation, or cooling equipment such as chimneys, stacks, *solar energy devices* and flues, extending no more than 2.0 metres above the applicable *height* limit shown on Map 2;
 - (b) a mechanical penthouse extending no more than 10.0 metres above the applicable *height* limit shown on Map 2 for *Tower 1*; and
 - (c) those structural projections permitted to be outside a *building envelope* by Section 11 hereof provided the restrictions set out therein are complied with, which for clarity does not permit any additional heights above the height limits shown for *Tower 2* and *Tower 3*.
- 14.** A continuous pedestrian weather protection, consisting of a colonnade or canopy, with a minimum horizontal width of 3.0 metres, shall be provided along the west and south frontages of the *site* shown on Map 2.
- 15.** A minimum of 2 square metres for each *dwelling unit* of indoor *residential amenity space* shall be provided in a multi-purpose room or rooms (whether or not such rooms are contiguous), at least one of which contains a kitchen and a washroom.
- 16.** Notwithstanding the requirements of Section 15 of this By-law regarding indoor *residential amenity space*, a maximum of 70 percent of the total indoor *residential amenity space* required by Section 15 to be provided indoors, may be located in a *fitness club*, provided:
- (a) no residents of the *mixed-use building* are excluded from eligibility as members of the *fitness club*; and
 - (b) the remaining indoor *residential amenity space* otherwise required by Section 15 of this By-law and not located within the *fitness club*:
 - 1. is provided elsewhere within the *mixed use building* for the exclusive use of its residents, in which event it need not be contiguous to the *fitness club*; and
 - 2. is not located within guest suites.
- 17.** A minimum of 1.8 square metres for each *dwelling unit* of outdoor *residential amenity space* shall be provided, of which at least 40 square metres shall be in a location adjoining or directly accessible to indoor *residential amenity space*.

18. A minimum of one *loading space - type "G"*, two *loading spaces - Type "A"*, three *loading spaces - type "B"* and four *loading spaces - type "C"*, shall be provided and maintained on the *site*.
19. *Parking spaces* shall be provided and maintained in an underground *parking garage* within the *site* in accordance with the following minimum and maximum requirements:
- (a) *dwelling units* - a minimum of 0.32 *parking spaces* for each *dwelling unit*;
 - (b) notwithstanding the preceding subsection (a), the total number of *parking spaces* required to satisfy parking requirements for *dwelling units* may be reduced by 4 *parking spaces* for each *car-share parking space*, up to a maximum of twenty-one *car-share parking spaces*, provided in the underground *parking garage*;
 - (c) no more than 21 *car-share parking spaces* shall be permitted within the *site*; and
 - (d) parking for non residential uses and residential visitor parking shall be satisfied by the provision of at least 360 *parking spaces*, which while *accessory* to the *mixed-use building* may be occupied by motor vehicles whose users are not occupants or customers of the *mixed-use building* and for which the *owner* may charge a fee for the use of such *parking spaces*.
20. Notwithstanding the provisions in Section 4(17) of *By-law No. 438-86*, which require "that the minimum width of a *parking space* shall be increased by 0.3 metres" when it is obstructed as set out in paragraph (e) of Section 4(17), that provision shall not apply to obstructed parking spaces located in the underground *parking garage* provided they constitute no more than 25 percent of the total number of its *parking spaces*.
21. Notwithstanding the provisions in Section 4(17) of *By-law No. 438-86*, which specify the minimum height and length of a *parking space*, a *bicycle parking space* may protrude into a *parking space* provided it protrudes no more than 1.0 metre so as to reduce the length of the *parking space* at a height of 2 metres above the finished surface.
22. *Bicycle parking spaces* for visitors located within the *site* may be provided within a secured room, notwithstanding that the definition of *bicycle parking space - visitor*" in section 2(1) of *By-law No. 438-86* does not include spaces within a secured room.
23. *Bicycle parking spaces* for occupants located within the *site* may be provided within the secured underground *parking garage*, notwithstanding that the definition of *bicycle parking space - occupant* in section 2(1) of *By-law No. 438-86* only allows spaces within a secured room or area.
24. Notwithstanding the provisions in Section 4(5)(i) of *By-law No. 438-86*, which require ingress and egress to and from parking facilities to be by way of unobstructed driveways or passageways, card reading devices and their associated poles shall not constitute obstructions.

25. None of the provisions of this By-law shall apply to prevent a temporary *sales office* on the *site*.
26. Notwithstanding any existing or future severances, partition, or division of the *site*, the provisions of this By-law shall apply to the whole of the *site* as if no severance, partition or division had occurred.
27. Within the *site*, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
- (a) all new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway; and
 - (b) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.
28. For the purpose of this By-law, the following expressions shall have the following meaning:
- (a) "*Area A*" means the building podium permitted within the *site* shown as Area A on Map 2, being the entire *site* area with exception of *Tower 1*, *Tower 2*, and *Tower 3*;
 - (b) "*building envelope*" means a building envelope for each height area as shown by an "H", and as delineated by the heavy lines on Map 2 attached hereto;
 - (c) "*By-law No. 486-86*" means By-law No. 438-86, as amended, of the former City of Toronto being, "A By-law to regulate the use of land and the erection, use, bulk, height, spacing and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto";
 - (d) "*car-share parking space*" means a parking space used exclusively for the parking of a motor vehicle available for short term rental, including an option for hourly rental, for the use of at least the occupants of a building erected within the *site*;
 - (e) "*City*" means the City of Toronto;
 - (f) "*grade*" means the Canadian Geodetic elevation of 76.89 metres;
 - (g) "*height*" means the vertical distance between *grade* and the highest point of the building or structure;
 - (h) "*fitness club*" means a commercial club containing exercise facilities for its members;
 - (i) "*owner*" means the fee simple owner(s) of the *site*;

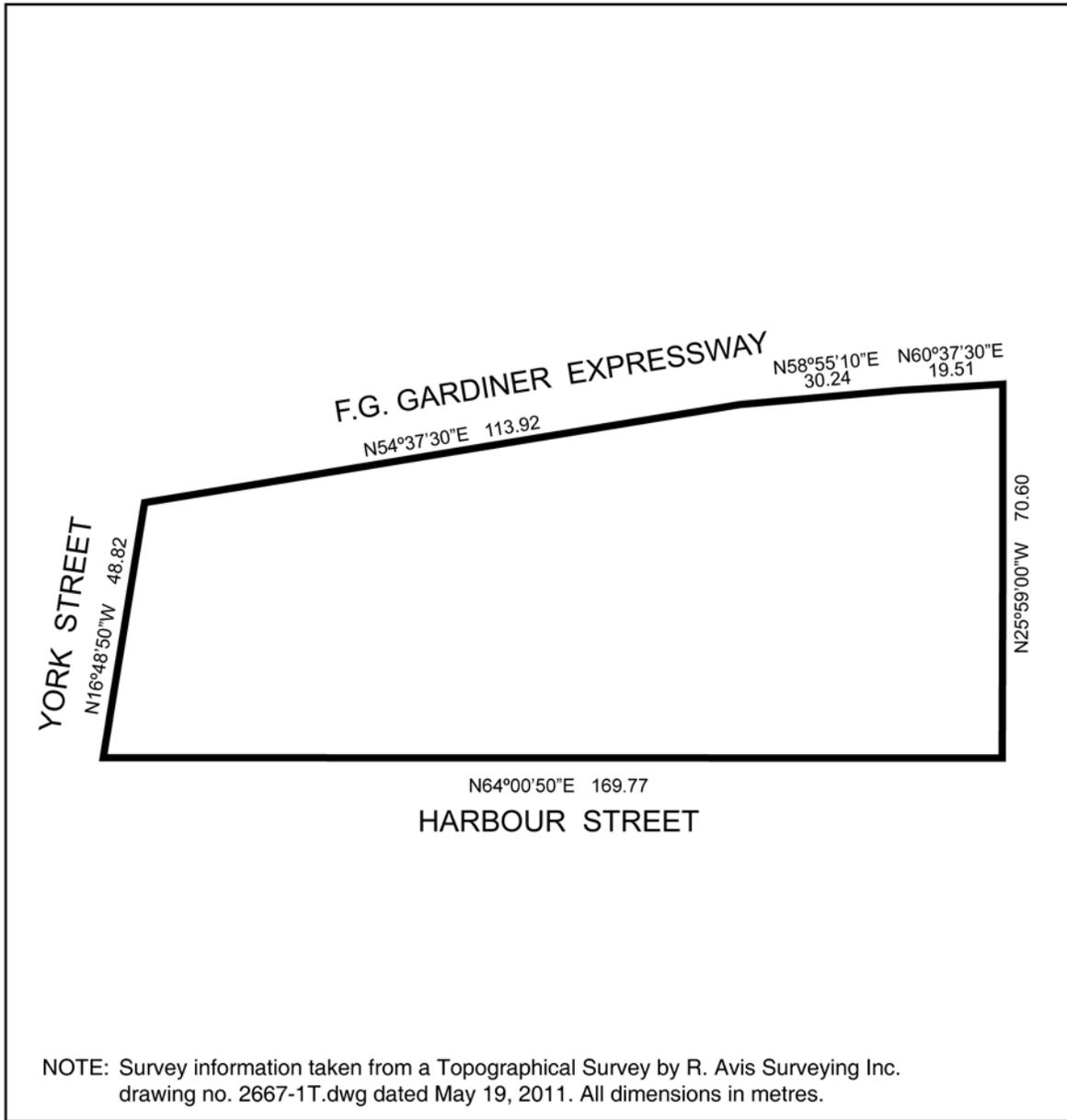
- (j) "*parking garage*" means a building or portion of a building, other than a *private garage*, located below *grade* that is used for the temporary parking of motor vehicles, as an *accessory* use to the principle use or uses permitted on the *site*, except that *parking spaces* which are *accessory* to non-residential uses within the *mixed-use building* may also be occupied by motor vehicles whose users are not occupants or customers of the *mixed-use building* and the *owner* may charge a fee for the use of such *parking spaces*;
- (k) "*sales office*" means an office, or sales trailer, used exclusively for the initial sale and/or initial leasing of *dwelling units* or the non residential uses to be erected on the *site*;
- (l) "*site*" means those lands outlined by heavy lines on Map 1 attached hereto;
- (m) "*Tower 1*", "*Tower 2*" and "*Tower 3*" each mean respectively the building towers permitted within the *building envelope* areas shown as Tower 1, Tower 2 and Tower 3 on Map 2;
- (n) "*solar energy device*" means a structure that collects energy from the sun that is converted to produce electrical or thermal energy; and
- (o) each other word or expression, which is italicized in this by-law shall have the same meaning as each such word or expression as defined in *By-law No. 438-86*.

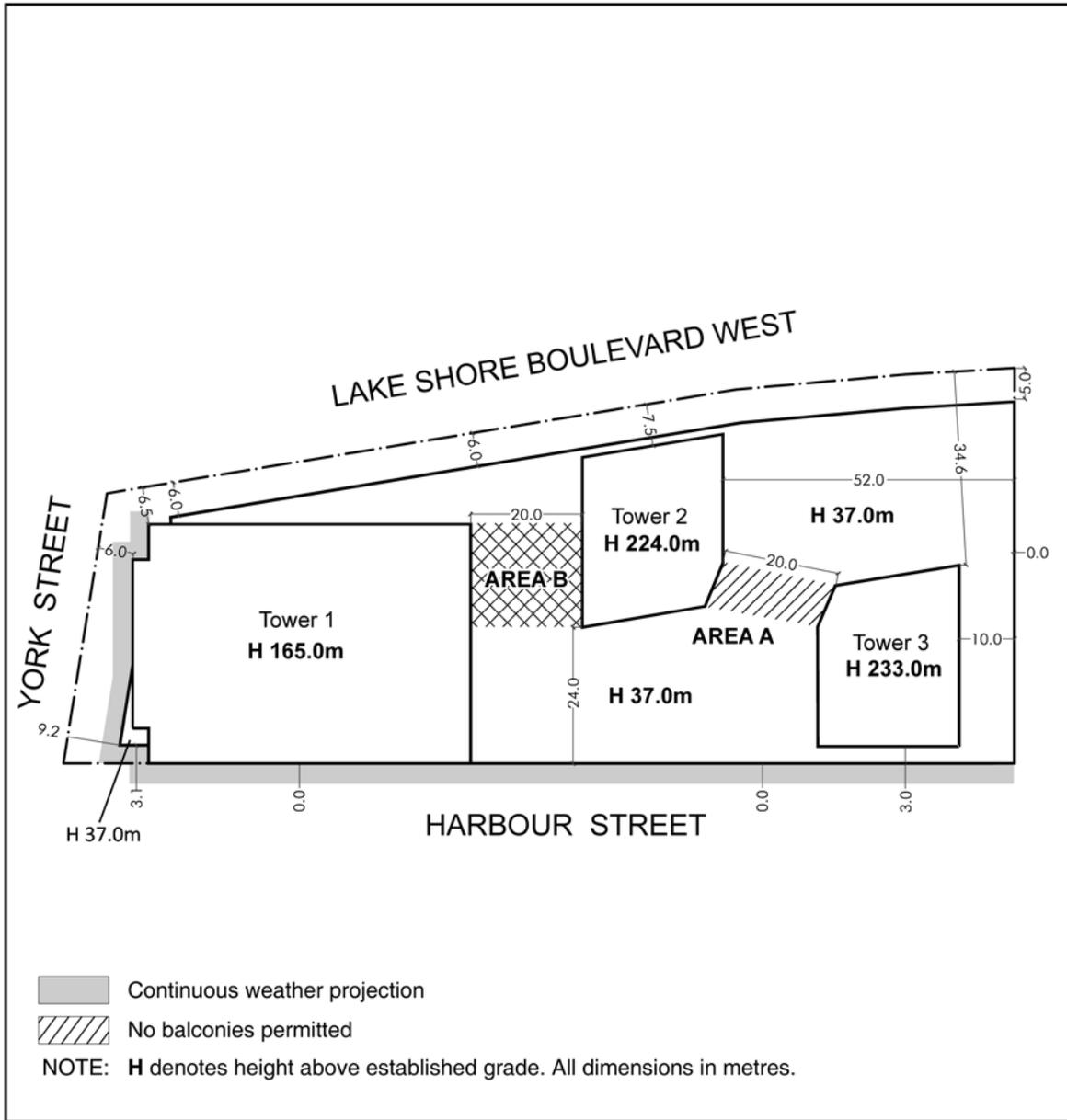
ENACTED AND PASSED this 29th day of November, A.D. 2012.

FRANCES NUNZIATA,
Speaker

ULLI S. WATKISS,
City Clerk

(Corporate Seal)





Appendix 1
Section 37 Provisions

The facilities, services and matters set out herein are the matters required to be provided by the *owner* of the *site* at its expense to the *City* in accordance with an agreement or agreements, pursuant to Section 37(3) of the *Planning Act*, in a form satisfactory to the *City* with conditions providing for indexing escalation of all financial contributions from the passage of the zoning by-law, no credit for development charges, indemnity, insurance, HST, termination and unwinding, and registration and priority of agreement whereby the *owner* shall agree as follows:

1. *Heritage* Items will be incorporated either within the *site* or its vicinity;
2. Wind mitigation measures shall be implemented;
3. At least ten percent (10%) of the total number of *dwelling units* shall be designed as three bedroom units;
4. A *fitness club* accessible to the residents of the proposed building, and in the event the *fitness club* ceases operation as a commercial fitness club, the area containing the *fitness club* shall be available, at no cost, to a residential condominium corporation within the *site*;
5. *Removal* of the vehicle lay-by located on Harbour Street;
6. Payment of Ten Million Dollars (\$10,000,000.00) (the "F.G. Gardiner - Ramp Modification Payment"), to be applied by the City, as directed by the Chief Planner in consultation with the Ward Councillor, for the following purposes:
 - (a) the modification of the traffic ramps exiting from the Frederick G. Gardiner Expressway at York Street, Bay Street, and Yonge Street, (the "F.G. Gardiner - Ramp Modification"); and
 - (b) any funds from the F.G. Gardiner - Ramp Modification Payment not applied to the F.G. Gardiner - Ramp Modification are intended to be applied to either or both:
 - (i) improvements to the park located north of Queens Quay West, east of York Street, west of 85 Harbour Street and south of Harbour Street, being the York Street "Off-Ramp" park; and
 - (ii) the Jack Layton Ferry Terminal revitalization.

as follows:

- (i) upon the passage by Council of the Amending By-laws, - the sum of One Million Dollars (\$1,000,000.00), which is intended to facilitate the immediate start of the design process for the F.G. Gardiner - Ramp Modification;
- (ii) prior to the issuance of the first Above-Grade Building Permit, - the further sum of Four Million Dollars (\$4,000,000.00); and

- (iii) the further sum of Five Million Dollars (\$5,000,000.00) upon the first to occur of:
 - (A) the first occupancy of any part of the proposed building; and
 - (B) the award by the City of the contract for the demolition and construction portion of the detailed design of the F.G. Gardiner - Ramp Modification.
- 7. Pedestrian access to Union Station, through a PATH System pedestrian bridge (the "PATH System Walkway Bridge"), - the construction of the Proposed Building will not impede the construction and/or operation of the PATH System Walkway Bridge, and the PATH System Walkway Bridge shall be fully integrated into the Site;
- 8. A publicly accessible walkway through the Proposed Building (the "PATH System Walkway"), on terms satisfactory to the City;
- 9. A Wayfinding Agreement;
- 10. All necessary improvements to the future PATH System connections;
- 11. The Owner shall also grant an easement (the "PATH System Walkway Easement"), including any necessary rights for support, to the City for the life of the Proposed Building; and
- 12. The Owner shall provide public art having an assessed value, satisfactory to the Chief Planner, of Two Million Dollars (\$2,000,000.00) as of November 27, 2012 (the "Public Art Cost"). The Owner shall submit to the Chief Planner a public art proposal, which may include the Heritage Items, art installation in the PATH connections, and components within the public realm. The Owner shall finalize the public art proposal to the satisfaction of the Chief Planner in consultation with the Ward Councillor and the Owner.